

# **Ex. PGS 1027**

**(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  
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) Judge Keith P. Ellison  
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) Jury Trial Demanded  
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**WESTERNGECO’S OPPOSITION TO ION’S MOTION FOR A NEW TRIAL  
ON INVALIDITY UNDER 35 U.S.C. §§ 102 AND 103 (D.I. 550)**

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majority of ION's other invalidity defenses were dismissed as a matter of law at trial. (D.I. 533) On August 16, 2012 the jury returned a verdict in WesternGeco's favor on all remaining issues, finding all of the asserted patent claims willfully infringed, not anticipated and not obvious, and awarding WesternGeco \$105.9 million in damages for ION's past infringement. (D.I. 536)

### **BACKGROUND**

Marine seismic streamers are cables up to many miles in length that are towed behind ships. (Trial Tr. at 248:25–253:17) An acoustic source, such as an air gun, is used to generate an acoustic signal towards the ocean floor. *Id.* Seismic sensors, such as hydrophones, are spaced along the length of each streamer and are used to detect the reflected acoustic signal. *Id.* The resulting data can be used to map the subsurface geology for the purpose of exploring, exploiting, and managing natural resources of the seabed and subsoil. *Id.*

In 1992, Dr. Simon Bittleston began developing methods and systems for lateral streamer steering for Geco-Prakla, AS (“Geco”), a predecessor to WesternGeco. (Trial Tr. at 497:12-501:10, 518:13-519:22, 521:2-527:13) For example, Dr. Bittleston invented a streamer positioning device, or “bird,” to steer the streamer both laterally and in depth, as reflected in his December 20, 1996 patent application. (ION 18, the “’636 application”)

In order to implement a workable steering system, Dr. Bittleston also recognized the need for sophisticated control systems for steering across the miles-long streamer array. (Trial Tr. at 509:11-517:7, 532:19-534:3, 536:5-539:23) As Dr. Bittleston explained at trial, this was akin to trying to steer 200 separate airplanes on auto-pilot simultaneously, while dealing with the unpredictable forces of currents and waves in the deepwater ocean and in light of the many millions of dollars of equipment that could be destroyed or lost with any error. (*Id.* at 497:12-501:10, 507:11-508:3) Working with Oyvind Hillesund, another Geco engineer, Dr. Bittleston's research led to the International Patent Application WO 00/20895 (ION 19, the “’895

the Zajac '038 patent—ION's invalidity arguments were thoroughly vetted and dismissed by the PTO before granting the '038 patent.

**A. Workman Does Not Teach or Enable Lateral Steering or the “Streamer Positioning Devices” Claimed in the Bittleston Patents**

The Court construed “streamer positioning device” to mean “a device that controls the position of a streamer as it is towed (*e.g.*, a ‘bird’),” noting evidence that “each streamer-positioning device must be capable of steering horizontally.” (D.I. 120 at 14) Workman does not enable such laterally steerable streamer positioning devices—or any lateral steering technology—and therefore cannot anticipate any of the Bittleston patent claims. The Workman patent—now owned by WesternGeco—stems from the work of Rick Workman at Western Geophysical in the 1990s before it merged with Geco in 2000 to form WesternGeco. As confirmed by multiple co-workers of Mr. Workman from this time—including ION trial witness Kenneth Williamson—Western Geophysical in general, and Mr. Workman in particular, never worked on or invented any lateral steering technology. (*See, e.g.*, Trial Tr. at 289:20-291:12, 838:7-9, 4014:20-4015:6, 4110:15-23).

Rather, Workman focused on noise thresholds that affect the acoustic signals used to map subsurface formations. (ION 266 at 4:37-40 (“[T]he present invention controls the use of position correction by determining when the hydrophone noise level should prevent the repositioning of the streamer cable.”); *see also id.* at 4:61-5:31 (discussing noise thresholds)) ION's expert, Mr. Brune confirmed this fact. (*Id.* at 3949:23-24 (“Q. The key focus of the Workman patent is noise reduction? A. Correct.”)) As he admitted on cross-examination, Workman “basically *presupposes* that there is a working steering system” already in place. (Trial Tr. at 3950:15-19; *see also id.* at 3950:22-3951:5)<sup>1</sup> The mere reference to “lateral

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<sup>1</sup> Unless otherwise indicated, all emphases are added.

steering” is insufficient to enable one of ordinary skill in the art to actually practice lateral steering. *Id.* at 3949:4-8 (“Q. You would agree, sir, that just mentioning lateral steering in a reference does not anticipate the claims in this case, correct? A. The mere mention of it, without some disclosure at some level of detail, certainly would not.”); *see also Impax Labs.*, 545 F.3d at 1314 (stating that an anticipatory reference must “enable one of ordinary skill in the art to make the invention without undue experimentation”).

Accordingly, Mr. Workman’s ’472 patent cannot anticipate WesternGeco’s lateral steering inventions, because Workman never invented or enabled such technology. *See Forest Labs., Inc. v. Ivax Pharms., Inc.*, 501 F.3d 1263, 1268 (Fed. Cir. 2007) (“A reference that is not enabling is not anticipating.”); *Elan Pharms., Inc. v. Mayo Found. for Med. Educ. & Research*, 346 F.3d 1051, 1055 (Fed. Cir. 2003) (“The disclosure in an assertedly anticipating reference must be adequate to enable possession of the desired subject matter); *Fiers v. Revel*, 984 F.2d 1164 (Fed. Cir. 1993) (“[O]ne cannot describe what one has not conceived.”).

Although Workman includes references to “streamer positioning devices,” the specification makes clear that the term largely refers to depth control devices whose noise can affect the seismic survey:

The use of streamer positioning devices comes at the price of introducing increased noise onto the seismic streamer and hence into the hydrophones. The areas of greatest noise are from those hydrophones which are adjacent to externally attached ***streamer positioning devices, such as depth controlling birds.***

(ION 266 at 1:62-67) Such depth birds do not satisfy the horizontal steering required by the term “streamer positioning devices” as used in the Bittleston patents. (D.I. 120 at 14)

At most, Workman discloses only two devices in its discussion of lateral positions—Waters ’278 and Owsley ’027, neither of which were ever built, or would work in the invention claimed in the ’520 patent. As Mr. Brune admitted, the Waters ’278 device was described in

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