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 IPR2015-00567
Patent 7,080,607

REPLY TO PATENT OWNER'S OPPOSITION TO MOTION FOR JOINDER

EXHIBITS

ION-1059	Notice of Docketing from *WesternGeco L.L.C. v. ION Geophysical Corp.*, United States Court of Appeals for the Federal Circuit Case Nos. 2013-1527
ION-1060	ION's Redacted Opening Brief from *WesternGeco L.L.C. v. ION Geophysical Corp.*, United States Court of Appeals for the Federal Circuit Case Nos. 2013-1527, 2014-1121, -1526, -1528
ION-1061	Patent Owner Preliminary Response from *Petroleum Geo-Services Inc. v. WesternGeco LLC*, IPR2014-00688, Paper 28 (Sep. 30, 2014)
ION-1062	Institution Decision from from *Petroleum Geo-Services Inc. v. WesternGeco LLC*, IPR2014-00688, Paper 33 (Dec. 15, 2014)
ION-1063	ION's Opposed Motion to Stay from *WesternGeco L.L.C. v. ION Geophysical Corp.*, United States Court of Appeals for the Federal Circuit Case Nos. 2013-1527, 2014-1121, -1526, -1528

I. Introduction

The Board routinely grants motions for joinder where the party seeking joinder presents identical arguments to those raised in the existing proceeding and agrees to reasonable limits on its role in the joined proceeding. *See, e.g.*, *Fujitsu Semiconductor Limited v. Zond, LLC*, IPR2014-00845, Paper 14 (PTAB Oct. 2, 2014); *Enzymotec Ltd. v. Neptune Technologies & Bioresources, Inc.*, IPR2014-00556, Paper 19 (PTAB Jul. 9, 2014). That is the exact situation here, and joinder should be granted consistent with the Board's "policy preference for joining a party that does not present new issues that might complicate or delay an existing proceeding," noted in *Enzymotec.* The Opposition concocts obstacles to joinder, each of which is belied by the evidence and unaddressed legal precedent. These cavils should be given no weight.

II. Petitioner's Request for Joinder Raises No New Issues and Joinder Would Not Complicate the Existing Proceeding

Throughout its Opposition, WesternGeco argues that granting joinder would "exacerbate discovery coordination difficulties," require the reconsideration of "multiple grounds that were not instituted in the '688 IPR," and otherwise "make the '688 IPR unruly, burdensome, costly, and slow." *See* Opp., pp. 2-4. Such arguments are not consistent with facts set forth in Petitioner's motion nor the Board's own precedent.

The Board has frequently granted joinder in cases where, as here, the Petition of the party seeking joinder "asserts identical grounds of unpatentability, challenging the same claims of the" challenged patent. *Fujitsu*, Paper 14, p. 4. As in *Fujitsu*, the instant petition is "substantively identical" to the petition filed in the IPR being joined and it even "submits identical claim constructions, as well as the same Declaration." *See id.* Thus, Petitioner asks the Board to simply "institute the instant trial based on the same grounds for which [it] instituted trial in" the '688 IPR, as the Board has done in similar cases. *See id.*

Furthermore, in its motion for joinder, Petitioner unequivocally indicates that it does not seek to "modify the existing schedule of the First PGS IPR," and, to that end, cites the procedures used in the IPR2013-00256 proceeding as specific examples of "briefing and discovery procedures," including "consolidated filings," that are acceptable to Petitioner and that will ensure no alteration of the '688 IPR schedule is necessary.. *See* Motion for Joinder, pp. 7-9. Consistent with this, Petitioner has indicated no intention to revisit the already conducted depositions, despite suggestions otherwise by the Opposition (p. 11). Rather, Petitioner simply seeks to join the ongoing '688 IPR, adopting its status upon the grant of joinder.

III. The "New Legal Issues" Raised in the Opposition Find No Basis in the Relevant Law and Facts

Despite the lack of any substantive differences between the instant Petition and that of the '688 IPR, Patent Owner suggests that two "new legal issues"

threaten to complicate the '688 IPR should joinder be granted: (1) res judicata and collateral estoppel, and (2) real parties-in-interest. *See* Opp., pp. 5-11. However, the first is contrary to existing precedent, and the second was already raised in the '688 IPR. As such, as detailed below, these "issues" are unsustainable. Moreover, even assuming for the sake of argument that these issues were legitimate, the existence of so few additional issues further demonstrates the appropriateness of joinder.

A. Res Judicata and Collateral Estoppel Are Not Valid Defenses, And Even if They Were, They Should Not Impede Joinder

In the co-pending ION litigation, Petitioner timely filed an appeal to the Federal Circuit in which Petitioner is challenging the issues of standing, liability, and damages. *See* Ex. 1065; *see also* Ex. 1066, pp. 2-3. This appeal remains pending, with no final judgment. Thus, res judicata and collateral estoppel are not defenses available to WesternGeco, and neither should be considered "new legal issues" for purposes of impeding joinder. Moreover, even if they were available defenses, the narrow scope of issues implicated by these defenses should not impede joinder, which is otherwise appropriate.

In *Fresenius USA, Inc. v. Baxter Intern., Inc.*, 721 F.3d 1330 (Fed. Cir. 2013) and *In re Baxter Intern., Inc.*, 678 F.3d 1357 (Fed. Cir. 2012), the Federal Circuit clarified that, regardless of whether validity remains an ongoing issue in a litigation co-pending with a patent office review, res judicata and collateral

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