

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WEATHERFORD INTERNATIONAL, LLC;
WEATHERFORD/LAMB, INC.; WEATHERFORD US, LP; and
WEATHERFORD ARTIFICIAL LIFT SYSTEMS, LLC
Petitioners

v.

PACKERS PLUS ENERGY SERVICES, INC.,
Patent Owner

Case IPR2016-01509
Patent 7,861,774

**PETITIONER'S REPLY TO PATENT OWNER'S OBJECTIONS TO
EVIDENCE AND PETITIONER'S SUPPLEMENTARY EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(2)**

IPR2016-01509

Under 37 C.F.R. § 42.64(b)(2), Petitioners Weatherford International LLC, et al. (hereinafter “Petitioner”), reply to the evidentiary objections submitted by Exclusive Licensee Rapid Completions (hereinafter “Patent Owner”). Petitioner also serves supplementary evidence as Exhibits 1032 and 1033, also pursuant to 37 C.F.R. § 42.64(b)(2).

Exhibit 1007 – Declaration of Vikram Rao

Patent Owner objects to Petitioner’s Ex. 1007 because Patent Owner has not yet had the opportunity to depose the declarant. Petitioner respectfully directs Patent Owner to 37 C.F.R. § 42.53(d) for the procedure by which deposition testimony may be taken.

Exhibit 1008 – Transcript of Daniel Themig

Patent Owner objects to Ex. 1008 as being inadmissible hearsay under Fed. R. Evid. 801 and 802. Ex. 1008 is not hearsay pursuant to Fed. R. Evid. 801(d). Specifically, Ex. 1008 contains a transcript of a deposition of Daniel Themig in the litigation styled *Halliburton Energy Services, Inc. et al. v. Packers Plus Energy Services, Inc., et al.*, No. CV-44,964 in the 238th Judicial District Court of Midland County, Texas (“the ‘964 action”) in which Mr. Themig provides testimony as a representative for real party in interest Packers Plus Energy Services Inc. *See, e.g.*, Ex. 1032; *see also* Ex. 1008 at 2 (internal page 444). The testimony contained in

Ex. 1008 is being used against Packers Plus Energy Services Inc. in the current proceeding. *See, e.g.*, IPR2016-01509, Petition for *Inter Partes* Review, Paper 1 (hereinafter “Petition”) at 16-18. Furthermore, the testimony was made by the party in an individual or representative capacity; is testimony that the party manifested that it adopted or believed to be true; was made by a person authorized to make a statement on the subject; and/or was made by the party’s agent or employee on a matter within the scope of the relationship while it existed.

For example, as illustrated on pages 1-3 of Ex. 1032, real party in interest Packers Plus Energy Services Inc. was served with a Notice of Deposition in the ‘964 action. As noted on page 1 of Ex. 1032 and page 2 (internal page 444) of Ex. 1008, Mr. Themig served as the designated representative for real party in interest Packers Plus Energy Services Inc. in the deposition taken in response to the Notice of Deposition of Ex. 1032 and as memorialized in the deposition transcript of Ex. 1008. Furthermore, Mr. Themig was designated by real party in interest Packers Plus Energy Services Inc. to address the subject matter for which Petitioner relies on Ex. 1008. *See, e.g.*, Ex. 1032 at 5-6; *see also, e.g.*, Ex. 1008 at 2 (internal page 444); *see also, e.g.*, Petition at 16-18. Therefore, Ex. 1008 is not hearsay pursuant to Fed. R. Evid. 801(d). Ex. 1008 also falls within one or more of the hearsay exceptions of Fed. R. Evid. 803 and 807.

Additionally, Patent Owner has not specifically identified any of the statements in Ex. 1008 that constitute hearsay, as is required under 37 C.F.R. § 42.64(b)(1). *Liberty Mutual Insurance Co. v. Progressive Casualty Insurance Co.*, CBM2012-00010, Paper 59, at 36 (rejecting hearsay objections in motion to exclude where movant failed to specifically identify the textual portions of the exhibits that allegedly were offered for the truth of the matter asserted and instead moved to exclude the entire exhibits).

Patent Owner also objects to Ex. 1008 as being inadmissible under Fed. R. Evid. 901 as not being properly authenticated. Patent Owner is directed to Petitioner Ex. 1027, the Declaration of Carrie Anderson, which provides evidence sufficient to support a finding that Ex. 1008 is what Petitioner claims it is. Patent Owner also submits herewith Ex. 1033, a Second Declaration of Carrie Anderson, which also provides evidence sufficient to support a finding that Ex. 1008 is what Petitioner claims it is.

Finally, Patent Owner objects to Ex. 1008 as being inadmissible under Fed. R. Evid. 402 as being irrelevant or as being confusing or a waste of time under Fed. R. Evid. 403 because it is allegedly inadmissible under Fed. R. Evid. 801, 802 and 901. First, as noted above, the submission of Ex. 1008 is admissible under Fed. R.

Evid. 801, 803, 807 and/or and 901. Second, Petitioner notes that Ex. 1008 is clearly relevant to the issues in the present proceeding. *See, e.g.*, Petition at 16-18.

Exhibit 1011 – Affidavit of Kevin Trahan

Patent Owner objects to Ex. 1011 as being inadmissible hearsay under Fed. R. Evid. 801 and 802. Ex. 1011 is not hearsay pursuant to Fed. R. Evid. 801(d). For example, Kevin Trahan served as an expert in the ‘964 action for real party in interest Packers Plus Energy Services Inc., and the affidavit was made pursuant to Mr. Trahan’s role as an expert for Packers Plus Energy Services Inc. in the ‘964 action. *See, e.g.*, Ex. 1011 at 1. The testimony contained in Ex. 1011 is being used against Packers Plus Energy Services Inc. in the present proceeding. *See, e.g.*, Petition at 18. Furthermore, the testimony contained in Ex. 1011 was made by the party in an individual or representative capacity; is testimony that the party manifested that it adopted or believed to be true; was made by a person authorized to make a statement on the subject; and/or was made by the party’s agent or employee on a matter within the scope of the relationship while it existed. Therefore, Ex. 1011 is not hearsay pursuant to Fed. R. Evid. 801(d)(2). *See, e.g.*, CBM2015-00130, Final Written Decision, paper 33 at 40 (Real party in interest expert report in a prior proceeding found to be non-hearsay evidence pursuant to Fed. R. Evid. 801(d)(2)). Ex. 1011 also falls within one or more of the hearsay exceptions of Fed. R. Evid. 803 and 807.

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