

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**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**

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

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**PETITIONERS' REPLY IN SUPPORT OF PETITIONERS'  
MOTION TO EXCLUDE EVIDENCE UNDER 37 C.F.R. § 42.64(c)**

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Patent Owner's ("PO") Opposition to Petitioners' Motion to Exclude (Paper 50) ("Opp.") ignores the evidence cited in the Motion to Exclude (Paper 44) ("Motion") and does not overcome its showing that the evidence should be excluded.

### **I. Improper Expert Testimony**

PO's expert, Mr. McGowen, relied on undisclosed Baker Hughes data for his opinions on commercial success. Motion at 4. Petitioners moved to exclude section 14.4 of Ex. 2051 and section 11.2 of Ex. 2081. PO opposed, arguing that the objection is "untimely" because it was raised "well after" PO served exhibits 2051 and 2081. Opp. ("Paper 50") at 1. However, Weatherford first became aware that McGowen was relying upon undisclosed data at his deposition, and Petitioners' Objections (Paper 40) themselves make clear "the present Objections are timely as they are being served and filed within five business days of receipt of the official transcript of the Oral Deposition of Harold E. McGowen III . . . ." Paper 40 at 1 n.1. While PO asserts that Exs. 2051 and 2081 show that "McGowen prepared a separate revenue calculation for this proceeding—he estimated Baker Hughes' revenue based only on publicly available information," Opp. at 2, McGowen told a different story at his deposition: "I just know that, that I saw that information, and that entered into my thinking when I was writing my report and drawing my conclusions." Ex. 1038 at 163:4-7. When asked directly, "So in drawing your conclusions, you relied on – you're referring to the Baker Hughes' data?" *Id.* at

163:8-9. McGowen responded, “Yes” and he admitted that Weatherford did not have access to that data. *Id.* at 163:13-20. Weatherford objected both at the deposition (Ex. 1038 at 163:22-164:3) and in Paper 40 submitted within five business days of receiving his official transcript. Weatherford’s objections are therefore timely.

PO admits that its argument that Petitioners could have obtained the information under the district court Protective Order is wrong because “this provision is not directly applicable in an IPR.” Opp. at 5.

PO next asserts that Petitioners’ arguments about lack of underlying data go only to the weight of the evidence, not its admissibility under the PTAB Trial Practice Guide. Opp. at 6. But PO does not address its violations of FRE 705 (requiring disclosure of the basis for an expert opinion on cross examination) and its failure to provide the basis for its expert’s opinions under FRE 702.

Finally, PO argues that the objections are moot because McGowen provided new Baker Hughes data to substantiate his opinion. McGowen’s testimony that his opinion relied upon undisclosed data refutes PO’s argument. Ex. 1038 at 163:8-13. Thus, McGowen’s opinions should be excluded.

## **II. Unauthenticated Evidence**

PO asserts that it followed the “proper procedure” for authenticating Exs. 2004-2012, 2014, and 2020 by ignoring 37 C.F.R. § 42.64(b)(2), which requires

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