

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAKER HUGHES INCORPORATED and
BAKER HUGHES OILFIELD OPERATIONS, INC.,
Petitioner,

v.

PACKERS PLUS ENERGY SERVICES, INC.,
Patent Owner.

IPR2016-00598¹
Patent 7,861,774 B2

NEIL T. POWELL, *Administrative Patent Judge.*

DECISION
Petitioner's Motion to Submit Supplemental Information
37 C.F.R. § 42.123(a)

¹ IPR2016-001506 has been joined with IPR2016-00598.

Petitioner filed a Motion to Submit Supplemental Information seeking to submit certain exhibits as supplemental information “to further establish the prior art nature of Lane-Wells (Ex. 1002), Van Dyke (Ex. 1006), Baker (Ex. 1007), Howard (Ex. 1018), and Hyne (Ex. 1019).” IPR2016-01506, Paper 27² (“the Motion” or “Mot.”). Patent Owner filed a Response to Petitioners’ Motion to Submit Supplemental Information. IPR2016-01506 Paper 28 (“Response” or “Resp.”).

Petitioner argues that each of the exhibits it seeks entered as supplemental information has been submitted in a timely manner and is relevant to a claim for which trial has been instituted. Mot. 6–10. Asserting that Patent Owner received the exhibits more than two months prior to the due date for its Patent Owner Response, Petitioner argues that entry of the exhibits will not prejudice Patent Owner. *Id.* at 10.

Patent Owner objects to entry of only one of the exhibits proffered by Petitioner—the Davis-Nichols Declaration (Ex. 1123³), which relates to the public accessibility of Lane-Wells (IPR2016-01506, Ex. 1002). Resp. 1–5. Noting that its Preliminary Response (IPR2016-01506 Paper 17) attacked Petitioner’s other evidence of public accessibility of Lane-Wells, Patent Owner argues that we should not allow Petitioner to submit new evidence that would require Patent Owner to launch a new attack on Petitioner’s public accessibility assertion. *Id.* at 1–3. Patent Owner asserts that

² This paper was filed in IPR2016-01506 before that case was joined with IPR2016-00598 and terminated.

³ The Motion and Response refer to this declaration as Exhibit 1023, but the declaration appears in the record as Exhibit 1123.

Petitioner’s “attempted reliance on this new evidence demonstrates that the Petition itself is fatally flawed.” *Id.* at 3.

We find Petitioner’s arguments more persuasive than Patent Owner’s. We agree with Petitioner that the Motion complies with the requirements of 37 C.F.R. § 42.123(a). Additionally, consistent with Petitioner’s arguments, we do not find significant prejudice to Patent Owner from the entry of the Davis-Nichols Declaration. Contrary to Patent Owner’s argument, the Petition is not fatally flawed. As we explained when we instituted trial, Petitioner submitted evidence of public accessibility sufficient to demonstrate a reasonable likelihood of prevailing. IPR2016-01506 Paper 19, 6–11. Neither Patent Owner’s initial attack nor its attempt to reiterate that initial attack persuade us otherwise. Having submitted evidence of public accessibility sufficient to demonstrate a reasonable likelihood of prevailing, Petitioner’s response to Patent Owner’s attack with additional evidence bolstering its public accessibility contention is foreseeable, reasonable, and not unduly prejudicial to Patent Owner.

Order

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner’s Motion to Submit Supplemental Information is *granted*.

Case IPR2016-00598
Patent 7,861,774 B2

PETITIONER:

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