

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**WESTERNGECO L.L.C.,**

**Plaintiff,**

**v.**

**ION GEOPHYSICAL CORPORATION,  
et al.**

**Defendants.**

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**Case No. 4:09-cv-1827**

**MEMORANDUM AND ORDER**

Pending before the Court are the following motions:

1. ION's Partial Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. No. 565);
2. ION's Rule 59 Motion for New Trial on Invalidity Under 35 U.S.C. §§ 102 and 103 (Doc. No. 550);
3. ION's Request for Findings and Conclusions on Enablement and, Alternatively, Motion for New Trial (Doc. No. 552);
4. ION's Renewed Motion for Judgment as a Matter of Law and Alternative Motion for New Trial Regarding Non-Infringement (Doc. No. 556);
5. ION's Motion for New Trial on Infringement Under 35 U.S.C. § 271(f)(2) (Doc. No. 557);
6. ION's Motion for JMOL and New Trial Due to Incorrect Claim Construction (Doc. No. 561);
7. ION's Motion for Entry of Findings and Conclusions of No Willful Infringement, Renewed Motion for Judgment as a Matter of Law of No Willful Infringement, and Alternative Motion for New Trial (Doc. No. 559);
8. WesternGeco's Motion for Willfulness and Enhanced Damages (Doc. No. 560);
9. WesternGeco's Motion to Find this Case Exceptional Under Section 285 and for Attorneys' Fees (Doc. No. 554);

10. ION's Motion for JMOL, Motion for New Trial on Damages alternatively Motion for Remittitur (Doc. No. 562);
11. WesternGeco's Motion for Prejudgment Interest and Post-Discovery Damages (Doc. No. 553);
12. WesternGeco's Motion for Costs (Doc. No. 555);
13. ION's Motion to Compel Production of Documents From WesternGeco (Doc. No. 609); and
14. WesternGeco's Motion for a Permanent Injunction or, in the Alternative, an Ongoing Royalty (Doc. No. 558).

Upon considering the Motions, all responses thereto, the applicable law, and oral arguments, the Court finds that:

1. ION's Partial Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. No. 565) must be **DENIED**;
2. ION's Rule 59 Motion for New Trial on Invalidity Under 35 U.S.C. §§ 102 and 103 (Doc. No. 550) must be **DENIED**;
3. ION's Request for Findings and Conclusions on Enablement and, Alternatively, Motion for New Trial (Doc. No. 552) must be **DENIED**;
4. ION's Renewed Motion for Judgment as a Matter of Law and Alternative Motion for New Trial Regarding Non-Infringement (Doc. No. 556) must be **DENIED**;
5. ION's Motion for New Trial on Infringement Under 35 U.S.C. § 271(f)(2) (Doc. No. 557) must be **DENIED**;
6. ION's Motion for JMOL and New Trial Due to Incorrect Claim Construction (Doc. No. 561) must be **DENIED**;
7. ION's Motion for Entry of Findings and Conclusions of No Willful Infringement, Renewed Motion for Judgment as a Matter of Law of No Willful Infringement, and Alternative Motion for New Trial (Doc. No. 559) must be **GRANTED**;
8. WesternGeco's Motion for Willfulness and Enhanced Damages (Doc. No. 560) must be **DENIED**;
9. WesternGeco's Motion to Find this Case Exceptional Under Section 285 and for Attorneys' Fees (Doc. No. 554) must be **DENIED**;

10. ION's Motion for JMOL, Motion for New Trial on Damages alternatively Motion for Remittitur (Doc. No. 562) must be **DENIED**;
11. WesternGeco's Motion for Prejudgment Interest and Post-Discovery Damages (Doc. No. 553) must be **GRANTED**;
12. WesternGeco's Motion for Costs (Doc. No. 555) must be **GRANTED in part and DENIED in part**;
13. ION's Motion to Compel Production of Documents From WesternGeco (Doc. No. 609) must be **DENIED**;
14. WesternGeco's Motion for a Permanent Injunction or, in the Alternative, an Ongoing Royalty (Doc. No. 558) must be **GRANTED**.

## I. BACKGROUND

This is a patent infringement case originally brought by WesternGeco L.L.C. ("Plaintiff" or "WesternGeco") against ION Geophysical Corporation ("ION"). 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, greater control over the depth and lateral position of streamers is important in order to achieve optimal imagery from the signals and to maneuver around impediments such as rocks and oil rigs. WesternGeco's patents all pertain to streamer positioning devices, or devices that are used to control the position of a streamer as it is towed. At trial, WesternGeco argued that ION had infringed on four of its U.S. patents—U.S. Patent No. 7,293,520 (the "'520 Patent"); 7,162,967 (the "'967 Patent"), 7,080,607 (the "'607 Patent") ("Bittleston Patents" collectively); and U.S. Patent. No. 6,691,038 (the "'038 Patent" or "Zajac Patent").

After a three and a half week trial, the jury returned a verdict in favor of WesternGeco. (Doc. No. 536.) The jury found that ION infringed the '520 Patent, the '967 Patent, the '607 Patent, and the '038 Patent pursuant to Section 271(f)(1) & (2). The jury did not find anticipation

or non-enablement of the '520 Patent or the '967 Patent. The jury did not find anticipation, obviousness or non-enablement of the '607 Patent or the '038 Patent. The jury did find that ION willfully infringed. The jury awarded \$93.4 million in lost profits and a reasonable royalty of \$12.5 million. Both parties have now filed numerous post-trial motions. The Court will address each of the motions in turn.

## II. LEGAL STANDARDS

### A. Judgment as a Matter of Law (“JMOL”)

The Fifth Circuit reviews a district court’s ruling on a motion for judgment as a matter of law *de novo*. See *Cambridge Toxicology Grp., Inc. v. Exnicios*, 495 F.3d 169, 179 (5th Cir. 2007). Judgment as a matter of law is appropriate “[i]f a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue.” See Fed. R. Civ. P. 50(a)(1); *Gomez v. St. Jude Med. Daig Div. Inc.*, 442 F.3d 919, 927 (5th Cir. 2006). “The decision to grant a directed verdict . . . is not a matter of discretion, but a conclusion of law based upon a finding that there is insufficient evidence to create a fact question for the jury.” *Omnitech Int’l v. Clorox Co.*, 11 F.3d 1316, 1323 (5th Cir. 1994) (citations omitted) (internal quotation marks omitted). A legally sufficient evidentiary basis requires more than a mere scintilla of evidence. *Hollywood Fantasy Corp. v. Gabor*, 151 F.3d 203, 211 (5th Cir. 1998).

The trial court is required to consider the entire record when considering a renewed judgment as a matter of law motion. *Reeves v. Sanderson Plumbing Prod., Inc.*, 530 U.S. 133, 149–50 (2000). Therefore, a court “should consider all of the evidence—not just that evidence which supports the non-mover’s case—but in the light and with all reasonable inferences most

favorable to the party opposed to the motion.” *Goodner v. Hyundai Motor Co., Ltd.*, 650 F.3d 1034, 1040 (5th Cir. 2011).

### **B. Rule 59 Motion for New Trial**

The district court’s ruling on a Rule 59 motion for new trial is reviewed for an abuse of discretion. *Beckham v. Louisiana Dock Co., L.L.C.*, 124 Fed.App’x. 268, 270 (5th Cir. 2005). A district court can grant a new trial under FRCP 59(a) “for any reason for which a new trial has heretofore been granted in an action at law in federal court.” A new trial should not be granted “unless, at a minimum, the verdict is against the great weight of the evidence.” *Dawson v. Wal-Mart Stores, Inc.*, 978 F.2d 205, 208 (5th Cir. 1992). The Court must again view the evidence “in a light most favorable to the jury’s verdict, and the verdict must be affirmed unless the evidence points so strongly and overwhelmingly in favor of one party that the court believes that reasonable [jurors] could not arrive at a contrary conclusion.” *Id.* “Where the jury could have reached a number of different conclusions, all of which would have sufficient support based on the evidence, the jury’s findings will be upheld.” *Id.* If an issue is raised for the first time on a motion for a new trial, the issue is waived. *Auster Oil & Gas, Inc. v. Stream*, 835 F.2d 597, 601 (5th Cir. 1988).

### **III. PARTIAL MOTION TO DISMISS**

ION has filed a Partial Motion to Dismiss for Lack of Subject Matter Jurisdiction. (Doc. No. 565.) ION moves to dismiss for lack of subject matter jurisdiction with respect to WesternGeco’s claims that ION infringed the Bittleston Patents. ION claims that WesternGeco does not own the Bittleston Patents and therefore lacks standing to sue for infringement.

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