

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

NATIONAL OILWELL VARCO, LP *

Plaintiff, *

v. * DOCKET NO.

*** AU:12-CV-00773**

OMRON OILFIELD & MARINE *

INC., * April 16, 2013

Defendant. * Austin, Texas

**TRANSCRIPT OF MARKMAN HEARING
BEFORE SPECIAL MASTER KARL BAYER
VOLUME 1 OF 1**

APPEARANCES:

For the Plaintiff: Mr. Robert M. Bowick

Mr. John W. Raley

Mr. Bradford T. Laney

RALEY & BOWICK, LLP

1800 Augusta Drive, Suite 300

Houston, Texas 77057

For the Defendant: Mr. Matthew B. Lowrie

Ms. Kimberly K. Dodd

FOLEY & LARDNER, LLP

777 East Wisconsin Avenue

Milwaukee, Wisconsin 53202

For the Defendant: Mr. Steven Smit

Mr. Matthew C. Powers

GRAVES, DOUGHERTY, HEARON & MOODY

401 Congress Avenue, Suite 2200

Austin, Texas 78701

Court Reporter: Paige S. Watts, CSR/RPR

DEPUTY OFFICIAL COURT REPORTER

1016 La Posada Drive, Suite 204

Austin, Texas 78752

**(Proceedings recorded by mechanical stenography,
transcript produced by computer)**

1 although we're the Defendant, we get to go first on this
2 one, which is okay.

3 THE COURT: Yeah.

4 MR. LOWRIE: There was a definition, I
5 think, that was provided in an earlier case by NOV that
6 we might accept; but I think it's along the lines of an
7 engineering background or it could be a degree or the
8 equivalent.

9 THE COURT: I just wasn't clear if there
10 was a fuss over that.

11 MR. LOWRIE: Yeah, and I'm not sure that
12 there is. I'll let them speak for themselves on that,
13 but maybe.

14 THE COURT: Okay.

15 MR. LOWRIE: And we would think five
16 years of experience with oil -- at least five years of
17 experience; so an engineering background or the
18 equivalent based on experience. You need to understand
19 the electrical systems -- or excuse me, not electrical
20 systems. That's actually not in the patent. You need
21 to understand mechanical systems, including pneumatic
22 systems because that's what's described. Again, setting
23 aside whether the claims are limited to that, that would
24 be the appropriate background. A familiarity with the
25 running of oil rigs, particularly the process of braking

1 or not braking the release of the drill string and the
2 experience with the design of the systems that are used
3 for that.

4 THE COURT: And I'll put you on the spot
5 before I let counsel speak to the -- opposing counsel
6 speak to ordinary skill. You may say there's nothing
7 inventive about this and I would respect that and we
8 would later see a motion for summary judgment on
9 obviousness or anticipation or something. But what do
10 you think the invention is here?

11 MR. LOWRIE: I actually agree with the
12 point that there is no invention or that it would be
13 obvious. We have both of those positions. What's
14 described in the patent is really a system that can use
15 drilling fluid pressure as apposed to bit weight, that
16 is the concept known in the prior art. We'll get to
17 that later, but that is what it does. And so it takes
18 old pneumatic systems and it applies it, I think,
19 probably in a technologically flawed way to additional
20 parameters.

21 THE COURT: To operate the brake.

22 MR. LOWRIE: To -- well, operate the
23 brake, that's an interesting point with respect to the
24 claims because the claims actually don't talk about
25 operating the brake. They talk about controlling the

1 of the time he doesn't give a hearing. Sometimes he
2 does if, you know, if you want to complain about the
3 report and recommendation. So we ought to have
4 something in the can I would think in this one by --
5 before our worthy law clerk leaves for his next
6 employment.

7 (Hearing adjourns)

8
9 **REPORTER'S CERTIFICATION**

10
11 I HEREBY CERTIFY that the foregoing is a true and
12 correct transcript from the stenographic notes of the
13 proceedings in the above-entitled matter to the best
14 of my ability.
15
16
17
18

19 _____/s/_____ April 22, 2013_____
20 PAIGE S. WATTS, CSR, RPR Date
21 Deputy Official Court Reporter
22 State of Texas No. 8311
23 Expiration Date: 12/31/14
24
25