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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91205542
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HALLIBURTON ENERGY SERVICES, INC.,

Opposer/Respondent,

v.

BAKER HUGHES INCORPORATED,

Applicant/Petitioner.

Opposition No.: 91205542

Application Ser. No. 85/402,715

Mark: VACS

**OPPOSER/RESPONDENT’S RENEWED MOTION TO DISMISS  
AND REPLY BRIEF IN SUPPORT THEREOF**

Opposer/Respondent Halliburton Energy Services, Inc. (“Halliburton”) respectfully moves the Board to dismiss the amended counterclaim for fraud and counterclaim for abandonment filed by Applicant/Petitioner Baker Hughes Incorporated (“Petitioner”) for failure to state a claim upon which relief can be granted pursuant to 37 C.F.R. §§ 2.116(a) and 2.127 and Fed. R. Civ. P. 12(b)(6).

Halliburton moved to dismiss Petitioner’s original counterclaim for fraud because Petitioner failed to state a claim upon which relief could be granted. Acknowledging the deficient nature of its original counterclaim, Petitioner then amended its counterclaim in response to Halliburton’s motion to dismiss. Despite being three times longer than the original pleading, the substance of Petitioner’s amended counterclaim remains similarly deficient. In its amended counterclaim, Petitioner merely inserted pages upon pages of prosecution history relating to Halliburton’s trademark application and threw in several fraud-related buzz words and conclusory allegations. An increased page count and a few catch phrases, however, are not a substitute for alleging actual facts with particularity. Petitioner has again failed to establish a

viable claim, and its amended counterclaim for fraud should be dismissed with prejudice. Petitioner's abandonment claim also fails as a matter of law and should be similarly dismissed.

### **FACTUAL BACKGROUND**

Halliburton owns U.S. Reg. No. 3,738,313 on the Supplemental Register for the mark VAC TECH for "drilling machines; drilling machines and parts therefor," which was originally obtained by its predecessor in interest, Wellbore Energy Solutions, LLC ("Wellbore"). As shown by the numerous exhibits attached to Petitioner's amended counterclaim, Wellbore had extensive communications with the Examining Attorney during prosecution of the application that resulted in the VAC TECH supplemental registration.

The communications included correspondence regarding the nature of the goods identified in Wellbore's application. *See* Office Action, March 14, 2007 ("[T]he proposed mark merely describes a function of applicant's goods....Here, applicant's goods are drilling machines....Drilling involves using vacuum technology to remove dirt and rock."); *see also* Response to Office Action, November 13, 2009 regarding refusal of Wellbore's specimen of use ("[T]he nature of the goods is such that applying or affixing the mark directly onto the product itself by marking or stamping is not feasible or desirable because the product is used in down hole oil drilling operations. Because the product is a highly engineered tool that operates within well casing to precise specifications of dimension, tolerance, and performance, any marking on the tools are to be avoided.").

As such, at all times during the prosecution of the VAC TECH application that resulted in Reg. No. 3,738,313, the nature of the identified goods was clear, and the record shows that at no time did Wellbore's attorney intend to deceive the Examining Attorney about such goods. The prosecution history also shows extensive use of the term "VAC" as shorthand for "vacuum" in

connection with drilling. *See* Exhibits attached to Office Actions dated March 14, 2007; October 23, 2007; and May 15, 2008. Such use is consistent with Wellbore's belief that it was entitled to use the VAC TECH mark. After acceptance of Wellbore's specimen of use, which included a diagram of the product and product specifications, the VAC TECH mark eventually registered on the Supplemental Register.<sup>1</sup>

On August 19, 2011, Petitioner filed an application to register "VACS" in connection with equipment to clean and remove debris from wellbores and downhole casing and tubing in oil, gas, and water wells (App. Ser. No. 85/402,715). The Examining Attorney reviewing Petitioner's application did not cite Halliburton's previously-registered VAC TECH mark as a bar to registration of VACS. Halliburton opposed Petitioner's application on June 11, 2012 on the basis that the term "VACS" is merely descriptive of the goods identified in the application. In response, Petitioner answered Halliburton's notice of opposition and concurrently filed a counterclaim seeking to cancel Halliburton's VAC TECH supplemental registration, alleging that Wellbore misled the USPTO in obtaining the registration, by: (1) declaring that it was not aware of any third party marks that conflicted with its mark, when Wellbore was aware of Petitioner's use of the term "VACS"; and (2) declaring that the mark was in use with all of the goods set forth in its registration, when, at the time of issuance, the mark was not in use with such goods.

On August 20, 2012, Halliburton filed an answer to Petitioner's counterclaim and concurrently moved to dismiss the fraud counterclaim because it failed to state a claim upon which relief could be granted. Petitioner then filed an amended counterclaim in an apparent, but

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<sup>1</sup> *In re Armor Inox SA*, 2006 WL 2558000 (T.T.A.B. Aug. 10, 2006) ("Registering a mark on the Supplemental Register is an admission that the mark is merely descriptive."); *see also Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 453 F.2d 1296 (C.C.P.A. 1972) ("We also agree with the observation of the board that, when appellant sought registration of SUPERBLEND on the Supplemental Register, it admitted that the term was merely descriptive of its goods.").

failed, attempt to correct the deficiencies of its original counterclaim. In its amended pleading, Petitioner also included abandonment and priority and likelihood of confusion as alleged bases for cancelling Halliburton's supplemental registration.

### ARGUMENT

Petitioner's amended counterclaim for fraud remains deficient in several significant respects, and it should be dismissed. In 19 pages of briefing and 145 pages of exhibits, Petitioner failed to allege even one fact to support its bare, conclusory allegations that Halliburton committed fraud. Additionally, Petitioner's newly inserted counterclaim for abandonment should be dismissed, as it fails as a matter of law given Halliburton's actual use of VAC TECH.

#### **I. PETITIONER'S AMENDED COUNTERCLAIM FOR FRAUD FAILS TO ALLEGE ANY FACTUAL SUPPORT AND SHOULD BE DISMISSED AS A MATTER OF LAW**

To establish its counterclaim for fraud, Petitioner must plead and prove that: (1) Wellbore made a false representation to the USPTO; (2) the false representation was material to the registrability of a mark; (3) Wellbore had knowledge of the falsity of the representation; and (4) Wellbore made the representation with the intent to deceive the USPTO. *In re Bose Corp.*, 580 F.3d 1240, 1243 (Fed. Cir. 2009); *ShutEmDown Sports, Inc. v. Carl Dean Lacy*, 102 U.S.P.Q.2d 1036, 1046 (T.T.A.B. 2012); *see also Crown Wallcovering Corp. v. The Wall Paper Mfrs. Ltd.*, 188 U.S.P.Q. 141, 144 (T.T.A.B. 1975) ("In order to state a claim upon which relief can be granted on the ground of fraud, it must be asserted that the false statements complained of were made willfully in bad faith with the intent to obtain that to which the party making the statements would not otherwise have been entitled.").

"[A] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Therefore, threadbare recitals of the elements of a cause of action supported by mere conclusory

statements do not suffice. *Id.* Additionally, allegations of fraud in filing a trademark application are governed by the heightened pleading standard of Fed. R. Civ. P. 9(b), which requires that the circumstances constituting fraud shall be stated with particularity. *See, e.g., Intellimedia Sports Inc. v. Intellimedia Corp.*, 43 U.S.P.Q.2d 1203, 1206 (T.T.A.B. 1997). “In petitioning to cancel on the ground of fraud, a petitioner must allege the elements of fraud with particularity,” and “the pleadings [must] contain explicit rather than implied expression of the circumstances constituting fraud.” *Asian and Western Classics B.V. v. Lynne Selkow*, 92 U.S.P.Q.2d 1478 (T.T.A.B. 2009). A pleading must allege sufficient underlying facts supporting an allegation that a party made a knowingly false material representation with the intent to deceive the USPTO. *Exergen Corp. v. Wal-Mart Stores Inc.*, 575 F.3d 1312, 1327 (Fed. Cir. 2009) (“Our precedent . . . requires that the pleadings allege sufficient underlying facts from which a court may reasonably infer that a party acted with the requisite state of mind.”); *see also King Auto., Inc. v. Speedy Muffler King, Inc.*, 667 F.2d 1008, 1011 (C.C.P.A. 1981) (“Appellant’s conclusory statement that [appellee] knew its declaration to be untrue is not supported by a pleading of any facts which reflect [appellee’s] belief that the respective uses of MUFFLER KING and SPEEDY MUFFLER KING would be likely to confuse.”).

In its amended counterclaim, Petitioner claims Wellbore made two fraudulent statements in obtaining its supplemental registration for VAC TECH. First, Petitioner alleges that Wellbore committed fraud in declaring that, to the best of its knowledge and belief, it had the exclusive right to use the VAC TECH mark when, according to Petitioner, Wellbore was not entitled to use the mark in commerce because Petitioner’s trademark rights in VACS were senior. First Am. Counterclaim, ¶ 21.<sup>2</sup> Second, Petitioner alleges that Wellbore committed fraud in declaring that

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<sup>2</sup> Notably, in paragraph 21 of the amended counterclaim, Petitioner deletes the words “he/she believes applicant to be” prior to the words “entitled to use such mark in commerce.”

its VAC TECH mark was in use with “drilling machines; drilling machines and parts therefor,” when, according to Petitioner, the mark was not in use with such goods. First Am. Counterclaim, ¶ 26. Petitioner failed to allege any facts to support its conclusory allegations, and its fraud claim fails as a matter of law because the facts of record demonstrate that fraud cannot be established. As such, Petitioner’s amended counterclaim should be dismissed under Fed. R. Civ. P. 12(b)(6) without leave to amend.

**A. PETITIONER’S CLAIM OF FRAUD WITH RESPECT TO THE FIRST ALLEGEDLY FRAUDULENT STATEMENT IS DEFICIENT AND SHOULD BE DISMISSED**

In its trademark application, Wellbore declared that:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; **he/she believes** the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), **he/she believes** applicant to be entitled to use such mark in commerce; **to the best of his/her knowledge and belief** no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true. (emphasis added).

According to Petitioner, this declaration was fraudulent because Wellbore “was not entitled to use the mark in commerce because Baker Hughes’ trademark rights in VACS were senior.” First Am. Counterclaim, ¶ 22. Petitioner’s amended counterclaim failed to plead facts showing that (1) the representation was false; (2) the representation was material to the registrability of the mark; (3) Wellbore had knowledge of the falsity of the representation; and (4) Wellbore made the representation with the intent to deceive the USPTO.

First, Petitioner failed to plead facts showing that Wellbore's representation was false. Petitioner did not allege any prior litigation between the parties or any prior decision by a court establishing that Petitioner has prior rights in its mark vis-à-vis Wellbore or Halliburton. Petitioner did not allege that there are any prior agreements between the parties which would establish that Petitioner has superior rights in the mark. Indeed, there are no facts establishing that Petitioner had superior rights in the VACS mark such that Wellbore would have been precluded from making the declaration in its application. *Intellimedia Sports*, 43 U.S.P.Q.2d at 1206 (holding that if purported rights to use the mark by other parties "are not known by [an applicant] to be superior or clearly established, e.g., by court decree or prior agreement of the parties, then the [applicant] has a reasonable basis for believing that no one else has the right to use the mark in commerce, and the [applicant's] averment of that reasonable belief in its application declaration or oath is not fraudulent").

In fact, the Examining Attorney reviewing Petitioner's application to register VACS, which was filed after the issuance of Halliburton's supplemental registration, did not conclude that there is a likelihood of confusion between VACS and VAC TECH. Even if Wellbore was aware of Petitioner's purported mark, Wellbore's declaration that it is entitled to use VAC TECH is consistent with the conduct of the USPTO, allowing both designations to coexist. Therefore, Wellbore's statement was not false, and Petitioner has not, and will never be able to, plead facts to the contrary.

Second, Petitioner alleged no facts regarding materiality. Instead, Petitioner alleged the conclusory statement that the USPTO "would have refused registration of VAC TECH had it known the truth about Baker Hughes' senior, continuous, and exclusive use of its mark VACS." First Am. Counterclaim, ¶ 25. Petitioner's statement is illogical. Wellbore filed its application

to register VAC TECH before Baker Hughes had filed any applications or obtained any registrations for VACS. Under USPTO practice, the USPTO would not have refused registration of VAC TECH based on Petitioner's unregistered use of VACS. Again, it is notable that when *Petitioner* applied to register VACS, the USPTO conducted a comprehensive search and did not refuse registration based on Halliburton's already-existing VAC TECH registration. Petitioner's materiality allegation lacks factual support and the actual facts that do exist demonstrate a lack of materiality.

Third, for Wellbore to have committed fraud, it must have had knowledge of the falsity of the statement. In other words, Wellbore must have had direct knowledge of Petitioner's purported prior mark and knowledge that Wellbore was not entitled to use the VAC TECH designation. The counterclaim does not contain *any* facts, let alone facts pled with particularity, showing that Wellbore had actual knowledge of Petitioner's purported VACS mark and had actual knowledge that Wellbore was not entitled to use the VAC TECH designation.

Petitioner alleged that Wellbore "knew the First Fraudulent Statement was false because Baker Hughes had been openly and widely using its mark VACS on the products listed in U.S. Trademark Application Serial No. 85/402,715 since at least as early as July 14, 1999." First Am. Counterclaim, ¶ 23. Based on this purported "open[] and wide[]" use, Petitioner speculates that Wellbore "was well-aware of Baker Hughes' mark VACS and such knowledge is imputed to Respondent's attorney of record." *Id.* Petitioner's assertion of Wellbore's knowledge of Petitioner's use of VACS is based solely on speculation due to Petitioner's purported use. Nowhere does Petitioner allege facts supporting any actual knowledge of Petitioner's claimed mark, and nowhere does Petitioner allege that Wellbore's filing attorney had actual knowledge of

Petitioner's claimed mark. Moreover, Petitioner fails to allege any facts showing that Wellbore and its filing attorney knew that Wellbore was not entitled to use the VAC TECH designation.

Petitioner's deficient allegations are analogous to the allegation analyzed in *Cavern City Tours Ltd. v. Hard Rock Café Int'l, Inc.*, 2011 WL 5014033 (T.T.A.B. Sept. 29, 2011). In *Cavern City Tours*, the Board found that the following allegation fell far short of the pleading requirements necessary to seek a cancellation based on fraud:

Registrant was *well aware* of the existence and fame of The Cavern Club in Liverpool and the worldwide fame of THE CAVERN CLUB owned by Petitioner when it filed its application and when it submitted its Statement of Use.

*Id.* (emphasis added); *see also King Auto.*, 667 F.2d at 1008 (motion to dismiss fraudulent misrepresentation claim granted because “[petitioner’s] conclusory statement that [respondent] *knew* its declaration to be untrue is not supported by a pleading of any facts which reflect [respondent’s] belief of third-party’s right to use the mark in commerce”) (citations omitted) (emphasis added). Similarly, in this case, Petitioner’s claim that Wellbore was “well-aware” of Petitioner’s use is not supported by a pleading of any facts and falls far short of the pleading requirements necessary to sustain a claim for fraud.

Fourth, Petitioner stretched its speculation even further by alleging that Wellbore made the first alleged fraudulent statement “with intent to deceive the USPTO during the application process to distract the USPTO from the fact that another party was using a confusingly similar mark on goods that were identical” to Wellbore’s goods. First Am. Counterclaim, ¶ 24. Again, there are no facts to support that Wellbore (or its attorney) intended to deceive the USPTO. Labels and conclusory allegations are not sufficient; such allegations are particularly insufficient when dealing with fraud, which must be pled with particularity. Fed. R. Evid. 9(b); *see also Ashcroft*, 129 S. Ct. at 1949. Moreover, Petitioner defies logic by claiming that Wellbore’s

statement that it had the exclusive right to use the VAC TECH mark was made “in order to distract the USPTO from the fact that another party was using a confusingly similar mark on goods that were identical” to Wellbore’s goods. Petitioner did not have an application or registration for VACS at the time Wellbore applied to register VAC TECH, and the Examining Attorney identified widespread use of the term “VAC” in connection with drilling and concluded the term is merely descriptive of the identified goods. Later, when Petitioner applied to register VACS, the Examining Attorney conducted a search of its database and concluded, independently, that Petitioner’s VACS mark is not confusingly similar to Wellbore’s VAC TECH mark. The USPTO was unmoved by the fact that both the VACS and VAC TECH designations would coexist on the register. Petitioner does not allege any facts supporting its claim that Wellbore intended to deceive or distract the USPTO, and the facts of record demonstrate otherwise. Accordingly, Petitioner’s first allegation of fraud fails to properly state a claim for fraud and it should be dismissed.

**B. PETITIONER’S CLAIM OF FRAUD WITH RESPECT TO THE SECOND ALLEGEDLY FRAUDULENT STATEMENT IS DEFICIENT AND SHOULD BE DISMISSED**

Petitioner’s second fraud allegation is that Wellbore made false statements in declarations filed to obtain its VAC TECH registration, by declaring that its mark was in use with “drilling machines; drilling machines and parts therefor,” when, according to Petitioner, the mark was not in use with such goods. Petitioner again failed to allege with particularity any underlying facts from which the Board could reasonably infer that Wellbore knowingly made a false material representation with the intent to deceive the USPTO.

Petitioner failed to plead facts showing that Wellbore’s statement was a material misrepresentation. Instead, Petitioner alleged:

27. The Second Fraudulent Statement was false because Respondent and its predecessor-in-interest never used the mark in commerce on or in connection with “drilling machines; drilling machines and parts therefor.” . . . Instead, Respondent and its predecessor-in-interest used the mark on or in connection with mechanical downhole equipment for use in oil, gas and water wells, namely, downhole tool for removing debris from, and otherwise cleaning, wellbores and downhole casing and tubing.

Petitioner failed to allege any facts showing that Wellbore’s goods are not drilling machines. Similarly, Petitioner failed to allege any facts showing that mechanical downhole equipment does not fall into the category of drilling machines. Indeed, Petitioner will never be able to allege any such facts because the equipment used in connection with the VAC TECH mark *is* used for drilling operations. Specifically, it is a drilling machine having a vacuum function and therefore falls into the category of drilling machines and parts therefor. Petitioner fails to recognize that mechanical downhole equipment is in fact a subset of drilling machines and parts therefor.

After examining Wellbore’s application materials, the Examining Attorney stated:

Petitioner’s goods are drilling machines and parts for drilling machines. As discussed in the first two Office actions (which are incorporated by reference inclusive of the evidence), vacuum excavation comprises a good portion of drilling, and of horizontal excavation especially. Internet evidence attached to the first Office action, and incorporated herein by reference, shows that vacuums are commonly sold with and as a part of drilling equipment, that vacuum excavation is a separate service regularly performed and advertised by drilling and industrial vacuum companies, and that vacuuming is done as a part of the drilling process. . . . Internet evidence in this Office action and the first two Office actions shows that “VAC” as a shortened form of “vacuum” is in common usage among the users of drills and drilling equipment. Consumers would be quite familiar with “VAC” as used in conjunction with drills to mean suction either to mount the drill in place, to remove debris associated with the drilling process, or to suction the goods that the drilling process has unearthed.

Office Action, May 15, 2008. Therefore, even the USPTO agreed that Wellbore’s chosen identification of goods was appropriate and encompassed the equipment Wellbore identified in connection with its VAC TECH mark.

Additionally, Petitioner has not alleged a single fact regarding the intent of the individuals who signed the declarations on behalf of Wellbore. Instead, Petitioner alleged:

28. Respondent's predecessor-in-interest knew that the Second Fraudulent statement was false when it submitted to the USPTO a specimen on April 1, 2009 evidencing using of its mark on or in connection with mechanical downhole equipment for use in oil, gas and water wells, namely, downhole tool for removing debris from, and otherwise cleaning, wellbores and downhole casing and tubing. In so doing, Respondent's predecessor-in-interest knowingly and intentionally misle[]d the USPTO to understand that the specimen submitted on April 1, 2009 evidenced use of Respondent's predecessor-in-interest's mark on or in connection with 'drilling machines; drilling machines and parts therefor' when, in fact, Respondent had never, and has never, used the mark VAC TECH on any drilling machines, or parts therefor.

29. Respondent's predecessor-in-interest made the Second Fraudulent Statement in order to distract the USPTO from the fact that Baker Hughes was using a mark, VACS, on goods that were identical to Respondent's actual goods well before Respondent adopted and began using its confusingly similar mark VAC TECH.

Petitioner did not identify any known information giving rise to its stated beliefs, assert any specific admissions by Wellbore, or even make any statements regarding evidence that is likely to be discovered that would support a claim of fraud. Indeed, Petitioner failed to allege *any* underlying facts whatsoever to support its conclusions.

Petitioner will never be able to point to evidence to support its allegation that Wellbore knowingly made false material representations with respect to use of the VAC TECH mark in connection with the goods listed in the application with a willful intent to deceive the USPTO. As shown in the file history for the VAC TECH application, Wellbore selected the most appropriate identification of goods from the preapproved identifications contained in the manual of acceptable identifications, which must be used when filing an application through the TEAS-plus system. The Examining Attorney then studied the identification of goods, the specimens, and Wellbore's explanations in its responses to the Office Actions—all of which described the function of the VAC TECH product. It is simply not plausible that Wellbore intended to deceive

the Examining Attorney about the nature of the VAC TECH product when Wellbore submitted information detailing the purpose and function of the product. The Examining Attorney never raised an issue that the specimen did not relate to the identified goods. And when Wellbore provided further explanation about the specimen, it described the goods and how they are used. This conduct does not reflect intent to deceive. There are no facts alleged or which support the theory that Wellbore's explanation of the specimen or its product was false, let alone intentionally false and designed to deceive.

Therefore, Petitioner's second allegation of fraud fails to properly state a claim for fraud as a matter of law. Because Petitioner failed to allege any facts to support its conclusions, it has failed to plead fraud with particularity and its claim should be dismissed.

## **II. PETITIONER'S ABANDONMENT COUNTERCLAIM FAILS AS A MATTER OF LAW AND SHOULD BE DISMISSED WITH PREJUDICE**

To the extent paragraphs 32-34 of the amended counterclaim attempt to claim that Halliburton has abandoned its VAC TECH mark, Petitioner's allegations fail as a matter of law. In paragraph 34, Petitioner alleges: "Because neither Respondent nor its predecessor-in-interest has ever used the mark VAC TECH on or in connection with 'drilling machines; drilling machines and parts therefor,' Respondent has abandoned this mark for these goods and, therefore, the '313 Registration should be cancelled."

Under the Lanham Act, a trademark is abandoned "when its use has been *discontinued* with intent not to resume such use." 15 U.S.C. § 1127 (emphasis added). Even assuming *arguendo* that Halliburton *had* used its VAC TECH mark continuously in connection with goods other than those identified in its registration, such use is not "abandonment" as defined under the Lanham Act. For abandonment to occur, use must have been "discontinued"; under Petitioner's interpretation, there was no use to begin with and therefore no use to be "discontinued."

Therefore, Petitioner's abandonment claim fails as a matter of law and should be dismissed without prejudice.

Regardless, as previously explained, and contrary to Petitioner's allegations, Halliburton, including through its predecessor, has used the VAC TECH mark continuously in connection with drilling machines and parts therefor (as drilling machines that have a vacuum function fall into the category of drilling machines and parts therefor) since the date of first use claimed in its registration. Such use is shown in the application file history. Therefore, Halliburton never abandoned the VAC TECH mark in U.S. Reg. No. 3,738,313 and Petitioner's abandonment counterclaim should be dismissed with prejudice.

### **CONCLUSION**

For the foregoing reasons, Halliburton respectfully requests that Petitioner's amended counterclaim for fraud and counterclaim for abandonment be dismissed with prejudice.

Respectfully submitted,

Date: September 27, 2012

/Joel D. Leviton/

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ATTORNEYS FOR HALLIBURTON  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of OPPOSER/RESPONDENT'S RENEWED MOTION TO DISMISS AND REPLY BRIEF IN SUPPORT THEREOF has been served this 27<sup>th</sup> day of September, 2012 by First Class U.S. Mail, postage prepaid, upon counsel for Applicant/Petitioner Baker Hughes Incorporated at the following address:

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