

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

Case IPR2014-00688¹

U.S. Patent No. 7,080,607

PETROLEUM GEO-SERVICES INC.'S OBJECTIONS TO EVIDENCE

¹ Case IPR2015-00567 has been joined with this proceeding.

Petitioner Petroleum Geo-Services Inc. (“PGS”) objects pursuant to 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence (“FRE”) to the admissibility of evidence served by Patent Owner WesternGeco, LLC on June 1, 2015. PGS files these objections pursuant to 37 C.F.R. § 42.64(b)(1), which—as of May 19, 2015—requires objections to be filed with the Board. *See* 80 F.R. 28,561, 28,563. Nothing contained herein shall be deemed to withdraw any objection in PGS’ Objections to Evidence previously served on Patent Owner on March 27, April 16, May 6, and May 28, 2015.

The exhibits objected to, and grounds for PGS’ objections, are listed below. PGS also objects to Patent Owner’s reliance on or citation to any objected evidence in its papers.

I. IDENTIFICATION OF CHALLENGED EVIDENCE AND GROUNDS FOR OBJECTIONS

A. Exhibit 2141

PGS objects to Exhibit 2141 because it is untimely under 37 C.F.R. § 42.64(b). Exhibit 2141 was not filed within the due date for Patent Owner’s response, March 20, 2015. *See* Paper 38 at 2. Moreover, Patent Owner has not requested authorization from the Board to file supplemental information under 37 C.F.R. § 42.123, and Patent Owner does not and cannot demonstrate that this

exhibit reasonably could not have been obtained earlier or that it would be in the interests of justice to allow this supplemental information. *See* 37 C.F.R. § 42.123.

PGS also objects to Exhibit 2141 under FRE 802 because it is inadmissible hearsay. This document appears to be from *WesternGeco LLC v. ION Geophysical Corp.*, 4:09-cv-01827 (S.D. Tex.) (“the ION case”). PGS was not a party to the ION case and, consequently, did not have an opportunity to respond or object to these statements.

PGS also objects to Exhibit 2141 under FRE 402 and 403 because it is irrelevant and its probative value is substantially outweighed by the danger of wasting time in this compressed proceeding. The Board has instituted this IPR based on various grounds that certain claims of the '607 Patent are anticipated and/or obvious. The Board declined to deny institution of the petition on the basis that ION is a real party in interest or a privy of PGS in this proceeding. Because Patent Owner has cited this exhibit solely in an effort to show that ION is a real party in interest or a privy of PGS in this proceeding, this exhibit is irrelevant to the determination to be made in this IPR. Moreover, even were the question of ION's status as a real party in interest or privy of PGS relevant to the proceeding, Exhibit 2141 is not relevant to that determination and therefore should be excluded under FRE 402. And because any relevance of Exhibit 2141 is significantly outweighed by the undue prejudice associated with ancillary litigation of the

tangential and irrelevant issue of Petitioner's relationship with ION, it should be excluded pursuant to FRE 403. Additionally, despite having a full and fair opportunity to address RPI and privity issues in its POPR and Patent Owner Response that have already been submitted, WesternGeco filed this new exhibit contrary to the Board's rules. *See* Trial Practice Guide at 48769 (providing only for motions for observation on cross-examination when "no further substantive paper is permitted"). For these additional reasons, Exhibit 2141 should be excluded under FRE 402 and 403.

PGS further objects to Exhibit 2141 because it is not an "original" under FRE 1002 or a "duplicate" under FRE 1001(e) and 1003. Exhibit 2141 appears to have been improperly reproduced, resulting in unreadable pages. *See, e.g.*, Ex. 2141 at 29-34. Exhibit 2141 is therefore inadmissible under FRE 1002 and 1003.

B. Exhibit 2142

PGS objects to Exhibit 2142 because it is untimely under 37 C.F.R. § 42.64(b). Exhibit 2142 was not filed within the due date for Patent Owner's response, March 20, 2015. *See* Paper 38 at 2. Moreover, Patent Owner has not requested authorization from the Board to file supplemental information under 37 C.F.R. § 42.123, and Patent Owner does not and cannot demonstrate that this exhibit reasonably could not have been obtained earlier or that it would be in the interests of justice to allow this supplemental information. *See* 37 C.F.R. § 42.123.

PGS also objects to Exhibit 2142 under FRE 802 because it is inadmissible hearsay. This document appears to be from the ION case. PGS was not a party to the ION case and, consequently, did not have an opportunity to respond or object to these statements.

PGS also objects to Exhibit 2142 under FRE 402 and 403 because it is irrelevant and its probative value is substantially outweighed by the danger of wasting time in this compressed proceeding. The Board has instituted this IPR based on various grounds that certain claims of the '607 Patent are anticipated and/or obvious. The Board declined to deny institution of the petition on the basis that ION is a real party in interest or a privy of PGS in this proceeding. Because Patent Owner has cited this exhibit solely in an effort to show that ION is a real party in interest or a privy of PGS in this proceeding, this exhibit is irrelevant to the determination to be made in this IPR. Moreover, even were the question of ION's status as a real party in interest or privy of PGS relevant to the proceeding, Exhibit 2142 is not relevant to that determination and therefore should be excluded under FRE 402. And because any relevance of Exhibit 2142 is significantly outweighed by the undue prejudice associated with ancillary litigation of the tangential and irrelevant issue of Petitioner's relationship with ION, it should be excluded pursuant to FRE 403. Additionally, despite having a full and fair opportunity to address RPI and privity issues in its POPR and Patent Owner

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.