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

Proceeding	91205542
Party	Plaintiff Halliburton Energy Services, Inc.
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Attachments	Halliburton Motion to Strike (7-10-13).pdf(101346 bytes )

**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

**MOTION TO STRIKE**  
**AND EMBODIED MEMORANDUM IN SUPPORT THEREOF**

Pursuant to Fed. R. Civ. P. 12(f) and T.B.M.P. § 506, Opposer/Respondent Halliburton Energy Services, Inc. (“Halliburton”) hereby moves to strike the following sentence from paragraph 32 of the Second Amended Petition for Cancellation filed by Applicant/Petitioner Baker Hughes Incorporated’s (“Petitioner”):

- “Further, Respondent fraudulently obtained the ‘313 Registration in violation of federal law.”

“The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). On May 13, 2013, the Board granted Halliburton’s motion to dismiss Petitioner’s counterclaim for fraud and abandonment and allowed applicant thirty days to file an amended counterclaim if Petitioner believed it could state a claim for abandonment and/or fraud. The Board ordered that failure to file an amended counterclaim would result in dismissal of that claim with prejudice. In its June 12, 2013 Second Amended Petition for Cancellation, Petitioner alleged two grounds for

cancellation: (1) abandonment; and (2) likelihood of confusion. *See* pages 6 and 8 of the Second Amended Petition for Cancellation. Petitioner did not re-plead a counterclaim for fraud. However, in the penultimate numbered paragraph of the Second Amended Petition for Cancellation (namely, paragraph 32), in which Petitioner alleges its purported damage, Petitioner improperly maintained the sentence quoted above, which appeared in the corresponding paragraphs of Petitioner's prior pleadings.

Because Petitioner did not allege an amended counterclaim for fraud, its counterclaim for fraud is dismissed with prejudice pursuant to the Board's May 13, 2013 order. As such, the single reference to fraud in paragraph 32 of the Second Amended Petition for Cancellation is insufficient, immaterial, and impertinent and should be stricken pursuant to Fed. R. Civ. P. 12(f). The above-referenced sentence does not provide fuller notice of the basis for Petitioner's abandonment and likelihood of confusion claims, but rather prejudices Halliburton by alleging that it acted fraudulently when there is no basis for such an allegation.

Halliburton, therefore, respectfully requests that the Board strike the above-mentioned sentence from paragraph 32 of the Petitioner's Second Amended Petition for Cancellation.

Respectfully Submitted,

Date: July 10, 2013

/s/ Joel D. Leviton  
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ATTORNEYS FOR HALLIBURTON  
ENERGY SERVICES, INC.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the following document:

**MOTION TO STRIKE AND EMBODIED MEMORANDUM IN SUPPORT THEREOF**

has been served this 10th day of July, 2013 by U.S. mail, postage prepaid, upon counsel for the Applicant:

ANTHONY F MATHENY  
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/s/ Joel D. Leviton  
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