

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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PETROLEUM GEO-SERVICES INC.

Petitioner,

v.

WESTERNGECO LLC

Patent Owner.

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Case IPR2014-01477

U.S. Patent No. 7,080,607

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**PATENT OWNER'S OPPOSITION TO PETITIONER  
PETROLEUM GEO-SERVICES INC.'S MOTION TO EXCLUDE**

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## I. INTRODUCTION

Once again, Petroleum Geo-Services Inc. (“PGS”) ignores the Board’s explicit instructions regarding the proper use of motions to exclude just like it did in IPR2014-00688. PGS’s motion to exclude improperly attacks the weight of the evidence, amounting to an impermissible sur-reply, and thus disregards the Board’s admonition that “motions to exclude are extraordinary remedies” and “issues of admissibility of evidence [should be considered], *in light of the Board’s experience and diligence in applying appropriate weight to evidence*, before filing any motion to exclude evidence.” Paper 27 at 4 (emphasis added). For this reason alone, the Board should deny PGS’s motion in its entirety and, in fact, should strike PGS’s improper, merit-based arguments that go to the weight of WesternGeco LLC’s (“Patent Owner” or “WG”) evidence. *See Marvell Semiconductor, Inc. v. Intellectual Ventures I LLC*, IPR2014-00552, Paper 65 at 2-3 (PTAB Aug. 13, 2015) (expunging “what amounts to surreply testimony on the merits as part of a motion to exclude.”).

PGS’s motion is a waste of time, and appears calculated to distract WG as the parties prepare for the Oral Hearing in this matter and sundry proceedings in parallel disputes. To the extent any legitimate issues existed, WG long-ago served supplemental evidence to resolve them. PGS’s continued arguing ignores that evidence and implausibly seeks to exclude *nearly all* of WG’s underlying exhibits.

PGS's motion is procedurally, substantively, and logically defective and, accordingly, must fail.

PGS's incomprehensible laundry list of scattershot objections and tortured maze of conclusory, vague arguments is procedurally defective because it did not identify, *inter alia*, where each objection was originally made and did not explain each objection with specificity. PGS's apparent shifting of the burden onto the Board and WG to navigate PGS's bloated argumentation to decipher how it relates to the 38 exhibits PGS seeks to exclude is impermissible. As PGS failed to carry its burden of succinctly identifying what was legitimately disputed and why, its motion can be denied on that basis alone.

Substantively, PGS's arguments fare no better. PGS largely argues the *weight* of the evidence—which has no proper place in a motion to exclude. PGS's few statements that touch on admissibility fail to justify exclusion. For example, PGS complains that various documents are hearsay, yet it ignores that those documents are not offered for the truth of the matter asserted but rather to show, *inter alia*, secondary considerations and the relationship between PGS and ION Geophysical S.A.R.L. (“ION”), as discussed below. PGS's motion is simply an attempt to avoid the merits of WG's unrebutted and compelling evidence of patentability and nonobviousness, and an attempt to distract the Board and WG. Accordingly, the Board should deny PGS the extraordinary relief it demands.

## **II. PGS'S MOTION IGNORES WESTERNGECO'S SUPPLEMENTAL EVIDENCE**

PGS's motion serves only to waste this Board's and WG's time and resources. The bulk of PGS's arguments have nothing to do with admissibility, and the few that touch on that issue were mooted by WG's supplemental evidence that addressed PGS's purported objections. As Rule 42.64(b)(2) allows, WG served PGS with supplemental evidence on August 28, 2015 responsive to many of the exhibits PGS now seeks to exclude. *See* Ex. 2161. For example, PGS complains that Ex. 2107 lacks authentication, while willfully ignoring the authentication provided by Ex. 2148.<sup>1</sup> Similarly, PGS complains that Exs. 2103-2105 and 2116 should be excluded as hearsay, yet Exs. 2149-2153 and 2155 cure any possible hearsay deficiencies. The Board expects that supplemental evidence will render many objections moot and motions to exclude unnecessary. *Handi-Quilter, Inc. v. Bernina Int'l AG*, IPR2013-00364, Paper 30 at 3 (PTAB June 12, 2014). By stubbornly ignoring that evidence and plowing ahead with an omnibus motion to exclude, PGS has fallen far short of the Board's stated expectations.

## **III. PGS'S MOTION FAILS TO COMPLY WITH THE ESTABLISHED REQUIREMENTS FOR MOTIONS TO EXCLUDE**

The Board's requirement that a motion to exclude "must identify the

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<sup>1</sup> PGS also complains that Exs. 2060, 2061, 2067, and 2118 have not been authenticated even though Ex. 2137 authenticates these exhibits.

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