

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

IPR2024-00385
Patent No. 8,505,332

**PETITIONERS' OPPOSITION TO
PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY**

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LIST OF EXHIBITS

Exhibit	Description	
2001	Declaration of Trevor Bors	Previously Filed
2002	<i>Curriculum Vitae</i> of Trevor Bors	Previously Filed
2003	U.S. Patent No. 4,529,411 (“Goddin”)	Previously Filed
2004	Table of Similarities (demonstrating similarities between Goddin ‘411 Patent Fig. 11 and Three-Column Ryan/Holmes Process)	Previously Filed
2005	GPA Engineering Data Book (12th Ed. 2006, FPS version) (Part 1 of 2)	Previously Filed
2006	U.S. Patent No. 4,318,723 (“Cryogenic Distillative Separation of Acid Gases from Methane”)	Previously Filed
2007	U.S. Patent No. 4,462,814 (“Distillative Separations of Gas Mixtures Containing Methane, Carbon Dioxide and Other Components”)	Previously Filed
2008	Holmes AS, Ryan JM, Price BC, Styring RE. Process Improves Acid Gas Separation. <i>Hydrocarbon Processing</i> 1982; 61:131– 136	Previously Filed
2009	Hannah Kent-Webb PhD, Best Practices for Biological Sample Storage and Management. <i>Biocompare</i> . (Oct. 2022)	Previously Filed
2010	Vortex Expansion Devices for High Temperature Cryogenics. Proceedings of The 26 th Intersociety Energy Convention Engineering Conference (1991)	Previously Filed
2011	Penflex Engineering Bulletin #113 (including table from The American Society of Materials “ASM Specialty Handbook: Stainless Steels,” published in 1994)	Previously Filed

2012	Hydrate Formation in Chevron Mabee Unit for NGL Recovery and CO2 Purification for EOR (Submitted to Gas Processors Association 2017)	Previously Filed
2013	Canada Patent No. 294,939 (Prosecution File History – including Re-examination)	Previously Filed
2014	Proposed Discovery Requests (including annotated Ex. 2012 Figure 3, specifically identifying four particular streams)	Previously Filed
2015	Claim Chart_ '332 Patent Claims 1-4 6-7_Secondary Considerations_Copying	Previously Filed
2016	United States Patent No. 4,753,666 (“Pastor”)	Previously Filed
2017	Naomi Baker e-mail “Memo to file. conversation with Allen Hein, Chevron” (2012-02-12) (highlighted) (“He [Chevron’s Allen Hein] told me [Pilot’s Naomi Baker] that they were building a plant identical to their Rangeley (CO) plant”)	Previously Filed
2018	Notice Letter from Pilot Energy Solutions to Chevron (August 15, 2013)	Previously Filed
2019	Response Letter from Chevron to Pilot Energy Solutions (August 29, 2013) (attaching Pastor ‘666 Patent)	Previously Filed
2020	<i>Pilot Energy Solutions, LLC et al. v. Chevron U.S.A. Inc. et al.</i> , Case No. 4:23-cv-02505-AHB, in the U.S. District Court for the Southern District of Texas, Houston Division, Order on Defendants’ Motion to Dismiss (Granting in Part, Denying in Part) (Doc. 41)	Previously Filed
2021	<i>Pilot Energy Solutions, LLC et al. v. Chevron U.S.A. Inc. et al.</i> , Case No. 4:23-cv-02505-AHB, in the U.S. District Court for the Southern District of Texas, Houston Division, Agreed Joint Motion to Stay Pending Final	Previously Filed

	Written Decision in Inter Partes Review Proceedings (Doc. 42)	
2022	OSHA § 1910.119(d)(3)(i)(B) (requiring “Piping and instrument diagrams (P&ID’s)” for Process safety management of highly hazardous chemicals) (highlighted)	Previously Filed
2023	Chevron Mabee Plant Air Permit Application – Texas Commission for Environmental Quality (“TCEQ”) (November 5, 2012)	Previously Filed

Pilot's motion for additional discovery¹ is a thinly veiled attempt to obtain discovery for its district court case and to obtain direction for amending its claims. But with respect to its stated purpose, which is to obtain purported objective evidence of non-obviousness, Pilot's motion contains nothing more than speculation and unsupported accusations. As explained in more detail below, the Board should reject Pilot's motion for additional discovery because it does not come close to meeting the *Garmin* factors.

I. THE *GARMIN* FACTORS DO NOT SUPPORT DISCOVERY

A. Factor 1: Pilot Relies on Unsupported Speculation

Pilot's copying and commercial success allegations are merely speculative.

a. Pilot Shows No Legitimate Basis for Alleged Copying

First, Pilot's copying allegation is principally based on an alleged, decade-old, third-party hearsay statement (of which there is no evidence) that would require crediting "industry contacts" that Pilot refuses to identify in its briefing. Mot., 2; EX2018, 1; EX2017. Worse, Pilot is asking that the Board credit these allegations when Pilot itself was unwilling to believe them in 2013, when Pilot first decided not to pursue its infringement allegations against Chevron. In fact, in co-pending litigation the District Court dismissed Pilot's misrepresentation claim dealing with the same allegations as barred by the statute of limitations because, in

¹ Pilot's motion appears to violate Rule 42.6(a)(2)(iii), requiring double spacing.

part, Pilot “voluntarily chose to ‘drop the matter.’” EX2020, 8. The Board should reject Pilot’s baseless speculation.

Second, Pilot’s copying argument revolves around the idea that the Mabee Plant was not based on the design of a prior-art plant built by Chevron in Rangely, Colorado.² Mot., 2. But Pilot’s argument is pure speculation. Pilot assumes that the Rangely plant had the same stream compositions as disclosed in a simulation in a 1988 Chevron patent (“*Pastor*”), asserts that the Mabee Plant has different stream compositions from those in *Pastor*, and concludes the Mabee and Rangely plants must therefore be different. But Pilot provides no basis to assume the stream compositions in Rangely and *Pastor* were the same. And even if Pilot’s arguments regarding differences between Mabee’s and *Pastor*’s stream compositions had merit, which they do not,³ that is irrelevant to whether the Mabee NGL recovery

² If the Mabee Plant was based on a prior art design, then it could not have been copied from Pilot.

³ For instance, Pilot points to *Pastor*’s teaching that “substantially all” of the inlet propane goes overhead in the distillation column, and then points to a portion of the Hydrate Formation Paper discussing Mabee as allegedly being different. Mot., 2-3. But in the Mabee NGL stream composition Pilot points to, propane is by far the smallest component, even though Pilot calls it “a significant amount.” Mot., 3;

unit replicated Chevron's prior-art Rangely plant, let alone whether it copied Pilot's "Prim process."

Third, Pilot asserts the Mabee Plant copied the "Prim process" based on Mabee's alleged treatment of propane and H₂S, Mot., 2-3, but these arguments lack nexus to Pilot's claims and only highlight features that were well known in the art, which cannot be evidence of copying. For propane, Pilot fails to link propane composition to its patent, let alone its claims. The block citation Pilot provides from its specification only refers to "NGL" as an undifferentiated group, as "C₃₊", not singling out "an optimal amount of propane" as Pilot does in its motion. Mot., 2 (citing EX1001, 8:03-10:21). For H₂S, Pilot points to a flow diagram showing "NGL Sweetening," as a supposed indication of copying. Mot., 3; EX2012, 4. But this cannot evidence copying, as "sweetening processes are a well-known method in the art and can be applied to any sour process streams," as the examiner explained in the notice of allowance for the '332 patent. EX1003, 270.

EX2012, 4 (Table 1). Furthermore, Pilot provides no basis to assume this is a "significant amount" of the *inlet* propane, which is what *Pastor*'s "substantially all" statement was in reference to. EX2016, Abstract, 3:4-5, 3:55-58.

b. Pilot Shows No Basis for Alleged Commercial Success

Pilot provides zero basis for its speculation that “Chevron had huge commercial success” with the Mabee NGL Recovery unit. Mot., 3; *see also* Mot.,

1. Pilot’s request for additional discovery is, in reality, a wild goose chase for potential damages for district court rather than being based on more than a possibility or mere allegation that there was commercial success that would be useful to Pilot in this IPR.

B. Factor 2: Pilot Is Seeking to Bolster Its District Court Positions

Pilot is seeking the underlying bases for Chevron’s and Scout’s non-infringement and damages positions. The fact that the district court case is currently “on hold,” Mot., 4, actually highlights the fact that Pilot is investigating its litigation positions and underlying bases with its current discovery requests because it cannot obtain that discovery in district court. Furthermore, during meet and confers, Pilot indicated it may seek amendment of its claims in this IPR. Pilot’s requests are attempting to obtain plant schematic and compositional information that, if they had obtained from district court discovery, would otherwise bar it from participating in prosecution and IPR claim amendments. Pilot’s requests are thus also an end run around the district court’s protective order.

C. Factor 3: Pilot Is Able to Generate Equivalent Information by Other Means

Pilot’s analysis of this factor is off base, only describing its inability to get

the specific documents and information in its requests through district court discovery because the case is stayed (based on agreement by all parties). But this factor is not myopically focused on Pilot's ability to get the requested documents through district court discovery—instead, it specifically contemplates “equivalent information” and “other means.” Pilot gives no basis why it cannot obtain equivalent information, for instance, its own commercial successes with the technology. And Pilot provides no explanation why the unnamed “industry contacts” it supposedly “heard from,” Mot., 2; EX2018, 1, could not be an “other means” of obtaining equivalent information regarding alleged copying.

D. Factors 4 & 5: Pilot's Requests are Overly Burdensome

Pilot's requests are overly and unfairly burdensome given the speculative nature of Pilot's explanations as to why it supposes it would find something useful for this IPR, and in light of the fact that the real motive seems to be to discover information for district court litigation and to guide its claim amendments.

Date: September 20, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with 37 C.F.R. § 42.6(e), the undersigned certifies that on the 20th day of September, 2024, a complete and entire copy of the foregoing **PETITIONERS' OPPOSITION TO PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY** was served on Patent Owner via email to counsel of record for the Patent Owner at the following addresses:

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