Trials@uspto.gov
571-272-7822

Paper 106
Entered: March 17, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

PETROLEUM GEO-SERVICES INC.
Petitioner,

v.

WESTERNGECO LLC
Patent Owner.

---

Case IPR2014-00688
Patent 7,080,607 B2

---

Before BRYAN F. MOORE, SCOTT A. DANIELS, and BEVERLY M. BUNTING, *Administrative Patent Judges.*

MOORE, *Administrative Patent Judge*.

DECISION
Denying Patent Owner's Request for Rehearing
*37 C.F.R. § 42.71(d)*

## I. INTRODUCTION

WesternGeco LLC ("Patent Owner") filed a Request for Rehearing (Paper 103, "Req. Reh'g") of the Final Written Decision of the above entitled *Inter Partes* Review (IPR) (Paper 101, "Final Dec.") of claims 1 and 15 of U.S. Patent No. 7,080,607 B2 (Ex. 1001, "the '607 patent"). In the Request for Rehearing, Patent Owner argues that the Final Written Decision overlooked and/or misapprehended several matters in the IPR. For the reasons set forth below, the Request for Rehearing is *denied*.

## II. ANALYSIS

When considering a request for rehearing, we review the Final Written Decision for an abuse of discretion. 37 C.F.R. § 42.71(c). The party requesting rehearing bears the burden of showing that the Final Written Decision should be modified, and "[t]he request must specifically identify all matters the party believes [we] misapprehended or overlooked." 37 C.F.R. § 42.71(d).

### *A. Workman discloses a "prediction unit"*

Claim 15 of the '607 patent recites "a prediction unit adapted to predict positions of at least some of the streamer positioning devices." Claim 1 contains a similar limitation written in method form. In the Final Written Decision, we determined that "predict positions," means "estimating the actual locations." Final Dec. 16. We also determined that the Workman references disclosure of a Kalman filter meets the limitation to "predict[ing] positions." *Id.* at 25–29. Finally, we stated "we have incorporated the time delay aspect of past verses future positions of the SPD's into the proper claim construction of 'predicting positions' by determining this limitation to mean 'estimating the actual locations.'" *Id.* at 25.

In its Request for Rehearing, Patent Owner argues "Kalman filters are flexible calculators that can be used for many applications, including merely "as a filter for noisy signals"—there is nothing inherent to a Kalman filter that teaches predicting future positions based on past data. Paper 101 at 26." Req. Reh'g 5. Thus, according to Patent Owner, "[b]y misapprehending 'real time' as teaching prediction to account for 'signal processing delay time'—a problem unrecognized in the art—the Board erroneously 'interpret[ed] Workman[1] to disclose a Kalman filter that provides an estimate of real time, i.e. actual, streamer positions.' Paper 101 at 27." *Id.*

The Final Decision considered the issue of what is meant by "real time." Final Dec. 25–29. Based on substantial evidence from Workman ("the network solution system 10 implements a Kalman filter solution on the signals it receives from the vessel positioning system 20 and location sensing devices" (Ex. 1004, 3:46-48); "[t]he network solution system 10 outputs real time streamer cable shapes, streamer cable positions, and streamer cable separations" (Ex. 1004, 3:48-51), and Patent Owner's expert (Ex. 2042 ¶ 137 (admitting that a Kalman Filter can "predict the behavior of the system in the future."); Ex. 1092, 434), we determined that Workman predicts streamer positions as required by the claims. *Id.* In the Final Written Decision, we fully considered the evidence cited in Patent Owner's Request for Rehearing, including the argument that Kalman filters can be used in other applications (i.e. filtering a noisy signal) and the argument that Workman does not account for time delay. *Id.* Both of these arguments were presented in the Patent Owner Response. Patent Owner Response

[1] Ex. 1004, U.S. Patent No. 5,790,472 (Aug. 4, 1998).

(Paper 44, PO Resp.), 21–22 (time delay), 23–24 (Kalman filter has other applications).

Upon review of the Final Written Decision, however, we did find that the Decision omitted a citation to evidence upon which the Decision was based. Thus, we amend the decision at page 26 after the following citation "Ex. 1004, 3:46–51, *see also* Ex. 1092, 434." to insert the following sentence: "We also credit the testimony of Dr. Evans that receiving signals and outputting real time positions using a Kalman filter is predicting locations, i.e. "Workman thus discloses using a Kalman filter to predict present ("real time") streamer positions from the past positions that were determined by the position-monitoring system." Ex. 1002 ¶ 81."

For the reasons stated above, the Decision did not overlook or misapprehend Petitioner's arguments or evidence. We considered Petitioner's position, and determined that the evidence on which Petitioner relied was persuasive in establishing that Workman disclosed predicting streamer location by estimating the actual, i.e., real time, streamer positions as required by the claims, that accounts for delay. Patent Owner's "real time" argument on rehearing is merely a restating of the argument proffered in the Patent Owner Response. A request for rehearing is not an opportunity merely to disagree with the panel's assessment of the arguments or weighing of the evidence. It is not an abuse of discretion to have performed an analysis or reached a conclusion with which Petitioner disagrees, and mere disagreement with the Board's analysis or conclusion is not a proper basis for rehearing. We are not persuaded that this determination was an abuse of our discretion. Thus, we are not persuaded by this argument.

*B. Service under 315(b)*

Patent Owner argues "[t]he Board attempts to analogize the present case to *Motorola Mobility LLC v. Arnouse Digital Devices Corp.*, IPR2013-00010, Paper 20 (PTAB Jan. 30, 2013), in order to find that PGS [Petroleum Geo-Services Inc.] merely "received a copy" of the complaint." Req. Reh'g 6. Further, Patent Owner argues "[t]he Board compounded its error by re-writing 'served' in Section 315(b) to require 'service upon a defendant.' Paper 101 at 52." *Id.* at 7. We disagree. The Final Decision intended to read "petitioner, real party in interest, or privy of the petitioner is [']served[']' with a complaint alleging infringement of the patent" to mean that the party is served as a defendant in the case rather than served the complaint for the purpose of enforcing a third party subpoena. *Id.* at 6.

The Final Decision states:

> Patent Owner's argument that S.D. Texas L.R. 5-1 "comports" (PO Resp. 59) with the proper interpretation of service under §315(b) is not persuasive as to the intent of Congress with respect to §315(b). *See* 157 Cong. Rec. S5429 (daily ed. Sept. 8, 2011) (statement of Senator Kyl) ("it is important that the section 315(b) deadline afford defendants a reasonable opportunity to identify and understand the patent claims that are relevant to the litigation").

Final Dec. 52–53, n. 7. Thus, the Final Decision explicitly reads the requirement that the person "served" under section 315(b) is a defendant in from the legislative history of the statute. On rehearing, Patent Owner argues that "Congress did not intend to redefine the well-understood meaning of 'service,' but rather intended to ensure that the length of the Section 315(b) deadline would afford parties, defendants or otherwise, 'a reasonable opportunity to identify and understand the patent claims that are

DOCKET ALARM

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

**LAW FIRMS**
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

**FINANCIAL INSTITUTIONS**
Litigation and bankruptcy checks for companies and debtors.

**E-DISCOVERY AND LEGAL VENDORS**
Sync your system to PACER to automate legal marketing.