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

David J. Healey
Fish & Richardson P.C.
One Houston Center
1221 McKinney Street,
Suite 2800
Houston, TX 77010

Tel: 713-654-5300

Justin M. Barnes Fish & Richardson P.C. 12390 El Camino Real San Diego, CA 92130 Tel: 858-678-5070 Frank Porcelli
Fish & Richardson P.C.
One Marina Park Drive
Boston, MA 02210
Tel: 617-542-5070

Attorneys for Defendant-Appellant



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, Jackob Ben-Ezra;

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

Jones Day: David Burgert



;

TABLE OF CONTENTS

			<u>Page</u>
CER	TIFIC	ATE OF INTEREST	i
		CASES	
		ΓΙΟΝΑL STATEMENT	
ISSU	JES PF	RESENTED	2
STA	TEME	NT OF THE CASE	3
STA	TEME	NT OF FACTS	
	A.	The Underlying Technology	6
	В.	The Bittleston Patents' Chain of Title	8
	C.	WG Focused on Extraterritorial Activities for Liability and	
	_	Damages	
	D.	Pertinent District Court Rulings	
CI IN	E.	Post-Verdict Changes in the Law	
SUMMARY OF ARGUMENTARGUMENT			
I.	WG	Lacks Standing for the Bittleston Patents	24
	A.	ION Has Not Waived and Is Not Estopped from Challenging	
		Standing, Particularly in Light of WG's Misstatements	27
	B.	There Is No Assignment from the Inventors to WG in the Chain of Title	31
	C.	The Corporate Agreements Pre-Dating the Inventors'	
	٠.	Assignments Cannot Convey Legal Title to WG	34
II.	The l	District Court's Improper 271(f) Rulings Require a New Trial	
	A.	The Court Applied the Wrong Intent for 271(f)(1)	37
	B.	The Error Prejudiced ION at Trial	40
	C.	The Court's Error Regarding 271(f)(1) Necessarily Infected 271(f)(2)	41
	D.	Plain Error Based on the Subsequent <i>Commil</i> Decision Requires a New Trial	45
III.	Lost Profits are Unavailable as a Matter of Law		47
	A.	The District Court Failed to Consider the Post-Verdict <i>Power Integrations</i> Decision Banning Extraterritorial Lost Profits	48



B.	This Court and the Supreme Court Have Recognized Damages Cannot Be Tied to Purely Extraterritorial A	
C.	Panduit Cannot be Satisfied Because ION and WG do Compete in the Marketplace, Here or Abroad	
CONCLU	SION	59
ADDEND	UM	
	dum and Order on Post-Trial Motions, dated	. A000001-48
	dum and Order on Plaintiff's Motion for Summary of Willful Infringement, dated June 29, 2012	A000049-58
Testimony	dum and Order on Defendants' Motions to Exclude Experts of Raymond Sims and Certain Motions in Limine, 16, 2012	
Jury Verdi	ct Form, dated August 16, 2012	A000071-78
	dum and Order on WesternGeco's Motion for Supplement	ntal
_	Motion to Strike, and ION's Motion to Compel, dated 4, 2013 (filed under seal)	A000079-92
	Defendant's Motion for Remittitur, dated April 30, 2014 er seal)	. A000093-96
Final Judg	ment, dated May 7, 2014	A000097-98
U.S. Paten	t No. 6,691,038	A000478-92
U.S. Paten	t No. 7,080,607	. A000503-14
U.S. Paten	t No. 7,162,967	. A000515-25
U.S. Paten	t No. 7,293,520	A000526-36



Assignment of Control System for Positioning of Marine Seismic S	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				
Patent and Trademark Office website	A012199			

CONFIDENTIAL MATERIAL OMITTED

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



DOCKET

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

