

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SCOUT ENERGY MANAGEMENT, LLC, and
CHEVRON U.S.A. INC.,
Petitioners,

v.

PILOT INTELLECTUAL PROPERTY, LLC,
Patent Owner.

Case IPR2024-00385
Patent 8,505,332 B1

**PATENT OWNER'S MOTION
FOR ADDITIONAL DISCOVERY
OF OBJECTIVE EVIDENCE OF NON-OBVIOUSNESS**

(Filed pursuant to the Board's September 7, 2024 email
authorizing this Motion for Additional Discovery)

I. INTRODUCTION - Patent Owner (“Pilot”) requests additional discovery from Petitioners, Proposed Discovery Requests (EX2014), which is four requests for documents in support of Pilot’s assertion of objective evidence of non-obviousness. Pilot requests documents evidencing Petitioner Chevron’s copying and commercial success. For copying, Pilot requests documents including drawings showing the NGL Recovery unit that Chevron added to its Mabee gas plant after it gained access to Pilot’s then patent pending process, and the composition of four particular inlet/outlet streams identified on a flow diagram of the plant. For commercial success, Pilot requests documents showing the value that Petitioners placed on the Chevron Mabee gas plant NGL Recovery unit when Chevron sold the plant to Petitioner Scout. The document requests are narrowly tailored to specific needs for evidence relevant to copying and commercial success. For the specific drawings and stream compositions requested, the Ex. 2015 claim chart demonstrates these specific needs by identifying each element of the challenged Claims 1-4, 6-7 that corresponds with each document request in the Proposed Discovery Requests. Pilot understands that its assertion of copying in its Response to the Petition will be demonstrated through a comparison of Petitioners’ NGL Recovery unit process with Pilot’s NGL recovery process, to show copying, rather than merely infringement of the challenged claims. But the challenged claims are a recitation of the steps of Pilot’s process, so Pilot’s claim chart detailing the elements of the claims is the most effective/efficient way to demonstrate the specific need for the requested documents.

II. BACKGROUND – Chevron Misrepresented Its NGL Recovery Unit Process when Confronted by Pilot about Possible Infringement

Pilot has strong compelling circumstantial evidence of copying because Chevron made material false representations about its NGL Recovery unit process when confronted by Pilot about possible infringement. Before adding an NGL Recovery unit to its previously existing Mabee gas plant, Chevron had access to Pilot's patent-pending process, through Pilot's proposals to build the NGL Recovery unit. Chevron had its own proprietary technology at that time it was using in its Rangely, Colorado facility, which it patented and asserted was much better than the Ryan/Holmes prior art. EX2016 1:56-2:16, 6:25-62. Instead, Chevron used what Pilot heard from industry contacts was Pilot's innovative process. When Pilot confronted Chevron about possible infringement, Chevron asserted it was building a plant identical to its Rangely, Colorado plant, the Pastor '666 process. EX2017-19.

The Pastor '666 process is distinctly different from the Prim process because Pastor keeps substantially all of the propane and H₂S in the CO₂ recycle stream (out the top of the NGL distillation column), for the specific purpose of using the propane and H₂S in the CO₂ recycle stream to address miscibility problems. EX2016 [57] Abstract, 3:55-58, 3:12-15, Table 1, 5:57-6:4, 6:9-11. And by keeping the H₂S in the overhead, it keeps this acid gas out of the bottoms NGL stream, thus saving the costs of removal of the H₂S from the NGL sales stream. *Id.* 3:55-58. The Prim process is distinctly different because it recovers an optimal amount of propane (in the bottoms NGL stream) (EX1001 8:03-10:21, Figs. 3-4 ("NGL recovery optimization method")), resulting in some H₂S also in the bottoms NGL stream, which requires a sweetening step to remove the H₂S from the NGL sales stream.

Years after having misled Pilot with Chevron's assertion it was building a Pastor

plant at Mabee, Chevron's NGL Recovery unit had problems with a sensor not calibrated properly, leading to hydrate formation in the NGL distillation column. Chevron used the original designer and fabricator of the NGL Recovery unit (Dickson) to troubleshoot and fix the problem. Chevron/Dickson published an article in 2017 describing the fix, which included a flow diagram of the process, and a Table showing the composition of the NGL stream. EX2012 Fig. 3, Table 1. This paper shows that Chevron did not build a Pastor plant, but instead used the Prim process. The NGL stream composition in Table 1 shows a significant amount of propane, and the flow diagram shows an NGL sweetening step for processing the bottoms of the NGL Distillation column, meaning that a significant amount of H₂S is in the bottoms stream. *Id.* If Chevron had built a Pastor plant, rather than a Prim plant, there would be virtually no propane or H₂S in that bottoms stream. These facts led Pilot to file its infringement action, and to be convinced that Chevron copied Prim's process.

**III. Granting Pilot's Motion Is in The Interests of Justice
And Is Warranted in View of The Relevant Factors**

**A. There is More Than a Possibility That the Requested Discovery
Will Yield Useful Information - *Garmin* factor 1**

Pilot is convinced that Chevron copied its Prim process, and convinced that Chevron had huge commercial success with the process, including years of very profitable sales of the NGLs recovered from the process, culminating in a sale of the NGL Recovery unit as part of its sale of the Mabee gas plant to Scout in 2021. While Pilot is firmly convinced based on the evidence it has in hand, Pilot is also painfully aware that it needs the requested additional discovery to convince the Board.

The requested discovery will yield useful information to support Pilot's

assertion of copying and commercial success. Pilot details its need and usefulness in the Ex. 2015 claim chart, first demonstrating in Columns 2 and 3 the information it already has, from an Air Permit and the Hydrate Formation paper, sufficient to show several steps of its process in Petitioners' NGL Recovery unit. Then for each step that Pilot needs additional evidence, Column 5 specifies the corresponding request in the Proposed Discovery Requests. Pilot's request for documents sufficient to show the value that Petitioners placed on their NGL Recovery unit, or alternatively a sales report for the revenue Petitioners made from selling the NGLs recovered, will be very useful for showing their commercial success.

B. Pilot Does Not Seek Petitioners' Litigation Positions - *Garmin* factor 2

Pilot has agreed to a stay of the parallel litigation pending resolution of this IPR. Pilot and Petitioners filed a joint agreed Motion to Stay. EX2021. Pilot's Proposed Discovery Requests seek only factual information regarding Petitioners' NGL Recovery unit (process steps and value/sales) to support Pilot's assertions of copying and commercial success, not to obtain any litigation theories for a case on hold.

C. Pilot Can Obtain the Requested Discovery Only Through Petitioners

The documents requested are not public, they are solely in the possession of Petitioners, and this is the only forum in which Pilot can obtain them. Petitioners filed a pre-Answer Motion to Dismiss in the parallel litigation, which resulted in a stay of discovery. The Court's ruling on the Motion issued last week (EX2020), and the parties then filed their Motion to Stay pending resolution of this IPR (EX2021). The documents at issue cannot be obtained through discovery in the parallel litigation that is on hold. Pilot therefore has no other way to obtain the documents

other than through this request for additional discovery.

D. Pilot's Requests Are Easily Understandable and Not Overly Burdensome - *Garmin* factors 4 and 5

Pilot's requests are specific and narrowly tailored to its needs for documents. Request 1 identifies four particular inlet/outlet streams on a flow diagram of Petitioners' NGL Recovery unit, and defines the "composition" requested as used by Chevron's in its own publication of the composition for one of those four streams in its NGL Recovery unit. EX2012 Table 1. Request 2 specifically identifies particular drawings that Petitioners possess, which are "the most recent version of the Piping and Instrumentation Diagrams (P&IDs) and Plot Plan for the Mabee gas plant." These drawings are readily obtainable by Petitioners and not overly burdensome to produce. Federal regulations require that Petitioners have these documents. EX2022 OSHA 1910.119(d)(3)(i)(B) (requiring P&IDs). Pilot narrows the requests to a relatively small subset of the P&IDs "limited to those for the NGL Recovery unit added to" the Mabee gas plant. Pilot narrows Request 3 to be limited to those already discovered by Petitioners for this IPR and the parallel litigation, thus not requiring any search for additional information, insuring the request is not overly burdensome, and limited to "routine discovery" Petitioners are already obligated to produce when denying copying. Request 4 specifically identifies documents "sufficient to show the value that Chevron/Scout placed on the Mabee gas plant NGL Recovery unit" for Chevron's sale of the Mabee gas plant to Scout. Pilot insures this request is not overly burdensome, by offering Petitioners the option to instead produce readily obtainable revenue data for a mere four years of sales.

Respectfully submitted this 13th day of September, 2024.

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e), I hereby certify that on September 13, 2024 the foregoing *Patent Owner's Motion for Additional Discovery of Objective Evidence of Non-Obviousness* is being served electronically by agreement of the parties, by e-mail to the following counsel of record.

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