1   J. Cole

2   UNITED STATES PATENT AND TRADEMARK OFFICE

3   BEFORE THE PATENT TRIAL AND APPEAL BOARD

4   _____

5   PETROLEUM GEO-SERVICES INC.

6   Petitioner

7   v.

8   WESTERNGECO LLC

9   Patent Owner

10   _____

11   Case No. IPR2014-01475, -01476, -01477, -91478

12   Patent No. 7,162,520 B2

13   Patent No. 7,162,967 B2

14   Patent No. 7,080,607

15   _____

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17

18   DEPOSITION OF JACK H. COLE, Ph.D.

19   Washington, D.C.

20   Volume Two - June 26, 2015

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24   Reported by: Mary Ann Payonk

25   Job No. 94685

1　　　　　　J. Cole
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5　　　　　June 26, 2015
6　　　　　9:03 a.m.
7
8　　　　Deposition of DR. JACK H. COLE, Ph.D.,
9　Volume Two, held at the offices of Williams &
10　Connolly, 725 12th Street, N.W., Washington,
11　D.C., pursuant to Notice before Mary Ann
12　Payonk, Nationally Certified Realtime Reporter
13　and Notary Public of the District of Columbia,
14　Commonwealth of Virginia, States of Maryland
15　and New York, CA-CSR No. 13431.
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1　　　　　　J. Cole
2　APPEARANCES:
3　ON BEHALF OF PETITIONER:
4　　　THOMAS FLETCHER, ESQUIRE
5　　　ALEC SWAFFORD, ESQUIRE
6　　　JESSAMYN BERNIKER, ESQUIRE
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12　ON BEHALF OF PATENT OWNER:
13　　　MICHAEL KIKLIS, ESQUIRE
14　　　CHRISTOPHER RUCCIUTI, ESQUIRE
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1　　　　　　J. Cole
2　Appearances (Cont'd.):
3　ON BEHALF OF PATENT OWNER:
4　　　SIMEON PAPACOSTAS, ESQUIRE
5　　　KIRKLAND & ELLIS
6　　　300 North LaSalle
7
8
9
10　ALSO PRESENT:
11　　　Kevin Hart, (by Internet Realtime)
12　　　Petroleum Geo-Services, Inc.
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1　　　　　　J. Cole
2　JACK H. COLE, Ph.D.,
3　　　recalled as a witness, having been duly
4　　　sworn, was admonished of his former
5　　　oath, examined and testified as follows:
6　　　　EXAMINATION (Cont'd.)
7　BY MR. KIKLIS:　　　　　　　　09:03:03
8　　　Q.　Good morning, Dr. Cole.　　　09:03:04
9　　　A.　Good morning.　　　　　09:03:05
10　　　Q.　You understand that you're still　09:03:06
11　under oath from yesterday?　　　　09:03:07
12　　　A.　Yes, sir.　　　　　　09:03:09
13　　　Q.　Is that your understanding?　　09:03:09
14　　　A.　Yes, sir.　　　　　　09:03:11
15　　　Q.　And you promise to testify truthfully　09:03:11
16　and honestly today?　　　　　09:03:14
17　　　A.　Yes, sir.　　　　　　09:03:15
18　　　MR. KIKLIS:　Before we get started,　09:03:16
19　I see we have a new face at the table.　09:03:16
20　　　MR. FLETCHER:　Christopher Suarez　09:03:19
21　from Williams & Connolly on behalf of　09:03:21
22　Petroleum GeoServices, Inc.　　　09:03:25
23　　　MR. KIKLIS:　Welcome.　　　09:03:30
24　BY MR. KIKLIS:　　　　　　09:03:32
25　　　Q.　Dr. Cole, yesterday at any of the　09:03:34

1   J. Cole
2   breaks or in the evening, did you speak with   09:03:37
3   your counsel about your deposition?   09:03:40
4   A. No, sir.   09:03:43
5   Q. Do you have any conversations with   09:03:44
6   anybody about your deposition?   09:03:46
7   A. No, sir.   09:03:50
8   Q. Or your testimony from yesterday?   09:03:50
9   A. No, sir.   09:03:52
10   Q. Did you go directly back to your   09:03:53
11   hotel after the deposition yesterday?   09:03:55
12   A. No, sir. Tom showed me where I might   09:03:59
13   be able to get a massage, because I was not   09:04:06
14   familiar here. So we walked there and then he   09:04:09
15   took me back to the hotel so I wouldn't be lost 09:04:13
16   and --   09:04:15
17   Q. Oh.   09:04:16
18   A. -- we bid goodnight at the door, and   09:04:16
19   then I was on my own the rest of the evening.   09:04:19
20   I didn't talk to or have conversations with   09:04:21
21   anyone regarding this, nor during that time.   09:04:24
22   Q. I'd like to have you pull out your   09:04:32
23   declaration for the '607 patent.   09:04:38
24   A. I have it.   09:04:53
25   Q. Would you please turn to paragraph   09:04:55

1   J. Cole
2   40?   09:04:57
3   A. Yes, sir, I'm there.   09:05:05
4   Q. At the bottom of paragraph 40, which   09:05:19
5   is on the top of page 20, tell me when you get   09:05:21
6   there.   09:05:36
7   A. Yes, I'm there.   09:05:37
8   MR. KIKLIS: I'm not getting any   09:08:04
9   feed on this.   09:08:04
10   (Recess taken.)   09:05:39
11   BY MR. KIKLIS: 09:15:29
12   Q. Dr. Cole, I'd like to direct your   09:15:30
13   attention, sir, to the bottom of paragraph 40   09:15:32
14   on the top of page 20 in your '607 declaration.   09:15:34
15   Are you there, Dr. Cole?   09:15:39
16   A. Yes, sir.   09:15:41
17   Q. Okay. Now, in there you say, "The   09:15:41
18   system as a whole," in quotes, "utilizes a   09:15:45
19   distributed processing control architecture and   09:15:48
20   behavior-predictive model-based control logic   09:15:51
21   to properly control the streamer positioning   09:15:56
22   devices which I discuss in paragraphs 72   09:16:00
23   through 88, supra."   09:16:04
24   Did I read that correctly?   09:16:07
25   A. I think you read it verbatim.   09:16:09

1   J. Cole
2   Q. Okay. Is that a true statement?   09:16:11
3   A. Yes.   09:16:19
4   Q. Do you know what the word "supra"   09:16:22
5   means?   09:16:26
6   A. I would like to be refreshed on it.   09:16:27
7   I think it -- IB means ibid., which --   09:16:30
8   referring to the same thing. But I would   09:16:32
9   really appreciate being refreshed on that   09:16:34
10   terminology. It's a legal term which I   09:16:38
11   personally don't use, but I think it refers to   09:16:41
12   the paragraphs that -- 72, 78 and --   09:16:47
13   Q. So in your sentence here, you say   09:16:55
14   that "the system as a whole utilizes a   09:16:57
15   distributed processing control architecture and   09:17:02
16   behavior-predictive model-based control logic";   09:17:04
17   isn't that correct?   09:17:07
18   A. I think if you read that, that's a   09:17:15
19   quotation from the '607 patent, yes, so --   09:17:16
20   Q. So --   09:17:25
21   A. -- looks like column 360 to -- let me   09:17:26
22   take you there.   09:17:29
23   Q. I'm not asking you to go to the   09:17:37
24   specific location in the patent.   09:17:38
25   MR. FLETCHER: Objection.   09:17:40

1   J. Cole
2   BY MR. KIKLIS: 09:17:49
3   Q. My question is, sir, is it your   09:17:50
4   understanding that the '607 patent utilizes   09:17:52
5   behavior-predictive model-based control logic?   09:17:57
6   MR. FLETCHER: Objection.   09:18:03
7   A. The answer to that is no. I read   09:18:08
8   that the patent says that, as it's quoted.   09:18:10
9   That's what I'm aware of.   09:18:17
10   BY MR. KIKLIS: 09:18:25
11   Q. So are you saying that --   09:18:25
12   THE WITNESS: Excuse me, that was a   09:18:27
13   distraction. When I hear an alarm goes   09:18:28
14   off, I tend to panic just a little bit.   09:18:34
15   MR. KIKLIS: Could you silence your   09:18:39
16   cell phones please?   09:18:40
17   MR. SUAREZ: Sorry.   09:18:43
18   MR. KIKLIS: Thank you very much.   09:18:44
19   THE WITNESS: I apologize, but I'm   09:18:44
20   a little bit stressed, so -- so go   09:18:46
21   ahead.   09:18:48
22   BY MR. KIKLIS: 09:18:50
23   Q. So are you saying that the '607   09:18:52
24   patent does not describe a system that utilizes 09:18:55
25   behavior-predictive model-based control logic?   09:19:02

1   J. Cole
2   MR. FLETCHER: Objection.   09:19:06
3   A. I don't recall having said that, sir. 09:19:06
4   BY MR. KIKLIS: 09:19:09
5   Q. Okay. Then are you -- is it your   09:19:10
6   opinion that the '607 patent describes a system   09:19:13
7   that utilizes behavior-predictive model-based   09:19:18
8   control logic?   09:19:21
9   MR. FLETCHER: Objection.   09:19:25
10   A. I think again what is here is a -- is 09:19:31
11   a -- is a quotation and has nothing to do with   09:19:33
12   that question that you asked me. I think I --   09:19:39
13   I would respond that this is a quotation from   09:19:43
14   the patent.   09:19:48
15   BY MR. KIKLIS: 09:19:49
16   Q. Sir, but the words before the   09:19:50
17   quotation, "the system as a whole," are your   09:19:52
18   words, aren't they?   09:19:56
19   A. Wait a minute.   09:19:59
20   Q. Can you answer that question?   09:20:54
21   MR. FLETCHER: Objection.   09:20:57
22   BY MR. KIKLIS: 09:20:57
23   Q. I see you're reading the patent, and   09:20:58
24   my question is that the words "the system as a   09:21:00
25   whole" are not in quotation marks. And doesn't 09:21:02

1   J. Cole
2   that mean, sir, that those are your words?   09:21:07
3   A. Is that a new question?   09:21:13
4   Q. That's my question, sir. Please   09:21:15
5   answer that question.   09:21:17
6   A. You asked two questions, and --   09:21:18
7   Q. Sir? Sir?   09:21:19
8   A. -- I had not answered the -- the   09:21:19
9   first one and you're asking me a second one,   09:21:20
10   so --   09:21:22
11   Q. Sir, I'm --   09:21:24
12   A. -- I guess what I'm answering --   09:21:24
13   Q. Sir, I asked -- I asked -- answer the 09:21:24
14   question that I asked you.   09:21:26
15   My question is: The words "the   09:21:28
16   system as a whole" do not appear in quotation   09:21:31
17   marks. Now, doesn't --   09:21:35
18   A. That -- that's incorrect. That --   09:21:39
19   Q. -- that -- doesn't that mean that   09:21:41
20   those are your words? Can you answer that   09:21:43
21   question?   09:21:47
22   MR. FLETCHER: Objection, asked and   09:21:49
23   answered. I know you don't have the   09:21:49
24   realtime, but he did just answer that   09:21:58
25   question.   09:22:00

1   J. Cole
2   BY MR. KIKLIS: 09:22:00
3   Q. I'm sorry, sir. If you answered the   09:22:04
4   question, just tell me what it was. Maybe I   09:22:06
5   didn't hear it.   09:22:08
6   A. I said that I did not answer the   09:22:09
7   question, sir. I was --   09:22:11
8   Q. Oh.   09:22:12
9   A. -- attempting to answer the question   09:22:13
10   when you interrupted me and then asked another   09:22:14
11   question, which I have not answered.   09:22:17
12   MR. KIKLIS: Okay. Okay, Tom, you   09:22:18
13   were wrong.   09:22:19
14   MR. FLETCHER: Well, the record   09:22:20
15   will actually reflect who's right about   09:22:21
16   that.   09:22:23
17   MR. KIKLIS: Okay.   09:22:24
18   BY MR. KIKLIS: 09:22:25
19   Q. So my question, sir, is this   09:22:25
20   sentence, the last sentence of paragraph 40 of   09:22:28
21   your '607 declaration utilizes the words "the   09:22:31
22   system as a whole" not in quotation marks. And 09:22:37
23   my question, to you, sir, is whether those   09:22:42
24   words are yours.   09:22:46
25   A. I'm not sure if those are -- are my   09:22:54

1   J. Cole
2   words exactly or as I read them from the patent   09:22:59
3   and that's why I'm looking at the patent. And   09:23:01
4   if you're not going to allow me to do that, I   09:23:03
5   don't know how to answer that, sir, truthfully.   09:23:06
6   They may or not be my words, but I prefer to   09:23:12
7   look at the patent to see if -- if the system   09:23:17
8   as a whole is also included in the quotation.   09:23:22
9   Q. Sure. Look at the -- look at the   09:23:27
10   quotation. I believe your citation is column   09:23:27
11   4, lines 11 through 14.   09:23:30
12   A. Yeah.   09:24:27
13   Q. You beat me there, Dr. Cole.   09:24:27
14   A. Go ahead.   09:24:33
15   Q. Okay. I'm sorry, sir. So my   09:24:34
16   question is --   09:24:37
17   A. Let me tell you why I'm having to   09:24:38
18   struggle a little bit.   09:24:42
19   Q. Sure.   09:24:43
20   A. My eyesight isn't perfect, and -- and 09:24:43
21   the -- the print in this patent is -- is -- is   09:24:45
22   fairly small and -- and sometimes, it's   09:24:49
23   difficult for me to -- to read it clearly with   09:24:54
24   my vision. And I'm -- I'm sorry this -- that   09:24:59
25   this -- if this were in larger font, as is the   09:25:04

J. Cole

1   J. Cole
2   declaration, I assure you that it would go   09:25:09
3   faster.   09:25:11
4   I'm going as fast as I -- I'm able   09:25:12
5   with my vision, sir, and not trying to delay.   09:25:14
6   I'm just trying to see if -- if that's said   09:25:18
7   verbatim in the patent or is there something   09:25:22
8   that I said. And it -- it -- just a minute.   09:25:24
9   Okay, it says -- okay.   09:25:30
10   Q. Okay, fair enough.   09:25:33
11   A. I --   09:25:33
12   Q. Let --   09:25:33
13   A. I --   09:25:33
14   Q. -- me --   09:25:33
15   (Overlapping simultaneous speaking.)   09:25:33
16   A. I agree with you that --   09:25:33
17   Q. -- ask --   09:25:34
18   MR. FLETCHER: Objection.   09:25:36
19   MR. KIKLIS: Hold on. Do you guys   09:25:36
20   have a magnifying glass that we can use?   09:25:37
21   MR. FLETCHER: I don't have one   09:25:40
22   handy. I don't carry one.   09:25:40
23   MS. BERNIKER: You're welcome to   09:25:42
24   put it on the screen.   09:25:43
25   MR. KIKLIS: Oh, that would be   09:25:45

J. Cole

1   J. Cole
2   great.   09:25:46
3   THE WITNESS: Yeah.   09:25:46
4   MR. KIKLIS: Okay.   09:25:47
5   THE WITNESS: Is -- is that okay?   09:25:51
6   MR. FLETCHER: We can set that up.   09:25:53
7   MS. BERNIKER: I'll look for a   09:25:57
8   magnifying glass.   09:25:58
9   MR. KIKLIS: Why don't we take a   09:25:59
10   five-minute break? Why don't we take a   09:26:00
11   five-minute break? The court reporter   09:26:02
12   needs a five-minute break. We will get   09:26:05
13   Dr. Cole a magnifying glass, then we can   09:26:07
14   have a lot of fun for the rest of the   09:26:10
15   day, okay?   09:26:12
16   MR. FLETCHER: Fine.   09:26:13
17   (Recess taken.)   09:31:22
18   BY MR. KIKLIS: 09:41:16
19   Q. Sorry for the interruption, Dr. Cole, 09:41:25
20   but we have requested a magnifying glass to   09:41:28
21   assist you with reading the patent.   09:41:32
22   A. Yes, sir.   09:41:35
23   Q. And so we have now provided you with   09:41:35
24   the option of three. And if it becomes   09:41:37
25   difficult, we have it loaded on a computer and 09:41:41

J. Cole

1   J. Cole
2   we can project it on a screen as widely as you 09:41:44
3   like.   09:41:46
4   A. I appreciate that. Thank you, sir.   09:41:47
5   Q. So now let's get back to the   09:41:49
6   questions. The question, sir, that was   09:41:51
7   pending, with respect to your declaration,   09:41:54
8   paragraph 40, last sentence, you say "the   09:41:57
9   system as a whole." And my question to you,   09:42:02
10   sir, is whether those words are your words.   09:42:06
11   A. And I would like to take this   09:42:10
12   opportunity to apologize, counselor, for the 09:42:12
13   confusion. The reason for that is that I was 09:42:17
14   sworn to tell the whole truth, nothing but the 09:42:20
15   truth.   09:42:23
16   The reason I was deferring to the   09:42:23
17   patent was to be sure that I didn't get those 09:42:25
18   words from the patent. As to their being my 09:42:28
19   words, I will state they are the words as are 09:42:35
20   shown in this declaration, which I approve.   09:42:38
21   Whether they're -- they're actually my words or 09:42:45
22   not, I'm not sure, but I agree with what's said 09:42:47
23   here.   09:42:51
24   Q. Okay. Then you agree that the system 09:42:51
25   as a whole utilizes a behavior-predictive   09:42:53

J. Cole

1   J. Cole
2   model-based control logic?   09:42:59
3   MR. FLETCHER: Objection.   09:43:01
4   BY MR. KIKLIS: 09:43:03
5   Q. Is that correct?   09:43:03
6   A. What I -- I'm saying here is the   09:43:05
7   system as a whole, and -- and then quoting what 09:43:09
8   the patent says, uses that.   09:43:14
9   Q. Okay. But part of that --   09:43:17
10   A. And I didn't say that it uses -- I   09:43:20
11   said as a whole, quotation, and this is --   09:43:21
12   rather than trying to use exactly the words,   09:43:27
13   that this is what I understand, is that the   09:43:30
14   system as a whole, quote, that --   09:43:33
15   Q. Right.   09:43:38
16   A. And -- and that's all I said. That's 09:43:39
17   all I've done is quote that.   09:43:41
18   Q. Understood.   09:43:42
19   A. Okay.   09:43:43
20   Q. But your testimony in your   09:43:44
21   declaration is that the system as a whole   09:43:46
22   utilizes behavior-predictive model-based   09:43:49
23   control logic; isn't that correct?   09:43:53
24   MR. FLETCHER: Objection.   09:43:57
25   A. I think the statement stands on its   09:44:03

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