

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Petitioners,

v.

WESTERNGECO LLC

Patent Owner.

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Case IPR2014-00688<sup>1</sup>

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

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**PATENT OWNER'S OPPOSITION TO PETITIONER  
PETROLEUM GEO-SERVICES INC.'S MOTION TO EXCLUDE**

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<sup>1</sup> Case IPR2015-00567 has been joined with this proceeding.

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## I. INTRODUCTION

At the outset of this proceeding, the Board cautioned the parties that “motions to exclude are extraordinary remedies” and encouraged the parties to “consider issues of admissibility of evidence, *in light of the Board’s experience and diligence in applying appropriate weight to evidence*, before filing any motion to exclude.” Paper 37 at 4 (emphasis added); *see also* Exhibit 3002 at 11.

WesternGeco LLC (“Patent Owner” or “WesternGeco”) heeded the Board’s advice and has not objected to or moved to exclude evidence from the oral hearing.

Unfortunately, the same cannot be said for Petitioner Petroleum Geo-Services (“PGS”). After burdening Patent Owner throughout this proceeding with baseless objections to numerous exhibits and forcing Patent Owner to expend significant resources compiling and serving responsive supplemental evidence, PGS has ignored all of that supplemental evidence and now seeks to exclude nearly all of Patent Owner’s underlying exhibits. PGS’s kitchen-sink request is both procedurally and substantively defective and, accordingly, should be denied.

As a threshold matter, PGS’s motion runs afoul of the procedural requirements governing motions to exclude, which require PGS to identify, *inter alia*, where each objection was originally made and explain each objection with specificity. PGS’s incomprehensible laundry list of scattershot objections and tortured maze of conclusory, vague arguments do not come close to meeting those

requirements. PGS's attempt to shift the burden onto Patent Owner and the Board to navigate well over a hundred pages of objections and arguments to decipher how they relate to each of the 44 exhibits PGS seeks to exclude is impermissible, and PGS's motion may be denied on that basis alone.

If considered, PGS's objections are without merit. Indeed, the vast majority of PGS's arguments go to the weight of the evidence at issue, not its admissibility. The Board, however, is perfectly capable of considering and weighing the evidence for itself. Tellingly, PGS does not cite a single case in which the Board has excluded any evidence, much less the type of material PGS challenges here, and instead relies almost exclusively upon inapposite district court rulings excluding evidence from juries. In any event, PGS's analysis, which is riddled with legal errors and factual misstatements, fails to establish an evidentiary basis for exclusion in *any* forum. The Board should see PGS's motion for what it is—an attempt to both disrupt WesternGeco's preparation for the July 30 Oral Hearing and avoid the merits of WesternGeco's unrebutted evidence of secondary considerations—and deny the extraordinary relief PGS seeks.

## **II. PGS'S MOTION FAILS TO COMPLY WITH THE ESTABLISHED REQUIREMENTS FOR MOTIONS TO EXCLUDE**

The Board's requirements for motions to exclude are clear. The motion “must identify the objections in the record in order and must explain the objections.” 37 C.F.R. § 42.64(c). The Office Patent Trial Practice (“OPTP”)

Guide offers further guidance by providing four criteria that a motion to exclude must meet. Specifically, “[a] motion to exclude evidence must: (a) [i]dentify where in the record the objection originally was made; (b) [i]dentify where in the record the evidence sought to be excluded was relied upon by an opponent; (c) [a]ddress objections to exhibits in numerical order; and (d) [e]xplain each objection. *OPTP Guide*, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012). PGS’s Motion fails to meet these requirements.

Moreover, PGS completely ignores Patent Owner’s supplemental evidence. As Rule 42.64(b)(2) allows, throughout this trial, Patent Owner served supplemental evidence on PGS that is responsive to many of the exhibits PGS now seeks to exclude. Specifically, on January 14, 2015, and in response to PGS’s December 30, 2014 objections, Patent Owner served its first set of supplemental evidence on PGS. *See* Ex. 2166. Next, in response to PGS’s March 27, 2015 objections, Patent Owner served PGS with Exs. 2101-08 and 2111-27 on April 9, 2015. *See* Ex. 2167. PGS then recursively objected to Patent Owner’s supplemental evidence, requiring Patent Owner to waste further time and resources compiling and serving additional supplemental evidence (Exs. 2129-2135) on April 30, 2015. *See* Ex. 2168. PGS filed yet another set of recursive objections to Patent Owner’s supplemental evidence, to which Patent Owner served PGS with Ex. 2140. *See* Ex. 2169. Lastly, in response to PGS’s June 8, 2015 objections to

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