

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NATIONAL OILWELL VARCO, L.P.,
Petitioner,

v.

TECHNICAL INDUSTRIES, INC.,
Patent Owner.

Case IPR2017-00648 (Patent 7,263,887 B2)
Case IPR2017-00699 (Patent 7,401,518 B2)

Before BRYAN F. MOORE, MINN CHUNG, and
JACQUELINE T. HARLOW, *Administrative Patent Judges*.

HARLOW, *Administrative Patent Judge*.

ORDER¹
Conduct of the Proceeding
37 C.F.R. § 42.5

¹ This Order addresses issues common to each of the captioned cases. Thus, we exercise our discretion to issue a single order, to be entered in each case. The parties are not authorized to use this case caption, or to file consolidated papers, without prior authorization.

On March 1, 2018, a conference call was conducted among counsel for Petitioner, National Oilwell Varco, L.P., counsel for Patent Owner, Technical Industries, Inc., and Judges Harlow and Chung. The purpose of the call was to address the parties' request for additional briefing and modifications to the Scheduling Order. Petitioner's Motion to Strike the Proposed Expert Opinions of Patent Owner Technical's William Emblom ("Motion to Strike," Paper 27²) was also discussed.

In consideration of Petitioner's reliance, in its Reply (Paper 26), on the Supplemental Declaration of Dr. John P. Rodgers ("Supplemental Declaration," Ex. 1027), as well as complexities that have arisen with regard to scheduling Dr. Rodgers' deposition concerning that declaration, the parties jointly request limited additional briefing to address Dr. Rodgers' Supplemental Declaration and forthcoming deposition testimony. In view of the parties' agreement and the particular facts and circumstances of this case, including the circumscribed nature of the additional briefing sought, we grant the parties' request. Accordingly, Patent Owner may file, no later than March 13, 2018, a five-page Sur-Reply to Petitioner's Reply, addressed exclusively to the subject matter of the Supplemental Declaration and Dr. Rodgers' deposition testimony regarding the same. Petitioner is likewise authorized to file, by March 20, 2018, a five-page Sur-Sur-Reply, also confined to the subject of the Supplemental Declaration and Dr. Rodgers' testimony regarding same.

² For the sake of brevity citations will be provided to IPR2017-00648 only.

IPR2017-00648 (Patent 7,263,887 B2)
IPR2017-00699 (Patent 7,401,518 B2)

The parties' additionally request that we reschedule Due Date 7, the date for Oral Hearing in the above captioned matters, such that it coincides with Due Date 7 in two other proceedings, IPR2017-00860 and IPR2017-00910, which concern related patents. Alternatively, the parties' request that we consolidate the above captioned proceedings with IPR2017-00860 and IPR2017-00910. In view of resource constraints at the Board, the late timing of this request (less than one-month prior to Due Date 7 in IPR2017-00648 and IPR2017-00699), and the fact each of the four aforementioned cases concerns a different patent, we deny these requests.

Lastly, we address Petitioner's Motion to Strike the testimony of Patent Owner's declarant, Dr. Emblom (Paper 27). As we explained during the conference call, to the extent Petitioner intended to move to strike Dr. Emblom's declaration, it was required to seek authorization from the Board before so doing. *See* 37 C.F.R. § 42.20(b) ("A motion will not be entered without Board authorization."). As we further explained, to the extent Petitioner intended to move to exclude Dr. Emblom's declaration, an action that would not have required authorization from the Board, a motion to exclude evidence "must identify objections in the record in order and must explain the objections." 37 C.F.R. § 42.64(c). Because Petitioner neither requested authorization prior to filing its Motion to Strike, filed timely objections to Dr. Emblom's declaration, nor identified any such objections in the record in its motion, we expunge Petitioner's Motion to Strike from the record.

IPR2017-00648 (Patent 7,263,887 B2)
IPR2017-00699 (Patent 7,401,518 B2)

Accordingly, it is

ORDERED that on or before March 13, 2018, Patent Owner may file a five-page Sur-Reply to Petitioner's Reply, addressed exclusively to the subject of the Supplemental Declaration and Dr. Rodgers' deposition testimony regarding same;

FURTHER ORDERED that on or before March 20, 2018, Petitioner may file a five-page Sur-Sur-Reply, addressed exclusively to the subject of the Supplemental Declaration and Dr. Rodgers' testimony regarding same;

FURTHER ORDERED that the parties' request to change Due Date 7 is denied;

FURTHER ORDERED that the parties' request to consolidate IPR2017-00648, IPR2017-00699, IPR2017-00860, and IPR2017-00910 is denied; and

FURTHER ORDERED that Petitioner's Motion to Strike the Proposed Expert Opinions of Patent Owner Technical's William Emblom (IPR2017-00648, Paper 27; IPR2017-00699, Paper 30) is to be expunged from the record in each of IPR2017-00648 and IPR2017-00699.

IPR2017-00648 (Patent 7,263,887 B2)
IPR2017-00699 (Patent 7,401,518 B2)

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