

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

***Inter Partes* Review No. IPR2016-01517
Patent 7,134,505**

**PETITIONERS' OPPOSITION TO PATENT OWNER'S MOTION
TO EXCLUDE EVIDENCE UNDER 37 C.F.R. § 42.64(c)**

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Patent Owner's ("PO") Motion to Exclude (Paper 46) lacks a basis in facts or law and should be denied. PO moves to exclude Petitioners' Exhibits 1008 and 1011-1014 as allegedly lacking authentication and as allegedly being hearsay. Neither argument has any merit.

I. The Exhibits Have Been Authenticated

As PO's Motion acknowledges, each of Exhibits 1008 and 1011-1014 is supported by a declaration of Carrie Anderson. Ex. 1027 at 1. In that declaration, Ms. Anderson explains that she is a paralegal for the law firm of Heim, Payne & Chorush, LLP and that Heim, Payne & Chorush, LLP represented Halliburton Energy Services, Inc. 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 in Midland County, Texas ("Halliburton Litigation"). *Id.* She explains that her declaration is "based on personal knowledge." *Id.* And as she explains, each of Exhibits 1008 and 1011-1014 were provided by PO during that litigation. *Id.* FRE 901 requires nothing more. FRE 901(b)(1) (stating that evidence that satisfies authenticity including testimony of a witness with knowledge that an item is what it is claimed to be). Thus, Ms. Anderson's declaration establishes a basis for her personal knowledge regarding the documents and establishes that they are what they purport to be.

Moreover, PO does not assert that any of these exhibits are not authentic. PO offers no challenge to any of Ms. Anderson's testimony or any reason to question any of the facts asserted in her declaration. PO also does not explain why these facts, if true, are insufficient to establish authenticity. PO's sole allegation is that Ms. Anderson's declaration is insufficient, but PO provides no factual or legal arguments in support of that bare allegation. PO has failed to carry its burden as movant to establish that it is entitled to exclusion of these exhibits under 37 C.F.R. § 42.20(c). PO's motion to exclude on the basis of lack of authentication under FRE 901 should be denied.

II. The Exhibits Are Not Hearsay

PO next challenges each of Exhibits 1008 and 1011-1014 as hearsay not falling within any exception to the hearsay rules. PO makes no effort to address the fact that each of these statements were made or adopted by PO in the Halliburton Litigation as attested by Ms. Anderson. Each of these exhibits is not hearsay because under FRE 801(d)(2), it is the opposing party's own statement. *Northern Nat. Gas Co. v. Approximately 9117 Acres*, 2013 U.S. Dist. LEXIS 180922, at *28 (D. Kan. Dec. 27, 2013) (refusing to exclude a party's expert reports and testimony from a prior case because "Northern's prior use of these expert opinions" satisfies the standard that a party "manifested that it . . . believed [those statements] to be true")

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