

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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WEATHERFORD INTERNATIONAL, LLC,  
Petitioner,

v.

BAKER HUGHES OILFIELD OPERATIONS, LLC,  
Patent Owner.

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Case IPR2019-00768  
Patent RE46,137

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**PATENT OWNER'S OBJECTIONS TO PETITIONER'S EVIDENCE  
SERVED WITH ITS MOTION TO TERMINATE OR STAY THE  
REEXAMINATION**

As set forth below, Patent Owner objects to evidence that Petitioner served with its Motion to Terminate and/or Stay Ex Parte Reexamination No. 90/014,418 under 35 U.S.C. § 315(d) (Paper 21).

<b>Ex. # and Petitioner's Description</b>	<b>Objections</b>
1004. U.S. Patent No. 5,819,853 ("Patel '853")	<p><u>Irrelevant or Insufficiently Probative.</u> FRE 401-403. Petitioner relies on Ex. 1004 to allege that Patent Owner "misled the examiner" about what it teaches during prosecution of the '137 Patent. Paper 21 at 6; <i>see also id.</i> at 2. But Ex. 1004 is not at issue in this proceeding (at Petitioner's choice) or the reexamination, and for at least that reason, neither it nor anything Patent Owner said about it makes any fact of consequence to terminating or staying the reexamination more or less probable than without the exhibit.</p> <p>And more broadly, Ex. 1004 is used in support of Petitioner's allegation that "PO has ... perpetuate[d] a baseless assertion of fraudulently-obtained patent rights" (Paper 21 at 5), which is an issue the district court, not the Board, will decide. Patent Owner—throughout these objections—understands Petitioner's "baseless assertion" to refer to an assertion that is baseless for reasons relating to invalidity and/or enforceability.</p> <p>To the extent Ex. 1004 is relevant, any probative value it has is substantially outweighed by dangers of unfair prejudice, confusing the issues, and wasting time.</p> <p><u>Improper Character Evidence.</u> FRE 404(a)(1), (b)(1). To the extent Petitioner uses Ex. 1004 in an attempt to establish that Patent Owner has an untruthful character and has therefore acted untruthfully on one or more occasions (<i>see</i> Paper 21 at 5 ("PO has engaged in a series of [fraudulent] acts")), it is improper character evidence.</p>
1013. Letter from	<u>Irrelevant or Insufficiently Probative.</u> FRE 401-403.

<p>Matheny July 10, 2014</p>	<p>Petitioner relies on this exhibit to allege that PO “first threatened Petitioner with [patent infringement] ... in July 2014.” Paper 21 at 1. But this does not make any fact of consequence to terminating or staying the reexamination more or less probable than without the exhibit.</p> <p>To the extent Ex. 1013 is relevant, any probative value it has is substantially outweighed by dangers of unfair prejudice, confusing the issues, and wasting time.</p>
<p>1014. Brown email Aug. 18, 2014</p>	<p><u>Irrelevant or Insufficiently Probative.</u> FRE 401-403. Petitioner relies on Ex. 1014 as allegedly showing that “Petitioner told PO that the asserted claims of the ’960 Patent were invalid in view of Giroux.” Paper 21 at 1. But this does not make any fact of consequence to terminating or staying the reexamination more or less probable than without the exhibit.</p> <p>And more broadly, Ex. 1014 is used in support of Petitioner’s allegation that “PO has ... perpetuate[d] a baseless assertion of fraudulently-obtained patent rights” (Paper 21 at 5), which is an issue that the district court, not the Board, will decide.</p> <p>To the extent Ex. 1014 is relevant, any probative value it has is substantially outweighed by dangers of unfair prejudice, confusing the issues, and wasting time.</p> <p><u>Negotiations.</u> FRE 408. Ex. 1014 contains statements made during negotiations related to Patent Owner’s and Petitioner’s claims (e.g., infringement and invalidity), and such statements are therefore inadmissible to prove the validity of any of those claims or to impeach by contradiction. But this is precisely how Petitioner uses Ex. 1014. <i>See</i> Paper 21 at 1 (“PO then hatched a plan to file a reissue application in light of invalidity based on Giroux.”) and 3 (“Notwithstanding Petitioner’s charts proving the invalidity of the ’137 Patent ..., PO filed suit against Petitioner”).</p> <p><u>Hearsay.</u> FRE 801(c) and 802. Petitioner relies on Ex. 1014</p>

	<p>to establish the truth of out-of-court statements therein, e.g., that “claims ... are invalid ... in view of [Giroux].” Ex. 1014 at 1; Paper 21 at 1 and 3. These statements are thus hearsay, and Petitioner has not offered evidence sufficient to demonstrate that they fall within any exception to the rule against hearsay.</p> <p><u>Improper Character Evidence.</u> FRE 404(a)(1), (b)(1). To the extent Petitioner uses Ex. 1014 in an attempt to establish that Patent Owner has an untruthful character and has therefore acted untruthfully on one or more occasions (<i>see</i> Paper 21 at 5 (“PO has engaged in a series of [fraudulent] acts”)), it is improper character evidence.</p>
1015. Matheny Ltr. Sept. 8, 2014	<p><u>Irrelevant or Insufficiently Probative.</u> FRE 401-403. Petitioner relies on Ex. 1015 as showing that Petitioner and Patent Owner “exchanged correspondence regarding invalidity of the ’960 claims.” Paper 21 at 1. But this does not make any fact of consequence to terminating or staying the reexamination more or less probable than without the exhibit.</p> <p>And more broadly, Ex. 1015 is used in support of Petitioner’s allegation that “PO has ... perpetuate[d] a baseless assertion of fraudulently-obtained patent rights” (Paper 21 at 5), which is an issue that the district court, not the Board, will decide.</p> <p>To the extent Ex. 1015 is relevant, any probative value it has is substantially outweighed by dangers of unfair prejudice, confusing the issues, and wasting time.</p> <p><u>Negotiations.</u> FRE 408. Ex. 1015 contains statements made during negotiations related to Patent Owner’s and Petitioner’s claims (e.g., infringement and invalidity), and such statements are therefore inadmissible to prove the validity of any of those claims or to impeach by contradiction. But this is precisely how Petitioner uses Ex. 1015. <i>See</i> Paper 21 at 1 (“PO then hatched a plan to file a reissue application in light of invalidity based on Giroux.”) and 3 (“Notwithstanding Petitioner’s charts proving the</p>

	<p>invalidity of the '137 Patent ..., PO filed suit against Petitioner”).</p> <p><u>Improper Character Evidence.</u> FRE 404(a)(1), (b)(1). To the extent Petitioner uses Ex. 1015 in an attempt to establish that Patent Owner has an untruthful character and has therefore acted untruthfully on one or more occasions (<i>see</i> Paper 21 at 5 (“PO has engaged in a series of [fraudulent] acts”)), it is improper character evidence.</p>
1016. Brown email Sept. 17, 2014	<p><u>Irrelevant or Insufficiently Probative.</u> FRE 401-403. Petitioner relies on Ex. 1016 as showing that Petitioner and Patent Owner “exchanged correspondence regarding invalidity of the '960 claims.” Paper 21 at 1. But this does not make any fact of consequence to terminating or staying the reexamination more or less probable than without the exhibit.</p> <p>And more broadly, Ex. 1016 is used in support of Petitioner’s allegation that “PO has ... perpetuate[d] a baseless assertion of fraudulently-obtained patent rights” (Paper 21 at 5), which is an issue that the district court, not the Board, will decide.</p> <p>To the extent Ex. 1016 is relevant, any probative value it has is substantially outweighed by dangers of unfair prejudice, confusing the issues, and wasting time.</p> <p><u>Negotiations.</u> FRE 408. Ex. 1016 contains statements made during negotiations related to Patent Owner’s and Petitioner’s claims (e.g., infringement and invalidity), and such statements are therefore inadmissible to prove the validity of any of those claims or to impeach by contradiction. But this is precisely how Petitioner uses Ex. 1016. <i>See</i> Paper 21 at 1 (“PO then hatched a plan to file a reissue application in light of invalidity based on Giroux.”) and 3 (“Notwithstanding Petitioner’s charts proving the invalidity of the '137 Patent ..., PO filed suit against Petitioner”).</p> <p><u>Hearsay.</u> FRE 801(c) and 802. Petitioner relies on Ex. 1016</p>

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