

Ex. PGS 1031

(EXCERPTED)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WESTERNGECO LLC, . 4:09-CV-01827
. HOUSTON, TEXAS
PLAINTIFF, .
. .
vs. .
. .
ION GEOPHYSICAL .
CORPORATION, FUGRO GEOTEAM, .
INC., ET AL, .
. .
DEFENDANTS . JULY 23, 2012
. . 8:15 A.M.
.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF:

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1 and the patent examiner, including a record of any rejections,
2 the applicant's responses and any amendments.

3 Once a patent has issued, the inventor, or the
4 person or company the inventor has assigned the patent to, can
5 enforce the patent against anyone who uses the invention
6 without permission. We call such unlawful use "infringement."
7 But the PTO and its examiners do not decide infringement
8 issues. If there is a dispute about infringement, it is
9 brought to the Court to decide. Sometimes in a court case, you
10 are also asked to decide about validity; that is, whether the
11 patent should have been allowed at all by the PTO.

12 A party accused of infringement is entitled to
13 challenge whether the asserted patent claims are sufficiently
14 new or nonobvious in light of the prior art or whether other
15 requirements of patentability have been met. In other words, a
16 defense to an infringement lawsuit is that the patent in
17 question is invalid.

18 You may wonder why it is that you would be asked
19 to consider such things when the patent has already been
20 reviewed by a government examiner. There are several reasons
21 for this. First, there may be facts or arguments that the
22 examiner did not consider, such as prior art that was not
23 located by the PTO or provided by the applicant.

24 Another reason may be the failure by the
25 applicant to disclose the best way of making or using the

1 system that WesternGeco argues are covered by its patented
2 system claims. WesternGeco further alleges that Fugro-Geoteam
3 infringed certain method claims of the Bittleston patents by
4 selling or offering for sale within the United States methods
5 that WesternGeco argues are covered by its method claim.

6 The Court has already made a finding of
7 infringement as to Claim 18 of the '520 patent. You will hear
8 more about that later.

9 ION and Fugro deny WesternGeco's allegations and
10 further argue that their method and system claims are invalid.
11 I will instruct you later as to the ways in which a patent may
12 be invalid. In general, however, a patent is invalid if it is
13 not new or it is obvious in view of the state of the art at the
14 relevant time or if the description in the patent does not meet
15 certain requirements. Your job will be to decide whether ION
16 and Fugro infringed the patent claims asserted by WesternGeco
17 and whether or not those claims are invalid.

18 If you decide that any of the claims is infringed
19 and is not invalid, you will then need to decide any money
20 damages to be awarded WesternGeco to compensate it for the
21 infringement. You will also need to make a finding as to
22 whether the infringement was willful. If you decide that any
23 infringement was willful, that decision should not affect any
24 damages award you give. I will take willfulness into account
25 later.

13:06 1 Let's take a moment to look at United States
2 Patent Number '520, one of the patents in this case. The cover
3 page of the patent identifies the date the patent was granted
4 and patent number along the top as well as the inventor's
13:06 5 names, the filing date and a list of the references considered
6 in the PTO. The specification of the patent begins with an
7 abstract, also found on the cover page. The abstract is a
8 brief statement about the subject matter of the invention.

9 Next comes the drawings. These illustrate
13:07 10 various aspects or features of the invention. The written
11 description of the invention appears next and is organized in
12 the two columns on the next page. The specification ends with
13 numbered paragraphs. These are the patent claims.

14 I have already determined the meaning of certain
13:07 15 terms of the claims of the patents. You have been given a
16 document reflecting those meanings. For a claim term for which
17 I have not provided you with a definition, you should apply the
18 ordinary meaning. You are to apply my definitions of these
19 terms throughout this case. However, my interpretation of the
13:07 20 language of the claims should not be taken as an indication
21 that I have a view regarding issues such as infringement and
22 validity. Those issues are yours to decide. I will provide
23 you with more detailed instructions with the meaning of the
24 claims before you retire to deliberate on your verdict.

13:08 25 After our lunch break, the trial will begin.