

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PETROLEUM GEO-SERVICES INC,
and
ION GEOPHYSICAL CORPORATION
AND ION INTERNATIONAL S.A.R.L,
Petitioners,

v.

WESTERNGECO LLC,
Patent Owner.

Cases^{1 2}

IPR2014-00687 (Patent 7,162,967)

IPR2014-00688 (Patent 7,080,607)

IPR2014-00689 (Patent 7,293,520)

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

DANIELS, *Administrative Patent Judge.*

¹ This Order addresses issues from a phone conference that are the same in all three cases. Therefore, we exercise our discretion to issue one Decision to be filed in each case. The parties are not authorized to use this style heading for any subsequent papers.

² Cases IPR2015-00565, IPR2015-00566, IPR2015-00567 have been joined with these proceedings.

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CORRECTED ORDER³
Conduct of the Proceeding
37 C.F.R. § 42.5

A conference call for these proceedings was held on April 27, 2015, including Judges Daniels, Moore, Bunting, and Parvis, and respective counsel for the parties. A court reporter was also on the call. The transcript should be filed via PRPS as soon as it is available. PGS and WesternGeco requested the conference because they could not agree on deposition times for witnesses. In the discussion that follows, because of the related discovery matters directed to a second group of PGS proceedings, IPR2014--01475, -01477, and -01478, involving the same patents, we refer to the present proceedings as the first group of PGS proceedings.

Initially, Counsel for PGS raised a concern regarding unsupported evidence in the declaration of Mr. Robin Walker, asserting that certain information referenced by Mr. Walker had not been produced, and the deposition of Mr. Walker was only a few days away, set for April 30, 2015. Counsel for WesternGeco indicated that some of this information was on encrypted, and double encrypted drives which they were attempting to produce, and that certain information was from Mr. Walker's memory as opposed to physically available documents and things. The Board expects all available evidence that WesternGeco intends to rely on be produced prior to the deposition, and any additional evidence to be produced as soon as it is available. The Board is fully capable of determining the appropriate weight to give certain evidence relied upon by either party, and PGS may file

³ This Order corrects a misreference to a case number in the original Order.

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motions to exclude at the appropriate time should it believe it is prejudiced by late or unsupported evidence.

With respect to the length of depositions, in accordance with our Initial Conference Order (Paper 55) in this first group of PGS proceedings, we consistently determine that a reasonable time for each witness's petition declaration testimony in the second group of PGS proceedings is 17 hours total, including: 12 hours for cross-examination; 3 hours for redirect examination; and 2 hours for re-cross examination. A reasonable time for reply declaration testimony for each witness in both groups of PGS proceedings is 7 hours for cross-examination; 4 hours for redirect examination; and 2 hours for re-cross examination. If necessary, the parties may contact the Board to explain why any further deposition time is needed.

Also during the call, WesternGeco's counsel explained that new evidence, filed subsequent to our Decisions to Institute, specifically Master Purchase Agreement No. MAR-2008-0139, (Ex. 2069) between PGS and Concept Systems Limited, a subsidiary of ION, was indicative of the need for additional discovery with respect to alleged privity between ION and PGS. Having addressed the matters of privity and real-party-in-interest already in our Decisions to Institute, we took the matter under advisement. Thus, having reviewed the Master Purchase Agreement and the indemnity clause at 1.17, WesternGeco does not, now, apprise us of any new evidence demonstrating control, opportunity to control, or financial compensation for litigation, or IPR proceedings. *See* Ex. 2069, 14.⁴ Neither are we persuaded

⁴ WesternGeco's Counsel points to IPR2014-01559, Paper 23, where the Board determined that the facts and evidence supported a finding of privity.

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that we misapprehended or overlooked such evidence in our Decisions to Institute. *See* Inst. Dec. 17, Exs. 2022, 2027.

Accordingly, it is

ORDERED that petition declaration testimony for each witness in each of the first and second PGS proceedings shall not exceed 17 hours total, including: 12 hours for cross-examination; 3 hours for redirect examination; and 2 hours for re-cross examination;

FURTHER ORDERED that reply declaration witness testimony for each witness in each of the first and second PGS proceedings shall not exceed 13 hours total, including: 7 hours for cross-examination; 4 hours for redirect examination; and 2 hours for re-cross examination;

FURTHER ORDERED that Patent Owner's request for authorization for a Motion for Additional Discovery on the subjects of privity and real-party-in-interest, is *denied*; and

FURTHER ORDERED that a copy of this Order is to be entered into the files of the second group of PGS proceedings, IPR2014-01475, 01477, and 01478.

However, the decision referred to is not precedential and the Board's evaluation of privity in an *inter partes* review is made based on a case-by-case basis, taking into account the particular facts of each case. *See* 77 Fed. Reg. at 48,760.

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