ION Geophysical

WesternGeco Litigation Update Conference Call

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Operator: Greetings and welcome to the ION WesternGeco Litigation Update Conference Call.

At this time, all participants are in a listen only mode. A brief question and answer session will follow the formal presentation. If anyone should require operator assistance during the conference, please press star, zero on your telephone keypad. As a reminder, this conference is being recorded.

It is now my pleasure to introduce your host, Rachel White, VP of Corporate Communications. Thank you, Ms. White. You may begin.

Rachel White: Thank you for joining us today for an update on our litigation with WesternGeco. These remarks speak only as of today, and therefore, you are advised that time sensitive information may no longer be accurate at the time of any replay.

Before we begin, let me remind you that certain statements made during this call may constitute forward-looking statements, which are based on our current expectations and include known and unknown risks, uncertainties and other factors, many of which we are unable to predict or control, that may cause our actual results or performance to differ materially from any future results or performance expressed or implied by those statements. These risks and uncertainties include the risk factors disclosed by ION from time to time in our filings with the SEC, including in our annual report on Form 10-K and in our quarterly reports on Form 10-Q.

Furthermore, as we start this call, please refer to the disclosure regarding forward-looking statements incorporated in our press release issued on this litigation, and please note that the contents of our call are covered by these statements.

I'll now turn the call over the Brian Hanson, our President and CEO.

Brian Hanson: Thank you, Rachel, and thanks, everyone, for joining us today. As you are aware, the Supreme Court reversed the Federal Circuit Court of Appeals' determination that lost profits of the type WesternGeco seeks against ION, attributable to foreign conduct by third parties, are not available as a matter of law. This case has been going on for a long time. It has now wound its way through three levels of federal courts - the Trial Court, the Federal Circuit Court of Appeals and the US Supreme Court. I'd like to take some time to explain the procedural background of the case and what we see as the path forward.

In 2012, ION was found to have infringed WesternGeco's patents that cover methods of performing marine seismic surveys. The basis of infringement was ION's manufacture and export of the streamer steering device called DigiFIN. Notably, the DigiFINs themselves did not infringe any of WesternGeco's patents. WesternGeco's patents are systems patents and method patents associated with using the system. They pertain to a system for conducting surveys.

The DigiFINs were used in conjunction with a lot of other equipment not provided by ION to comprise a system by ION's customers to perform surveys that the Trial Court found used the same system that WesternGeco had patented. WesternGeco sued ION under a section of the patent law that holds component manufacturers liable for the use of their components outside of the United States.

I'd like to point out that ION did not copy WesternGeco's technology, and the Trial Court did not find that ION copied any of WesternGeco's technology. ION developed DigiFIN independently of WesternGeco's technology. However, under the Patent Act, it's possible to infringe patents without intending to or even without knowing they exist.

In 2014, the Trial Court here in Texas ruled that WesternGeco was entitled to $93 million in lost profits damages, plus interest. The damages were for surveys performed by our customers that occurred entirely outside of the United States. We argued to the Federal Circuit Court of Appeals that this type of foreign lost profits were never available as a matter of law. The Court agreed with us and, in 2015, reversed the Trial Court's award of lost profits.

The Supreme Court reversed the Federal Circuit Court of Appeals and ruled that this type of foreign lost profits are not always unavailable. Now when we went before the Federal Circuit Court of Appeals in 2015, we brought forth two arguments. In addition to arguing that foreign lost profits should never be available as a matter of law, we also brought forth an alternative argument, that under the jury instructions given by the Trial Court Judge, the jury could not hold us liable for any lost profits in our particular case. This was because, under the jury instructions, the jury was required to find that WesternGeco had shown that its product competed in the same market with ION's product, DigiFIN.

Because the Federal Circuit Court of Appeals found that foreign lost profits were not available as a matter of law, which was our first argument, it did not consider or rule on our alternative argument, and neither did the Supreme Court. Because we raised the argument on appeal in the Federal Circuit Court of Appeals, that court will now consider it, and we feel strongly that a jury simply could not have found that we were direct competitors with WesternGeco in this case.

WesternGeco never sold a product that competed with ION's DigiFINs. WesternGeco made its own steering devices, but did not sell them. They combined them with other equipment to build the system they used to perform surveys for E&P companies. The steering device is a very small part of that overall system.

WesternGeco's competitors in this market were ION's customers, as well as other equipment manufacturers' customers, from whom WesternGeco's competitors purchased equipment to build the systems that they used to perform the surveys that competed with WesternGeco. We strongly believe that no reasonable jury could have found that ION and WesternGeco were competing in the same market.

Even if the Federal Circuit Court of Appeals does not reverse the award of lost profits based on this direct competitor argument, developments in the case since the trial judgment afford us additional opportunities to challenge the Trial Court's award of lost profits.

Many of you know from some of our prior press releases and earnings calls that we engaged in a parallel proceeding against WesternGeco in a process known as an Inter Partes Review or IPR. An IPR is an administrative proceeding at the US Patent and Trademark Office that allows any party to challenge the validity of a patent. This relatively new process was not available to us when WesternGeco sued us in 2009, but in 2014, we were able to tack onto an IPR proceeding initiated by a customer of ours that WesternGeco had sued.

The Patent and Trademark Office ruled in 2015 that four of the six patent claims that WesternGeco prevailed on in their case against us, the case that the Supreme Court just ruled on, never should have been granted patent protection. WesternGeco appealed this administrative ruling to the Federal Circuit Court of Appeals, and just last month, the court affirmed the finding that the patent claims were not valid. Because this is a parallel proceeding, this finding was not a subject of the Supreme Court ruling. The Supreme Court's ruling did nothing to undercut or impact this finding that the patent claims were not valid.

I'd like to take a moment to reflect on what this means. We have spent nine years now on protected litigation and administrative proceedings over patents that never should have been issued in the first place. I noted earlier that we did not copy WesternGeco's technology and that it is possible to infringe on patents without intending to. The fact that the Patent and Trademark Office, the agency tasked with granted and defining patent protection, could grant patents that it never should have after thoroughly examining WesternGeco's technology, illustrates that the edges of where one party's intellectual property ends and another begins are hard to discern, even by the country's foremost experts. It also illustrates how unfair it would be for ION to have to pay lost profits damages.

More importantly, the finding affords us another avenue to defend our case against foreign lost profits. ION was found by the Trial Court to have infringed six patent claims. Four of those have now been held to be invalid, and the Supreme Court's ruling does not overturn that finding.

While the Trial Court did not assign particular dollar values to any of the six claims when it assessed lost profits against us, we believe that the lost profits are not attributable to the two remaining claims. One of the remaining claims was a claim pertaining to turning vessels between acquisition lines, and there are alternative ways to perform surveys using lateral steering without infringing this claim. Generally, an award of lost profits is not appropriate if an

infringer or its customers could have competed in the marketplace without infringing the patent. The other remaining claim was a system claim that only applies to 4D surveys, and WesternGeco did not assert at trial that any of the surveys it lost to ION's customers, for which it claimed lost profits, were 4D surveys.

In the even the Federal Circuit Court of Appeals does not reverse the award of lost profits on our preserved direct competitor argument, we will forcefully challenge the award of lost profits on the basis that the bulk of WesternGeco's damages were attributable to the patent claims that the Federal Circuit Court of Appeals held are invalid.

Please recognize this is ongoing litigation and we have shared about as much as is appropriate to avoid compromising our litigation strategy going forward. Now we will open up the call for Q&A with our General Counsel, Matt Powers, but solely for clarification on these prepared remarks. Thank you. Turn the call over to the operator.

Operator: Thank you. We will now be conducting a question and answer session. If you would like to ask a question, please press star, one on your telephone keypad. A confirmation tone will indicate your line is in the question queue. You may press star, two if you would like to remove your question from the queue. For participants using speaker equipment, it may be

necessary to pick up your handset before pressing the star keys. Please ask one question and one follow up question and then requeue for any additional questions.

Our first question comes from the line of Colin Rush from Oppenheimer and Company. Please proceed with your question.

Colin Rush: Thanks so much, guys. Is there any sense of timeline that you can share with us at this point? Have you gotten an indication on that from any of the courts and when we might see next steps on the return to the Circuit Court?

Matt Powers: Yeah, thanks. It's a good question. Yeah, so typically, there's 25 days to move for a rehearing in a Supreme Court after which the Supreme Court sends the case back down to the Federal Circuit and delivers the judgment, at which case the Federal Circuit then has mandate to consider our preserved claims. So, we're anticipating the next step would be 30 days, give or take, it would wind up back at the Federal Circuit for a consideration of our other claims.

Colin Rush: Okay. And then just my follow-up is just can you just remind us what the ongoing legal expense is related to this case?

Matt Powers: Yeah. You know, I don't have those at hand, but I would say, you know, we're really just doing clarification of the prepared remarks at this point.

Colin Rush: Okay. I'll take it offline. Thanks, guys.

Matt Powers: Thanks.

Operator: Our next question comes from the line of Akil Marsh from Janney. Please proceed with your question.

Akil Marsh: Thanks for taking my question. In regards to the legal proceedings related to the patent claims, just to confirm, so has WesternGeco already put in a motion to seek a rehearing on the prior ruling?

Matt Power: You mean have they--I'm sorry, I'm confused. Have they put in a motion to seek a rehearing on--in the Federal Circuit on the IPR issue?

Akil Marsh: Yeah, because what is it, May--just looking at the flow chart, in May, the Federal Circuit Court affirmed the Patent Board's ruling, and then on the next line you have, you know,

in June of 2018 WesternGeco seeking rehearing. I just want to confirm that--have they gone forward with trying to seek a rehearing?

Matt Powers: Yeah, so they applied for a rehearing en banc, and we were recently ordered to submit briefings in that particular matter. So, the answer to that is yes, they have.

Akil Marsh: Great. Thank you.

Matt Powers: Uh-huh.

Operator: As a reminder, if you would like to ask a question, please press star, one on your telephone keypad. One moment please while we poll for more questions.

There are no further questions at this time. I would like to turn the floor back to management for closing remarks.

Rachel White: Thank you very much for taking the time to join our conference call today. We look forward to speaking with you again soon.

Operator: Ladies and gentlemen, thank you for your participation. This does conclude today's teleconference. You may disconnect your lines, and have a wonderful day.