

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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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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Case IPR2016-01517  
Patent 7,134,505

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**PETITIONER'S REPLY TO  
PATENT OWNER'S PRELIMINARY RESPONSE**

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**Rules**

37 C.F.R. § 42.51(b)(2)(i).....5

## I. INTRODUCTION

Patent Owner (“PO”) filed a patent infringement lawsuit against four sets of Defendants, including Petitioner and Baker Hughes (who are competitors), but PO wants only one Defendant/Baker Hughes to file IPRs. Attempting to strip Petitioner of its right to have its own IPR evidence and grounds of rejection considered, including those citing Yost,<sup>1</sup> PO alleges that Petitioner failed to identify Baker Hughes as a real party in interest (RPI). PO has failed to rebut the presumption that Petitioner correctly identified all RPIs. Baker Hughes is not an RPI to the present proceeding, a fact PO was made aware of in the co-pending litigation prior to the filing of the Patent Owner Preliminary Response (POPR). Indeed, from the outset of the litigation, all Defendants agreed that they would act independently in IPRs, which is precisely what has happened. Baker Hughes has exerted no control over Petitioner in the IPRs (and vice versa). Nor has Baker Hughes had the “opportunity” to exert any such control (and vice versa).

## II. PATENT OWNER HAS FAILED TO REBUT THE PRESUMPTION THAT PETITIONER CORRECTLY IDENTIFIED THE RPI

The Board’s practice to “initially accept[] the identification of real parties in

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<sup>1</sup> Yost negates PO’s position in Baker Hughes’ IPRs that it was not known to perform multistage fracturing of horizontal open hole wells using packers for zonal isolation and ported sliding sleeves for injecting fracturing fluids.

interest in a petition as accurate acts as a rebuttable presumption.... The party against whom a presumption is directed has the burden of producing evidence to rebut the presumption.” IPR2013-00453, paper 88 at 7-8 (emphasis added). Thus, PO has the initial burden of rebutting Petitioner’s identification of the RPIs with sufficient evidence that brings into question the accuracy of the identified RPIs. *Id.* at 8; *see also* IPR2014-01021, paper 42, p. 7. PO has failed to meet this burden.

All that PO has alleged in the POPR is that: 1) Baker Hughes is a joint defense partner with Petitioner **in the litigation** (POPR at 10); 2) Petitioner allowed Baker Hughes to obtain discovery on its behalf **in the litigation** (POPR at 3); 3) Baker Hughes participated in drafting invalidity contentions **in the litigation** (POPR at 2-5, 10, 11)<sup>2</sup>; 4) Baker Hughes filed its own **separate IPR petitions** using similar art, but not Petitioner’s Yost reference (POPR at 3, 5, 11); and 5) Baker Hughes and Petitioner pursued **separate** summary judgment theories **in the litigation** (POPR at 11-12). In other words, all of PO’s evidence is directed to actions taken as part of a joint defense group in the litigation, or Baker Hughes’ separately filed IPR petitions in which Petitioners had no involvement.

Participation in a joint defense group and other actions taken in a co-pending litigation do not provide a connection to the present proceeding sufficient to show

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<sup>2</sup> Contrary to PO’s argument based on PDF metadata, Petitioner’s litigation counsel drafted the Yost-based invalidity contentions as well as other contentions.

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