

1 **Preamble**

The following communication presents a **decision** based on the oral proceedings on 17.09.2014.

2 **Facts and submissions**

European patent No EP1850151 is based upon European patent application No EP 07113031, filed on 28.09.1999 and claiming priority of GB 9821277 filed on 01.10.1998. Furthermore, the European patent No EP1850151 is a divisional filing of the European patent application No EP 99943180, filed on 28.09.1999, which itself is the regional phase of the international application PCT/IB99/01590, published as WO/00/20895 and having a priority date of 01.10.1998.

The mention of the grant of the patent has been published in European Patent Bulletin 2011/32 of 10.08.2011, as follows: "**Control system for positioning of marine seismic streamers**"; Proprietor, WesternGeco Seismic Holdings Limited (IT, NL).  
Services Pétroliers Schlumberger (FR).

2.1 On 10. 05. 2012, an opposition was filed against the granted patent by the opponent: ION Geophysical Corporation, 2105 City West Blvd. Suite 400, Houston. TX 77042-2839, USA.

2.2 **Requests**

With his letter of 10. 05. 2012 the opponent ION Geophysical Corporation requested that:

- the contested patent be revoked in its entirety in accordance with Articles 99 and 100 (a) EPC on the ground of lack of novelty (Art. 54 EPC) and on ground of lack of inventive step (Art. 56 EPC), on the ground of insufficiency of disclosure (Art. 100(b) EPC and 83 EPC) and on the ground of added subject-matter that extends beyond the content of the application of the earlier application as filed (Art. 100(c) EPC and 123(2) EPC).
- auxiliary, oral proceedings to be held (Art. 116 EPC).

2.2.1 The following documents were brought into evidence by the opponent:

- E1 US 5 200 930 A (ROUQUETTE ROBERT E [US]) 6 April 1993 (1993-04-06)
- E2 WO 98/28636 A1 (GECO AS [NO]; BITTLESTON SIMON HASTINGS [NO]) 2 July 1998 (1998-07-02)
- E3 US 5 790 472 A (WORKMAN RICKY L [US] ET AL) 4 August 1998 (1998-08-04)
- E4 EP 0 613 025 A1 (GECO AS [NO]) 31 August 1994 (1994-08-31)
- E5 WO 97/11395 A2 (LAITRAM CORP [US]; OLIVIER ANDRE W [US]; RAU BRIEN G [US]; ROUQUETTE R) 27 March 1997 (1997-03-27)
- E6 US 4 404 664 A (ZACHARIADIS ROBERT G [US]) 13 September 1983 (1983-09-13)
- E7 EP 0 018 053 A1 (SHELL INT RESEARCH [NL]) 29 October 1980 (1980-10-29)
- E8 US 4 890 568 A (DOLENGOWSKI GEORGE A [US]) 2 January 1990 (1990-01-02)
- E9 US 4 676 183 A (CONBOY MICHAEL R [US]) 30 June 1987 (1987-06-30)
- E10 US 4 729 333 A (KIRBY ROBERT A [US] ET AL) 8 March 1988 (1988-03-08)
- E11 GB 2 122 562 A (SEISMOGRAPH SERVICE) 18 January 1984 (1984-01-18)
- E12 US 5 532 975 A (ELHOLM TOR [NO]) 2 July 1996 (1996-07-02)
- E13 WO 97/30361 A1 (THOMSON CSF [FR]; BERTHEAS JEAN [FR]; MORESCO GILLES [FR]; SUPPA VITO) 21 August 1997 (1997-08-21)
- E14 US 5 138 582 A (FURU HARALD [NO]) 11 August 1992 (1992-08-11)
- E15 COURT I N: "Applications of acoustics to streamer/source positioning", SEG EXPANDED ABSTRACTS, XX, XX, 1 January 1989 (1989-01-01), pages 610-612, XP002480425,

- 2.3 The opponent provided following grounds of opposition:
- Added subject-matter (Art. 76(1) EPC, Art. 100(c) EPC, 123(2) and (3) EPC) in independent claims 1 and 15, dependent claims 2-14 and 16-28;
  - Insufficiency of disclosure (Art. 100(b) EPC and 83 EPC);
  - Lack of novelty (Art. 100(a) EPC and Art. 54 EPC) of independent claims 1 and 15 vis-a-vis E1, E2, E3 and E4;
  - Lack of inventive step (Art. 100(a) EPC and Art. 56 EPC) of independent claims 1 and 15 vis-a-vis a combination of E2 and E4, a combination of E2 and E3, a combination of E4 and E2, a combination of E4 and E3;
  - Lack of novelty of dependent claims 5-10 and 15-19 vis-a-vis E1 and E2;
  - Lack of inventive step of all dependent claims vis-a-vis any combination of E1 to E9.
- 2.4 With the letter of response of 28.01.2013 the proprietors requested
- maintenance of the patent as granted; and
  - auxiliary, oral proceedings to be held (Art. 116 EPC)
  - auxiliary, in case that submissions by the Opponent's Representatives are made in an another language than English, then the patentee requests simultaneous translation into English of the Opponent's Representatives submissions.
- 2.5 On 09. 04. 2014, a summons to oral proceedings was sent.
- 2.6 The opponent filed a submission on 15. 08. 2014 with further remarks concerning added subject-matter in independent claims 1 and 15 and dependent claims 4, 5, 18 and 19.
- 2.7 The proprietor filed on 18. 08. 2014 1 main request and 4 auxiliary requests.
- 2.8 During the oral proceedings the proprietor filed two first auxiliary requests, replacing the previous first auxiliary requests on file.

### 3 **Grounds for the Decision**

3.1 The opposition is deemed to be admissible

#### 3.2 **With regard to sufficiency of disclosure (Art. 100(b) EPC, Art.83 EPC):**

a) the feature **location information** is sufficiently disclosed. Page 8 of the parent application discloses two different embodiments of acquiring location information:

- 1) from a predictor software (lines 1 and 2)

2) from the vessels navigation system (lines 6-10).

Furthermore, on page 11, lines 12-14 it is directly disclosed that the global control system can transmit location information to the local control system.

b) the task of the **global control system** is sufficiently disclosed throughout the whole description of the parent application in order to perform the claimed invention;

c) the feature **estimating velocity** is sufficiently disclosed in order to perform the invention. The calculations on page 17 of the parent application incorporate the towing velocity, i.e. the velocity of the streamers. The positioning devices are coupled to the streamers. Therefore, the towing velocity is also the velocity of the positioning device. This is directly and unambiguously derivable from the description on page 17;

d) the feature **distributed processing control architecture and behaviour-predictive model-based control logic** is sufficiently disclosed. Page 7 of the parent application discloses how predictor software functions.

Dependent claims 2, 3, 13 and 14 are sufficiently disclosed on page 17 of the parent application. It seems that the calculations on page 17 are used to obtain an estimate of the velocity and do not an exact calculations of the velocity.

Therefore the application meets the requirements of Article 100(b) EPC and Article 83 EPC.

### 3.3 **Main request (filed on 18. 08. 2014)**

3.4 With regard to the added subject-matter (Art. 76(1) EPC, Art. 100(c) EPC, 123(2) and (3) EPC) in claims 1 and 15:

3.4.1 Claim 1:

*1a A method of controlling streamer positioning devices:*

the whole description of the parent application is about controlling streamer positioning devices. Therefore, this feature does not contravene article 76(1) EPC;

*1a1 using a control system distributed between a global control system located on or near a seismic survey vessel and a local control system located on each streamer positioning device, comprising:*

the opponent pointed out that the feature of behaviour prediction had to be incorporated into the claim. By referring to page 6 to 8, 11 and 18 the opponent made the remark that this feature is inherently linked to the invention.

However, page 11, second paragraph, line 18 of the parent application discloses the possibility of transmission of information without the need of a behaviour prediction. Therefore, the feature does not contravene Article 76(1) EPC.

*1b (a) towing an array of streamers:*

the opponent objected that only marine seismic streamers are referred to in the parent application. However, the claim refers to a seismic survey vessel. A vessel is used only in the context of marine seismic. It is clear that the streamers must be towed by the seismic survey vessel. Therefore, the feature does not contravene Article 76(1) EPC.

*1c each having a plurality of streamer positioning devices there along*

*1d each of the streamer positioning devices having a wing used to control the lateral position of the streamer positioning device*

*1e (b) transmitting from the global control system:*

Features 1c, 1d and 1e do not contravene Article 76(1) EPC.

*1f location information to at least one local control system*

*1g on at least one of the streamer positioning devices and:*

the opponent objected to the features 1f, 1g that there is no basis in the parent application for a streamer having more than one local control system. However, feature 1.a.1 already discloses one local control system per streamer and features 1f and 1g do not contravene Article 76(1) EPC.

*1h (c) adjusting the angle of the wing with a wing motor using the local control system:*

this feature is disclosed in the summary of the invention of the parent application.

The omission of the feature: force calculation using a localized conversion program:

the proprietor argued that this is not an essential feature and represents an alternative of a general system as suggested by the wording "preferably". However, the opposition division shared the opponent's view that with regard to the shared responsibilities between the global and local control system that a force calculation using a localized conversion program is essential (page 11, lines 5-14, page 17, lines 1-6 of the parent application) and the omission of that feature represents an unallowed amendment and contravenes Article 76(1) EPC.

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