

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

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4 PETROLEUM GEO-SERVICES,)
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25)
vs.)
Case No.)
IPR2014-00687,)
-00688, -00689)
WESTERNGECO,)
Patent Owner.)

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13 DEPOSITION OF BRIAN EVANS, PH.D.
14 VOLUME I

15
16 Washington, D.C.
17 Thursday, February 5, 2015

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23 Reported by: Lori J. Goodin, RPR, CLR, CRR
24 Realtime Systems Administrator

25 Job No. 90106

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February 5, 2015
8:49 a.m.

Deposition of BRIAN EVANS, PH.D.,
held at Williams & Connolly, 725 12th
Street, Northwest, Washington, D.C. before
Lori J. Goodin, RPR, CLR, CRR, a Notary
Public of the District of Columbia.

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A P P E A R A N C E S:

On Behalf of Petitioner:
WILLIAMS & CONNOLLY
725 Twelfth Street, Northwest
Washington, D.C. 20005
BY: THOMAS FLETCHER, ESQUIRE
BY: DAVID BERL, ESQUIRE
BY: CHRISTOPHER SUAREZ, ESQUIRE

PETROLEUM GEO-SERVICES, INC.
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Houston, Texas 77079
BY: KEVIN HART, ESQUIRE

On Behalf of Patent Owner:
**OBLON MCCLELLAND MAIER &
NEUSTADT**
1940 Duke Street
Alexandria, Virginia 22314
BY: SCOTT MCKEOWN, ESQUIRE
CHRISTOPHER BULLARD, ESQUIRE

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A P P E A R A N C E S (CONTINUED):

On Behalf of Patent Owner:
KIRKLAND & ELLIS
300 North La Salle
Chicago, Illinois 60654
BY: SIMEON PAPACOSTAS, ESQUIRE

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B. Evans, Ph.D.
BRIAN J. EVANS, PH.D.,
having been first duly sworn, testified as
follows:
EXAMINATION
BY MR. MCKEOWN:
Q. Can you please state your name for the record. 08:49
A. Brian John Evans. 08:49
Q. Okay. Mr. Evans, my name is Scott McKeown, I'm an attorney for WesternGeco, and you have filed some declarations in some proceedings at the U.S. Patent and Trademark Office. Those are 2014-687 through 689. 08:49
Are you generally familiar with those proceedings? 08:49
A. Generally. But I'm not a lawyer. 08:49
Q. Sure. 08:49
MR. BERL: I don't mean to interrupt, but are we putting appearances on the record? 08:49
MR. MCKEOWN: Yes, sure, we can go around the table, if you want to. 08:49
So, I'm Scott McKeown. I'm an attorney for WesternGeco. To my right is 08:49

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1 B. Evans, Ph.D.
2 Chris Bullard, also with the Oblon firm. 08:49
3 To his immediate right is Simeon -- 08:49
4 MR. PAPACOSTAS: Papacostas. 08:49
5 MR. MCKEOWN: There you go. Of the 08:49
6 Kirkland & Ellis firm. 08:49
7 MR. BERL: And it is David Berl of 08:49
8 Williams & Connolly for petitioner. Along 08:50
9 with me is Tom Fletcher from Williams & 08:50
10 Connolly, Chris Suarez from Williams & 08:50
11 Connolly and Kevin Hart from PGS. 08:50
12 BY MR. MCKEOWN: 08:50
13 Q. So, I will be asking you some 08:50
14 questions today about some declarations you 08:50
15 prepared in those proceedings at the Patent 08:50
16 Office. 08:50
17 I would ask that we try not to talk 08:50
18 over each other. And if you need more 08:50
19 information or clarification about a question, 08:50
20 please feel free to ask. If you need a break 08:50
21 for the bathroom, we can do that whenever you 08:50
22 need it, just as long as it is not as a 08:50
23 question is pending. 08:50
24 So, when I ask you questions, you 08:50
25 are expected to give truthful answers to the 08:50

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1 B. Evans, Ph.D.
2 Q. Are they U.S. patents? 08:51
3 A. No, Australia. 08:51
4 Q. Okay. What is the subject matter of 08:51
5 those patents? 08:51
6 A. Oh, it was a seismic, seismic data 08:51
7 processing were two of them. 08:52
8 And the other one was a function of 08:52
9 my Ph.D. thesis about 3D techniques. 08:52
10 Q. What was the title of your Ph.D. 08:52
11 thesis? 08:52
12 A. I need to see my -- I can't remember 08:52
13 these things. 08:52
14 Q. Okay. Why don't I give you your 08:52
15 declarations here. 08:52
16 So, I will give you all three of 08:52
17 them. 08:52
18 A. Okay, thanks. 08:52
19 Q. And, a copy for your counsel as 08:52
20 well. So, the first one I'm handing you is for 08:52
21 the '607. 08:52
22 THE WITNESS: This is the '607. 08:52
23 MR. BERL: That is for you. He will 08:52
24 give me my copy. 08:52
25 MR. BULLARD: That is one copy of 08:52

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1 B. Evans, Ph.D.
2 extent you can. And you are required to answer 08:50
3 unless your attorney instructs you not to 08:51
4 answer. 08:51
5 Do you understand that? 08:51
6 A. Oh, okay. 08:51
7 Q. Okay. Have you had, have you been 08:51
8 previously deposed before? 08:51
9 A. What do you mean by deposed? 08:51
10 Q. This, what we are doing today is a 08:51
11 deposition. 08:51
12 A. Because I'm not legal. I'm a 08:51
13 scientist. 08:51
14 Q. Okay. 08:51
15 A. No, I have never. This is the first 08:51
16 time. 08:51
17 Q. Okay. Fair enough. Do you have any 08:51
18 other questions before we begin? 08:51
19 A. I don't know until I've got 08:51
20 something to ask. 08:51
21 Q. Okay, fair enough. Fair enough. 08:51
22 Are you an inventor on any patents, Mr. Evans? 08:51
23 A. I am a coinventor on three. Not 08:51
24 that they have been continued, because we paid 08:51
25 the money out. 08:51

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1 B. Evans, Ph.D.
2 the '607. 08:52
3 MR. MCKEOWN: This is the '607. I 08:53
4 may as well give them all out here. That 08:53
5 is the '967. 08:53
6 THE WITNESS: This isn't the same 08:53
7 index as I have had it. 08:53
8 MR. BERL: Yes. 08:53
9 BY MR. MCKEOWN: 08:53
10 Q. And this is the '520. So, we will 08:53
11 be talking about all three of these today. I 08:53
12 will try to keep it clear which one we are 08:53
13 talking about when we are talking about it, so 08:53
14 we don't confuse the three. 08:53
15 MR. BERL: And for the record, as 08:53
16 Dr. Evans just noted. We realize that the 08:53
17 table of contents was inappropriately 08:53
18 abridged in his declarations. 08:53
19 And we prepared, and it may move 08:53
20 things along more quickly to use table of 08:53
21 contents that goes down each level and 08:53
22 reflects the actual sections of the 08:53
23 declaration. 08:53
24 So, we have prepared those if you 08:53
25 would like to use and mark them. It may 08:53

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1 B. Evans, Ph.D.

2 make the process more efficient in the 08:53

3 coming days. The table of contents in the 08:53

4 actual declarations only go down two or 08:54

5 sometimes three levels, rather than all of 08:54

6 the way down. 08:54

7 THE WITNESS: So, do I get an update 08:54

8 then? 08:54

9 MR. BERL: He will likely give you a 08:54

10 copy. 08:54

11 MR. MCKEOWN: Do you have a copy of 08:54

12 this, Mr. Evans? 08:54

13 THE WITNESS: No, I don't. 08:54

14 MR. BERL: So, I will give you three 08:54

15 copies of each, Mr. McKeown, and then you 08:54

16 can give them back to Dr. Evans. 08:54

17 MR. MCKEOWN: Okay. All right. 08:54

18 MR. BERL: And maybe mark them as-B 08:54

19 or however you want to mark them is fine 08:54

20 with us. 08:54

21 MR. MCKEOWN: So, are these 08:54

22 corresponding to outline entries in the 08:54

23 actual declaration or are these -- 08:54

24 MR. BERL: Yes. 08:54

25 MR. MCKEOWN: Okay. All right. I 08:54

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1 B. Evans, Ph.D.

2 don't know that I need to use them. So, 08:54

3 let's just keep them on the side. 08:54

4 MR. BERL: It may make it easier to 08:54

5 find. 08:54

6 MR. MCKEOWN: I will be referring to 08:54

7 paragraph numbers, so I am not using 08:54

8 headings. 08:54

9 THE WITNESS: The headings help me 08:55

10 to find it in the -- 08:55

11 BY MR. MCKEOWN: 08:55

12 Q. Yes, okay. I will refer you to 08:55

13 the -- 08:55

14 A. Because in between these, I get 08:55

15 confused. 08:55

16 Q. Okay. Sure. Yes. So I was just 08:55

17 asking the name, or the title of your thesis. 08:55

18 A. Okay. Can I -- It is one of these 08:55

19 three replacement contents. 08:55

20 Q. Let me see if I can find it for you. 08:55

21 Looks to be about Paragraphs 10 through 11 talk 08:55

22 about your Ph.D. 08:55

23 A. What page? 08:55

24 Q. So, looks like Paragraph 10 top of 08:55

25 Page 5 in the '520. 08:55

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1 B. Evans, Ph.D.

2 A. Page 5. 08:55

3 MR. BERL: These are the '520. 08:55

4 THE WITNESS: We are in the '520, 08:55

5 right? 08:55

6 BY MR. MCKEOWN: 08:55

7 Q. I think it is the same in all of 08:55

8 them at least for the first couple of 08:55

9 paragraphs. But -- 08:55

10 A. So, should I be looking at '607. 08:55

11 MR. BERL: He thinks it is the same. 08:56

12 THE WITNESS: Oh, okay. 08:56

13 BY MR. MCKEOWN: 08:56

14 Q. It looks the top of Page 6 there. 08:56

15 A. So, Yes, top of Page 6, Advancements 08:56

16 in Techniques of Low Fold Three-Dimensional 08:56

17 Seismic Reflection Surveying. I think that 08:56

18 answers your question. 08:56

19 Q. Okay. So, that was the topic of the 08:56

20 thesis you were referring to? 08:56

21 A. Yes. 08:56

22 Q. Okay. Have you ever been involved 08:56

23 in any kind of patent disputes previously? 08:56

24 MR. BERL: Objection. 08:56

25 THE WITNESS: When you say 08:56

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1 B. Evans, Ph.D.

2 objection, sorry, I'm not, I don't 08:56

3 understand the process. 08:56

4 BY MR. MCKEOWN: 08:56

5 Q. You can answer. You are expected to 08:56

6 answer. 08:56

7 MR. BERL: You can answer the 08:56

8 question. I am just preserving the 08:56

9 objection. 08:56

10 THE WITNESS: Oh, okay. Okay. 08:56

11 Only inasmuch as talking between 08:56

12 authors of a patent that I argued my name 08:57

13 should be first and he argued. And he won. 08:57

14 It was just a personal argument. 08:57

15 BY MR. MCKEOWN: 08:57

16 Q. So, you haven't been hired as a 08:57

17 consultant? 08:57

18 A. Oh, never, never, never. 08:57

19 Q. Okay. 08:57

20 A. First time ever. 08:57

21 Q. Sure. How many declarations did you 08:57

22 prepare for this matter? 08:57

23 A. I think -- 08:57

24 MR. BERL: What? For this? 08:57

25 BY MR. MCKEOWN: 08:57

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1 B. Evans, Ph.D.

2 Q. For this matter. 08:57

3 A. For the whole -- 08:57

4 MR. BERL: Objection. 08:57

5 MR. MCKEOWN: Right. 08:57

6 BY MR. MCKEOWN: 08:57

7 Q. So, you have three declarations in 08:57

8 front of you. 08:57

9 A. Yes. 08:57

10 Q. Did you just prepare three? 08:57

11 A. I think there was a fourth, I think. 08:57

12 My memory isn't what it should be. 08:57

13 Q. Okay. 08:57

14 A. I think there is a fourth. 08:57

15 Q. Are you aware of the Patent Office's 08:57

16 review of those declarations? 08:57

17 MR. BERL: Objection. 08:57

18 THE WITNESS: I'm confused in him 08:58

19 saying objection. Am I supposed to stop 08:58

20 now or -- 08:58

21 MR. BERL: You can answer the 08:58

22 question. He will ask you questions, I may 08:58

23 object. 08:58

24 If I tell you not to answer, then 08:58

25 you don't answer. Unless I tell you not to 08:58

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1 B. Evans, Ph.D.

2 answer you can try to answer his question, 08:58

3 if you understand it. 08:58

4 THE WITNESS: Okay. I don't 08:58

5 understand the process, you understand. 08:58

6 Now, could you repeat? 08:58

7 BY MR. MCKEOWN: 08:58

8 Q. Sure. So you prepared four 08:58

9 declarations, correct? 08:58

10 A. Yes. 08:58

11 Q. And they were -- 08:58

12 A. To the best of my memory. 08:58

13 Q. And they were submitted to the 08:58

14 Patent Office; is that right? 08:58

15 A. Through his company. 08:58

16 Q. Okay. Have you seen the decisions 08:58

17 from the Patent Office? 08:58

18 A. Yes, I have scanned over them. 08:58

19 Q. Okay. So you are aware that the 08:58

20 fourth submission, or one of these submissions 08:58

21 was denied; is that right? 08:58

22 MR. BERL: Objection. 08:58

23 THE WITNESS: Yes. Because now, you 08:58

24 know, I am working with three now instead 08:58

25 of four. That is my -- 08:58

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1 B. Evans, Ph.D.

2 BY MR. MCKEOWN: 08:58

3 Q. Okay. But you did read the decision 08:58

4 that denied the fourth? 08:58

5 A. I read it, but that was -- I have 08:59

6 got seven Ph.D. students. That is one of the 08:59

7 many documents I read on a daily basis, but I 08:59

8 don't exactly read these things on a daily 08:59

9 basis. 08:59

10 Q. Sure. Did you form an opinion as to 08:59

11 whether you believe that decision was correct 08:59

12 or not? 08:59

13 A. The board made? 08:59

14 Q. Right. 08:59

15 MR. BERL: Objection. 08:59

16 THE WITNESS: I, my impression, 08:59

17 because I didn't go into it deeply, and I 08:59

18 was on my own, not with anyone else, not 08:59

19 discussing it with anyone else, 08:59

20 12,000 miles away, was that I didn't think 08:59

21 the interpretation was the same as I had 08:59

22 put on it. 08:59

23 BY MR. MCKEOWN: 08:59

24 Q. Uh-huh. So did you conclude that 08:59

25 the USPTO's interpretation was wrong? 09:00

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1 B. Evans, Ph.D.

2 MR. BERL: Objection, relevance. 09:00

3 THE WITNESS: In Australia, a court 09:00

4 in one state can have a different decision 09:00

5 from a court in another state. 09:00

6 And part of that decision process is 09:00

7 based on state rules and regulations. I am 09:00

8 not conversant with U.S. or Australia state 09:00

9 rules and regulations. 09:00

10 So, I can't really saying that it 09:00

11 was wrong without a thorough understanding 09:01

12 and a legal standing. 09:01

13 Wouldn't you agree with that, that 09:01

14 that is a reasonable assumption? I 09:01

15 couldn't even make a decision myself on 09:01

16 whether there is something wrong. 09:01

17 But, if I came to my opinion and the 09:01

18 court came to their opinion, based on their 09:01

19 knowledge, which is far superior to mine, 09:01

20 one assumes they must be right based on 09:01

21 their own regulations. 09:01

22 BY MR. MCKEOWN: 09:01

23 Q. Okay. I'm going to talk a little 09:01

24 bit about your educational background in the 09:01

25 next couple of questions. And I believe that 09:01

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