

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 L.L.C.  
Patent Owner.

---

Case IPR2014-00689<sup>1</sup>  
U.S. Patent No. 7,293,520

---

**PATENT OWNER'S PRELIMINARY RESPONSE**

Pursuant to 37 C.F.R. § 42.107(a) and the Board's Order dated May 19, 2015 (Paper 68), Patent Owner, WesternGeco L.L.C. ("WesternGeco" or "Patent Owner"), submits this Preliminary Response to the Petition for Inter Partes Review ("Petition") of U.S. Patent No. 7,293,520 (the "'520 patent") filed by Petitioners, ION Geophysical Corporation and ION International S.A.R.L. (collectively, "ION") in IPR2015-00565 ("the '565 IPR").

---

<sup>1</sup> Case IPR2015-00565 has been joined with this proceeding. This Preliminary Response is being concurrently filed in that proceeding.

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. ION’S PETITION AND JOINDER MOTION SHOULD BE DENIED BECAUSE ION AND PGS ARE IN PRIVITY AND BECAUSE ION FAILED TO NAME ALL REAL PARTIES IN INTEREST .....5

    A. Privity is Flexibly Applied and Broader Than Real Party-In-Interest ..6

    B. PGS’s Relationship to the ION Litigation Establishes Privity ..... 11

    C. PGS’s Substantive Legal Relationship With ION Establishes Privity ..... 15

    D. PGS is a RPI Under the Guidelines..... 18

    E. At a Minimum, Patent Owner Deserves Additional Discovery on Privity and RPI ..... 20

III. ION’S VALIDITY ARGUMENTS ARE BARRED UNDER RES JUDICATA AND COLLATERAL ESTOPPEL AND CANNOT SUPPORT TRIAL INSTITUTION ..... 20

    A. ION’s Petition is Barred Under the Doctrine of Collateral Estoppel.. 22

        1. Collateral Estoppel Applies to IPR Proceedings ..... 23

        2. Collateral Estoppel is Appropriate..... 25

    B. ION’s Petition is Barred Under the Doctrine of Res Judicata ..... 28

IV. ION’S PRIOR STATEMENTS AND ADJUDICATIONS CONTRADICT ITS SUBSTANTIVE ARGUMENTS ..... 29

    A. ION Previously Rejected Its Current Characterizations of the Prior Art ..... 30

    B. ION Previously Admitted That WesternGeco’s Commercial Embodiments Practice The Claimed Inventions ..... 33

V. JOINDER IS IMPOSSIBLE WITHOUT COMPROMISING THE EXISTING SCHEDULE AS WELL AS PATENT OWNER’S DUE

PROCESS RIGHTS .....34  
VI. CONCLUSION.....35

**I. INTRODUCTION**

ION’s petition and motion to join IPR2014-00689 (“the ’689 IPR”) are a sham as well as an impermissible second—if not third or fourth—bite at the apple. ION is an adjudicated infringer of U.S. Patent No. 7,293,520 (“the ’520 patent”) and has already lost on the same validity arguments that it attempts to relitigate here, first on summary judgment, then at trial, and then again post-trial. Having been sued in 2009, ION was time-barred under 35 U.S.C. § 315(b) from filing its own IPR. Instead, ION seeks to join its proxy’s, Petroleum Geo-Services, Inc.’s (“PGS’s”), ’689 IPR in an attempt to skirt the rules. This Board should see through this ruse—PGS and ION are privies with close corporate ties that have worked together for years to invalidate the ’520 patent. Accordingly, the Board must deny ION’s joinder motion, deny ION’s petition, and terminate the ’689 IPR.

\* \* \*

ION is time-barred from filing an IPR challenging the ’520 patent. Over five years ago Patent Owner sued ION for infringement of multiple patents, including the ’520 patent. *See WesternGeco LLC v. ION Geophysical Corp.*, No. 09-cv-01827 (S.D. Tex. 2009) (the “ION litigation”). Thus, 35 U.S.C. § 315(b) bars ION from now challenging the ’520 patent’s validity through an IPR proceeding.

PGS is likewise barred from challenging the ’520 patent as ION’s proxy and

thus barred from launching an IPR proceeding for ION to then join. PGS and ION's attempt to distinguish themselves for the purpose of these IPR proceedings is simply a ruse based on concealment—if not outright misrepresentation—of the relevant facts. Both a strong contractual relationship and a strong collaborative relationship exist between ION and PGS regarding the validity of the '520 patent, making these two parties privies for purposes of these proceedings.

Their contractual relationship began [REDACTED]

[REDACTED]

Alongside this contractual relationship, ION and PGS have entered into a collaboration regarding the subject matter of these proceedings, coordinating their efforts across multiple forums to invalidate the '520 patent. This collaboration

<sup>2</sup> [REDACTED]

[REDACTED]

# 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.