Ex. PGS 1015

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WESTERNGECO LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 09-cv-1827**
	§	
ION GEOPHYSICAL CORP.,	§	
	§	
Defendant.	§	

MEMORANDUM AND ORDER

In this patent infringement suit, the Court is asked to construe aspects of six patents. In particular, the Court considers the asserted claims of U.S. Patent Nos. 6,932,017 (the "'017 Patent"), 7,080,607 (the "'607 Patent"), 7,162,967 (the "'967 Patent"), and 7,293,520 (the "'520 Patent") ("Bittleston Patents" collectively); U.S. Patent. No. 6,691,038 (the "'038 Patent" or "Zajac Patent"); and U.S. Patent No. 6,525,992 (the "'992 Patent" or "Ion Patent"). A hearing was held on May 14, 2010, during which the parties presented argument in support of their proposed constructions. This Court now construes the disputed claim terms as a matter of law under *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995), *aff'd*, 517 U.S. 370 (1996).

I. BACKGROUND

At issue in this case is marine seismic streamer technology that is deployed behind ships. These streamers, essentially long cables, use acoustic signals and sensors to create three-dimensional maps of the subsurface of the ocean floor in order to facilitate natural resource exploration and management. For many seismic studies, it is important

that the streamers be located at a specific depth and lateral position with respect to one another in order to achieve optimal imagery generated from the signals. In addition, greater control over the position of the streamers prevents streamer arrays from become entangled, and allows the streamer vessel to maneuver safely around impediments such as rocks and oil rigs. The patents at issue all pertain to streamer positioning devices, or devices that are used to control the position of a streamer as it is towed.

On June 12, 2009, Plaintiff WesternGeco LLC ("WG") filed a Complaint alleging that Defendant Ion Corporation ("Ion") was infringing upon the Bittleston Patents, so named after their inventor, Simon Bittleston, and the Zajac Patent, invented by Marc Zajac. All five of these patents are incorporated into WG's streamer positioning product called "Q-Marine." In response to the lawsuit, Ion filed a counterclaim against WG, alleging that WG was in fact infringing upon an Ion-owned patent, the '992 Patent. According to WG, although several models were tested, no functional products embodying the technology in the '992 Patent has ever been produced by Ion. Ion does not appear to dispute this point.

Aside from the patent issues, there are several other claims and counterclaims being asserted by the parties in this case. Most notably, the parties are in direct dispute as to inventorship of the technology embodied in the Bittleston patents. Apparently, a series of meetings took place between Simon Bittleston and employees of DigiCOURSE, Inc. ("DigiCOURSE"), the predecessor of Ion, in 1995, during which disclosures between the parties concerning steamer positioning technology were made pursuant to a Confidentiality Disclosure Agreement. Ion is asserting that the technology embodied in the Bittleston Patents contains elements of a DigiCOURSE prototype that was provided

to Bittleston during these meetings. The Court previously dismissed Ion's breach of contract and conversion counterclaims against WG. (*See* Mem. & Order, Oct. 28, 2009, Doc. No. 35.) The parties now seek to construe certain terms contained in all six patents-in-suit.

II. LEGAL STANDARD- *MARKMAN* HEARINGS GENERALLY

A. Claim Construction

Claim construction is a matter of law, and thus the task of determining the proper construction of all disputed claim terms lies with the Court. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). The Federal Circuit has opined extensively on the proper approach to claim construction, most notably in its recent opinion in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc).

The goal of a *Markman* hearing is to arrive at the ordinary and customary meaning of a claim term in the eyes of a person of ordinary skill in the art. *Phillips*, 415 F.3d at 1313. In order to do so, the Court should first look to intrinsic evidence to decide if it clearly and unambiguously defines the disputed terms of the claim. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F. 3d 1576, 1585 (Fed Cir. 1996). The intrinsic evidence includes the claims themselves, the specification, and the prosecution history. *Phillips*, 415 F.3d at 1314.

1. Claim Language

Words of a claim are generally given their ordinary and customary meaning, which is the meaning a term would have to a person of ordinary skill in the art after reviewing the intrinsic record at the time of the invention. *O2 Micro Int'l Ltd. v. Beyond Innovation Technology Co.*, 521 F.3d 1352, 1360 (Fed. Cir. 2008). Thus, the inquiry into

how a person of ordinary skill in the art understands a claim term provides an objective baseline from which to begin claim interpretation. *Phillips*, 415 F.3d at 1313. That starting point is based on "the well-settled understanding that inventors are typically persons skilled in the field of the invention, and that patents are addressed to, and intended to be read by, others of skill in the pertinent art." *Id*. A district court is not obligated to construe terms with ordinary meanings, lest trial courts be inundated with requests to parse the meaning of every word in the asserted claims. *O2 Micro Intern. Ltd*., 521 F.3d at 1360; *see also Biotec Biologische Naturverpackungen GmbH & Co. KG v. Biocorp, Inc.*, 249 F.3d 1341, 1349 (Fed. Cir. 2001) (finding no error in non-construction of "melting"); *Mentor H/S, Inc. v. Med. Device Alliance, Inc.*, 244 F.3d 1365, 1380 (Fed. Cir. 2001) (finding no error in the lower court's refusal to construe "irrigating" and "frictional heat").

The claims themselves provide substantial guidance as to the meaning of particular claim terms. *Phillips*, 415 F.3d at 1314. To begin with, the context in which a term is used in the asserted claim can be highly instructive. *Id*. Other claims of the patent in question, both asserted and unasserted, can also be valuable sources of enlightenment as to the meaning of a claim term. *Vitronics*, 90 F.3d at 1582. Because claim terms are normally used consistently throughout the patent, the usage of a term in one claim can often illuminate the meaning of the same term in other claims. *Phillips*, 415 F.3d at 1314. "[D]ifferent words or phrases used in separate claims are presumed to indicate that the claims have different meanings and scope." *Seachange Int'l, Inc. v. C-COR, Inc*., 413 F.3d 1361, 1368 (Fed. Cir. 2005). Furthermore, the presence of a dependent claim that adds a particular limitation gives rise to a presumption that that limitation in question is

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