

Ex. PGS 1025

(EXCERPTED)

Protective Order Material – Subject to Protective Order

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

WESTERNGECO L.L.C.,

Plaintiff,

v.

ION GEOPHYSICAL CORPORATION,

Defendant.

Civil Action No. 4:09-CV-01827

Jury Trial Demanded

CONFIDENTIAL INFORMATION
FILED UNDER SEAL

WESTERNGECO'S OPENING CLAIM CONSTRUCTION BRIEF

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70:21) ION's current streamer steering devices were developed years later and do not embody the '992 patent. (Ex. 43 at 11:15-19; Ex. 44 at 115:21-116:2; Ex. 16 at 3)

ARGUMENT

I. CLAIM TERMS ARE PROPERLY CONSTRUED BASED ON THEIR ORDINARY MEANING IN LIGHT OF THE PATENT'S SPECIFICATION

"[T]he claims of a patent define the invention to which the patentee is entitled the right to exclude." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*). "[T]he court has the power and obligation to construe as a matter of law the meaning of language used in the patent claim." *Markman v. Westview Instr. Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (*en banc*).

The "words of a claim 'are generally given their ordinary and customary meaning' . . . the meaning that the term would have to a person of ordinary skill in the art in question at the time of invention." *Phillips*, 415 F.3d at 1312-13. "Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id.* at 1313. "The specification 'is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.'" *Id.* at 1315.

II. PROPOSED CONSTRUCTIONS FOR THE BITTLESTON PATENTS

(a) "streamer positioning device(s)"

Claim	Term	WesternGeco's Proposed Construction	ION's Proposed Construction
'017-1, 3-5, 7-8, 16; '967-1-9, 15; '607-1, 4-6, 8-9, 15; '520-1, 9, 18, 26.	"streamer positioning device(s)"; "the positioning device"	a device that controls the position of a streamer as it is towed (e.g., a "bird")	device(s) used to steer/position the streamer both vertically and horizontally

Both parties include "streamer," "positioning" and "device" in their proposed construction. There is no contention that these words have unusual meanings or would be confusing for a jury. In such cases, claim construction "involves little more than the application

of the widely accepted meaning of commonly understood words." *Phillips*, 415 F.3d at 1314. WesternGeco's proposed construction is in accord with this principle — a "streamer positioning device" is "a device that controls the position of a streamer as it is towed (e.g., a 'bird')."

The specification confirms this ordinary meaning. "Birds," "deflectors" and "steerable tail buoys" are all disclosed as examples of "streamer positioning devices." (E.g., Ex. 1 at 10:23-30)⁴ Some of these control the lateral position of the streamer as it is towed. (E.g., *id.* at 1:24-27) Some control the vertical position. (E.g., *id.* at 1:34-36) And some control both. (E.g., *id.* at 3:27-29) Specifically regarding birds, the specification discloses examples that are laterally steerable, vertically steerable and both. (*Id.* at 1:34-36, 1:47-52, 2:5-6 (citing Ex. 12 at WG24354-55)) There is no requirement that a "streamer positioning device" must control both lateral and vertical steering. (See Ex. 18, at ¶38; see also Ex. 41 at 52:19-53:2)

This construction is confirmed by the context of the claims. Claim 1 recites a "streamer positioning device having a wing . . . to steer the streamer positioning device laterally." (Ex. 1 at Cl. 1) If the "streamer positioning device" were limited to vertical and horizontal steering, the later limitation would be redundant. See *Stumbo v. Eastman Outdoors, Inc.*, 508 F.3d 1358, 1362 (Fed. Cir. 2007) (rejecting a proposed construction that rendered claim terms superfluous); *Merck & Co., Inc. v. Teva Pharms. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005) ("A claim construction that gives meaning to all of the terms of the claim is preferred over one that does not do so."); *Phillips*, 415 F.3d at 1314 ("[T]he claim in this case refers to 'steel baffles', which strongly implies that the term 'baffles' does not inherently mean objects made of steel.")

ION's proposed construction commits the "cardinal sin of claim construction" by

⁴ As the specifications of the Bittleston patents are largely identical, citations are made to the '017 patent for convenience. To the extent any relevant differences exist, the patents are addressed separately herein.

attempting to limit the claims to a preferred embodiment. *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1324 (Fed. Cir. 2002). As disclosed in the specification, combined vertical and lateral control is merely a preferred embodiment:

Located between the deflector 16 and the tail buoy 20 are a plurality of streamer positioning devices known as birds 18. ***Preferably the birds 18 are both vertically and horizontally steerable.***

(Ex. 1, at 3:27-29)⁵ The Federal Circuit has "repeatedly warned against confining the claims to [preferred] embodiments." *Phillips*, 415 F.3d at 1323. "[I]t is well-settled that claims are not to be confined to [a preferred] embodiment." *DSW, Inc. v. Shoe Pavilion, Inc.*, 537 F.3d 1342, 1348 (Fed. Cir. 2008). The use of "preferably" to refer to this embodiment "strongly suggests that . . . [it] is simply a preferred embodiment." *Halliburton Energy Services, Inc. v. M-I LLC*, 514 F.3d 1244, 1251 (Fed. Cir. 2008).

Moreover, ION's proposed construction would improperly *exclude* from the scope of "streamer positioning devices" embodiments that the Bittleston patents explicitly disclose as examples of "streamer positioning devices," e.g., devices that only control lateral steering. See *Verizon Servs. Corp. v. Vonage Holdings Corp.*, 503 F.3d 1295, 1305 (Fed. Cir. 2007) ("We normally do not interpret claim terms in a way that excludes disclosed examples in the specification."). For this reason as well, ION's proposed construction is properly rejected.

(b) "global control system"

Claim	Term	WesternGeco's Proposed Construction	ION's Proposed Construction
'017-7, 8; '607-7, 8; '967-1, 4, 5, 8, 9, 15	"global control system"	a control system that sends commands to other devices in a system (e.g., local control systems)	system that monitors the positioning of the streamers and provides the desired vertical and horizontal forces or vertical and horizontal positioning information to the local control systems

As taught in the Bittleston patents, "the control system for the birds **18** is distributed

⁵ Unless otherwise indicated, all emphases are added.