

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

NATIONAL OILWELL VARCO, L.P.,	§	
Plaintiff	§	CIVIL ACTION NO. 1:12-CV-00773
 	§	
v.	§	Judge Sam Sparks
 	§	
OMRON OILFIELD & MARINE, INC.,	§	
Defendant	§	<u>JURY TRIAL DEMANDED</u>

**NOV'S SUR-REPLY TO OMRON'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO
DISMISS, FOR DEFAULT JUDGMENT, AND FOR SUMMARY JUGDMENT**

Plaintiff National Oilwell Varco, L.P. (“NOV”) respectfully files this sur-reply to Omron’s reply brief (Doc.No. 148-1) in Support of its Motion to Dismiss, for Default Judgment, and for Summary Judgment.

1. Omron’s reply relies heavily on the Federal Circuit’s holding in Abraxis Bioscience, Inc. v. Navinta, L.L.C., 625 F.3d 1359, 1361 – 65 (Fed. Cir. 2010).¹ Omron’s assessment of Abraxis is misplaced. The Federal Circuit in Abraxis held that the asset purchase agreement in question was not a valid transfer for one single reason – the transferring entity did not own the patents-in-suit:

At that time [time of the asset purchase agreement] AZ-UK could not assign the patents because it did not possess their titles. AZ-UK had no legal title to assign and, therefore, lacked standing to commence litigation.

Abraxis, 625 F.3d at 1365 – 66 (emphasis added). Since AZ-UK did not own the patents until after execution of the agreement, the agreement could not have transferred the patents. Id. Abraxis is completely different than the case at bar. Omron does not dispute that Varco, L.P. owned the ‘142 patent at the time the asset purchase agreement was executed.²

¹ Doc.No. 148-1 at 4, 9.

² See Doc.No. 140-3 (NOV’s Response to Omron’s Motion) at 3 – 7.

2. Omron also cited a Delaware case about a gas utility which sought to raise its rates. Chesapeake Utilities Corp. v. Delaware Pub. Serv. Comm'n, 705 A.2d 1059 (Del. Super. 1997). *Id.* The case defined “intangible asset” under the state statute pertaining to environmental cleanup expenses. This case has no relevance here. The parties to the Varco/National Oilwell agreement defined “physical assets” to include “Patents.”³ Any other reading of the asset purchase agreement would ignore the plain language of the agreement and the intent of the parties.

Date: January 6, 2015

Respectfully submitted,

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³ Ex. C to Doc.No. 145 (deposition of NOV's corporate representative)(confirming that Exhibit A to the asset purchase agreement was “an example of the type of assets that were owned by Varco, L.P. that were transferred to National Oilwell Varco, L.P.”)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document and all attachments are being served on all counsel of record via electronic mail as addressed below, on January 6, 2015.

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/s/ Bradford T. Laney

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