



To the extent that Workman discusses lateral position as a “threshold parameter” for noise considerations, it merely addresses “minimum allowable separations between the streamer cables”—essentially an accident avoidance maneuver. (ION 266 at 3:62-4:3) These “minimum allowable separations,” as their name suggests, merely set a minimum threshold separation between adjacent streamers. They do not in any way “maintain” a specific spacing, as the Court’s claim construction requires. (*See, e.g.*, Trial Tr. at 3965:2-14) Even the term employed by Workman, “threshold parameters,” confirms that they will be invoked only at the margins, as confirmed by Workman’s specification. (*See, e.g.*, ION 266 at 4:40-46) Unlike WesternGeco’s patented inventions or ION’s infringing products, Workman discloses no mechanism of setting or maintaining any spacing between streamers. On direct examination, Mr. Brune distinguished between the patented and infringed setting a particular value for desired streamer separations and actively maintaining the streamer positions at that desired separation value versus Workman’s concept of maintaining a minimum threshold parameter. (Trial Tr. at 3804:4-6 (“You can have a particular desired value, a set point target, *or* you can have constraints or limits of minimum and maximum values.”)) The patents and accused products are based on setting and maintaining the former, whereas Workman merely mentions the latter. Mr. Brune also admitted that Workman “doesn’t say” how to accomplish even this limited goal. *Id.* at 3965:11-14.

Mr. Brune further admitted on cross-examination that Workman’s “threshold parameters” failed to address the problems solved by the Bittleston patents, such as the trousering effect, where the separation between streamers is too large. (*See, e.g.*, Trial Tr. at 3965:15-3966:2; *id.* at 3968:8-11 (“Q. The concept where the streamers get too far, trousering, that is not minimum separation distance as disclosed in Workman, is it? A. That wouldn’t be addressed.”). More generally, Mr. Brune conceded that Workman didn’t disclose how to set and maintain any given

distance between adjacent streamers. *Id.* at 3970:8-12 (“Q. But if the Court’s construction, set and maintain spacing, requires the streamers to each be equidistant from one another, both in a minimum and a maximum setting, then Workman doesn’t disclose that, agreed? A. That’s a different case, yes.”); *see also id.* at 3967:3-14. Significantly, Mr. Brune did not include any opinion that Workman infringed Claim 18 of the ’520 patent in his expert report during discovery, nor did ION include such a theory in its Preliminary or Final Invalidity Contentions. (D.I. 308 at 10-11). Workman was only raised after ION’s principal defenses failed as a matter of law.

Because Workman fails to disclose all of the limitations of WesternGeco’s claimed invention, ION’s invalidity defense fails as a matter of law. *Sanofi*, 550 F.3d at 1082. And to the extent ION attempts to cobble together evidence of anticipation with cherry-picked snippets of testimony, ION fails to address the entire evidentiary record—including the portions discussed above—or to credit the jury’s balancing of any conflicting evidence or evaluation of witness credibility. ION fails to apply the proper analysis in seeking a new trial post-verdict, under which ION’s motion must fail.

**C. Workman Does Not Anticipate Claim 15 of the ’607 Patent**

Claim 15 of the ’607 patent provides:

15. An array of seismic streamers towed by a towing vessel comprising:  
(a) a plurality of streamer positioning devices on or inline with each streamer;  
(b) a prediction unit adapted to predict positions of at least some of the streamer positioning devices; and  
(c) a control unit adapted to use the predicted positions to calculate desired changes in positions of one or more of the streamer positioning devices.

(PTX 3). As Mr. Brune admitted, Claim 15 of the ’607 patent requires lateral steering. (*See, e.g.,* Trial Tr. at 3977:20-3978:3) And as explained above, Workman does not enable lateral steering or the claimed “streamer positioning devices” capable of steering a streamer