Ex. PGS 1012
(EXCERPTED)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WESTERNGECO L.L.C.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Case No. 4:09-cv-1827**
	§	
ION GEOPHYSICAL CORPORATION, et al.	§	
	§	
	§	
Defendants.	§	

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);

No. 120 p. 45.) The Workman Patent states only that a "threshold parameter" of "at least 100 meters" be maintained. (Doc. No. 583 p. 5.) This threshold parameter does not specify that a precise spacing be set and maintained between adjacent streamers. WesternGeco aptly points out that, without maintaining any space, the streamers could range from 100 meters apart to 100 miles. (Doc. No. 602 p. 3.) With this, and other evidence and testimony, the jury could reasonably find that Claim 18 of the '520 Patent was not anticipated.

2. Claim 15 of the '607 Patent

ION argues that the Workman Patent anticipates Claim 15 of the '607 Patent by disclosing limitation (a), (b), and (c) of the Claim. Claim 15 states:

(a) a plurality of streamer positioning devices on or inline with each streamer,
(b) a prediction unit adapted to predict positions of at least some of the streamer positioning devices,
(c) a control unit adapted to use the predicted positions to calculate desired changes in positions of one or more of the streamer positioning devices.

However, at trial, ION's expert witness, Robert Brune admitted that Claim 15 of the '607 patent requires lateral steering and Workman does not enable lateral steering. To anticipate, a patent must teach and enable all claim limitations. Since lateral steering is a limitation of Claim 15, it is reasonable that the jury would conclude that Claim 15 of the '607 Patent was not anticipated.

3. Claim 14 of the '038 Patent

ION argues that Claim 14 of the '038 Patent is anticipated based on the '895 Publication, which discloses all of the limitations of Claim 14. However, Mr. Brune admitted at trial that the '895 Publication does not disclose the 4D surveys claimed in the '038 Patent. The jury could weigh this evidence and testimony and conclude that Claim 14 was not anticipated.