

IN THE 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 No. IPR2014-00689¹
U.S. Patent No. 7,293,520

**MOTION FOR PRESERVATION IN NON-PUBLIC FORM OF THE
RECORD PENDING APPEAL AND,
IN THE ALTERNATIVE, MOTION TO EXPUNGE
CONFIDENTIAL INFORMATION UNDER 37 C.F.R. § 42.56**

¹ Case IPR2015-00565 has been joined with this proceeding.

Petitioner Petroleum Geo-Services Inc. (“PGS”) respectfully requests that Exhibits 2021-23, 2027, and 2069 in IPR2014-00689 be preserved in non-public form pending any appeal. In the alternative, PGS requests that those exhibits be expunged from the record pursuant to 37 C.F.R. § 42.56.

As a general rule, confidential information referred to in a final written decision becomes public 45 days after final judgment, unless a motion to expunge is filed. 77 Fed. Reg. 48761; 37 C.F.R. § 42.56. As will be discussed below, Exhibits 2021-23, 2027, and 2069 contain confidential information that ultimately should be expunged rather than being made public. The Board, however, has found it “reasonable to maintain the record undisturbed pending resolution of the Appeal, or any subsequent appeal concerning this proceeding.” *U.S. Bancorp v. Solutran, Inc.*, CBM2014-00076, Paper 47 at 2-3 (PTAB Jan. 4, 2016). And the Federal Circuit’s rules affirm this approach. Specifically, Federal Circuit Rule 17(a) provides that “[t]he agency must retain the record,” and Federal Circuit Rule 17(d) confirms that parties and counsel must have access to the original record. Beyond these governing principles, expungement presents a real risk of prejudice where “on judicial review, the correctness of the decision appealed from can be defended by the appellee on any ground that is supported by the record.” *See, e.g., Rexnord Indus., LLC v. Kappos*, 705 F.3d 1347, 1356 (Fed. Cir. 2013). In

other words, there is a risk that expungement will deny PGS record support for its own appeal in the event that Patent Owner appeals the Board’s final decision.

Accordingly, PGS requests that Exhibits 2021-23, 2027, and 2069 be preserved pending a possible appeal but remain in non-public form. The good-cause grounds for sealing Exhibits 2021-23 and 2027 have been detailed in a joint motion to seal (Paper 29 at 6-7), which was granted by the Board as to those exhibits (Paper 31). The good-cause grounds for sealing Exhibit 2069 have been detailed in Patent Owner’s motion to seal (Paper 44 at 2-3), which has not been ruled on by the Board. The good cause to seal these exhibits is included in Table 1 below:

Table 1. Exhibits that Should Remain Under Seal

Exhibit	Description	Good Cause
2021	Invoices for transactions between ION and PGS	PGS states that this exhibit includes confidential business information of PGS concerning its commercial transactions with a third party. This business information is not public, is maintained in confidence, and is unnecessary for the public to understand the patentability dispute at issue. This exhibit is further subject to protective orders in <i>WesternGeco LLC v. Petroleum Geo-Services Inc.</i> , No. 13-cv-2725 and <i>WesternGeco LLC v. ION Geophysical Corp. et al.</i> , No. 09-cv-01827.

2022	<i>WesternGeco LLC v. Petroleum Geo-Services Inc., et al.</i> , No. 4-13-cv-02725, PGSI-T2725-WG-46456-58.	PGS states that this exhibit includes confidential business information of PGS concerning the negotiation of a commercial agreement. This business information is not public, is maintained in confidence, and is unnecessary for the public to understand the patentability dispute at issue. This exhibit is further subject to a protective order in <i>WesternGeco LLC v. Petroleum Geo-Services Inc.</i> , No. 13-cv-2725.
2023	<i>WesternGeco LLC v. Petroleum Geo-Services Inc., et al.</i> , No. 4-13-cv-02725, PGSI-T2725-WG-47225.	PGS states that this exhibit includes confidential business information of PGS concerning the negotiation of a commercial agreement. This business information is not public, is maintained in confidence, and is unnecessary for the public to understand the patentability dispute at issue. This exhibit is further subject to a protective order in <i>WesternGeco LLC v. Petroleum Geo-Services Inc.</i> , No. 13-cv-2725.
2027	<i>WesternGeco LLC v. Petroleum Geo-Services Inc., et al.</i> , No. 4-13-cv-02725, PGSI-T2725-WG-47303.	PGS states that this exhibit includes confidential business information of PGS concerning the provisions of a commercial agreement. This business information is not public, is maintained in confidence, and is unnecessary for the public to understand the patentability dispute at issue. This exhibit is further subject to a protective order in <i>WesternGeco LLC v. Petroleum Geo-Services Inc.</i> , No. 13-cv-2725.
2069	Agreement Between PGS Geophysical A.S. and another party, <i>WesternGeco LLC v. Petroleum Geo-Services Inc.</i> ,	PGS states that this exhibit includes confidential business information in the form of a commercial agreement. This business information is not

	et al., No. 4-13-cv-02725, PGS-JURID_00000158-183.	public, is maintained in confidence, and is unnecessary for the public to understand the patentability dispute at issue. This exhibit is further subject to a protective order in <i>WesternGeco LLC v. Petroleum Geo-Services Inc.</i> , No. 13-cv-2725.
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For these reasons, PGS moves the Board to maintain Exhibits 2021-23, 2027 and 2069 in their non-public form pending any appeal. If granted, PGS will contact the Board at the conclusion of any appeal proceeding, or if no appeal is taken, to address this matter further.

If the Board declines to preserve Exhibits 2021-23, 2027, and 2069 in their non-public form, PGS respectfully requests expungement of those exhibits under 37 C.F.R. § 42.56, for the good cause explained in Table 1 above.

Dated: January 29, 2016

Respectfully submitted,

/David Berl/

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