

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: September 27, 2019

**UNITED STATES PATENT AND TRADEMARK OFFICE**

—  
**Trademark Trial and Appeal Board**  
—

*In re Schlumberger Technology Corporation*  
—

Serial No. 86071560  
—

Margaret A. Boulware of Boulware & Valoir,  
for Schlumberger Technology Corporation.

John M. Gartner, Trademark Examining Attorney, Law Office 102,  
Mitchell Front, Managing Attorney.

—  
Before Cataldo, Lynch, and Pologeorgis,  
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

**I. Background**

Schlumberger Technology Corporation (“Applicant”) seeks registration on the Principal Register of the standard character mark POWERDRIVE ORBIT for the following goods and services:<sup>1</sup>

---

<sup>1</sup> Application Serial No. 86071560 was filed on September 23, 2013, based on an allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). Applicant filed its Statement of Use on April 11, 2017, claiming 2014 as both the date of first use and the date of first use in commerce.

Well drilling machines; machine tools for well drilling, in International Class 12; and

Well drilling services for others, in International Class 37.

As noted, Applicant initially based its application on its allegation of a bona fide intention to use the mark in commerce. After the notice of allowance issued, Applicant filed a statement of use<sup>2</sup> with a specimen that consists of an eight-page brochure that Applicant describes as “print advertising” and “point of sale material.”<sup>3</sup> The specimen, in its entirety, is reproduced below:<sup>4</sup>

---

<sup>2</sup> Applicant, in its Statement of Use, stated that “the Applicant does not package their goods or mark the trademark on their goods because of their [sic] nature of the goods and channels of trade,” and added that the specimens were “print advertising and point of sale material because the instruments and their method of use are not conducive to traditional labeling.” *See* Applicant’s April 11, 2017 Statement of Use. This is a reference to 15 U.S.C. §1127, which allows alternate specimens in cases where the nature of the goods makes it “impracticable” to place the mark on the goods, their packaging or displays associated with the goods. In submitting what it identified as printed point-of-sale display material, however, Applicant was not, in fact, resorting to the impracticability exception of 15 U.S.C. §1127, since such displays do constitute traditional specimens for goods. Similarly, in his declaration attached to Applicant’s February 23, 2018 Request for Reconsideration, Applicant’s general counsel declared that “the goods are large technically complex downhole well drilling tools and are not susceptible to typical labeling.” In the body of the request for reconsideration, Applicant argued that the specimens should be accepted as either print or online point-of-purchase displays, which are traditional specimens, but added, “Alternatively, the tools used in down hole well drilling cannot be labeled easily and Applicant requests consideration under 15 USC § 1127 for goods that are impractical to mark.”

A mere assertion of impracticability does not suffice to establish that traditional trademark use is impracticable and Applicant did not elaborate on this statement or provide the evidence necessary to establish that it was, in fact, impracticable to place the mark on the goods, especially given that traditional trademark usage is typically employed with International Class 7 machinery and equipment. Applicant did not reference the impracticability exception in its appeal brief. Thus, we have given no consideration to the issue of the impracticability exception under 15 U.S.C. §1127 in this decision.

<sup>3</sup> Applicant’s April 11, 2017 Statement of Use; TSDR p. 4.

<sup>4</sup> Applicant’s April 11, 2017 Specimen; TSDR pp. 1-8.



**PowerDrive Orbit**  
Rotary steerable system

## PowerDrive Orbit

Rotary steerable system

The PowerDrive Orbit® rotary steerable system (RSS) is a highly reliable push-the-bit RSS that increases drilling efficiency and enhances trajectory control using a newly developed pad actuation design on any rig type worldwide.

**Optimize directional drilling with the PowerDrive RSS family**  
The Schlumberger PowerDrive® RSS family includes a broad array of directional drilling technologies designed to deliver full rotation that reduces drag, improves rates of penetration (ROP), decreases stick/slip, and achieves superior hole cleaning in a variety of operating scenarios. The fully rotational steering systems improve penetration rates by eliminating stationary components that cause friction and inefficiency.





### New Features and Benefits

- New pad design with metal-to-metal sealing to handle corrosive drilling fluids and severe downhole conditions
- Expanded revolution rate limits, supporting up to 350 rev/min from the current limit of 220 rev/min for higher ROP and stick and slip control
- Six-axis continuous inclination and azimuth measurements for better true-vertical-depth (TVD) definition and accurate well positioning
- Dual downlink options to fulfill all commands from surface in any rig type

## PowerDrive Orbit RSS

### PowerDrive Orbit RSS Drills 619 Meters in 283.3 Pumping Hours in a Single Run with Excellent Steerability

BHA drills record-breaking 8½-in section in the North Sea

Shell needed a reliable RSS that could sustain HPHT conditions, including measured static temperatures up to 165 degC, while keeping the well vertical.



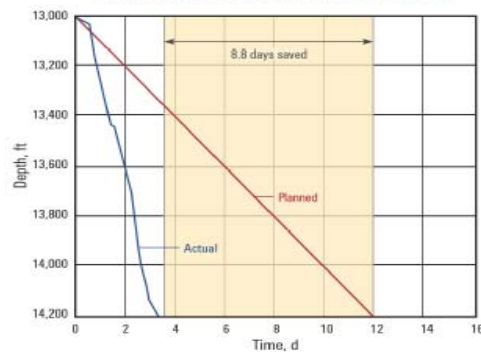
PowerDrive Orbit system, with its newly developed pad design and real steering automation, helped improve ROP and drill from 4,085 to 4,704 m while keeping verticality of the well within 0.5 degrees.

### Increases operating window in challenging drilling conditions

With wells becoming increasingly more complex, operators need solutions that go beyond the limits of conventional technology. The PowerDrive Orbit RSS expands the operating envelope of rotary steerable technology with features that deliver greater durability, reliability, and efficiency.

The system includes a newly developed actuation pad designed with metal-to-metal sealing to withstand the most aggressive drilling fluids and challenging hydraulic designs. The pad pushes against the formation to steer the well and provide precise directional control in complex 3D well trajectories.

### Example of Time Savings in Sandstone Reservoir



PowerDrive Orbit RSS drilled an 8½-in section in approximately 3 days, 8.8 days faster than the operation's planned trajectory in the Missoua formation.

**Delivers accurate well placement**

The durable system also includes new and comprehensive six-axis continuous inclination and azimuth measurements. The multiaxial component allows automatic hold inclination and azimuth capability. The system also features self steering capabilities making automatic adjustments in a closed-loop system to keep a specific inclination and azimuth. With better automatic trajectory control, hole quality is improved, the tangent is smoother, and tortuosity is minimized. This new feature also allows the most precise kickoff from vertical.

Extended range gamma ray measurements provide earlier identification of the zones of interest and valuable well placement data for real-time decision making.

**Enhances drilling efficiency**

The PowerDrive Orbit RSS is fully compatible with all existing BHA components being used today and complements other tools in the PowerDrive suite of services. The PowerDrive Orbit vortex™ motorized hybrid rotary steerable system (RSS), can perform at speeds up to 350 rev/min while still maintaining directional control and consistent steerability. Performing multiple functions while drilling, the time-saving system has been engineered to drill wells, from shoe to total depth (TD), in a single run.

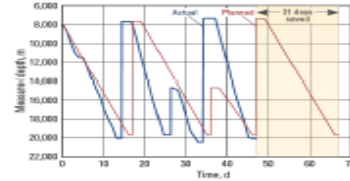


*PowerDrive Orbit system has achieved successful runs in conventional and complex environments across the globe, including in the Middle East, United States, Gulf of Mexico, Mexico, Colombia, Venezuela, China, and the North Sea.*

## PowerDrive Orbit RSS Helps Save 21 Days and Increase Lateral Length by 33%

Middle East operator drills a new record 6½-in hole 12,690-ft deep in a single run

An operator needed an RSS that could maintain directional control while drilling deep laterals in a field that presented high stick/slip and severe shock levels.



*Despite high stick/slip peak values reaching 350 rpm, the PowerDrive Orbit RSS helped overcome severe torque and drilled a record 12,690 ft in a single run, 21 days ahead of schedule.*

# PowerDrive Orbit RSS

*The pad activation design of the RSS performs in the most difficult drilling conditions. An additional pad design, built for greater durability, serves as an option for highly abrasive formations.*



Deeper drilling, faster performance, excellent directional control — from shoe to TD, in one run

### Expanded applications with dual downlink communication

The system offers dual downlink capabilities — the first option allows for downlink activation by a traditional flow change command, and the second is a new collar RPM-based feature that allows direct activation by changing the collar rotation rate.

The flow change command, which is typically used, is less affected by high stick/slip and high torque. The new collar RPM-based command is less affected by the slow reaction from the mud pumps when drilling. This application enables an RSS to be run on any type of rig, including mechanical rigs without a silicon-controlled rectifier, which require fast-reacting manipulation of surface pumps to send the command.

| Specifications                           | PowerDrive Orbit 475   | PowerDrive Orbit 675   | PowerDrive Orbit 900   | PowerDrive Orbit 900 Large Borehole                          |
|--|--|--|--|--|
| Nominal OD (API)                         | 4.75 in  | 6.75 in  | 9.625 in   | 9.625 in   |
| Hole size                                | 5/8 in to 6 1/4 in   | 8 1/2 in   | 12 1/4 in to 14 1/4 in   | 16 to 38 1/4 in  |
| Overall length                           | 13.5 ft  | 13.53 ft   | 14.00 ft   | 14.27 ft   |
| Max. collar strokes                      | 30"/100 ft (30"/30 m) sliding,<br>10"/100 ft (10"/30 m) rotating | 16"/100 ft (16"/30 m) sliding,<br>8"/100 ft (8"/30 m) rotating | 10"/100 ft (10"/30 m) sliding,<br>5"/100 ft (5"/30 m) rotating | 8"/100 ft (8"/30 m) sliding,<br>4"/100 ft (4"/30 m) rotating |
| Build rate                               | 0"–8"/100 ft   | 0"–8"/100 ft   | 0"–5"/100 ft   | 0"–3"/100 ft   |
| Max. operating torque <sup>1</sup>       | 4,000 ft.lbf (5,420 N.m)   | 16,000 ft.lbf (21,700 N.m)                                     | 48,000 ft.lbf (65,000 N.m)                                     | 48,000 ft.lbf (65,000 N.m)                                   |
| Max. operating load                      | 340,000 lbf (1,500,000 N)  | 1,100,000 lbf (4,900,000 N)                                    | 1,400,000 lbf (6,200,000 N)                                    | 2,280,000 lbf (10,140,000 N)                                 |
| Max. weight on bit                       | 50,000 lbf (223,000 N)   | 65,000 lbf (290,000 N)   | 65,000 lbf (290,000 N)   | 65,000 lbf (290,000 N)                                       |
| Weight of assembly in air                | 584 lbs  | 1,276 lbs  | 2,445 lbs  | 2,729 lbs  |
| Max. lost circulation material           | 35 lbm/bbl medium nut plug                                       | 50 lbm/bbl medium nut plug                                     | 50 lbm/bbl medium nut plug                                     | 50 lbm/bbl medium nut plug                                   |
| Flow range <sup>2</sup>                  | 170–330 galUS/min<br>[645–1,250 L/min]                           | 250–950 galUS/min<br>[946–3,580 L/min]                         | 250–2,000 galUS/min<br>[1,325–7,570 L/min]                     | 250–2,000 galUS/min<br>[1,325–7,570 L/min]                   |
| Lateral vibrations                       | Shock level 3 (50-gn threshold),<br>30-min limit                 | Shock level 3 (50-gn threshold),<br>30-min limit               | Shock level 3 (50-gn threshold),<br>30-min limit               | Shock level 3 (50-gn threshold),<br>30-min limit             |
| Stick/slip                               | ± 100% mean rotational speed,<br>30-min limit                    | ± 100% mean rotational speed,<br>30-min limit                  | ± 100% mean rotational speed,<br>30-min limit                  | ± 100% mean rotational speed,<br>30-min limit                |
| Max. rotational speed                    | 350 rpm  | 350 rpm  | 350 rpm  | 350 rpm  |
| Max. temperature <sup>3</sup>            | 302 degF (150 degC)  | 302 degF (150 degC)  | 302 degF (150 degC)  | 302 degF (150 degC)  |
| Max. hydrostatic pressure                | 20,000 psi (138 MPa)   | 20,000 psi (138 MPa)   | 20,000 psi (138 MPa)   | 20,000 psi (138 MPa)   |
| Pressure drop across tool                | Density (in lbm/galUS) × Flow <sup>2</sup><br>(in galUS/min)     | Density (in lbm/galUS) × Flow <sup>2</sup><br>(in galUS/min)   | Density (in lbm/galUS) × Flow <sup>2</sup><br>(in galUS/min)   | Density (in lbm/galUS) × Flow <sup>2</sup><br>(in galUS/min) |
|  | 14,500.00  | 56,000.00  | 278,000.00   | 337,500.00   |
| Mud sand content                         | 1% by volume   | 1% by volume   | 1% by volume   | 1% by volume   |
| <b>Rotary Connections</b>                |  |  |  |  |
| Collar upper connection                  | 3 1/2 IF box   | 4 1/2 IF box   | 6 Reg box  | 7 1/4 Reg box  |
| Bit box                                  | 3 1/2 Reg  | 4 1/2 Reg  | 6 1/2 Reg  | 7 1/4 Reg  |
| <b>Sensors</b>                           |  |  |  |  |
| Bit box to gamma ray                     | 5.86 ft (1.79 m)   | 6.40 ft (1.95 m)   | 7.56 ft (2.30 m)   | 7.97 ft (2.43 m)   |
| Bit box to inclination                   | 6.73 ft (2.05 m)   | 7.27 ft (2.21 m)   | 8.43 ft (2.57 m)   | 8.83 ft (2.69 m)   |
| Bit box to azimuth                       | 8.83 ft (2.69 m)   | 9.37 ft (2.85 m)   | 10.53 ft (3.21 m)  | 10.93 ft (3.33 m)  |
| Inclination accuracy                     | 0.11 (at 1 sigma level)  | 0.11 (at 1 sigma level)  | 0.11 (at 1 sigma level)  | 0.11 (at 1 sigma level)                                      |
| Azimuth accuracy                         | 1.8 at 90° inclination<br>(at 1 sigma level)                     | 1.8 at 90° inclination<br>(at 1 sigma level)                   | 1.8 at 90° inclination<br>(at 1 sigma level)                   | 1.8 at 90° inclination<br>(at 1 sigma level)                 |
| Gamma ray accuracy, azimuthal 4-quadrant | ± 5% (30-s averaging window)                                     | ± 5% (30-s averaging window)                                   | ± 5% (30-s averaging window)                                   | ± 5% (30-s averaging window)                                 |
| Shock detector threshold, radial         | 50 gn ± 5 gn (± 500 gn max. peak)                                | 50 gn ± 5 gn (± 500 gn max. peak)                              | 50 gn ± 5 gn (± 500 gn max. peak)                              | 50 gn ± 5 gn (± 500 gn max. peak)                            |

<sup>1</sup>Depending on weight on bit (WOB).  
<sup>2</sup>Depending on mud weight values.  
<sup>3</sup>Optional 350 degF (175 degC) available.

## PowerDrive Orbit



With performance focused design, high-speed capabilities, and long durability, the PowerDrive Orbit rotary steerable system improves drilling efficiency and well placement in all conventional and complex environments.

[slb.com/PowerDriveOrbit](http://slb.com/PowerDriveOrbit)

**Schlumberger**

Mark of Schlumberger  
Other concepts, product, and service names are the properties of their respective owners.  
Copyright © 2015 Schlumberger. All rights reserved. 13-00-0210

The Examining Attorney refused registration under Sections 1 and 45 of the Trademark Act, 15 U.S.C. §§ 1051 and 1127, on the ground that the specimen submitted by Applicant with its Statement of Use (1) is an inappropriate and unacceptable specimen for the goods identified, and (2) does not show Applicant's mark in use in connection with any of the recited services.<sup>5</sup> Specifically, the Examining Attorney explained that while print advertising material may constitute

---

<sup>5</sup> May 2, 2017 Office Action; TSDR p. 1.

as an acceptable specimen of use for goods, such advertising must be used in conjunction with a point-of-sale display of the goods.<sup>6</sup> Here, the Examining Attorney maintains that Applicant has failed to demonstrate that its print advertising is used in association with any point-of-sale display for its goods.<sup>7</sup> Additionally, the Examining Attorney found that the specimen does not show use of the applied-for mark in commerce in connection with any of the identified International Class 37 services.<sup>8</sup>

In response to the Examining Attorney's initial office action, Applicant submitted an additional specimen for its International Class 7 goods that it contends is a screenshot of its website.<sup>9</sup> The screenshot is reproduced below:

---

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> September 22, 2017 Response to Office Action, TSDR pp. 7 and 12.



The screenshot shows the Schlumberger website's product page for the PowerDrive Orbit Rotary Steerable System. The page features a blue header with the Schlumberger logo and a search bar. Below the header is a navigation menu with categories like Services & Products, About Us, Investors, Newsroom, HSE, Careers, Alumni, and Resources. A breadcrumb trail indicates the user's location: Home > Services & Products > Drilling > Drilling Services & Systems > Directional Drilling > PowerDrive Rotary Steerable Systems > PowerDrive Orbit RSS.

The main content area is divided into three columns. The left column is a sidebar with a 'Services & Products' section containing links to 'Drilling', 'Drilling Services & Systems', 'Directional Drilling', and 'PowerDrive Rotary Steerable Systems'. Under 'PowerDrive Rotary Steerable Systems', there are several product options, with 'PowerDrive Orbit RSS' highlighted. The middle column is the main product description, titled 'PowerDrive Orbit Rotary Steerable System'. It includes an 'Overview' tab and a 'Library' tab. The description is organized into several sections: 'Performance-focused RSS designed for any environment', 'Improved drilling efficiency and faster performance', 'Expanded operating window in challenging drilling conditions', and 'Accurate well placement with multiaxis measurements and automatic trajectory control'. Each section provides a brief overview of the system's capabilities and benefits. At the bottom of the middle column, there is a 'Tech Reports' section with a link to 'Enhanced RSS Drills Challenging Wells in a Single Run (0.60 MB PDF)'. The right column contains two promotional boxes. The top box is titled 'Push-the-Bit RSS Drills High-Angle Well in Single Run and Saves Operator 8.8 Days' and includes a line graph comparing 'Actual' and 'Planned' drilling paths, with a yellow shaded area indicating '8.8 days saved'. The bottom box is titled 'Drill from Shoe to TD in One Run' and includes a video player showing a close-up of the drilling equipment.

Applicant argues that “webpage displays are acceptable specimens for goods if they contain 1) a picture or textual description of the goods, 2) show the mark in association with the goods, and 3) provides a means for ordering the identified goods.”<sup>10</sup> Applicant contends that this new substitute specimen provides all three. Specifically, Applicant maintains that the webpage describes the “pad actuation design, the six-axis continuous inclination and azimuth capability, and information regarding the speed of the drilling.”<sup>11</sup> Applicant also asserts that its applied-for POWERDRIVE ORBIT mark is clearly displayed at the top of the column containing the description of the goods and is mentioned in the description.<sup>12</sup> Finally, Applicant

<sup>10</sup> *Id.*, TSDR p. 7.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

contends that the webpage provides a means for ordering the goods. In particular, Applicant argues that while the webpage does not include an “Add to the Cart” ordering option as would be available for consumer goods such as clothes, towels, sunglasses, etc., the webpage nonetheless has a means for ordering Applicant’s identified goods. Applicant specifically maintains that since its goods are specialized industrial products for very specific drilling applications, a customer would need to consider the technical information for this system prior to placing an order and would likely require technical assistance when purchasing the drilling system.<sup>13</sup> Applicant contends that the webpage provides the methods to obtain assistance and technical information prior to placing an order for its goods.<sup>14</sup>

In support of its arguments, Applicant relies on the Board’s decision in *In re Valenite, Inc.*, 84 USPQ2d 1346 (TTAB 2007). In *Valenite*, the Board found that appellant's webpage was an acceptable display used in association with the goods because it functioned as a point-of-sale display. The webpage contained links to appellant's “Technical Resource Center,” including specification sheets, online calculators, and reference tables, as well as providing appellant's toll-free customer service telephone numbers. Accordingly, the Board found that appellant's webpage “provides an on-line catalog, technical information apparently intended to further the prospective purchaser's determination of which particular product to consider, an online calculator and both a link to, and phone number for, customer service

---

<sup>13</sup> *Id.* at TSDR p. 8.

<sup>14</sup> *Id.*

information. Therefore, applicant's website provides the prospective purchaser with sufficient information that the customer can select a product and call customer service to confirm the correctness of the selection and place an order.” *In re Valenite, Inc.*, 84 USPQ2d at 1349-50.

Applicant argues that, like *Valenite*, the webpage specimen submitted also has links to request more information and web links to a Contact page with contact information for sales.<sup>15</sup> Additionally, Applicant maintains that the webpage includes web links to a library with Tech Reports, product sheets, and technical papers. As such, Applicant contends that the web page should be viewed as a means to place an order because its goods are specialized industrial products for specific drilling applications and, therefore, technical support will be needed to ensure prospective purchasers are purchasing the right system for their particular needs.<sup>16</sup> Finally, Applicant argues that the fact that the web page does not allow a purchaser to click on a product and place it in a shopping cart should not result in a different finding.<sup>17</sup>

With regard to the Class 37 services, Applicant maintains that the original specimen submitted, i.e., the eight-page brochure, clearly demonstrates service mark usage of its POWERDRIVE ORBIT mark. Specifically, Applicant contends that the first page of the specimen shows a photograph of workers wearing outfits with Applicant’s SCHLUMBERGER trade name and rendering the well-drilling services.

---

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at TSDR p. 9.

To further support Applicant’s use of its mark as a service mark in commerce, Applicant submitted an additional specimen for consideration which it describes as “promotional material.”<sup>18</sup> The additional specimen is reproduced below:<sup>19</sup>

CASE STUDY



## Statoil Reaches Section TD in One Run in High-Well-Density Statfjord Field

PowerDrive Orbit RSS and collar RPM surveys enable improved hole cleaning

**CHALLENGE**

Drill 8½-in section of reentry well in high-well-density environment with high packoffs; maintain high flow rate of 2.3–2.35 m<sup>3</sup>/min [14.5–14.8 bbl/min] required for hole cleaning.

**SOLUTION:**

- Improve hole cleaning with WARP<sup>1</sup> fluids technology, which contains micronized weighting material.
- Maintain directional control using the PowerDrive Orbit<sup>®</sup> rotary steerable system (RSS) in severe stick/slip and high flow rate conditions.
- Avoid nearby producing wells by conducting collar rpm cessation surveys with magnetic ranging technology.

**RESULTS:**

- Reached target TD of 950-m [3,116-ft] section in one run.
- Avoided close-proximity wells and ensured sufficient hole cleaning.
- Averaged 25 m/h while drilling the first 475 m [1,558 ft] of the section despite stick/slip severity of 90–100%.



\*Mark of Schlumberger  
 ®Mark of M-I L.L.C.  
 Other names, product, and service names are the properties of their respective owners.  
 Copyright © 2010 Schlumberger. All rights reserved. 14-08-0255

**Drill challenging reentry well from 42-slot platform**

Statoil planned to drill a reentry well from one of its 42-slot offshore platforms in the Statfjord field, one of the largest and oldest fields on the North Sea continental shelf. Slot recovery had become challenging in this environment because of close-proximity wells and hole cleaning issues related to mud system limitations.

In this specific well, Statoil expected to encounter severe packoffs because of cement agitation in the 40-m rat hole, located below the 9½-in casing shoe. Statoil needed an RSS capable of managing these conditions and efficiently drilling the 8½-in section on target.

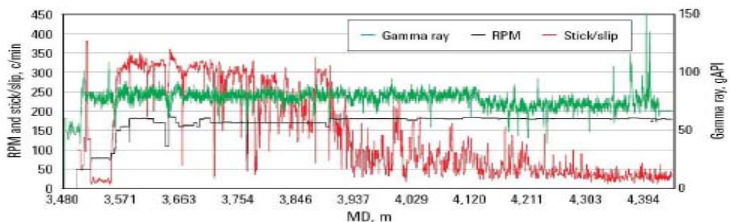
**Use PowerDrive Orbit RSS to remain on target despite well collision risks**

After modeling the dynamic downhole conditions of the Statfjord field using VIRTUAL HYDRAULICS<sup>1</sup> software, Schlumberger experts recommended drilling the well with PowerDrive Orbit RSS and WARP fluids technology. This fluid contains micronized weighting material to improve hole cleaning and requires a high flow rate of 2.3–2.35 m<sup>3</sup>/min, which can cause standpipe pressure to exceed the limitations of conventional RSSs. Unlike a conventional RSS, the PowerDrive Orbit RSS is designed with metal-to-metal seals on the bias unit that expand the tool’s flow rate window.

**Reached section TD on target and in one run**

To avoid nearby wellbores and ensure sufficient hole cleaning, Schlumberger conducted collar rpm surveys rather than pump cycling. The collar rpm cessation surveys were coupled with magnetic ranging technology to allow Statoil to drill close to an offset producing well at a minimum separation factor of 0.18 and a center-to-center distance of 34 m [111 ft]. Statoil drilled the 950-m section according to plan and in one run.

Despite experiencing stick/slip severity of 90–100% in the first 475 m of the section, the PowerDrive Orbit RSS drilled the reentry well on target. As a result of the durability demonstrated on this job, Statoil plans to use the PowerDrive Orbit RSS in other reentry wells in this field.



*In the first 475 m of the hole section, PowerDrive Orbit RSS encountered high stick/slip severity of 90–100% caused by cement agitation in the rat hole below the 9½-in casing shoe. Despite this, the section was drilled to TD with superior directional control.*

[slb.com/PowerDriveOrbit](http://slb.com/PowerDriveOrbit)

Drilling

Applicant also submitted an excerpt of the same specimen reproduced above, highlighting certain language in the specimen, as displayed below:

<sup>18</sup> *Id.* at TSDR p. 10.

<sup>19</sup> *Id.* at TSDR p. 13.

**Use PowerDrive Orbit RSS to remain on target despite well collision risks**

After modeling the dynamic downhole conditions of the Statfjord field using VIRTUAL HYDRAULICS<sup>†</sup> software, Schlumberger experts recommended drilling the well with PowerDrive Orbit RSS and WARP fluids technology. This fluid contains micronized weighting material to improve hole cleaning and requires a high flow rate of 2.3–2.35 m<sup>3</sup>/min, which can cause standpipe pressure to exceed the limitations of conventional RSSs. Unlike a conventional RSS, the PowerDrive Orbit RSS is designed with metal-to-metal seals on the bias unit that expand the tool’s flow rate window.

**Reached section TD on target and in one run**

To avoid nearby wellbores and ensure sufficient hole cleaning, Schlumberger conducted collar rpm surveys rather than pump cycling. The collar rpm cessation surveys were coupled with magnetic

Applicant argues that this additional specimen demonstrates service mark usage of its POWERDRIVE ORBIT mark because it provides information regarding “modeling the reservoir,” “recommending how to drill the well,” and “conducting tests to avoid collision with other wells.”

The Examining Attorney rejected the substitute specimens and maintained and made final the refusal that none of the specimens of record show use of Applicant’s mark in connection with either its identified goods or services.<sup>20</sup>


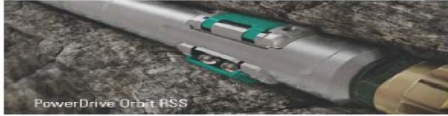
After the Examining Attorney issued his final refusal, Applicant appealed and requested reconsideration. In its request for reconsideration, Applicant submitted yet another specimen, which Applicant describes as an invitation to an event at an industry conference promoting the sale of its POWERDRIVE ORBIT goods and services.<sup>21</sup> The additional specimen is reproduced below:

---

<sup>20</sup> October 16, 2017 Office Action.

<sup>21</sup> February 23, 2018 Request for Reconsideration, TSDR pp. 4-5. With its request for reconsideration, Applicant also attached two articles that purportedly ran in the January 2018 and October 2017 issues of EPmag.com. *Id.* at TSDR pp. 8-12. The articles were attached as evidence, not as substitute specimens. In any event, while the articles do use the mark in connection with the goods, they do so in the manner of an advertisement for the goods. As

YOUR INVITATION TO AN EXCLUSIVE EVENT



### Make It Two


**Join Schlumberger for specialty margaritas and Mexican fare as we introduce two of our latest drilling technologies.**

The celebratory drinks will be served following premiere presentations on the two technologies: **PowerDrive Orbit\* rotary steerable system**, a push-the-bit RSS that increases drilling efficiency and enhances trajectory control, and the **DynaForce Flex\* shale drilling motor**, which enables shoe-to-shoe drilling in high dog leg wells for reduced drilling time.

Let's cheer to a successful end to the first day of the conference.

**EVENT DETAILS**  
Tuesday, March 4, 2014  
5:45 p.m.—6:45 p.m.  
Booth 615, Hall A

IADC/SPE Drilling Conference & Exhibition  
Fort Worth Convention Center  
Fort Worth, Texas



**Schlumberger**

With its request for reconsideration, Applicant also submitted the declaration of its General Counsel, Mr. Matthias Abrell, who testified, inter alia, to the following:<sup>22</sup>

The mark POWERDRIVE ORBIT has been used by Applicant since 2014 for both goods and services applied for in connection with well tools and drilling wells for others. The goods and services are used and sold to multi-national companies and other large oil and gas customers. The goods and services are advertised on the [www.slb.com](http://www.slb.com) website and brochures are available for download on the website for consumer to use in purchasing the same. The website screen shot specimen provided by Applicant is used to solicit customers. The button “Request More Information” is used by purchasers to connect with the Applicant’s sales force. The goods are largely technically complex downhole well drilling tools and are not susceptible to typical labeling. The tools are used in combination with the services provided by Applicant utilizing the POWERDRIVE ORBIT mark as shown and described in the brochure provided as a specimen of use.

The customers for the POWERDRIVE ORBIT goods and services recognize the mark from the use on the Applicant’s website including the case studies on [www.slb.com](http://www.slb.com) promoting the Applicant’s goods and services also provided as specimen of use. The current sales

---

such, they do not constitute acceptable specimens for Applicant’s Class 7 goods. Moreover, the articles do not use Applicant’s mark in association with the identified Class 37 services.

<sup>22</sup> *Id.* at TSDR pp. 15-16.

environment is dependent on the Internet for sales of sophisticated oil and gas goods and services.<sup>23</sup>

The Examining Attorney denied Applicant's request for reconsideration essentially repeating his argument that none of the specimens submitted show service mark usage for the identified Class 37 services and that the specimens are mere advertisements for the Class 7 goods and, therefore, are unacceptable for use as a specimen for such goods.<sup>24</sup>

This appeal resumed after the denial of Applicant's request for reconsideration. Both Applicant and the Examining Attorney filed briefs. As explained below, we affirm the refusal as it pertains to the International Class 37 services, but reverse the refusal as it concerns the International Class 12 goods.

## **II. Failure to Show Use of the Mark for the Identified Class 37 Services**

Section 45 of the Trademark Act specifies that "a mark shall be deemed to be in use in commerce . . . on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce . . . ."

Use as a service mark may be established by: (1) showing the mark used or displayed as a service mark in the sale of the services, which includes use in the

---

<sup>23</sup> Mr. Abrell also testified that "[s]ince 2014 Applicant has sold over \$10 Million each year of the POWERDRIVE ORBIT branded services using the goods, to its customers in commerce in the US." Mr. Abrell's testimony regarding the amount of sales Applicant has made while in business, the size of Applicant's company, the scope of Applicant's efforts at advertising its goods and services and the relative strength of Applicant's mark, however, is not relevant to the issue before us, namely, whether the specimens submitted by Applicant demonstrate trademark or service mark usage of its applied-for POWERDRIVE ORBIT mark in connection with the identified goods and services.

<sup>24</sup> February 27, 2018 Denial of Request for Reconsideration.

course of rendering or performing the services, or (2) showing the mark used or displayed as a service mark in advertising the services, which encompasses marketing and promotional materials. *In re WAY Media, Inc.*, 118 USPQ2d 1697, 1698 (TTAB 2016); *see also In re ICE Futures U.S. Inc.*, 85 USPQ2d 1664, 1669 (TTAB 2008) (noting that use in the rendition of services is an element of the “sale” of services under Trademark Act Section 45); *In re Metriplex, Inc.*, 23 USPQ2d 1315, 1316-17 (TTAB 1992) (explaining that an acceptable specimen need not explicitly refer to the services if it “show[s] use of the mark in the rendering, i.e., sale of the services”).

To show service mark usage, a specimen must display use of the mark in a manner that would be perceived by potential purchasers as identifying the applicant's services and indicating their source by “direct association.” *In re Universal Oil Prods. Co.*, 476 F.2d 653, 177 USPQ 456 (CCPA 1973); *WAY Media*, 118 USPQ2d at 1698. Specimens showing the mark used in rendering the identified services need not explicitly specify the nature of the services, but “there must be something which creates in the mind of the purchaser an association between the mark and the service activity.” *In re Johnson Controls, Inc.*, 33 USPQ2d 1318, 1320 (TTAB 1994). A specimen that shows the mark with no reference to, or association with, the services does not show service mark usage. *In re DSM Pharms. Inc.*, 87 USPQ2d 1623, 1624 (TTAB 2008) (LIQUIDADVANTAGE referred only to software and did not identify and distinguish custom manufacturing services); *see also, e.g., In re HSB Solomon Assocs. LLC*, 102 USPQ2d 1269, 1274 (TTAB 2012) (CEI identified process by which applicant derived a measurement rather than technical consulting service); *In re*



*Osmotica Holdings Corp.*, 95 USPQ2d 1666, 1669 (TTAB 2010) (OSMODEX referred only to drug delivery technology, not consulting services).

Whether a mark sought to be registered as a service mark has been used “to identify” the services specified in the application is a question of fact to be determined on the basis of the specimens submitted by applicant, together with any other evidence of record. *In re Adair*, 45 USPQ2d 1211, 1214 (TTAB 1997). When appropriate, the Board has been fairly flexible in accepting service mark specimens. *See In re Ralph Mantia Inc.*, 54 USPQ2d 1284 (TTAB 2000).

Following a careful review of all the specimens submitted by Applicant, we find that none of them demonstrate service mark usage of Applicant’s POWERDRIVE ORBIT mark for “well drilling services for others.” We address each specimen in turn.

**A. The 8-Page brochure**

With regard to the eight-page brochure, we find that this specimen is unacceptable as a specimen for the Class 37 services for the following reasons. First, the photograph on the brochure does not show the rendering of well drilling services. Rather, it is a promotional photograph for the cover of a brochure showing men wearing hardhats and gloves and measuring equipment which, based on the caption beneath, appears to be the “PowerDrive Orbit Rotary steerable system.” In the context of the brochure, which is a brochure for the equipment and which does not mention well drilling services at all, the purpose of the photograph clearly is to show the advertised goods in a work setting.

Applicant argues that “there is no question that a user of the Powerdrive Orbit services will associate the mark on the specimen with the services in the photograph that Applicant offers because such activities in the photograph are rendered during the well drilling services.”<sup>25</sup> In other words: Customers will know that the photograph of men measuring drilling equipment shows Applicant rendering well drilling services because customers know that measuring drilling equipment is a necessary part of well drilling services. Such an argument cannot be made without an accompanying explanation or evidence. Without such an explanation or evidence, a reasonable interpretation of the photograph is that it shows workers posing with the equipment identified in the caption below the photograph and advertised within the brochure. The photograph does not show the workers drilling wells. This is true as well for a similar photograph which appears on the sixth page of the brochure.

The fact that the mark appears beneath the photograph is irrelevant to the issue of whether the photograph itself shows the mark in connection with the rendering of the services. Applicant’s claim that “the goods . . . are not conducive to traditional labeling” is irrelevant, as the issue is not the use of the mark on the goods, but the use of the mark in connection with the services. Similarly, the claim that “subsurface drilling [is] not conducive to traditional labeling” is confusing, as services are not labelled, and Applicant appears to be suggesting that well drilling services cannot be advertised by traditional means. Applicant did not elaborate on this claim.

---

<sup>25</sup> Applicant’s Appeal Brief, pp. 11-12; 4 TTABVUE 12-13.

In the alternative, Applicant argues that that the brochure does, in fact, advertise Applicant's well drilling services:<sup>26</sup>

The services are well drilling and the brochure in the cover page shows the mark and a well site, the second page references 'drilling efficiency', 'directional drilling technology', the third page the benefit of handling 'corrosive drilling fluids', the fourth page discusses the benefits of the PowerDrive Orbit technology over conventional technology in 'challenging drilling conditions', the fifth page touts the PowerDrive Orbit technology that 'Enhances drilling efficiency' and a 'time saving system . . . to drill wells', the sixth page specifically references the use of PowerDrive Orbit technology with 'difficult drilling conditions' and 'Deeper drilling.'

In each one of these instances, however, the references are to Applicant's well drilling equipment. The brochure does not mention, or even imply, that Applicant also provides well drilling services. Accordingly, we find that the brochure does not demonstrate service mark usage of Applicant's well drilling services.

## **B. Promotional Material Specimen**

With its September 22, 2017 Response to Office Action, Applicant submitted a substitute Class 37 specimen, which Applicant identified as "promotional material showing the use of Schlumberger's services under PowerDrive Orbit, including modeling the reservoir, recommending how to drill the well and conducting tests to avoid collision with other wells."

In submitting this specimen, Applicant highlighted two passages from the specimen. The first reads, "After modeling the dynamic downhole conditions of the Statfjord field using VIRTUAL HYDRAULICS software, Schlumberger experts

---

<sup>26</sup> *Id.* at p. 12; 4 TTABVue 13.

recommended drilling the well with PowerDrive Orbit RSS and WARP fluids technology.” While this passage does reference services, the services appear to be consultation services provided under the Schlumberger trademark, not well drilling services. The POWERDRIVE ORBIT mark, however, is limited to identifying the goods.

The second highlighted passage reads, “To avoid nearby wellbores and ensure sufficient hole cleaning, Schlumberger conducted collar rpm surveys rather than pump cycling.” This also identifies services, but the services are not well drilling services and the mark associated with the services is Schlumberger, not Applicant’s applied-for POWERDRIVE ORBIT mark.

The promotional material specimen, therefore, does not demonstrate use of the mark in association with Applicant’s identified “well drilling services for others.”

### **C. The Invitation Specimen**

With its request for reconsideration, Applicant submitted an additional substitute specimen for its Class 37 services in the form of an invitation. The text of the invitation reads as follows:

Join Schlumberger for specialty margaritas and Mexican fare as we introduce two of our latest drilling technologies. The celebratory drinks will be served following premiere presentations on the two technologies: PowerDrive Orbit rotary steerable system, a push-the-bit RSS that increases drilling efficiency and enhances trajectory control, and the DynaForce Flex shale drilling motor, which enables shoe-to-shoe drilling in high dog leg wells for reduced drilling time.

The invitation uses the mark solely to identify Applicant’s Class 7 goods, referring to POWERDRIVE ORBIT as a “technology” and a “rotary steerable system.” Although

the specimen states that the goods “increase[e] drilling efficiency,” the drilling, presumably, would be performed by the customer who purchases the goods, not by Applicant. There is nothing in the specimen to suggest that Applicant itself provides well drilling services, and nothing that suggests that the mark POWERDRIVE ORBIT is used in association with well drilling services for others.

In view of the above, we find that none of the specimens of record serve to show use of the mark POWERDRIVE ORBIT as a service mark in connection with Applicant’s identified “well drilling services for others.”

### **III. Specimens for the International Class 12 Goods**

Under Section 45 of the Trademark Act, a mark is used in commerce on goods when:

- (A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and
- (B) the goods are sold or transported in commerce, ... .

Advertising materials are generally not acceptable as specimens to show use in commerce for goods. *See In re Kohr Bros.*, 121 USPQ2d 1793, 1794 (TTAB 2017) (quoting *In re Quantum Foods, Inc.*, 94 USPQ2d 1375, 1379 (TTAB 2010)); Trademark Manual of Examining Procedure (“TMEP”) §§ 904.04(b) and (c) (Oct. 2018). Brochures and other advertising materials may be acceptable specimens as printed point-of-sale displays only if sufficient evidence, such as a photograph of a trade show booth, is provided showing how such specimens are used in an actual

display featuring the goods and the print advertising material together. *See In re Ancha Elecs., Inc.*, 1 USPQ2d 1318, 1319-20 (TTAB 1986); TMEP § 904.03(g).

We focus our analysis in this case with regard to Applicant's goods on whether Applicant's webpage specimen contains sufficient ordering means and information to qualify as a display associated with the goods. "Factually, we need to ask whether the purported point-of-sale display provides the potential purchaser with the information normally associated with ordering products of that kind. This has long been an important factor to the Board and its reviewing Courts." *In re Anpath Grp. Inc.*, 95 USPQ2d 1377, 1381 (TTAB 2010) (citing *In re Marriott Corp.*, 173 USPQ 799, 800 (CCPA 1972); *Lands' End Inc. v. Manbeck*, 797 F. Supp. 511, 24 USPQ2d 1314, 1316 (E.D. Va. 1992); *In re Shipley Co.*, 230 USPQ 691, 693-94 (TTAB 1986)).

Displays associated with the goods, including online displays, must be at the point of sale, where the customer sees the mark on the display contemporaneously with the ability to purchase the goods. *Lands' End*, 24 USPQ2d at 1316 ("A crucial factor in the analysis is if the use of an alleged mark is at a point of sale location."); *see also In re Sones*, 93 USPQ2d at 1122 (quoting *In re Ostberg*, 83 USPQ2d 1220, 1222-23 (TTAB 2007) ("In [Lands' End], the determinative factor was that the mark was used at the point of sale.")). "A point of sale location provides a customer with the opportunity to look to the displayed mark as a means of identifying and distinguishing the source of goods." *Lands' End*, 24 USPQ2d at 1316. The Board has held:

[T]o be more than mere advertising, a point-of-sale display associated with the goods must do more than simply promote the goods and induce

a person to buy them; that is the purpose of advertising in general. The specimen must be ‘calculated to consummate a sale.’

*In re U.S. Tsubaki, Inc.*, 109 USPQ2d 2002, 2009 (TTAB 2014) (quoting *In re Bright of Am., Inc.*, 205 USPQ 63, 71 (TTAB 1979). To be calculated to consummate a sale, the specimen must contain sufficient practical information about the goods and a way to order the goods, so as to put the prospective customer at the point of purchase. A way to order the goods can include a catalog order form, a telephone number through which the consumer is invited to call in a purchase, *Lands’ End*, 24 USPQ2d at 1316, or in the case of webpage specimens, a way to “plac[e] orders for the goods via the Internet,” *Anpath Grp.*, 95 USPQ2d at 1381, such as selecting goods and adding them to a virtual shopping cart for check-out.

On the other hand, a specimen fails to qualify as a point-of-sale display if it contains more limited information, and would require a prospective customer to “contact applicant to obtain preliminary information necessary to order the goods” before the prospective customer could actually place an order. *Id.*; see also *U.S. Tsubaki*, 109 USPQ2d at 2005. The U.S. Court of Appeals for the Federal Circuit recently affirmed the rejection of a webpage specimen because it was not a point-of-sale display. The Federal Circuit held that substantial evidence supported the Board decision:

[The Board] noted the absence of information it considered essential to a purchasing decision, such as a price or range of prices for the goods, the minimum quantities one may order, accepted methods of payment, or how the goods would be shipped. J.A. 8. The Board also considered the “For sales information:” text and phone number contact. It assumed that the phone number would connect a prospective customer to sales personnel, but it found that “if virtually all important aspects of the

transaction must be determined from information extraneous to the web page, then the web page is not a point of sale.” J.A. 9; see J.A. 6 (“A simple invitation to call applicant to get information--even to get quotes for placing orders--does not provide a means of ordering the product.” (quoting *In re U.S. Tsubaki, Inc.*, 109 U.S.P.Q.2d 2002, 2005 (T.T.A.B. 2014))). The Board further noted the absence of any evidence (as opposed to attorney argument) of how sales are actually made--e.g., documentation or verified statements from knowledgeable personnel as to what happens and how. J.A. 9.

*In re Siny Corp.*, 920 F.3d 1331, 1336, 2019 USPQ2d 127099, \*\*3 (Fed. Cir. 2019).

However, unlike the applicant in *Siny*, Applicant in this appeal has provided a verified statement from knowledgeable personnel in the form of a declaration from its general counsel who declares, inter alia, the following:

The website screen shot specimen provided by Applicant is used to solicit customers. **The button “Request More Information” is used by purchasers to connect with the Applicant’s sales force.** The goods are largely technically complex downhole well drilling tools and are not susceptible to typical labeling. The tools are used in combination with the services provided by Applicant utilizing the POWERDRIVE ORBIT mark as shown and describes in the brochure provided as a specimen of use. ... **The current sales environment is dependent on the Internet for sales of sophisticated oil and gas goods and services.**

(emphasis added). See *In re Pitney Bowes, Inc.*, 125 USPQ2d 1417, 1420 (TTAB 2018) (“Both precedent and examination guidance make clear that in assessing the specimens, consideration must be given not only to the information provided by the specimen itself, but also to any explanations offered by Applicant clarifying the nature, content, or context of use of the specimen that are consistent with what the specimen itself shows.”).

When viewing the screenshot of Applicant’s webpage in tandem with the declaration of Applicant’s general counsel, we find that the webpage does function as



a point-of-purchase display for Applicant's goods. We initially note that the webpage screenshot clearly displays Applicant's applied-for mark. The webpage also provides information regarding Applicant's goods, including links to technical reports and case studies concerning the goods, as well as a video a prospective consumer may view that demonstrates how the goods operate. In light of the highly specialized and technical nature of Applicant's goods, we agree with Applicant that the fact that the webpage screenshot does not include any pricing for the goods or an "Add to the Cart" ordering option, as would be available for consumer goods such as clothes, towels, sunglasses, is of no consequence since Applicant's goods are of the type that are not susceptible to having pricing information on the webpage itself. We further note that the webpage screenshot also includes a link to "Request More Information." As explained by Applicant's general counsel, this link connects a prospective consumer directly to Applicant's sales force and, therefore, provides a means by which prospective consumers may obtain additional information regarding Applicant's goods, as well as obtain pricing information and the ability to purchase Applicant's goods that may fit their specific needs. Moreover, as further explained by Applicant's general counsel, Applicant relies on the Internet as a vehicle by which potential consumers may purchase Applicant's goods.

In view of the foregoing, we find that Applicant's webpage does function as a point-of-purchase display and, therefore, constitutes an acceptable specimen for Applicant's identified International Class 12 goods.

**Decision:** The refusal to register under Sections 1 and 45 of the Trademark Act on the ground that Applicant has not submitted acceptable specimens of use is affirmed as to the International Class 37 services, but is reversed with regard to the goods identified in International Class 12. Accordingly, Applicant's application will proceed to issuance of a registration solely in regard to the identified International Class 12 goods.