

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PETROLEUM GEO-SERVICES INC.,

Petitioner,

v.

WESTERNGECO LLC,

Patent Owner.

Case IPR2014-01477
U.S. Patent No. 7,080,607

**PATENT OWNER'S REQUEST FOR REHEARING
UNDER 37 C.F.R. § 42.71(d)**

I. SUMMARY OF ISSUES FOR REHEARING

Patent Owner WesternGeco, L.L.C. ("WG") requests rehearing under 37 C.F.R. § 42.71(d) of the Board's Final Written Decision ("Decision," Paper 65) finding that claims 16-23 of U.S. Patent No. 7,080,607 ("the '607 patent") are unpatentable.

To avoid the time bar of § 315(b), Petitioner Petroleum Geo-Services Inc. ("PGS") engaged in chicanery to obscure the facts and deny its relationship with its privies ION Geophysical Corp. ("ION") and Multi Klient Invest AS ("Multi Klient"). The Board overlooked this record and misapprehended the law in finding that the Petition was not barred under § 315(b), in ignoring PGS's admission that Multi Klient is an RPI, and in denying targeted discovery of documents *that PGS admitted existed*, which would have compelled a contrary result. The Board's decision wrongfully rewards PGS for its obfuscation and gamesmanship.

The above grounds are case-dispositive and justify relief under 37 C.F.R. § 42.71(d). WG respectfully requests that the Board grant rehearing, modify its Decision and find that the Petition was time-barred or, at a minimum, vacate its Decision and grant WG the additional discovery it was wrongfully denied.

II. LEGAL STANDARDS

"A party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board." 37 C.F.R. § 42.71(d). "The burden

of showing a decision should be modified lies with the party challenging the decision” and “[t]he request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” *Id.*

III. ARGUMENT

A. The Board's Decision Overlooks PGS's Conflicting Representations Made Throughout this Proceeding

PGS and ION deceived the Board to skirt the statutory time bar by misrepresenting both their relationship with each other and PGS's relationship with Multi Klient. They directly contradicted each other as to the facts underlying their relationship. And after initially denying that Multi Klient was an RPI, PGS abandoned that representation (after PGS thought the record was sufficiently closed in this case that its reversal would go unnoticed) to admit that Multi Klient *is* an RPI. Evidence of this deception and inconsistency, by itself, should be considered sufficient cause for granting additional discovery under the Board's rules. To hold otherwise violates the constitutionally mandated due process protections guaranteed to WG and would effectively reward PGS for its bad behavior. *See* U.S. CONST. amend. V; amend. XIV § 1; *see also Fla. Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank*, 527 U.S. 627, 642 (1999) (“Patents . . . have long been considered a species of property”). This is especially true when the lack of any burden to PGS, discussed below, is balanced against the

harm of depriving WG of its property rights without a full record of relevant facts.

Indemnity is a hallmark of privity. The Board did not sufficiently consider that PGS has admitted to the existence of multiple indemnification agreements between PGS and ION, while its co-conspirator, ION, denied the very existence of *any* such agreements—even the one of record. *See* Paper 31 at 6-9; *See also* Ex. 3002 at 21:21-22:17, 25:16-26:21. PGS produced one indemnification agreement but has refused to produce the others that it admits exist. Paper 31 at 8. The fact that PGS could characterize these agreements confirms that its attorneys had these agreements in hand—*no burden existed for PGS to produce them*. Additionally, despite the Board's continued citation to PGS's responses to WG's interrogatories (Ex. 2018), the Board overlooks the importance of PGS's answers and the misleading way in which PGS redrafted the interrogatories so as to avoid the disclosure of damaging information.

The Board's Decision also overlooks PGS's misrepresentations about whether Multi Klient is a real party-in-interest ("RPI"). Earlier in this proceeding, WG alerted the Board to Multi Klient's stake in this case, as well as PGS's disclosure of Multi Klient as an interested party in co-pending district court litigation. Paper 39 at 60. In its Decision, however, the Board failed to fully consider this evidence and found that Multi Klient was not an RPI to this proceeding. *See* Paper 65 at 74. However, shortly after the Oral Hearing in this

case, *i.e.*, after PGS thought the record was sufficiently closed, ***PGS admitted that Multi Klient was an RPI*** in two IPR petitions challenging patents asserted in the very co-pending litigation that WG identified in its Patent Owner Response (“PO Resp.”). *See Petroleum Geo-Services Inc. v. WesternGeco LLC*, Case IPR2016-00407, Paper 1 at 3 (PTAB Dec. 23, 2015); *Petroleum Geo-Services Inc. v. WesternGeco LLC*, Case IPR2016-00499, Paper 3 at 14 (PTAB Jan. 23, 2016). By delaying this disclosure and standing by its prior, incorrect, representations, PGS hoped to game the system and avoid the necessary implication of the facts, *i.e.*, that PGS’s Petition was time barred and that this Board therefore lacked jurisdiction to consider PGS’s challenges to WG’s property rights.

PGS’s deception should not be rewarded. At a minimum, such misrepresentations should qualify as a basis for this Board to grant additional discovery. By underappreciating this evidence and ignoring PGS’s gamesmanship, the Board’s Decision allows PGS to skirt the statutory requirements of § 315(b) and to inappropriately invoke this Board’s jurisdiction. Accordingly, WG requests that the Board grant rehearing, vacate its Decision, and terminate this proceeding or, in the alternative, grant WG additional discovery on RPI.

1. The Board Erred in Denying Additional Discovery on PGS’s Relationship With ION

If ION is a RPI or privy of PGS, this proceeding is time-barred. PGS admits to the existence of indemnification agreements between ION and PGS-related

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