

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PROPPANT EXPRESS INVESTMENTS, LLC, and
PROPPANT EXPRESS SOLUTIONS, LLC,
Petitioners,

v.

OREN TECHNOLOGIES, LLC,
Patent Owner.

Case IPR2017-01917 (Patent 9,296,518 B2)
Case IPR2017-01918 (Patent 9,403,626 B2)
Case IPR2017-02103 (Patent 9,511,929 B2)

Record of Oral Hearing
Held: November 30, 2018

Before MITCHELL G. WEATHERLY, KEVIN W. CHERRY, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

Case IPR2017-01917 (Patent 9,296,518 B2)
Case IPR2017-01918 (Patent 9,403,626 B2)
Case IPR2017-02103 (Patent 9,511,929 B2)

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The above-entitled matter came on for hearing on Friday, November 30, 2018, commencing at 10:00 a.m. at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

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P R O C E E D I N G S

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JUDGE CHERRY: Good morning, I'm Judge Cherry. With me here in the room is Judge Weatherly, and remote from our Dallas office is Judge Woods. Will the parties please make their appearances?

MR. GARRETT: Good morning, Your Honors. Mark Garrett for the Petitioners. With me today is Jeremy Albright, and we're going to split up the presentation.

JUDGE CHERRY: Great.

MR. GORYUNOV: Your Honor, good morning. Gene Goryunov, on behalf of the Patent Order. And with me, Meredith Zinanni.

JUDGE CHERRY: Great. And just to identify that this is the hearing in Proppant Express Investments versus Oren Technologies. The IPR is 2017-01917, 01918, and 2103. Mr. Garrett, you have the burden of proof, you can start when you're ready.

How much time do you want to reserve for rebuttal?

MR. GARRETT: We're going to shoot for ten minutes.

JUDGE CHERRY: Okay. Let's see. I guessed 20, but I can fix that, all right. You may begin--

(Off the record comments.)

MR. GARRETT: Good morning, Your Honors. Mark Garrett, for Petitioners. I'm going to hand off to Jeremy Albright when we get to Mr.

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1 Smith's FEA analysis, and also for the secondary considerations. And we'll
2 try to make that seamless.

3 Slide 2 shows some background information that may be helpful
4 today. The main thing to note is that in this presentation the references to
5 different materials are to those of the 2103 proceeding.

6 On Slide 3, we've excerpted a portion of our discussion of the level
7 of ordinary skill in the art, it's in the Petition. And I'd like to point out a
8 couple of things. First, this is unrebutted. The Patent Owner does not
9 challenge this.

10 And today I may refer to Patent Owner as PO, and I may refer to a
11 person of ordinary skill in the art as a POSITA, P-O-S-I-T-A. I think, Mr.
12 Albright's probably going to do both of those things as well.

13 The other things to note about this, one, it, it specifies and reflects
14 that the specification is very light on details and, two, it reflects Dr.
15 Wooley's opinion, and you can see it there, in the second column, that a
16 POSITA would've been able to apply his, or her, knowledge of engineering
17 mechanics, materials selection, and welding, when figuring out how to make
18 the devices that are shown in these patents.

19 And that's, despite the fact, there are, there are no details about those
20 things that are in these patents. And that's important to keep in mind, when
21 you get to their arguments about the effects of welding.

22 So Slides 4, 5, and 6, I won't spend a great deal of time on. I've
23 paused here on Slide 4. These figures, from their patents, and this is a

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1 common specification to all three patents, they're, they're here to just remind
2 the Board just how simple these containers are.

3 So I'm moving ahead now to Slide 7. This is the primary reference,
4 the Smith reference. You can see, this is the two-compartment version that
5 we discussed. Dr. Wooley opined that it would've been obvious to get to a
6 one-compartment version, as well, and you can see that it's set up in a way
7 that lends itself to that.

8 Slides 8, 9, and 10, I won't spend a great deal of time on. These are
9 slides showing our secondary references Hedrick and Claussen, and we've
10 excerpted some of Dr. Wooley's testimony, about those on these slides.

11 So where I want to spend a little bit of time is Slide 11. And this is
12 a slide that some details, from the Petition that describe why it would've
13 been obvious to, number one, use Smith's container for proper transportation
14 and storage, and why it would've been obvious to a POSITA to reinforce it.

15 So we got to back in time. We got to go back to the time of the
16 invention, so that's December of 2011. Back at that time, the frack boom,
17 the shell boom was well-underway. Demand for proppant had gone through
18 the roof.

19 And references like Krenek and Uhryn, and Uhryn, in particular -- I,
20 I want to, sort of, go on a sidetrack, just a little bit. There's a second of their
21 PORs, where they describe, sort of, the problems in the art and then they talk
22 about their container being a solution.

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