

Nos. 2013-1527, 2014-1121, -1526, -1528

**United States Court of Appeals
For The Federal Circuit**

WESTERNGECO L.L.C.,

Plaintiff-Cross-Appellant,

v.

ION GEOPHYSICAL CORPORATION,

Defendant-Appellant.

**Appeals from the United States District Court for the Southern District of
Texas in case no. 09-cv-1827, Judge Keith P. Ellison.**

**CORRECTED NON-CONFIDENTIAL BRIEF FOR DEFENDANT-
APPELLANT ION GEOPHYSICAL CORPORATION**

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CERTIFICATE OF INTEREST

Counsel for the Defendant-Appellant certifies the following:

1. The full name of every party represented by counsel is:

ION Geophysical Corporation

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by counsel is:

N/A

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

N/A

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this Court are:

Fish & Richardson P.C.: David J. Healey, Justin M. Barnes, Frank Porcelli, Brian G. Strand, Francis J. Albert, Olga May, Kevin Su, Robert Courtney, Bailey Harris, Jakob Ben-Ezra;

Porter Hedges L.L.P.: Ray Torgerson, Jonathan Pierce, Jonna Summers, Eric Wade, Susan Hellinger

Jones Day: David Burgert

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	Memorandum and Order on WesternGeco’s Motion for Supplemental Damages, Motion to Strike, and ION’s Motion to Compel, dated October 24, 2013 (filed under seal)	A000079-92
	Order on Defendant’s Motion for Remittitur, dated April 30, 2014 (filed under seal)	A000093-96
	Final Judgment, dated May 7, 2014.....	A000097-98
	U.S. Patent No. 6,691,038.....	A000478-92
	U.S. Patent No. 7,080,607	A000503-14
	U.S. Patent No. 7,162,967	A000515-25
	U.S. Patent No. 7,293,520	A000526-36

Assignment of Control System for Positioning of Marine Seismic Streamers
from Oyvind Hillesund to Schlumberger Technology Corporation,
dated February 26, 2001 A012195-96
Assignment of Control System for Positioning of Marine Seismic
Streamers from Simon Bittleston to Schlumberger Technology
Corporation, dated February 26, 2001 A012197-98

Assignment Record of U.S. Patent 6,932,017 from the United States
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CONFIDENTIAL MATERIAL OMITTED

The material omitted on pages 12, 34 and 35 reflect terms of a confidential agreement.

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