

Ex. PGS 1053

(EXCERPTED)

Protective Order Material – Subject to Protective Order

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

WESTERNGECO L.L.C.,	§	
	§	
Plaintiff,	§	
	§	
V.	§	CIVIL ACTION NO. 4:09-cv-01827
	§	
ION GEOPHYSICAL CORPORATION,	§	Judge Keith P. Ellison
FUGRO-GEOTEAM, INC., FUGRO-	§	
GEOTEAM AS, FUGRO NORWAY	§	
MARINE SERVICES AS, FUGRO, INC.,	§	<u>FILED UNDER SEAL</u>
FUGRO (USA), INC. and FUGRO	§	
GEOSERVICES, INC.,	§	
	§	JURY TRIAL DEMANDED
Defendants.	§	

**DEFENDANTS’ AMENDED RESPONSE IN OPPOSITION TO
WESTERNGECO L.L.C.’S MOTION FOR SUMMARY JUDGMENT
OF WILLFUL INFRINGEMENT OF VALID CLAIMS OF THE ‘520 PATENT¹**

Defendants ION Geophysical Corporation (“ION”), Fugro-Geoteam, Inc., Fugro-Geoteam AS, Fugro Norway Marine Services AS, Fugro, Inc., Fugro (USA), Inc., and Fugro Geoservices, Inc. (“the Fugro Defendants”) (collectively “Defendants”) file this Response in Opposition to Plaintiff WesternGeco L.L.C.’s (“WesternGeco”) Motion for Summary Judgment of Willful Infringement of Valid Claims of the ‘520 Patent (Doc. No. 276) (the “‘520 Motion”), and respectfully show as follows:

RELEVANT PROCEDURAL HISTORY

Before the Court is WesternGeco’s action against Defendants for patent infringement of five of its patents. (Doc. Nos. 1, 145). WesternGeco’s U.S. Patent No. 7,293,520 (the “‘520 Patent”) is the only patent relevant to this motion.

¹ Defendants amend their response brief per the Court’s request to limit the brief to 50 pages.

CLAIM TERM	COURT'S CONSTRUCTION
“streamer positioning device(s)”; “the positioning device”	a device that controls the position of a streamer as it is towed (<i>e.g.</i> , a “bird”)
“feather angle mode”	a control mode that attempts to set and maintain each streamer in a straight line offset from the towing direction by a certain feather angle
“turn control mode”	mode wherein streamer positioning device(s) generate a force in the opposite direction of a turn and then directing each streamer positioning device to the position defined in the feather angle mode
“streamer separation mode”	a control mode that attempts to set and maintain the spacing between adjacent streamers

Also at issue in this motion, and yet to be construed by the Court, is the phrase “a control system configured to use a control mode selected from [the listed modes].”

Courts examine the patent’s intrinsic evidence to define the patented invention’s scope. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (*en banc*). This intrinsic evidence includes the claims themselves, the specification, and the prosecution history. *See id.* at 1314; *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 861 (Fed. Cir. 2001).

“[T]he claims themselves provide substantial guidance in determining the meaning of particular claim terms.” *Phillips*, 415 F.3d at 1314. A term’s context in the asserted claim can be very instructive. *Id.* Other asserted or unasserted claims can also aid in determining the claim’s meaning because claim terms are typically used consistently throughout the patent. *Id.* Differences among the claim terms can also assist in understanding a term’s meaning. *Id.*

- 1. Claim 18 of the ‘520 Patent requires a control system configured to use a feather angle mode, a turn control mode, a streamer separation mode, and two or more of these modes.**

Claim 18 requires “a control system configured to use a control mode selected from a

feather angle mode, a turn control mode, a streamer separation mode, and two or more of these modes.” Ex. A, ‘520 Patent (emphasis added). The use of the term “and” to separate the control modes connotes a conjunctive list, which requires the claimed invention to comprise each mode listed. *See SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 886-87 (Fed. Cir. 2004).

WesternGeco ignores the literal wording of the claim, arguing that the claim could be satisfied if a control system were configured to use only one of the modes. Effectively, WesternGeco asks the court to replace the word “and” with the word “or.” As the Federal Circuit explained in *Chef America, Inc. v. Lamb Weston, Inc.*, a patent must be interpreted “as written, not as the patentees wish they had written it.” 358 F.3d 1371, 1374 (Fed. Cir. 2004). Any ambiguity arising from the claim language that WesternGeco chose to use should be resolved against the patentee by choosing the narrower interpretation. *See Athletic Alternatives, Inc. v. Prince Mfg., Inc.*, 73 F.3d 1573, 1581 (Fed. Cir. 1996).

The plain language of the limitation comports with the understanding that the control system of Claim 18 must be capable of operation in *each* of the listed modes such that the system’s operator may select from the listed control modes the particular control mode for use. The purpose of having selectable control modes is to permit the system operator to select the mode of operation best suited for the operating conditions. Without a control system that is designed to operate in each of these modes, the control system cannot be configured to use a control mode selected from these modes. After all, the mode must be available in the control system for the mode to be selected.

This understanding of Claim 18 is perfectly consistent with the patent’s specification. The specification notes that “[t]he inventive control system will primarily operate in two different control modes: a feather angle control mode and a turn control mode.” Ex. A, ‘520

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