

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 L.L.C.

Patent Owner.

Case IPR2015-00567¹

U.S. Patent No. 7,080,607

PATENT OWNER'S PRELIMINARY RESPONSE

Pursuant to 37 C.F.R. § 42.107(a) and the Board's Order dated May 19, 2015 (Paper No. 18), Patent Owner, WesternGeco L.L.C. ("WesternGeco" or "Patent Owner"), submits this Preliminary Response to the Petition for Inter Partes Review ("Petition") of U.S. Patent No. 7,080,607 (the "'607 patent") filed by Petitioners, ION Geophysical Corporation and ION International S.A.R.L. (collectively, "ION" or "Petitioners").

¹ This Case has been joined with IPR2014-00688. This Preliminary Response is being concurrently filed in that proceeding.

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I. INTRODUCTION

ION's petition and motion to join IPR2014-00688 ("the '688 IPR") are a sham as well as an impermissible second—if not third or fourth—bite at the apple. ION is an adjudicated infringer of U.S. Patent No. 7,080,607 ("the '607 patent") and has already lost on the same validity arguments that it attempts to relitigate here, first on summary judgment, then at trial, and then again post-trial. Having been sued in 2009, ION was time-barred under 35 U.S.C. § 315(b) from filing its own IPR. Instead, ION seeks to join its proxy's, Petroleum Geo-Services, Inc.'s ("PGS's"), '688 IPR in an attempt to skirt the rules. This Board should see through this ruse—PGS and ION are privies with close corporate ties that have worked together for years to invalidate the '607 patent. Accordingly, the Board must deny ION's joinder motion, deny this petition, and terminate the '688 IPR.

* * *

ION is time-barred from filing an IPR challenging the '607 patent. Over five years ago Patent Owner sued ION for infringement of multiple patents, including the '607 patent. *See WesternGeco LLC v. ION Geophysical Corp.*, No. 09-cv-01827 (S.D. Tex. 2009) (the "ION litigation"). Thus, 35 U.S.C. § 315(b) bars ION from now challenging the '607 patent's validity through an IPR proceeding.

PGS is likewise barred from challenging the '607 patent as ION's proxy and

thus barred from launching an IPR proceeding for ION to then join. PGS and ION's attempt to distinguish themselves for the purpose of these IPR proceedings is simply a ruse based on concealment—if not outright misrepresentation—of the relevant facts. Both a strong contractual relationship and a strong collaborative relationship exist between ION and PGS regarding the validity of the '607 patent, making these two parties privies for purposes of these proceedings.

Their contractual relationship began [REDACTED]

[REDACTED]

Alongside this contractual relationship, ION and PGS have entered into a collaboration regarding the subject matter of these proceedings, coordinating their efforts across multiple forums to invalidate the '607 patent. This collaboration

² [REDACTED]

[REDACTED]

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