

# **Ex. PGS 1018**

## **(EXCERPTED)**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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WESTERNGECO L.L.C.,

*Plaintiff,*

v.

ION GEOPHYSICAL CORPORATION,

*Defendant.*

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) Civil Action No. 4:09-CV-01827  
)  
) Judge Keith P. Ellison  
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) Jury Trial Demanded  
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**WESTERNGECO’S OPPOSITION TO ION’S RENEWED MOTION  
FOR JUDGMENT AS A MATTER OF LAW AND ALTERNATIVE  
MOTION FOR NEW TRIAL REGARDING NON-INFRINGEMENT (D.I. 556)**

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proposition that “a party prevailing on an issue of claim construction cannot argue for a differing claim construction following an adverse jury verdict.” *Cordis*, 658 F.3d at 1355; *see also Fenner*, 632 F. Supp. 2d at 638. WesternGeco prevailed at claim construction and seeks nothing new. ION, in contrast, seeks precisely what was rejected in *Cordis* and *Fenner*—to revisit a decided claim construction post-verdict. ION’s purported reliance on *Central Admixture Pharm. Servs., Inc. v. Advanced Cardiac Solns., P.C.*, 482 F.3d 1347, 1356 (Fed. Cir. 2007) is also misplaced. Unlike the party in *Central Admixture*, however, WesternGeco specifically asserted that “predict” had its ordinary meaning to one of skill in the art and was not limited to future times, and accordingly, WesternGeco did not “waive” this position. Substantial evidence supports the jury’s verdict under the Court’s claim construction, and ION’s motion accordingly should be denied.

### **C. ION Infringes Claim 15 Of The ’967 Patent**

Claim 15 of the ’967 patent provides:

An array of seismic streamers towed by a towing vessel comprising: (a) a plurality of streamer positioning devices on or inline with each streamer, at least one of the streamer positioning devices having a wing; (b) a global control system transmitting location information to at least one local control system on the at least one streamer positioning device having a wing, the local control system adjusting the wing.

(PTX 2 at Claim 15) ION contends that the “location information” limitation is not met because a reasonable juror could not conclude that the “fin angle” information sent from ION’s lateral controller to the DigiFIN units comprises “location information.” (D.I. 556 at 17–20) As an initial matter, ION is incorrect in arguing that the Lateral Controller only sends a desired fin angle to the DigiFINs. (D.I. 556 at 7, 18) ION’s user manual shows that the Lateral Controller also sends “operating mode commands” and other location information to the DigiFINs. (PTX 9 at ION 15134) But in any event, WesternGeco presented substantial evidence that a commanded

fin angle comprises “location information.” WesternGeco’s expert, Dr. Triantafyllou, testified that the fin angle indicates how much force is needed to keep the streamers at their target separation. (*Id.* at 1338:22–1339:17) ION’s engineers and product literature confirm that the commanded fin angle is based directly on the location separations between adjacent streamers. (*Id.* at 1488:4–25; PTX 8) The commanded fin angle accordingly provides information about location because “to find the fin angle, you have to know where you are and where you go.” (Trial Tr. at 1338:22–1339:15; *see also id.* 1385:22–1386:8, 1386:16–1387:17, 1393:25–1394:11) Mr. Brune, ION’s technical expert, agreed that ION’s system used location information to calculate the fin angle, which is sent to the DigiFINs in the water. (Trial Tr. at 3926:10–19) This record evidence supports the verdict as well as confirms that ION literally infringes under the Court’s claim construction.

To the extent that the fin angle is not literally location information, Dr. Triantafyllou also testified that the fin angle is “an equivalent concept, whether you send location or a fin calculated on location.” (*See, e.g.*, Trial Tr. at 1463:9–22) For example, “the fin angle is a function, direct function, you can write it down as a function of the location.” *Id.* This is confirmed by ION’s engineering documents, which show a proportional relationship between locations and the fin angle sent to each DigiFIN. (PTX 269) To the extent the fin angle represented a specific direction, “that direction is equivalent to giving you the information and telling you to calculate it.” (Trial Tr. at 1464:17–22) Accordingly, in addition to the evidence of literal infringement discussed above, WesternGeco presented considerable evidence supporting infringement under DOE as well. *Dawson*, 978 F.2d at 208; *see also Cummins-Allison*, 2012 WL 1890153 at \*4.