

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ION GEOPHYSICAL CORPORATION
AND ION INTERNATIONAL S.A.R.L.,
Petitioners,

v.

WESTERNGECO LLC,
Patent Owner.

Case IPR2015-00565
Patent 7,293,520

Before SCOTT A. DANIELS, BEVERLY M. BUNTING, and
BARBARA A. PARVIS, *Administrative Patent Judges*.

DANIELS, *Administrative Patent Judge*.

DECISION

Institution of *Inter Partes* Review and Grant of Motion for Joinder
37 C.F.R. § 42.108
37 C.F.R. § 42.122(b)

I. INTRODUCTION

ION Geophysical Corporation and ION International S.a.r.l. (“ION”) filed a Petition to institute an *inter partes* review of claims 1, 2, 6, 18, 19, and 23 of U.S. Patent No. 7,293,520 (“the ’520 patent”). Paper 3 (“Pet.”). The Petition was accorded a filing date of January 14, 2014. Paper 6. With the Petition, ION also filed a Motion for Joinder (“Mot.,” Paper 4) seeking to join this proceeding with *Petroleum Geo-Services, Inc., v. WesternGeco L.L.C.*, Case IPR2014-00689 (the “PGS IPR”). Mot. 2. The PGS IPR concerns the same patent as at issue here, namely the ’520 patent. We instituted trial in the PGS IPR on December 15, 2015. *See Petroleum Geo-Services, Inc., v. WesternGeco L.L.C.*, Case IPR2014-00689, Paper 32 (Decision instituting *inter partes* review).

Patent Owner, WesternGeco L.L.C. (“WesternGeco”) timely filed an Opposition (“Opp.,” Paper 10) to ION’s Motion for Joinder, and ION, in turn, filed a Reply (Paper 12).

We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” For the reasons provided below, we (1) institute an *inter partes* review on certain grounds, and (2) grant ION’s Motion for Joinder, subject to the conditions detailed herein.

II. INSTITUTION OF *INTER PARTES* REVIEW

We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” The Petition in this proceeding asserts

the same grounds as those asserted in the PGS IPR. Pet. 1, 28, Mot. 2–4.

We instituted a trial in the PGS IPR on four grounds:

1. Claims 1 and 18 are anticipated by Workman;
2. Claims 1, 2, 18, and 19 as obvious over Workman;
3. Claims 1, 2, 18, and 19 as anticipated by Hedberg;
4. Claims 1, 2, 18, and 19 as obvious over Hedberg

Petroleum Geo-Services, Inc., v. WesternGeco L.L.C., Case IPR2014-00689, slip op. at 43 (PTAB Dec. 15, 2014) (Paper 32). We did not institute on two grounds, namely, obviousness of claims 1, 6, 18, and 23 over the '636 PCT and either the '153 PCT or Dolengowski. *Id.* In view of the challenges in the instant Petition and the petition in the PGS IPR, we institute an *inter partes* review in this proceeding on the same four grounds as those on which we instituted in the PGS IPR. *Id.* We do not institute on any other grounds.

III. GRANT OF MOTION FOR JOINDER

An *inter partes* review may be joined with another *inter partes* review, subject to the provisions 35 U.S.C. § 315(c), which governs joinder of *inter partes* review proceedings:

(c) JOINDER.—If the Director institutes an *inter partes* review, the Director, in his or her discretion, may join as a party to that *inter partes* review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an *inter partes* review under section 314.

As the moving party, ION bears the burden of proving that it is entitled to the requested relief. 37 C.F.R. § 42.20(c). A motion for joinder should: (1) set forth the reasons joinder is appropriate; (2) identify any new

grounds of unpatentability asserted in the petition; and (3) explain what impact (if any) joinder would have on the trial schedule for the existing review. *See* Frequently Asked Question H5, <http://www.uspto.gov/patents-application-process/appealing-patentdecisions/trials/patent-review-processing-system-prps-0>. (Last visited April 1, 2015).

The Petition in this proceeding has been accorded a filing date of January 14, 2015 (Paper 6), and the Motion for Joinder was filed on the same date. (Mot.). Thus, the Motion for Joinder in this proceeding satisfies the requirement of being filed within one month of the date, December 15, 2014, instituting a trial in the PGS IPR. *See* 37 C.F.R. § 42.122(b) (Any request for joinder must be filed, as a motion under § 42.22, no later than one month after the institution date of any *inter partes* review for which joinder is requested.).

In its Motion for Joinder, ION contends that “aside from the procedural sections of the Petition, for example that identify ION and its standing, the Petition and accompanying evidence are identical.” Mot. 7. ION further represents that because the challenges are identical, it “envisions few, if any, differences in position between ION and PGS.” *Id.* at 8.

PGS indicated during a conference call on March 25, 2015, with the Board and all the participants in the PGS IPR and this proceeding, that it opposes joinder because PGS does not desire to coordinate its conduct of the PGS IPR with ION, and also, because joining these proceeding may raise issues relating to alleged hearsay evidence. For its part, WesternGeco argues that joinder would create duplicative litigation delay and complicate the PGS IPR schedule, thus prejudicing WesternGeco and raising its costs. Opp. Mot. 2–4.

Based on the present record, we agree that joinder with the PGS IPR would promote the efficient resolution of these proceedings. In the March 25, 2015 conference call, ION confirmed that it was amendable to joinder on only the already instituted grounds in the PGS IPR. In its Motion for Joinder, ION notes that both proceedings involve the same prior art, the same claims, and the same arguments and evidence. Mot.5–6. ION has brought the same substantive challenges in this proceeding, as in the PGS IPR, and joinder simplifies addressing the overlap of the instituted grounds. *Compare* Pet. 3–60 with, *Petroleum Geo-Services, Inc., v. WesternGeco L.L.C.*, Case IPR2014-00689, Paper 3, 3–60. Addressing the same grounds in the PGS IPR as presented here, in a joined proceeding, facilitates scheduling of the joined actions and minimizes delay. Also, because the challenges, prior art and evidence are substantively identical to the PGS IPR, prejudice to WesternGeco is minimal. With respect to PGS’s concern regarding hearsay evidence, even if these proceedings were not joined, the parties have the ability to request authorization to obtain 3rd party testimony under 35 U.S.C. 24. *See* § 42.53. In addition, scheduling of the joined proceeding, as set forth below, will occur so as to minimize impact to WesternGeco and PGS, yet maintain the current DUE DATE 7 (July 30, 2015) for oral hearing.

IV. SCHEDULING

The Scheduling Order in the PGS IPR (Paper 33) sets the oral hearing for July 30, 2015. Final hearing and final determination shall not be delayed by joining the two proceedings. In view of our joinder order below, the remaining DUE DATES are unchanged. The parties may stipulate to different dates for DUE DATES 2 through 5 (earlier or later, but no later

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