

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD
3

4 PETROLEUM GEO-SERVICES,)
5 Petitioner,) Case No.
6) IPR2014-00687,
7 vs.) -00688, -00689
8)
9 WESTERNGECO,)
10 Patent Owner.)

11 -----x

12
13
14 DEPOSITION OF JACK COLE, PH.D.

15
16 Washington, D.C.

17 Thursday, February 12, 2015

18
19 ** REVISED **

20
21
22
23 Reported by: Lori J. Goodin, RPR, CLR, CRR
24 Realtime Systems Administrator

25 JOB NO. 90108

Page 2

1
2
3 February 12, 2015
4 8:41 a.m.
5
6
7 Deposition of JACK COLE, PH.D., held
8 at Williams & Connolly, 725 12th Street,
9 Northwest, Washington, D.C. before Lori J.
10 Goodin, RPR, CLR, CRR, a Notary Public of
11 the District of Columbia.
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1 **A P P E A R A N C E S (CONTINUED):**
2
3 **On Behalf of Patent Owner:**
4 **KIRKLAND & ELLIS**
5 **300 North LaSalle**
6 **Chicago, Illinois 60654**
7 **BY: SIMEON PAPACOSTAS, ESQUIRE**
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1 **A P P E A R A N C E S:**
2
3 **On Behalf of Petitioner:**
4 **WILLIAMS & CONNOLLY**
5 **725 Twelfth Street, Northwest**
6 **Washington, D.C. 20005**
7 **BY: JESSAMYN BERNIKER, ESQUIRE**
8 **BY: ALEC SWAFFORD, ESQUIRE**
9 **BY: THOMAS FLETCHER, ESQUIRE**
10 **BY: DAVID BERL, ESQUIRE**
11 **AND**
12 **PETROLEUM GEO-SERVICES**
13 **15150 Memorial Drive**
14 **Houston, Texas 77079**
15 **BY: KEVIN HART, ESQUIRE**
16
17 **On Behalf of Patent Owner:**
18 **OBLON MCCLELLAND MAIER &**
19 **NEUSTADT**
20 **1940 Duke Street**
21 **Alexandria, Virginia 22314**
22 **BY: SCOTT MCKEOWN, ESQUIRE**
23 **CHRISTOPHER BULLARD, ESQUIRE**
24 **AND**
25 **///**

Page 5

1 J. Cole, Ph.D.
2 JACK COLE, PH.D.,
3 having been first duly sworn, testified as
4 follows:
5 EXAMINATION 08:38
6 BY MR. BULLARD: 08:38
7 Q. Good morning, Dr. Cole. 08:41
8 A. Good morning. 08:41
9 Q. Let's start by making -- 08:41
10 A. Excuse me, sir, would you speak a 08:41
11 little louder, please. 08:41
12 Q. Thank you. Thank you for telling 08:41
13 me. And if at any time today you can't hear me 08:41
14 or understand my question, please let me know. 08:41
15 A. Yes, thank you. 08:41
16 Q. My name is Chris Bullard, and I 08:41
17 represent WesternGeco, and I'm here today with 08:41
18 Mr. Scott McKeown and also with Simeon 08:41
19 Papacostas. 08:42
20 THE WITNESS: I am sorry. I didn't 08:42
21 get your name. 08:42
22 MR. PAPACOSTAS: Simeon Papacostas. 08:42
23 THE WITNESS: Okay. Thank you, sir. 08:42
24 MS. BERNIKER: Jessamyn Berniker on 08:42
25 behalf of petitioner. And with me are Alec 08:42

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1 J. Cole, Ph.D.
2 Swafford and Tom Fletcher, and Kevin Hart 08:42
3 for petitioner. 08:42
4 BY MR. BULLARD: 08:42
5 Q. So, Dr. Cole, have you been deposed 08:42
6 before? 08:42
7 A. No, sir. 08:42
8 Q. Have you worked in patent related 08:42
9 matters before? 08:42
10 A. Yes, sir. I am an inventor. 08:42
11 Q. Okay. Have you ever done any 08:42
12 testifying outside of being deposed? 08:42
13 A. No, sir. 08:42
14 Q. So, today is a deposition. And I 08:42
15 will just go over a little bit of how this 08:42
16 works. 08:42
17 So, do you understand that while 08:42
18 there is no judge or jury here today, that you 08:42
19 are giving testimony, and that your testimony 08:42
20 is under oath? 08:42
21 A. Yes, sir. 08:42
22 Q. Okay. And, as I say, if you do not 08:42
23 hear my questions or understand my questions, 08:42
24 will you let me know? 08:43
25 A. Yes, sir. 08:43

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1 J. Cole, Ph.D.
2 reporter. 08:43
3 So, I ask you if you do respond, to 08:43
4 please do so without making these type of 08:44
5 gestures. Is that all right? 08:44
6 A. Excuse me, sir, I'm used to using my 08:44
7 hands or something when I'm talking. Is that 08:44
8 okay? 08:44
9 Q. You can be expressive while you 08:44
10 talk. We just want to make sure that your 08:44
11 testimony is clear on the record. 08:44
12 A. I understand. Yes, sir. 08:44
13 Q. If you respond with a nod or a 08:44
14 grunt, nothing else, we can't get that down 08:44
15 on the record. And we want to make sure that 08:44
16 we do. 08:44
17 And so from time to time, as I'm 08:44
18 asking you questions, your counsel may object 08:44
19 to a question. So, unless I agree to rephrase 08:44
20 the question or withdraw it, I'm going to ask 08:44
21 you to answer the question. Is that okay? 08:44
22 A. Yes, sir. 08:44
23 Q. All right. And, like I say, please 08:44
24 let me know if you haven't finished a question, 08:44
25 but also let me know if you need a break. So, 08:44

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1 J. Cole, Ph.D.
2 Q. And, so, if you do answer, I will 08:43
3 assume that you heard and understood the 08:43
4 question. Is that fair enough? 08:43
5 A. Did you say, is that fair? 08:43
6 Q. I'm sorry. 08:43
7 A. If you would speak a little louder. 08:43
8 Q. I will try to speak a little louder. 08:43
9 I try not to shout. 08:43
10 A. No, I know, but I'm used to speaking 08:43
11 with a little better volume. I am more 08:43
12 comfortable with that, if I may say so. 08:43
13 Q. Thank you for letting me know. 08:43
14 A. Thank you. 08:43
15 Q. So, just to repeat, so if you do 08:43
16 answer, we will assume that you heard and 08:43
17 understood our questions. 08:43
18 A. I agree. 08:43
19 Q. Okay. So, today you are doing a 08:43
20 great job. You are giving oral testimony, and 08:43
21 your testimony is being recorded by our court 08:43
22 reporter. 08:43
23 But, because it is oral testimony, 08:43
24 if you respond with a shrug, or a nod, or a 08:43
25 gesture, they may not be picked up by the court 08:43

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1 J. Cole, Ph.D.
2 will you let me know if you need a break? 08:44
3 A. Yes, I will. 08:44
4 Q. Just before we get started, is there 08:44
5 any reason at all today that you would not be 08:44
6 able to give full and complete answers to the 08:44
7 questions that I'm going to ask? 08:44
8 A. Not that I'm aware of, sir. 08:45
9 Q. All right. So, let's set the stage 08:45
10 a little bit. 08:45
11 Are you here today to, for your 08:45
12 deposition relating to declarations that were 08:45
13 filed in IPRs 2014-00687, 00688 and 00689? 08:45
14 A. Can I get an affirmation on the 08:45
15 numbers? I don't remember the numbers, sir. 08:45
16 Q. Certainly, please take a moment. 08:45
17 So, why don't we -- let's take a step back. 08:45
18 So, you are here today for a 08:45
19 deposition relating to declarations that you 08:45
20 prepared; is that correct? 08:45
21 A. That's correct. 08:45
22 Q. And those depositions were relating 08:45
23 to patents; is that correct? 08:45
24 A. That's correct. 08:45
25 Q. Now, I'm going to hand you several 08:45

3 (Pages 6 to 9)

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1 J. Cole, Ph.D.

2 patents in turn. And I want you to confirm 08:45

3 that these are the patents that you prepared 08:45

4 declarations related to. Is that all right? 08:46

5 A. Yes, sir. 08:46

6 Q. Okay. So, we are going to start 08:46

7 with U.S. patent number 7,162,967. And this 08:46

8 has already been entered into the record in 08:46

9 IPR2014-00687 -- 08:46

10 A. Thanks. 08:46

11 Q. -- as Exhibit 1001. 08:46

12 So, is this a copy of U.S. patent 08:46

13 number 7,162,967? 08:46

14 A. The question is, is that the patent 08:46

15 I'm holding in my hand? 08:46

16 Q. Yes. 08:46

17 A. Yes, sir. 08:46

18 Q. And can I refer to this as the '967 08:46

19 patent, just for ease as we go through? 08:46

20 A. Yes. 08:46

21 Q. Okay. Now I'm going to hand you a 08:46

22 declaration. It is titled The Declaration of 08:46

23 Dr. Jack Cole. And this is already entered 08:47

24 into IPR2014-00687 as Exhibit 1003. 08:47

25 And, is this a copy of your 08:47

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1 J. Cole, Ph.D.

2 Q. Great. So, next I'm going to hand 08:48

3 you a copy of U.S. patent number 7,080,607, 08:48

4 which has been made of record already as 08:48

5 Exhibit 1001 in IPR2014-00688. 08:48

6 Is this a copy of U.S. patent 08:48

7 7,080,607 that I have handed you? 08:48

8 A. Yes, sir. 08:48

9 Q. Do you mind if I refer to that as 08:48

10 the '607 patent, going forward? 08:48

11 A. No, sir. 08:48

12 Q. Great. And now I'm going to hand 08:48

13 you a copy of your declaration related to the 08:49

14 '607 patent, which has already been entered 08:49

15 into the record as Exhibit 1003 in 08:49

16 IPR2014-00688. Is this a copy of the 08:49

17 declaration that you prepared -- 08:49

18 A. It appears to be, sir. 08:49

19 Q. -- for the '607? Thank you. 08:49

20 And, just like the other 08:49

21 declaration, did you get a chance to review 08:49

22 this declaration prior to your deposition 08:49

23 today? 08:49

24 A. Yes, sir. 08:49

25 Q. And were there any errors in this 08:49

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1 J. Cole, Ph.D.

2 declaration relating to the '967 patent? 08:47

3 A. It appears to be. I haven't gone 08:47

4 totally through it, but I'm assuming that it is 08:47

5 from the numbers. 08:47

6 Q. Okay. So, did you have an 08:47

7 opportunity to fully review your declaration as 08:47

8 you, as it was filed in advance of this 08:47

9 deposition today? 08:47

10 A. Yes sir, I did. 08:47

11 Q. Okay. Were there any errors that 08:47

12 you found in that declaration as part of your 08:47

13 review for today? 08:47

14 A. I did not find any errors. 08:47

15 Q. Okay. Great. Thank you. 08:47

16 So let's just walk through the other 08:47

17 patents and declarations so that you have them 08:47

18 in front of you for our conversation today. 08:48

19 Next I'm going to hand you -- 08:48

20 A. Excuse me, sir, would you repeat 08:48

21 that statement you just made? 08:48

22 Q. So, next I'm going to hand you the 08:48

23 other patents and declarations that we will be 08:48

24 talking about today. Is that all right? 08:48

25 A. Yes, sir. 08:48

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1 J. Cole, Ph.D.

2 declaration? 08:49

3 A. I did not find any errors. 08:49

4 Q. Okay. Thank you. And the last 08:49

5 patent I'm going to hand you now is U.S. patent 08:49

6 number 7,293,520. This has already been 08:49

7 entered into the record as Exhibit 1001 in 08:50

8 IPR2014-00689. 08:50

9 Do you mind if I refer to this as 08:50

10 the '520 patent? 08:50

11 A. No, sir. 08:50

12 MS. BERNIKER: Could you just repeat 08:50

13 the exhibit number? I'm sorry. 08:50

14 MR. BULLARD: I'm sorry. This has 08:50

15 been entered as Exhibit Number 1001 in 08:50

16 IPR2014-00689. 08:50

17 MS. BERNIKER: Thank you. 08:50

18 BY MR. BULLARD: 08:50

19 Q. Next I'm going to hand you -- oh, is 08:50

20 that a copy of the '520 patent that I have just 08:50

21 handed you? 08:50

22 A. Yes, sir, it appears to be. 08:50

23 Q. Next I'm going to hand you a copy of 08:50

24 your declaration prepared relating to the '520 08:50

25 patent, which has already been entered as 08:50

4 (Pages 10 to 13)

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1 J. Cole, Ph.D.
2 Exhibit 1003 in IPR2014-00689. 08:50
3 Is this a copy of the declaration 08:51
4 you prepared relating to the '520 patent? 08:51
5 A. Yes, sir, it appears to be. 08:51
6 Q. And did you get a chance to review 08:51
7 this declaration -- 08:51
8 A. Yes, sir, I did. 08:51
9 Q. -- in advance of our deposition 08:51
10 today? 08:51
11 And, are there any errors? 08:51
12 A. I did not find any errors. 08:51
13 Q. Great, thank you. 08:51
14 So, let's just start generally by 08:51
15 talking about how these declarations came 08:51
16 together. Who first contacted you to work on 08:51
17 this matter? 08:51
18 A. Williams & Connolly law firm. 08:51
19 Q. And, in that initial conversation, 08:51
20 did they tell you what this matter was about? 08:51
21 A. Sir, I don't recall. 08:52
22 Q. Okay. At any point before you were 08:52
23 engaged by Williams & Connolly, did you have to 08:52
24 investigate whether you had any conflicts with 08:52
25 the companies involved? 08:52

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1 J. Cole, Ph.D.
2 A. WesternGeco. Correct it, please. 08:53
3 Q. Okay. Did you enter into an 08:53
4 engagement agreement with Williams & Connolly? 08:53
5 A. Yes, I did. 08:53
6 Q. And prior to that engagement 08:53
7 agreement being entered into, did you talk to 08:53
8 any other attorneys from law firms or companies 08:53
9 other than Williams & Connolly? 08:53
10 A. You are talking about in regard to 08:53
11 this -- 08:53
12 Q. In regards to this matter. 08:53
13 A. That's correct. 08:53
14 Q. So did you talk to anyone, any 08:53
15 attorneys other than the attorneys from 08:53
16 Williams & Connolly regarding this matter, 08:54
17 prior to signing your engagement? 08:54
18 A. That's correct. 08:54
19 Q. Did you? 08:54
20 A. Did I? No. I'm sorry. 08:54
21 Q. Oh, you did not. 08:54
22 So, did Williams & Connolly tell you 08:54
23 prior to your engagement what companies this 08:54
24 matter would involve? 08:54
25 A. They informed me that it would 08:54

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1 J. Cole, Ph.D.
2 A. Yes, I did. 08:52
3 Q. And what companies did you 08:52
4 investigate to see whether they would present a 08:52
5 conflict for you? 08:52
6 A. Did I investigate the companies? 08:52
7 Q. Let me rephrase that, if you are 08:52
8 confused by that. 08:52
9 A. If you will, please. 08:52
10 Q. When you looked to see whether there 08:52
11 was a conflict, what companies did Williams & 08:52
12 Connolly ask you to determine whether there 08:52
13 would be a conflict? 08:52
14 A. This is, this is a recollection, 08:52
15 sir. 08:52
16 Q. Yes, thank you. 08:52
17 A. Western Atlas. 08:52
18 Q. Okay. 08:53
19 A. I can't, I can't recall any 08:53
20 others -- 08:53
21 Q. Did -- 08:53
22 A. -- at this time. I'm sorry, I said 08:53
23 Western Atlas. I meant, I think it is 08:53
24 WesternGeco. 08:53
25 Q. WesternGeco. 08:53

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1 J. Cole, Ph.D.
2 involve PGS, sir. 08:54
3 Q. Did they let you know that any other 08:54
4 companies were involved in this matter? 08:54
5 A. I'm going to have to think about 08:54
6 that, because we haven't been discussing that 08:54
7 lately. And to go back, as I recall, it was a 08:54
8 conflict between WesternGeco and PGS, as best I 08:54
9 can frame it right now. 08:55
10 Q. And, you indicated that you signed 08:55
11 an engagement agreement with Williams & 08:55
12 Connolly. 08:55
13 Did you sign more than one 08:55
14 engagement agreement with Williams & Connolly? 08:55
15 A. Not that I remember. 08:55
16 Q. Before becoming engaged for this 08:55
17 matter, did you have any prior contact with 08:55
18 PGS? 08:55
19 A. Here is where I am, I want to make 08:55
20 sure that you understand. I'm an active member 08:55
21 of the Society of Exploration Geophysicists. I 08:55
22 may have encountered PGS salespeople at 08:55
23 offshore technology conferences, et cetera. 08:55
24 But that's my limit. I never had 08:56
25 any business relationship with them or any 08:56

5 (Pages 14 to 17)

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