

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PETROLEUM GEO-SERVICES INC,
and
ION GEOPHYSICAL CORPORATION
AND ION INTERNATIONAL S.A.R.L,
Petitioner,

v.

WESTERNGECO LLC,
Patent Owner.

Cases¹

IPR2014-00687 (Patent 7,162,967)
IPR2014-00688 (Patent 7,080,607)
IPR2014-00689 (Patent 7,293,520)

Before BRYAN F. MOORE, SCOTT A. DANIELS, and
BEVERLY M. BUNTING, *Administrative Patent Judges*.

DANIELS, *Administrative Patent Judge*.

¹Cases IPR2015-00565, IPR2015-00566, IPR2015-00567 have been joined with these proceedings.

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ORDER

Request for Oral Argument

37 C.F.R. § 42.70

The Scheduling Order for these cases sets the date for oral hearing as July 30, 2015, if a hearing is requested by the parties and granted by the panel. *See, e.g.*, IPR2014-00687, Paper 10. Both parties have requested oral hearing pursuant to 37 C.F.R. § 42.70. *See, e.g.*, IPR2014-00687, (Paper 81, “PO Req.”) (Paper 82, “Pet. Req.”). The requests for oral argument are *granted*.

Oral arguments in this proceeding will commence at 9:00 am Eastern Time on July 30, 2015, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. Each party will have 90 minutes total time to present argument in all three cases. Parties may divide the 90 minute time between each case as they wish.

Petitioner bears the ultimate burden of proof that Patent Owner’s claims at issue are unpatentable. Thus, Petitioner will open the hearing by presenting its case; Patent Owner will follow. Petitioner may reserve some time to respond to Patent Owner’s presentation.

Patent Owner has requested the Board grant leave for Patent Owner to offer live testimony from Mr. Robin Walker, WesternGeco’s former Vice President of Sales and Marketing Director. PO Req. 2–3. Patent Owner alleges that Petitioner has attacked Mr. Walker’s credibility, and that “Mr. Walker’s credibility and testimony are therefore central to this Board’s secondary considerations determination.” *Id.* at 3. Petitioner opposes live testimony of Mr. Walker. Pet. Req. 2–3.

Patent Owner has not cited to any specific credibility argument by Petitioner. We assume that Patent Owner refers in general to Petitioner’s

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Reply (Paper 77, “Pet. Reply”) and Petitioner’s evidentiary objections in Exs. 1110–12, as well as to Petitioner’s Motion to Exclude (Paper 85, “Mot.”), as evidencing such an attack on Mr. Walker’s credibility. Pointing to a lack of nexus to show objective indicia of secondary considerations, Petitioner’s Reply asserts that Mr. Walker’s testimony fails to show, on a limitation by limitation basis, that the Q-marine product embodies the claims at issue. Reply 27–28. Petitioner’s objections in Exs. 1110–12, as well as Petitioner’s Motion to Exclude, contain various specific objections based on certain evidentiary rules, e.g. FRE 402, 403, 802, etc. Neither Petitioner’s Reply, evidentiary objections nor the Motion to Exclude, however, amount to a specific attack as to Mr. Walker’s credibility as a witness. We are not persuaded that Petitioner’s evidentiary objections are an overt attack on Mr. Walker’s credibility that would prejudice in any way our ability to ascertain the appropriate weight to give to his sworn testimony. To the extent that certain parts of Mr. Walker’s testimony may be uncorroborated and self-serving because he was WesternGeco’s Vice President of Sales and Marketing, may indeed impact his credibility. *See* PO Reply 33–34, Ex. 2077 ¶ 1. However, assessing Mr. Walker’s demeanor during live direct and cross-examination cannot change the facts of his employment and therefore would provide little, if any, help to the Board in determining the appropriate weight to give his testimonial evidence as to secondary considerations. We are, therefore, not persuaded that Mr. Walker’s live testimony at the oral hearing would further the efficient administration of these proceedings or is necessary in the interest of justice. *See* 37 C.F.R. § 42.5.

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The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing. The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis.

Under 37 C.F.R. § 42.70(b), the parties shall serve any demonstrative exhibits upon each other at least five business days prior to the hearing. The parties also shall provide the demonstrative exhibits to the Board at least five business days prior to the hearing by emailing them to Trials@uspto.gov. The parties shall not file any demonstrative exhibits in this proceeding without prior authorization from the Board. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB Jan. 27, 2014 (Paper 65)), for guidance regarding the appropriate content of demonstrative exhibits.

The parties also should note that at least one member of the panel will be attending the hearing electronically from a remote location, and that if a demonstrative is not made fully available or visible to the judge participating in the hearing remotely, that demonstrative will not be considered. If the parties have questions as to whether demonstrative exhibits would be sufficiently visible and available to all of the judges, the parties are invited to contact the Board at (571) 272-9797. The parties are also reminded that the presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced during the hearing to ensure the clarity and accuracy of the reporter's transcript and the ability of the judge participating in the hearing remotely to closely follow the presenter's arguments.

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We expect lead counsel for each party to be present in person at the oral hearing. However, any counsel of record may present the party's argument. If either party expects that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone conference with the panel no later than two business days prior to the oral hearing to discuss the matter.

Petitioner requested audio/visual equipment for the oral hearing. Pet. Hearing Req. 3. Any special requests for audio visual equipment should be directed to Trials@uspto.gov. Requests for special equipment will not be honored unless presented in a separate communication directed to the above email address not less than five days before the hearing.

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner's request for live testimony is *denied*.

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