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B. Evans

UNITED STATES PATENT AND TRADEMARK OFFICE  
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 No. IPR2014-01475, -01476, -01477, -91478

Patent No. 7,162,520 B2

Patent No. 7,162,967 B2

Patent No. 7,080,607

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DEPOSITION OF DR. BRIAN EVANS

Washington, D.C.

Volume One - July 9, 2015

Reported by: Mary Ann Payonk

Job No. 94681

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<p style="text-align: right;">Page 2</p> <p>1 B. Evans</p> <p>2</p> <p>3</p> <p>4</p> <p>5 July 9, 2015</p> <p>6 9:04 a.m.</p> <p>7</p> <p>8 Deposition of DR. BRIAN J. EVANS,</p> <p>9 Ph.D., Volume One, held at the offices of</p> <p>10 Williams &amp; Connolly, 725 Twelfth Street, N.W.,</p> <p>11 Washington, D.C., pursuant to Notice before</p> <p>12 Mary Ann Payonk, Nationally Certified Realtime</p> <p>13 Reporter and Notary Public of the District of</p> <p>14 Columbia, Commonwealth of Virginia, and New</p> <p>15 York, CA-CSR No. 13431.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 B. Evans</p> <p>2 APPEARANCES:</p> <p>3 ON BEHALF OF PETITIONER:</p> <p>4 THOMAS FLETCHER, ESQUIRE</p> <p>5 JESSAMYN BERNIKER, ESQUIRE</p> <p>6 DAVID BERL, ESQUIRE</p> <p>7 CHRISTOPHER SUAREZ, ESQUIRE</p> <p>8 WILLIAMS &amp; CONNOLLY</p> <p>9 725 Twelfth Street, N.W.</p> <p>10 Washington, D.C. 20005</p> <p>11</p> <p>12 ON BEHALF OF PATENT OWNER:</p> <p>13 MICHAEL KIKLIS, ESQUIRE</p> <p>14 CHRISTOPHER RICCIUTI, ESQUIRE</p> <p>15 KATHERINE CAPPART, ESQUIRE</p> <p>16 OBLON, McCLELLAND, MAIER &amp; NEUSTADT</p> <p>17 1940 Duke Street</p> <p>18 Alexandria, VA 22314</p> <p>19</p> <p>20 SIMEON PAPACOSTAS, ESQUIRE</p> <p>21 KIRKLAND &amp; ELLIS</p> <p>22 300 North LaSalle</p> <p>23 Chicago, IL 60654</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 4</p> <p>1 B. Evans</p> <p>2 BRIAN J. EVANS, Ph.D.,</p> <p>3 called as a witness, having been duly</p> <p>4 sworn, was examined and testified as</p> <p>5 follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. KIKLIS:</p> <p>8 Q. Good morning, Dr. Evans.</p> <p>9 A. Good morning.</p> <p>10 Q. My name is Mike Kiklis. I'm from the</p> <p>11 Oblon firm, and I'll be asking you some</p> <p>12 questions today about the declarations that you</p> <p>13 have provided in a bunch of cases, three in</p> <p>14 particular.</p> <p>15 MS. BERNIKER: Could we do</p> <p>16 appearances, Mike?</p> <p>17 MR. KIKLIS: We can. I mean, she</p> <p>18 has all the information.</p> <p>19 THE REPORTER: If you want to go</p> <p>20 around the table, that's fine.</p> <p>21 MS. BERNIKER: That would be great.</p> <p>22 MR. KIKLIS: Sure. Mike Kiklis,</p> <p>23 Chris Ricciuti, Kate Cappaert from Oblon</p> <p>24 for WesternGeco. With us is -- what's</p> <p>25 your name again? Simeon Papacostas.</p>	<p style="text-align: right;">Page 5</p> <p>1 B. Evans</p> <p>2 MS. BERNIKER: Jessamyn Berniker</p> <p>3 from Williams &amp; Connolly. With me is</p> <p>4 Tom Fletcher and David Berl.</p> <p>5 BY MR. KIKLIS:</p> <p>6 Q. So before we get started, Dr. Evans,</p> <p>7 your counsel, Ms. Berniker, handed you a</p> <p>8 document. Have you ever seen this before?</p> <p>9 A. This one?</p> <p>10 Q. Yeah.</p> <p>11 A. Yes.</p> <p>12 Q. When did you see it?</p> <p>13 A. I saw it this morning.</p> <p>14 Q. Did you create this document? Sir,</p> <p>15 did you --</p> <p>16 A. I asked --</p> <p>17 Q. Did you --</p> <p>18 A. I asked for the -- for -- for</p> <p>19 something which would be applicable to the</p> <p>20 claims that I could understand, not being a</p> <p>21 legal guy. And this was produced this morning.</p> <p>22 Q. So you asked for a cheat sheet, in</p> <p>23 essence?</p> <p>24 MS. BERNIKER: Objection.</p> <p>25 A. I don't call it that. I -- I don't</p>

<p style="text-align: right;">Page 6</p> <p>1 B. Evans 2 see it as that. It's to assist everyone, as I 3 understand it, to understand what the claims 4 are and what the -- the -- the -- the -- the 5 anticipated and obvious claims are. 6 BY MR. KIKLIS: 7 Q. Did you do anything to check the 8 accuracy of this document? 9 A. I understand it is accurate. 10 Q. I -- I understand that you understand 11 it's accurate, but my question was to you, sir, 12 did you undertake any analysis to confirm that 13 the information contained in the document that 14 your counsel handed you at the beginning of 15 this deposition was accurate? 16 A. I understand that these -- these are 17 claims made, I understand there are two phases 18 of declarations by myself, and that these are 19 the anticipated and obvious patents that I 20 responded to in my declaration. 21 Q. Again, you used the word 22 "understand." Let me rephrase the question. 23 For example, on page 1 of the 24 document that Ms. Berniker handed to you, it 25 says in the left-hand column "U.S. Patent</p>	<p style="text-align: right;">Page 7</p> <p>1 B. Evans 2 Number 7,162,967," underneath, in parentheses, 3 "the '967 patent." 4 A. Sorry, sorry. Where are you? Where 5 are you now? 6 Q. On the first page. 7 A. Yeah. 8 Q. At the very top. 9 A. Yeah. 10 Q. On the left-hand column. 11 A. Uh-huh. 12 Q. It says "U.S. Patent Number 13 7,162,967," and then in parentheses, "the '967 14 patent." 15 A. Right. 16 Q. Do you see that? 17 A. I do. 18 Q. Okay. Then underneath that is the 19 word -- the words "global/local." Did you 20 write those words, "global/local"? 21 A. These words helped me understand as a 22 person of skill in the art to focus on what the 23 '967 patent is about. 24 Q. Sir, my question was, did you write 25 those words?</p>
<p style="text-align: right;">Page 8</p> <p>1 B. Evans 2 A. Well, firstly, they're not written; 3 they're typed. 4 Q. This is going to be a long day if 5 we're going to quibble over words like that. 6 A. That's fine -- yeah. 7 Q. There's writing -- certainly typing 8 is a form of writing; you'd agree, wouldn't 9 you? 10 A. Typing is a form of writing -- 11 Q. Okay. 12 A. -- but I did not type these. 13 Q. Now, is that your phrase? Is that 14 your characterization of the '967 patent? 15 A. It would be, yes. 16 Q. Now, on the right-hand column, 17 direct -- directly across from the text I just 18 read regarding the '967 patent, it recites -- 19 it lists Claim 1, and underneath it, it says 20 "Phase I instituted on '636 PCT anticipation 21 and '636 PCT obviousness." 22 Do you see that? 23 A. I do. 24 Q. Did you undertake any analysis to 25 confirm that Claim 1 of the '967 patent in</p>	<p style="text-align: right;">Page 9</p> <p>1 B. Evans 2 Phase I is facing a 63 -- a -- an anticipation 3 argument for the '636 PCT and an obviousness 4 argument on the '636 PCT? 5 A. You'll need to provide me with 6 Phase I declaration so I can check. 7 Q. No, I'm asking you, sir. Did you do 8 anything before your deposition here to confirm 9 the accuracy of these statements in the 10 right-hand column? I'm not asking you to 11 confirm it now. I'm asking you whether before 12 your deposition you undertook any analysis to 13 confirm that the information under Claim 1 is 14 accurate. 15 A. I make the assumption that it is 16 accurate. 17 Q. So you've undertaken no analysis 18 whatsoever for this entire document that 19 Ms. Berniker handed you as to its accuracy; is 20 that correct? 21 MS. BERNIKER: Objection. 22 A. No, that's not correct. I have 23 reviewed this document this morning. 24 BY MR. KIKLIS: 25 Q. But did you determine -- did you</p>

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1 B. Evans  
 2 check it against any information to see if it  
 3 was accurate?  
 4 A. Well, I understand what the claim  
 5 patents say, and when I read the particular  
 6 anticipated and obvious claims, I see that they  
 7 appear to have the correct patent numbers  
 8 within them.  
 9 Q. Can we have an extra copy of this,  
 10 Ms. Berniker?  
 11 MS. BERNIKER: Sure. Do you want  
 12 to mark it as an exhibit since you have  
 13 been asking about it?  
 14 MR. KIKLIS: We'll think about  
 15 that.  
 16 MS. BERNIKER: Okay. Seems  
 17 appropriate to mark it as an exhibit if  
 18 you are going to spend 10 minutes asking  
 19 about it. So I guess I object to the  
 20 extent you continue to ask him about it  
 21 and not mark it as an exhibit.  
 22 BY MR. KIKLIS:  
 23 Q. Now, Dr. Evans, have you been deposed  
 24 before, sir?  
 25 A. I had a first declaration, if that's

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1 B. Evans  
 2 please silence your cell phones, that  
 3 would be great. And then I think we  
 4 should announce Mr. Suarez has arrived.  
 5 THE REPORTER: Yes, sir.  
 6 MR. KIKLIS: Good morning.  
 7 MR. SUAREZ: Good morning.  
 8 BY MR. KIKLIS:  
 9 Q. So I'm going to briefly go over some  
 10 of the rules for the deposition. Okay? Now,  
 11 you understand, sir, that you're under oath?  
 12 A. Yes.  
 13 Q. And that means that you've got to  
 14 testify truthfully and honestly; correct?  
 15 A. Correct.  
 16 Q. And that failure to do so could  
 17 render you liable for criminal charges  
 18 including perjury. Are you aware of that?  
 19 A. Yes.  
 20 Q. Now, today when I ask you questions  
 21 I'm going to try to do my best to make them  
 22 clear so that you can understand them. But if  
 23 for any reason you can't understand my  
 24 questions, just let me know and we will try to  
 25 work, as we've done so far, to try to get them

Page 11

1 B. Evans  
 2 what you're asking me.  
 3 Q. No, I didn't ask you whether you had  
 4 a first declaration, sir. I asked you whether  
 5 you have been deposed before. Do you  
 6 understand the word "deposed"?  
 7 A. Can you give me your opinion of what  
 8 that word means, please? Because I want to be  
 9 clear of what you're saying.  
 10 Q. Do you have any understanding of the  
 11 word "deposed"?  
 12 A. Well, this is a -- as I understand, a  
 13 deposition is a meeting such as this where you  
 14 question my declaration. That's my  
 15 understanding of a deposition. And it's on the  
 16 record, so it's legal.  
 17 Q. Have you ever testified in a  
 18 deposition of any kind before?  
 19 A. Only with regard to this.  
 20 Q. So you've never testified in a  
 21 deposition other than with respect to the '520  
 22 patent, the '967 patent and the '607 patent.  
 23 Is that correct?  
 24 A. That's correct.  
 25 MR. KIKLIS: If you guys could

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1 B. Evans  
 2 in a form that you can understand such that you  
 3 can answer my questions. Okay?  
 4 A. Yes.  
 5 Q. Now, have you ever been diagnosed  
 6 with any condition whatsoever that would impair  
 7 your cognitive ability or your memory?  
 8 A. No.  
 9 Q. If at any point during today's  
 10 deposition or tomorrow's deposition you need to  
 11 take a break, we can do that as long as there  
 12 is no question pending. So as long as we --  
 13 you answer the question, we can take a break.  
 14 And we will try to do that every hour or so if  
 15 that's -- okay?  
 16 A. Okay.  
 17 Q. I do have to ask the next question,  
 18 sir. Have you ever been arrested before?  
 19 A. No.  
 20 Q. Now, you're here to testify for three  
 21 declarations that you provided as part of three  
 22 IPRs. Is that your understanding?  
 23 A. Three declarations as a part of  
 24 three?  
 25 Q. IPRs.

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1 B. Evans  
 2 A. What are they? What are IPRs?  
 3 Q. "Inter partes review proceedings."  
 4 Are you familiar with that term?  
 5 A. I've seen it written somewhere, yeah.  
 6 Q. So we -- you're here to talk about  
 7 your three declarations. And I'm going to hand  
 8 them to you.  
 9 MR. KIKLIS: If you are going to  
 10 speak to the witness, could you say it  
 11 loud enough so the court reporter could  
 12 get it on the record?  
 13 MS. BERNIKER: Yes. I told him --  
 14 he was trying to figure out where to put  
 15 the paper in front of him. I suggested  
 16 he could move it to the side to make  
 17 room for the documents you're going to  
 18 hand him.  
 19 BY MR. KIKLIS:  
 20 Q. Dr. Evans, I'm going to hand you  
 21 what's been marked as PGS Exhibit 1002.  
 22 A. Okay.  
 23 MR. KIKLIS: Here you go, Jessamyn.  
 24 By the way, Jessamyn, are you okay if I  
 25 use your first name during this

Page 16

1 B. Evans  
 2 Q. It's actually not there.  
 3 A. Oh. You're reading numbers out to  
 4 me?  
 5 Q. Yeah.  
 6 A. I don't know if I can -- if I know  
 7 those numbers.  
 8 Q. Well, you're here subject -- to  
 9 discuss three depositions in the second round.  
 10 That means something to you, doesn't it?  
 11 A. That does, yeah.  
 12 Q. So in fact, you've provided six  
 13 declarations, two on the '520 patent, two on  
 14 the '967 patent, and two on the '607 patent;  
 15 correct?  
 16 A. That is correct, yeah.  
 17 Q. And you were deposed earlier this  
 18 year on the first round of IPRs, the first  
 19 round of declarations; isn't that correct?  
 20 A. Yes, that's correct.  
 21 Q. And now you're here to testify on the  
 22 second round of declarations that you provided;  
 23 correct?  
 24 A. Yes, that's correct.  
 25 Q. And I've just provided you with

Page 15

1 B. Evans  
 2 proceeding? Because I'm fine with you  
 3 using mine.  
 4 MS. BERNIKER: That's fine.  
 5 THE WITNESS: This is '520.  
 6 BY MR. KIKLIS:  
 7 Q. I've handed you what's been marked  
 8 Exhibit 1002, sir. Do you recognize this  
 9 exhibit?  
 10 A. Uh-huh. Yes, I do.  
 11 Q. What is it?  
 12 A. It's the declaration that I have  
 13 written regarding patent 7,162,520. As I  
 14 understand it, this is phase B. Please correct  
 15 me if I'm wrong.  
 16 Q. It is --  
 17 A. Phase II?  
 18 Q. -- Phase II. And so just so we're  
 19 clear on terminology, the three patents -- the  
 20 three proceedings for which you are here are  
 21 IPR2014-01478, then 01475 and then 01477. Is  
 22 that your understanding?  
 23 A. Sorry, where were those numbers?  
 24 Q. Sure. IPR2014-01478.  
 25 A. Where is that?

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1 B. Evans  
 2 Exhibit Number 1002, which is your declaration  
 3 in the second round for the '520 patent;  
 4 correct?  
 5 A. Right, second round, yes, '520,  
 6 that's correct.  
 7 Q. So for the rest of the day I'm going  
 8 to refer to this declaration, Exhibit 1002, as  
 9 the '520 declaration.  
 10 A. Okay.  
 11 Q. Because it refers to the '520 patent.  
 12 Do you understand that?  
 13 A. I understand that.  
 14 Q. This is your declaration, sir,  
 15 Exhibit 1002 that I just handed you?  
 16 A. Yes.  
 17 Q. Can you flip to page 182?  
 18 A. Yeah.  
 19 Q. Is that your signature?  
 20 A. Well, it was signed by me. I  
 21 remember signing it.  
 22 Q. So this is an electronic signature --  
 23 A. Yeah.  
 24 Q. -- in typewritten form; correct?  
 25 A. Yeah.

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