IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

KERR MACHINE CO.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 6:20-CV-200-ADA**
	§	
VULCAN INDUSTRIAL HOLDINGS, LLC, VULCAN ENERGY SERVICES, LLC, and CIZION, LLC d/b/a VULCAN INDUSTRIAL MANUFACTURING, LLC	§	**JURY TRIAL DEMANDED**
	§	
Defendants.	§	

DEFENDANTS' OPPOSED MOTION TO STAY LITIGATION PENDING THE OUTCOME OF THE PENDING POST-GRANT REVIEW PROCEEDING BEFORE THE PATENT TRIAL AND APPEAL BOARD

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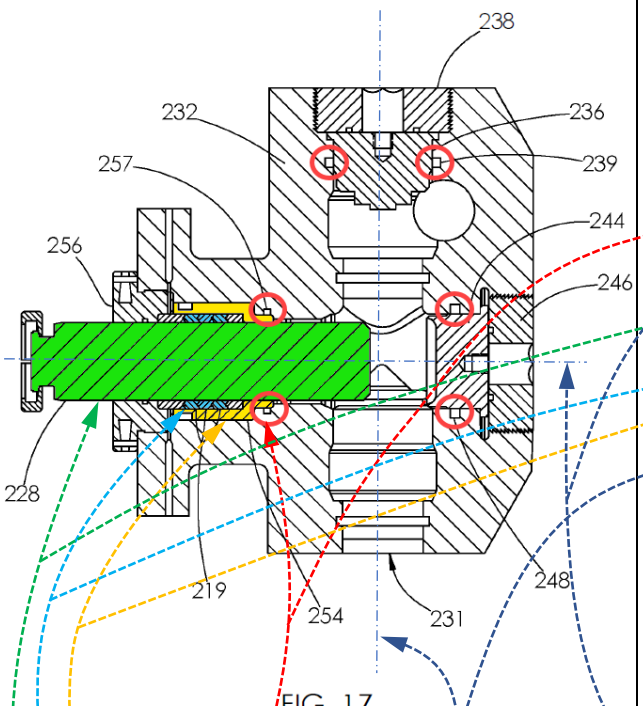
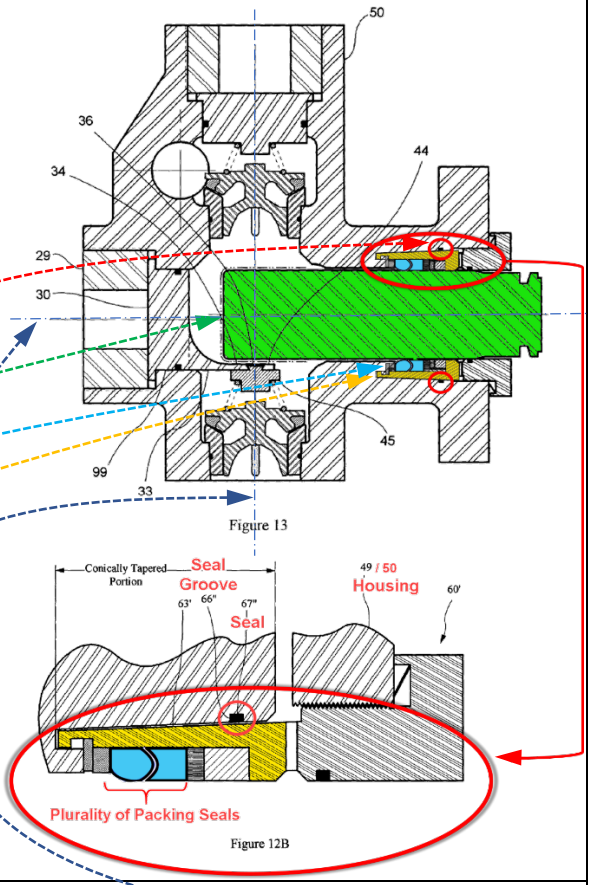
The unique circumstances here are likely a case of first impression for the Court.

First, the sole asserted '070 patent issued on March 17, 2020, and Kerr filed this lawsuit two (2) days later. Defendants quickly determined that most of the claims of the '070 patent are unambiguously anticipated by each of three separate prior art references that had not been considered by the USPTO, and all of the patent's claims are very likely to be cancelled in their entirety by the PTAB. For example, Claim 1 of the '070 patent reads identically on Blume '097:

Asserted '070 Patent	Prior Art – Blume '097 Patent
 FIG. 17	

1. A method of manufacturing the fluid end assembly, comprising:

providing a housing having a first conduit extending therethrough, and a second conduit extending therethrough that intersects the first conduit;

forming an endless groove in the housing such that the groove surrounds the second conduit;

positioning a seal within the groove;

installing a tubular sleeve within the second conduit such that at least a portion of the sleeve engages with the seal;

installing a plurality of packing seals within the sleeve; and

installing a reciprocating plunger at least partially within the sleeve and the plurality of packing seals.

Ex. 1 (PGR Petition) at 10, 39-41, & 52-59.

Second, the pending PTAB proceeding is a relatively uncommon Post-Grant Review ("PGR"), which is uniquely different from the far more routine Inter Partes Review (IPR) proceedings. Because PGRs are only permitted shortly after a patent issues, Congress intended for these just-issued patents to be reevaluated by the PTAB ***before*** "expensive litigation.":

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 112th CONGRESS, FIRST SESSION

Vol. 157 WASHINGTON, MONDAY, MARCH 7, 2011 *No. 33*

Senate

MONDAY, MARCH 7, 2011

S1326 CONGRESSIONAL RECORD — SENATE *March 7, 2011*

Other reforms included in the bill will improve the quality of U.S. patents over the long term. The bill creates a new post-grant review of patents, which can be sought within the first 9 months after the patent is issued and used to raise any challenge to the patent. This will allow invalid patents that were mistakenly issued by the PTO to be fixed early in their life, before they disrupt an entire industry or result in expensive litigation.

Ex. 2 (157 Cong. Rec. S1309, S1323-S1326) at S1309 & S1326 (emphases added). In addition, the estoppel effects for PGRs are significantly broader than they are for IPRs. Thus, the policy in favor of staying parallel litigation is considerably stronger for PGRs than for IPRs.

Third, ***all*** of the relevant factors support a stay in this case. The only accused product in the case – the ICON EVO product – is no longer being manufactured or sold. Kerr will not be

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