

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PETROLEUM GEO-SERVICES INC.
and
ION GEOPHYSICAL CORPORATION
AND ION INTERNATIONAL S.A.R.L.,

Petitioners,

v.

WESTERNGECO LLC

Patent Owner.

Case IPR2014-00688¹

U.S. Patent No. 7,080,607

**MOTION FOR PRESERVATION IN NON-PUBLIC FORM OF THE
RECORD PENDING APPEAL**

¹ Case IPR2015-00567 has been joined with this proceeding.

Patent Owner WesternGeco LLC (“WG”) respectfully requests that Exhibits 2002-04, 2006, 2014, 2019-23, 2027, 2052, 2069, 2077, 2079-80, 2086, 2103, 2114-17, 2124-26, 2129-35, 2149, 2150, 2157-60 in IPR2014-00688 be preserved in non-public form pending any appeal.

As a general rule, confidential information referred to in a final written decision becomes public 45 days after final judgment, unless a motion to expunge is filed. 77 Fed. Reg. 48761; 37 C.F.R. § 42.56. As was explained in the parties’ previously filed motions to seal (Paper Nos. 29, 44, and 91), Exhibits 2002-04, 2006, 2014, 2019-23, 2027, 2052, 2069, 2077, 2079-80, 2086, 2103, 2114-17, 2124-26, 2129-35, 2149, 2150, 2157-60 contain confidential information that ultimately should be expunged rather than being made public. The Board, however, has found it “reasonable to maintain the record undisturbed pending resolution of the Appeal, or any subsequent appeal concerning this proceeding.” *U.S. Bancorp v. Solutran, Inc.*, CBM2014-00076, Paper 47 at 2-3 (PTAB Jan. 4, 2016). And the Federal Circuit’s rules affirm this approach. Specifically, Federal Circuit Rule 17(a) provides that “[t]he agency must retain the record,” and Federal Circuit Rule 17(d) confirms that parties and counsel must have access to the original record. Beyond these governing principles, expungement presents a real risk of prejudice where “on judicial review, the correctness of the decision appealed from can be defended by the appellee on any ground that is supported by

the record.” *See, e.g., Rexnord Indus., LLC v. Kappos*, 705 F.3d 1347, 1356 (Fed. Cir. 2013).

Accordingly, WG requests that Exhibits 2002-04, 2006, 2014, 2019-23, 2027, 2052, 2069, 2077, 2079-80, 2086, 2103, 2114-17, 2124-26, 2129-35, 2149, 2150, 2157-60 be preserved pending a possible appeal but remain in non-public form. The good-cause grounds for sealing Exhibits 2002-04, 2006, 2014, 2019-23, 2027, 2052, 2069, 2077, 2079-80, 2086, 2103, 2114-17, 2124-26, 2129-35, 2149, 2150, 2157-60 have been detailed in joint motions to seal and Patent Owner’s motions to seal (Paper Nos. Paper Nos. 29, 45, and 91).

For the foregoing reasons, WG moves the Board to maintain Exhibits 2002-04, 2006, 2014, 2019-23, 2027, 2052, 2069, 2077, 2079-80, 2086, 2103, 2114-17, 2124-26, 2129-35, 2149, 2150, 2157-60 in their non-public form pending any appeal, or, if no appeal is taken, to address this matter further.

If, however, the Board declines to preserve Exhibits 2002-04, 2006, 2014, 2019-23, 2027, 2052, 2069, 2077, 2079-80, 2086, 2103, 2114-17, 2124-26, 2129-35, 2149, 2150, 2157-60 in their non-public form, WG respectfully requests expungement of those exhibits under 37 C.F.R. § 42.56, for the good cause explained above.

Respectfully submitted,
Oblon, McClelland, Maier &
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Dated: January 29, 2016

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CERTIFICATE OF SERVICE

The undersigned hereby certifies service of MOTION FOR PRESERVATION IN NON-PUBLIC FORM OF THE RECORD PENDING APPEAL on the counsel of record for the Petitioners by filing this document through the Patent Review Processing System as well as delivering a copy via electronic mail to the following addresses:

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