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MOSHE A. PERRY
23705 VANOWEN ST. # 262
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(747) 224-9515

ORIGINAL

**UNITED STATES DISTRICT COURT
Eastern District of Virginia**

In Re:

DISTRICT COURT CASE: 1:22cv1126
Not Consenting To Magistrate Judge.

MOSHE A. PERRY,

PLAINTIFF,

vs.

United States Patent And Trademark Office
("USPTO"); Andrei Iancu, Under Secretary Of
Commerce For Intellectual Property And Director Of
The United States Patent And Trademark Office;
Wendy Garber, Director Patent Technology Center
3600 (No. 3649); Darnell Jayne, Director (No. 3649);
Dale Shaw (The Deputy Director Stakeholder
Outreach And Patents Ombudsman United States
Patent And Trademark Office); Kristine Clarette
Matter, (Examiner); Katherine Matecki, (Group
Director, Technology Center No. 3600-3649); Laura
Martin (Examiner); Shirene Willis Brantley, (Attorney
Advisor At The USPTO Petition Department); Charles
Steven Brantley, (Attorney Advisor At The USPTO
Petition Department, In Their Administrative And
Official Capacities Subject To The Policies of The
Secretary of Commerce,¹ Does 1 Through 10 Known
And Unknown Defendants, et., al.,

DEFENDANTS.

**Verified Complaint With Subject Matter
Jurisdiction Invested In the United States -
District Court As Asserted By The Court of
Appeal For the Federal Circuit, Pursuant To 28
U.S.C. § 1338(a); federal question exception
under 28 U.S.C. § 1331; Violation of Plaintiff's
Civil Rights Under *Bivens v. Six Unknown Fed.
Narcotics Agents*, 403 U. S. 388; RICO 18 U.S.C.
§ 1961² By Means of 42 U.S.C. §1983; 28 U.S.C.
§ 1332 - Diversity of Citizenship; Under The
Administrative Procedure Act ("APA") 5
U.S.C. § 701-§ 706; With Civil Remedies Under
18 U.S.C. § 1964 Against The USPTO Director;
Examiners And All Other Defendants For
Fraud, Concealment, Conspiracy In Violation
of 18 U.S.C. § 1001 (As Referenced)³; Tortious
Harassment; Retaliation; Intentionally
Deceiving Plaintiff Entitlement For Patent;
Obstruction of Justice;⁴ Violation of The
Federal Tort Claims Act ("FTCA") FTCA, 28
U.S.C. §§ 2671-2680 And 28 U.S.C. §
1346(b)(1); Theft of Plaintiff's Intellectual
Properties, Patent Ideas⁵ For Publication of
Non- Publish Patent Applications And Posting
Them Online For Sale In The USPTO
"PublicPair" Portal⁶ In Violation of 18 U.S.C. §**

¹ 35 U.S.C. 2: Powers and duties.

² RICO - 18 U.S.C. § 1961 - Definitions (B): any act which is indictable under any of the following provisions of title 18 U.S.C.

³ 18 U.S.C. § 1001 - Crimes and Criminal Procedure § 1001. Statements or entries generally.

⁴ 18 U.S.C. § 1503 (relating to obstruction of justice);

⁵ 18 U.S.C. § 1831 and 1832 (relating to economic espionage and theft of trade secrets).

⁶ Violation of 18 U.S.C. § 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity).

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1957; Unfair Competition Affecting Commerce⁷; Discrimination Practices In Depriving Plaintiff's Right To Appeal To The PTAB after He already Paid His Appeal Fees, USPTO Accrued Frivolous Extension Fees In Order To Abandon Plaintiff's Four (4) Patent Applications In Violation of Plaintiff's Constitutional Rights; Refusing To Grant Patents In Violation of 28 U.S.C. § 1337;

USPTO And Agents Illegally Hacked Into Plaintiff's Gmail And Personal Computer And Erased Emails HE Received From The USPTO; In Violation of 18 U.S.C. § 1030⁸ Which Directly Prohibits Criminal Activity Using Computers; 5 CFR Part § 2635 Standards of Ethics; Request For Criminal/Non-Criminal Referral To The United States Attorney General - U.S. Justice Dep. (18 U.S.C. § 1957(e)⁹ And 18 U.S.C. § 3333¹⁰) For A Civil Investigative Demand Report Under 18 U.S. Code § 1968 Investigation of Such Alleged Racketeering Violation. Request For Relief To Obtain A Patent Pursuant To 35 U.S.C. § 145 From The USPTO; Request For Declaratory Judgment Under 28 U.S.C. § 2201; Injunctive Relief Under 15 U.S.C. § 1116, And Mandamus Under 28 U.S.C. § 1361; For Damages For Injuries

⁷ 18 U.S.C. § 1951 (relating to interference with commerce).

⁸ Mr. Perry's Gmail emails that were exchanged by the USPTO and plaintiff and erased by the hacking are covered under 18 U.S.C. § 1030, relating to fraud and related activity in hacking. See **"Prosecuting Computer Crimes Computer Crime and Intellectual Property Section Criminal Division."** Published by Office of Legal Education Executive Office for United States Attorneys, broadened the definition of **"protected computer"** in 18 U.S.C. § 1030(e)(2) **to the full extent of Congress's commerce power** by including those computers used in or affecting interstate or foreign commerce or communication; and Computer Fraud and Abuse Act provided a mechanism for civil and criminal forfeiture of property used in or derived from section 1030 violations. <https://www.justice.gov/criminal/file/442156/download>.

⁹ 18 U.S.C. § 1957(e): "[V]iolations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate,..."

¹⁰ 18 U.S.C. § 3333(a) (a): "[A] special grand jury impaneled by any district court, with the concurrence of a majority of its members, may, upon completion of its original term, or each extension thereof, submit to the court a report— (1) concerning noncriminal misconduct, malfeasance, or misfeasance in office involving organized criminal activity by an appointed public officer or employee as the basis for a recommendation of removal or disciplinary action..."

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Under Federal Laws (28 U.S.C. § 1357);

Request For A Stay All of USPTO's Actions;
Demand For A Bifurcated Jury Trial On Certain
Issues Covered Under A Jury;

Preserving Issues Deprived After They Were
Brought To Appeal Before The Patent And
Trademark Office Under Fed. R. Civ. P. 50.

(Plaintiff had presented timely administrative
claims to the USPTO Pursuant to 28 U.S.C. §
2675(a), The USPTO failed to response and
waived the Government's sovereign immunity.
This Related Sealed case was originally filed in
the United States Central District Court 1:19-cv-
00637(RGK-JCx) on January 28, 2019 and was
administratively closed on February 1, 2019.
The case was then was heard in the United State
Court of Federal Claims in case No. 1:19-cv-
01797(MHS), who dismissed for lack of
jurisdiction. The CAFC in case No. 20-2084,
affirmed that jurisdiction must be in the district
court.) On December 28, 2021 Mr. Perry
attempted to reopen the 1:19-cv-00637(RGK-
JCx) was denied on January 20, 2022. Mr. Perry
appealed the order to the CAFC Docket No. 22-
1720 who on August 9, 2022 issued an Order
terminating and dismissing Mr. Perry's appeal.

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25 15/382,598, No.:15/709,307 No. 16/599,131 In A Span of 7 Years Were All Maliciously Abandoned
26 Without Recommencing Any Examination In Violation of 18 U.S.C. § 1001. Every Patent Application
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3 1) It is shameful the United States Patent and Trademark Office use disgraceful thievery of
 4 patents applications and intellectual properties from innocent United States citizens, its
 5 untrustworthiness, and its infidelity to law by forcing publication of Mr. Perry’s non-publish patent
 6 applications, and posting them for sale and profit on the USPTO “PublicPair” to make more money.

7 2) Depriving ordinary people as Mr. Moshe Avram Perry the labor of his inventive work is a
 8 sad chapter on American lack of ingenuity and the constant strive for monopolies. This diminishes the
 9 creation of jobs and hurt American people who are looking for work. It makes growth of trade and E-
 Commerce reserved to the rich, and impossibility to the average American to live the American dream.

10 “All animals are equal, but some animals are more equal than
 11 others,” [George Orwell in “Animal Farm.”]¹¹

12 3) Mr. Perry alleges that the USPTO promotes monopolies by creating severe constraints on
 13 ordinary inventors by creating delays and charging frivolous extension fees created from thin air to cause
 14 abandonment of patent applications as was done against Mr. Perry and his small startup company he had
 founded.

15 4) What is alarming is the phenomenon of judge-shopping in patent cases—in which patent
 16 some litigants have taken advantage of the very same quirk in Texas procedure to file a wildly
 17 disproportionate percentage of patent suits in the Waco Division of the Western District of Texas to
 18 undermine patent applicants innocent applicants. Mr. Perry hopes that is not the case in the Eastern
 19 District Court of Virginia in Alexandria.

20 5) In the State of Israel where Mr. Perry is from, the State of Israel grants protection to
 21 patent applicants, which helps the State of Israel which has long been known as “Startup Nation” due
 22 to founding the most tech companies per capita. Israel allows entrepreneurially-minded people and not
 diminish natural entrepreneurs’ minds by losing patents application in the USPTO.

I. COMPLAINT

24 6) Plaintiff Moshe A. Perry (“M.A. PERRY”), for his Complaint against the United States
 25 Patent and Trademark Office (“USPTO”) and Andrei Iancu and examiners, Under Secretary of
 26

27 ¹¹ A proclamation by the story characters in “Animal Farm” who control the government in the
 28 novel of absolute equality of their citizens but give power and privileges to a small elite].

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1 Commerce for Intellectual Property and Director of the United States Patent and Trademark Office,
2 Wendy Garber, Director Patent Technology Center 3600 (No. 3649); Darnell Jayne, Director (No. 3649);
3 USPTO "Hyatt Unit" personnel; Dale Shaw, the Deputy Director Stakeholder Outreach and Patents
4 Ombudsman United States Patent and Trademark Office; Kristine Clarette Matter, (Examiner); Katherine
5 Matecki, (Group Director, Technology Center No. 3649); Laura Martin (Examiner); Shirene Willis
6 Brantley, (Attorney Advisor At The USPTO Petition Department); Charles Steven Brantley, (Attorney
7 Advisor At The USPTO Petition Department, In Their official capacity only, alleges as follows:

7 7) No judgment could ever fully remedy the injuries, discrimination and harassment that the
8 USPTO has inflicted on Mr. PERRY through its illegal mistreatment of him, but in this action Mr. Perry
9 also seeks to stop the USPTO from inflicting yet even greater injury upon him: delaying the vindication
10 of his rights to be fairly heard his patent applications and be issued patents.¹²

11 8) Article I, section 8 of the Constitution¹³ establishes the goal of the U.S. Patent system:
12 scientific progress. Congress adopted a system which attempted "to reconcile this Nation's deep-seated
13 antipathy to monopolies with the need to encourage progress"¹⁴ by motivating innovators to disclose
14 trade secrets in exchange for limited-term protection against the manufacture, use, sale, or importation of
15 products incorporating the protected technology.¹⁵

16 9) The USPTO has only the power granted to them by Congress.¹⁶ As an administrative
17 agency, the USPTO is subject to the Administrative Procedure Act. Among the USPTO's powers is a

18 ¹² See Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC, 138 S. Ct. 1365, 200 L. Ed. 2d
19 671 (2018) "[A]s Chief Justice Marshall explained, courts treated American invention patents as
20 recognizing an "inchoate property" that exists "from the moment of invention." Evans v. Jordan, 8
21 F. Cas. 872, 873 (No. 4,564) (CC Va. 1813). American patent holders thus were thought to "hol[d] a
22 property in [their] invention[s] by as good a title as the farmer holds his farm and flock." Hovey v.
23 Henry, 12 F. Cas. 603, 604 (No. 6,742) (CC Mass. 1846) (Woodbury, J.). And just as with farm and
24 flock, it was widely accepted that the government could divest patent owners of their rights only
25 through proceedings before independent judges..."

26 ¹³ U.S. CONST. art. I, § 8, cl. 8 ("The Congress shall have Power...To promote the Progress of
27 Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right
28 to their respective Writings and Discoveries.").

¹⁴ Diamond v. Chakrabarty, 447 U.S. 303, 319 (1980) (Brennan, J., dissenting); see also Graham v.
John Deere Co., 383 U.S. 1, 7-10 (1966).

¹⁵ 35 U.S.C. § 154(a) (2012) (giving a patent owner the right to prevent competitors from making,
using, selling, or importing the patented invention for a period starting on the date the USPTO issues the
patent and ending twenty years after the effective date of the application.).

¹⁶ The Constitution also provides Congress with a tool for accomplishing that goal. Congress
established the USPTO charged with evaluating which contributions to scientific progress are worthy of
the grant of the monopoly by patent and the standards by which that determination is to be made.

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1 general power to "establish regulations, not inconsistent with the law which...shall govern the conduct of
2 proceedings in the Office."¹⁷ The Federal Circuit has, however, held that this "does not vest the USPTO
3 with any general substantive rulemaking power" it only grants the power to make procedural rules.¹⁸

4 **II. PARTIES**

5 10) Plaintiff Mr. Moshe Avram PERRY resides in Los Angeles County, California. Mr. Perry
6 is a Pro Se inventor who filed four patent applications pending before the United States Patent and
7 Trademark Office ("USPTO"). Mr. PERRY filed, and is the sole owner of Patent Applications which the
8 USPTO acted in bad faith were all unfairly and unreasonably abandoned: No.:14/794,807; No.,
9 15/382,598, and No.:15/709,307 and No. 16/599,131, after Mr. Perry already paid the fees intended for
10 patent applications prosecution, when he was entitled to specific relief, i.e., the grant of his patent
11 applications.

12 11) The only patent prosecution occurred in patent application No.:14/794,807, which patent
13 issuance was denied and after Mr. Perry paid his appeal fees, the USPTO charged Mr. Perry extension
14 fees and then abandoned patent application No.:14/794,807 on February 8, 2018. (Id. Exhibit # 399).

15 12) Defendant United States Patent and Trademark Office ("USPTO") is the federal agency
16 responsible for examining patent applications and for issuing U.S. patents. The USPTO's headquarters is
17 located in Alexandria, Virginia. The USPTO is a government "Agency" under the APA. 5 U.S.C. §
18 701(b)(1).

19 13) Defendant Andrei Iancu is Under Secretary of Commerce for Intellectual Property and
20 Director of the United States Patent and Trademark Office.¹⁹ He has overall responsibility for the
21 administration and operation of the USPTO, including the patent examination process. He is named as a
22 defendant in his administrative and official capacity only.

23 14) Defendants Wendy Garber is the Director Patent Technology Center 3600 (No. 3649);

24 ¹⁷ 35 U.S.C. § 2(b)(2)(A) (2012).

25 ¹⁸ Cooper Techs. Co. v. Dudas, 536 F.3d 1330, 1335 (Fed. Cir. 2008) ("To comply with section
26 2(b)(2)(A), a Patent Office rule must be 'procedural' i.e., it must 'govern the conduct of proceedings in the
27 Office."); Merck & Co., Inc. v. Kessler, 80 F.3d 1543, 1550 (Fed. Cir. 1996); Tafas v. Dudas, 541 F.
28 Supp. 2d 805, 811 (E.D. Va. 2008)

¹⁹ The USPTO has West Coast regional offices in the Silicon Valley, California that is located in the
Wing Building of San Jose City Hall, (built in 2005). Address: 26 S. Fourth Street, San Jose, CA 95113.
Phone: 408-918-9900. Email: SiliconValley@USPTO.GOV. The Silicon Valley USPTO offers the
ability for entrepreneurs and independent inventors to schedule a twenty minute Patent Specialist 1-on-1
Meeting in-person with a USPTO patent prosecution specialist to discuss the patent process at their
regional office. <https://www.uspto.gov/about-us/uspto-locations/silicon-valley-california>.

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1 Darnell Jayne is the Director in Unit No. 3649; Dale Shaw is the Deputy Director Stakeholder Outreach
 2 And Patents Ombudsman United States Patent And Trademark Office; Kristine Clarette Matter was Mr.
 3 Perry's Examiner in his patent application No.:14/794,807; Katherine Matecki, is the Group Director,
 4 Technology Center No. 3600-3649; Laura Martin (Supervisor Examiner); Shirene Willis Brantley, is an
 5 attorney advisor at the USPTO petition department; Charles Steven Brantley is an attorney advisor at the
 6 USPTO petition department.

III. WAIVER OF QUALIFIED IMMUNITY

7
 8 111) Mr. Perry had properly served the USPTO with administrative claim forms prior to filing
 9 his lawsuits holding them responsible for his injuries, for his four patent applications to which the
 10 USPTO had refused and failed to make any final disposition of his claims within six months. See 28
 11 U.S.C. § 2675(a).²⁰

12 112) The USPTO waiver of any sovereign immunity with respect to actions seeking specific
 13 relief for money damages is appropriate, and for such injunction, a declaratory judgment, or a writ of
 14 mandamus is proper. *Bowen v. Massachusetts*, 487 U.S. 879 (1988).

15 113) Qualified immunity is a question of law, not a question of fact. *Torres v. City of Los*
 16 *Angeles*, 548 F.3d 1197, 1210 (9th Cir. 2008). **"Immunity ordinarily should be decided by the court**
 17 **long before trial."** *Hunter v. Bryant*, 502 U.S. 224, 228 (1991). Only when **"historical facts material**
 18 **to the qualified immunity determination are in dispute"** should the district court submit the factual
 19 dispute to a jury. *Torres*, 548 F.3d at 1211; see also *Newmaker v. City of Fortuna*, 842 F.3d 1108, 1116
 20 (9th Cir. 2016).

21 114) If the only material dispute concerns what inferences properly may be drawn from the
 22 historical facts, a district court should decide the issue of qualified immunity. *Conner*, 672 F.3d at 1131
 23 n.2 ("[W]hile determining the facts is the jury's job (where the facts are in dispute), determining what
 24 objectively reasonable inferences may be drawn from such facts may be determined by the court as a
 25 matter of logic and law."). Only the judge can decide whether a particular constitutional right was
 26 **"clearly established"** once any factual issues are resolved by a fact finder. See *Morales v. Fry*, 873 F.3d
 27 817, 823 (9th Cir. 2017).

28 ²⁰ 28 U.S.C. § 2675(a): "[T]he failure of an agency to make final disposition of a claim within
 six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final
 denial of the claim for purposes of this section."(b): Action under this section shall not be
 instituted for any sum in excess of the amount of the claim presented to the federal agency..."

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1 115) A defendant is entitled to qualified immunity as a matter of law only if, taking the facts in
2 the light most favorable to the nonmoving party, he or she did not violate any clearly established
3 constitutional right. *Torres*, 548 F.3d at 1210. If reasonable jurors could believe that the defendant
4 violated the plaintiff's constitutional right, and the right at issue was clearly established, the case should
5 proceed to trial. *Id.*; see also *LaLonde v. County of Riverside*, 204 F.3d 947, 953 (9th Cir. 2000).

6 116) Congress had enacted a partial waiver of the sovereign immunity defense as to judicial
7 review under the Administrative Procedure Act, 5 U.S.C. § 701, et seq. By Pub.L. No. 94-574, Act of
8 October 21, 1976, 90 Stat. 2721, 5 U.S.C. § 702 was amended to provide that an ("action in a court of the
9 United States seeking relief other than money damages and stating a claim that an agency or an officer or
10 employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be
11 dismissed nor relief therein be denied on the ground that it is against the United States or that the United
12 States is an indispensable party.") In addition, 5 U.S.C. § 703 has been amended to allow suit to be
13 brought against the United States or any of its agencies or officers.

14 117) "While federal officials will not be liable for mere mistakes in judgment, whether the
15 mistake is one of fact or one of law, there is no substantial basis for holding that executive officers
16 generally may with impunity discharge their duties in a way that is known to them to violate the
17 Constitution, or in a manner that they should know transgresses a clearly established constitutional rule.
18 Pp. 438 U. S. 504-508." (*Butz v. Economou* 438 U.S. 478 (1978)).

19 118) The Administrative Procedure Act waives sovereign immunity for Mr. Perry's claims. 5
20 U.S.C. §§ 702, 706(1) ("An action in a court of the United States seeking relief other than money
21 damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an
22 official capacity or under color of legal authority **shall not be dismissed nor relief therein be denied** on
23 the ground that it is against the United States.....").²¹

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²¹ "[R]elief in Certain Extraordinary Situations: This notice addresses the extraordinary situation in which a Patent and Trademark Office (PTO) customer has been intentionally deceived by his or her representative, resulting in a potential loss of intellectual property rights. In such a situation, the PTO will mitigate any such potential loss, to the extent possible within the PTO's statutory framework and the bounds of controlling law. To mitigate any such loss, the Commissioner of Patents and Trademarks may suspend or waive certain regulations. When that is the case, the Commissioner will exercise his power to do so under 37 C.F.R. 1.183 and 2.148 ("In an extraordinary situation, when justice requires," the Commissioner has the power to sua sponte suspend or waive any requirement of the regulations which is not required by statute.). In advance of the occurrence of such an extraordinary situation, the Commissioner cannot determine what specific action justice will require. Such action, however, could include waiving of certain non-statutory fees, reviving an abandoned application, or granting an application filing date based on the PTO filing date of a copending document that has all the elements of a patent application required by law. August 11, 1995. BRUCE A. LEHMAN,

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1 119) In *Harlow v. Fitzgerald*, 457 U.S. 800, 457 U.S. 800 (1982), the Supreme Court provided
2 the limits of a qualified immunity: “[g]overnment officials performing discretionary functions generally
3 are shielded from liability for civil damages insofar as their conduct does not violate “clearly established”
4 statutory or constitutional rights of which a reasonable person would have known. Pp. 457 U. S. 815-
5 819.” (“Citations”)

6 **IV. JURISDICTION**

7 15) The Supreme Court has counseled that “[n]ot every claim invoking the Constitution...is
8 **cognizable under the Tucker Act.**” The claim must be one for money damages against the United
9 States.” Id. *Mitchell v. United States*, 463 U.S. 206, 216-17 (1983) at 216. In *Carruth v. United States*,
10 224 Ct.Cl. 422, 627 F.2d 1068 (1980); *Crocker v. United States*, 125 F.3d 1475, 1476 (Fed.Cir.1997), the
11 court of Appeals for the Federal Circuit (“CAFC”) had explained that the District Court has jurisdiction
12 to hear a case and award punitive damages, when the Federal Claims Court does not have jurisdiction
13 over claims involving **due process violations of the Fifth or Fourteenth Amendment.** Similarly, the
14 United States Court of Federal Claims does not have jurisdiction to consider the propriety of a taking.
15 See *Crocker*, 125 F.3d at 1476.

16 16) See *Contreras v. United States*, 64 Fed. Cl. 583, 588 (2005); see also Mitchell, 463 U.S. at
17 216-18: “[I]f a plaintiff is not proceeding under a contract with the United States, he must
18 **demonstrate that his cause of action is “based on a law or regulation that either entitles the plaintiff
19 to a payment of money from the government, or places a duty upon the government, the breach of
20 which gives the plaintiff a money damages remedy.”** (“Citation”)

21 17) This is an action seeking (1) specific relief from retention of patent applications fees under
22 the Administrative Procedure Act (“APA”) without examinations to charge fraudulent, frivolous
23 extension fees in order to cause abandonment of patent applications. The APA authorizes the District
24 Court to hear and decide claims against federal agencies seeking “*relief other than money damages.*” 5
25 U.S.C. § 702. Specific relief is such a remedy. See generally *Bowen v. Massachusetts*, 487 U.S. 879
26 (1988).

27 18) The district courts have original jurisdiction of any civil action or proceeding arising under
28 any Act of Congress regulating commerce or protecting trade and commerce against restraints and

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks
[1178 OG 42]” <https://www.uspto.gov/news/og/1995/week37/patreli.htm>.

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1 monopolies under 28 U.S.C. §§ 1337 (Commerce and antitrust), unfair competition under 28 U.S.C. §
2 1338(a).

3 19) The district court review may be predicated on the general federal question jurisdiction
4 statute, 28 U.S.C. § 1331.²² See in *Leedom v. Kyne*, 358 U.S. 184, 79 S.Ct. 180, 3 L.Ed.2d 210 (1958),
5 the Supreme Court held that a District Court has jurisdiction under an exception in 28 U.S.C. § 1331 in
6 the very limited circumstance where there is a clear violation of an express mandate of the statute, and
7 the plaintiff has no alternative means of review. See *Hartz Mountain Corporation v. Dotson*, 727 F.2d
8 1308, 1311-12 (D.C. Cir. 1984). (“Citation”) *Telecommunications Research Action v. F.C.C.*, 750 F.2d
9 70, 242 U.S. App. D.C. 222 (D.C. Cir. 1984).

10 20) 28 U.S.C. § 1331 is the principal basis of federal jurisdiction in litigation against the
11 federal government and its agencies for injunctive relief. Under *Bivens v. Six Unknown Named Agents*,
12 *individual employees of the federal government* are subject to suit for damages for acts in violation of
13 plaintiffs’ federal constitutional rights.

14 21) The district courts also have jurisdiction under specific statutory provisions for the
15 recovery of money damages under the “*Little Tucker Act*” (28 U.S.C. § 1346),²³ and the Federal Tort
16 Claims Act, are unaffected. [See H.Rep. 94-1656, p. 13, 1976 U.S. Code Cong. & Ad. News 6133].

17 22) The district court also has the duty to examine sua sponte whether jurisdiction exists,
18 regardless how the parties have framed their claims. See, e.g. *Gonzalez v. Thaler*, 565 U.S. 134, 141
19 (2012): “[W]hen a requirement goes to subject matter jurisdiction, courts are obligated to consider
20 sua sponte the issues that the parties have disclaimed or have not presented. Subject matter
21 jurisdiction can never be waived or forfeited.” (internal citations omitted).

22 ²² The barrier to judicial review of administrative action was removed by section 2 of Pub.L. No.
23 94-574, which amended 28 U.S.C. § 1331(a) so as to eliminate the \$10,000 amount-in-controversy
24 requirement in actions against the United States, any agency thereof, or any officer or employee thereof
25 in his official capacity. This provision persuaded the Supreme Court to conclude that, subject to
26 preclusion-of-review statutes, jurisdiction to review agency action is conferred by 28 U.S.C. § 1331, and
27 that the Administrative Procedure Act is not an independent grant of jurisdiction. See *Califano v.*
28 *Sanders*, 430 U.S. 99, 105-07 (1977).

²³ The “**Tucker Act**” (March 3, 1887, ch. 359, 24 Stat. 505, 28 U.S.C. § 1491) is a federal statute of
the United States by which the United States government has waived its sovereign immunity with respect
to certain lawsuits. The Tucker Act may be divided into the “**Big**” Tucker Act, which applies to claims
above \$10,000 and the “**Little**” Tucker Act (28 U.S.C. § 1346), gives jurisdiction to the United States
Court of Federal Claims, and the United States District Courts jurisdiction “for the recovery of any
erroneous or illegal assessed or collected, or any penalty claimed to have been collected without authority
or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-
revenue laws”, and for claims below \$10,000.

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1 23) Plaintiff PERRY private rights²⁴ for “Novel” patent concept and ideas. (Post, at 10
2 (quoting McCormick Harvesting Machine Co. v. Aultman, 169 U. S. 606, 612 (1898)). See, e.g., Florida
3 Prepaid Postsecondary Ed. Expense Bd. v. College Savings Bank, 527 U. S. 627, 642 (1999); James v.
4 Campbell, 104 U. S. 356, 358 (1882).

5 24) This Court has duty to examine sua sponte whether jurisdiction exists, regardless how the
6 parties have framed their claims. See, e.g. Gonzalez v. Thaler, 565 U.S. 134, 141 (2012) (“When a
7 requirement goes to subject matter jurisdiction, courts are obligated to consider sua sponte the issues that
8 the parties have disclaimed or have not presented. Subject matter jurisdiction can never be waived or
9 forfeited.”) (internal citations omitted).

10 25) In United States v. Yermian, 468 U.S. 63, 73, 104 S.Ct. 2936, 82 L.Ed.2d 53 (1984)
11 determine the propriety of implied **cause of action** from federal statutes, “our focus must be on the intent
12 of Congress when it enacted the statutes....” Daily Income Fund, Inc. v. Fox, 464 U.S. 523, 536, 104

13 ²⁴ See Oil States Energy Services, LLC v. Greene's Energy Group, LLC. (16-712, 04-24-2018).
14 JUSTICE BREYER, with whom JUSTICE GINSBURG and JUSTICE SOTOMAYOR join, concurring:
15 “[B]ut the Court’s opinion should not be read to say that matters involving private rights may never be
16 adjudicated other than by Article III courts, say, **sometimes by agencies**. Our precedent is to the
17 contrary. Stern v. Marshall, 564 U. S. 462, 494 (2011); Commodity Futures Trading Comm’n v. Schor,
18 478 U. S. 833, 853–856 (1986); see also Stern, supra, at 513 (BREYER, J., dissenting) (“The presence of
19 ‘private rights’ does not automatically determine the outcome of the question but requires a more
20 ‘searching’ examination of the relevant factors”)....” This Court has not “definitively explained” the
21 distinction between public and private rights, Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.,
458 U. S. 50, 69 (1982), and its precedents applying the public-rights doctrine have “not been entirely
22 consistent,” Stern, 564 U. S., at 488....Our precedents have recognized that the doctrine covers matters
23 “which arise between the Government and persons subject to its authority in connection with the
24 performance of the constitutional functions of the executive or legislative departments.” Crowell v.
25 Benson, 285 U. S. 22, 50 (1932). In other words, the public-rights doctrine applies to matters “‘arising
26 between the government and others, which from their nature do not require judicial determination and yet
27 are susceptible of it.’” Ibid. (quoting Ex parte Bakelite Corp., 279 U. S. 438, 451 (1929))....”

28 JUSTICE GORSUCH, with whom THE CHIEF JUSTICE joins, dissenting: “The Constitution’s
original public meaning supplies the key, for the Constitution cannot secure the people’s liberty any less
today than it did the day it was ratified. The relevant constitutional provision, Article III, explains that the
federal “judicial Power” is vested in independent judges. As originally understood, the judicial power
extended to “suit[s] at the common law, or in equity, or admiralty. Murray’s Lessee v. Hoboken Land &
Improvement Co., 18 How. 272, 284 (1856). From this and as we’ve recently explained, it follows that,
“[w]hen a suit is made of the stuff of the traditional actions at common law tried by the courts at
Westminster in 1789....and is brought within the bounds of federal jurisdiction, the responsibility for
deciding that suit rests with” Article III judges endowed with the protections for their independence the
framers thought so important. Stern v. Marshall, 564 U. S. 462, 484 (2011) (internal quotation marks
omitted). The Court does not quarrel with this test. See ante, at 12–14. We part ways only on its
application”

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1 S.Ct. 831, 838, 78 L.Ed.2d 645 (1984). Accord California v. Sierra Club, 451 U.S. 287, 101 S.Ct. 1775,
2 68 L.Ed.2d 101 (1981); Home Health Services, Inc. v. Currie, 531 F. Supp. 476 (D.S.C. 1982), aff'd 706
3 F.2d 497 (4 Cir. 1983).

4 26) 28 U.S.C. § 1361 confers on the district courts “jurisdiction of any action in the nature of
5 mandamus to compel” a federal officer, employee, or agency “to perform a duty owed to the
6 plaintiff.” The mandamus jurisdiction conferred by this provision is available only if the plaintiff has a
7 clear right to relief, the duty breached is “a clear nondiscretionary duty,” and no other remedy is
8 available. Bowen v. Massachusetts, 487 U.S. 879 (1988).

9 27) See 5 U.S.C. §§ 701–706; (2) monetary relief under the Fifth Amendment’s Takings
10 Clause, U.S. Const. amend. V; (3) an order under the APA setting aside the USPTO’s unlawful policies
11 regarding all of Mr. Perry’s applications; (4) an order under the APA and writ of mandamus under the All
12 Writs Act, 28 U.S.C. § 1651, directing Defendants to act on Mr. PERRY’s applications in accordance
13 with law; (5) PERRY also seeks Declaratory Judgment Act, 28 U.S.C. § 2201 (§§ 2201–02), is to provide
14 an additional remedy, once jurisdiction is found to exist on another ground. See Benson v. State Bd. of
Parole and Probation, 384 F.2d 238, 239 (9th Cir. 1967), cert. denied, 391 U.S. 954 (1968); Schilling v.
Rogers, 363 U.S. 666, 677 (1960). See United States v. Ajoku, 584 Fed. App’x 824 (9th Cir. 2014).

15 28) The United States district court has subject matter jurisdiction under 28 U.S.C. § 2675(a),
16 the Federal Tort Claims Act (“FTCA”), like the Tucker Act waives the Government’s sovereign immunity
17 for any “injury or loss caused by the negligent or wrongful act of a Government employee acting within
18 the scope of his or her employment.” Medina v. United States, 259 F.3d 220, 223 (4th Cir. 2001).

19 29) This waiver includes actions for tortious harassment, so long as they are otherwise proper
20 before the Court. But for an FTCA claim to be properly before the Court, a plaintiff must first present an
21 administrative claim to the agency allegedly responsible for the plaintiff’s injury. See 28 U.S.C. §
22 2675(a).

23 30) The District Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
24 1361 - Action to compel an officer of the United States to perform his duty, and 28 U.S. Code § 1355(a)
25 “The district courts shall have original jurisdiction, exclusive of the courts of the States, of any
26 action or proceeding for the recovery...” 28 U.S. Code § 1355(c) & (d): “In any case in which a final
27 order disposing of property in a civil forfeiture action...shall not deprive the court of
28 jurisdiction...”

120) The district courts have also subject matter jurisdiction under 18 U.S.C. § 1001. The
current version of 18 U.S.C. § 1001 was enacted to “protect the authorized functions of governmental

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1 departments and agencies from the perversion which might result from...deceptive practices,” *United*
 2 *States v. Rodgers*, 466 U.S. 475, 480 (1984) (quoting *United States v. Gilliland*, 312 U.S. 86, 93 (1941)).
 3 18 U.S.C. § 1001 (false statements).

4 121) See 18 U.S.C. § 1001(a) in *United States v. Riccio*, 529 F.3d 529 F.3d 40 (2008):
 5 “Section § 1001 requires proof that the false statement was made “knowingly and willfully.” While
 6 interpreting the term willfulness, we have held that it means,“ nothing more in this context than that the
 7 defendant knew that his statement was false when he made it or-which amounts in law to the same thing-
 8 consciously disregarded or averted his eyes from its likely falsity.” *United States v. Gonsalves*, 435 F.3d
 9 64, 72 (1st Cir.2006). In *Gonsalves*, the court expressly rejected the argument that § 1001 requires “an
 intent to deceive.”

10 31) A district court’s equity jurisdiction provides broad and flexible powers to deliver justice
 11 in unique factual circumstances. In this case, equity would counsel that the USPTO should reinstate grant
 12 PERRY his Patent Application No.:14/794,807; and continue prosecution of PERRY’s other two patent
 13 applications No.: 15/382,598, and No.:15/709,307, after they already received payments for all
 outstanding extension fees. This relief will remedy the USPTO’s arbitrary and capricious actions.

14 32) **“A district court’s equity jurisdiction provides broad and flexible powers to deliver**
 15 **justice in unique factual circumstances. “The essence of a court’s equity power lies in its inherent**
 16 **capacity to adjust remedies in a feasible and practical way to eliminate the conditions or redress**
 17 **the injuries caused by unlawful action. Equitable remedies must be flexible if these underlying**
 18 **principles are to be enforced with fairness and precision.”** See in *Taylor v. United States PTO*, 339
 F. App’x. 995 (Fed. Cir. 2009) citing *Freeman v. Pitts*, 503 U.S. 467, 487 (1992).

19 122) Under 28 U.S. Code § 1357²⁵ for Injuries under Federal laws: The district courts shall
 20 have original jurisdiction of any civil action commenced by any person to recover damages for any injury
 21 to his person or property on account of any act done by him, under any Act of Congress, for the
 22 protection or collection of any of the revenues, or to enforce the right of citizens of the United States to
 vote in any State. (June 25, 1948, ch. 646, 62 Stat. 934.)

23 33) 28 U.S.C. § 1355 - Fine, penalty or forfeiture, with the United States as defendant (a) (2)
 24 Any other civil action or claim against the United States, even those exceeding \$10,000 in amount,
 25 founded either upon the Constitution, or any Act of Congress, or any regulation of an executive
 26 department, or upon any express or implied contract with the United States, or for liquidated or

27
 28 ²⁵ Title 28 U.S. Code § 1498 - Patent and copyright cases.

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1 unliquidated damages in cases not sounding in tort, in connection with the transactions, acts, practices
2 and courses of business alleged in this Complaint.

3 **V. VENUE**

4 34) Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 1391 and
5 Local Civil Rule L.R. 3-1 F.R.Civ.P. 16 and L.R. 16.²⁶ Mr. PERRY resides in Los Angeles County,
6 California. Mr. PERRY filed, and is the sole owner of Patent Applications No.:14/794,807; No.:
7 15/382,598, and No.:15/709,307 Applications that were unreasonably and arbitrarily delayed to incur
8 extension fees to cause the patent Applications to be abandoned. The USPTO caused damages to
9 PERRY by ignoring his December 12, 2016 data application plainly stated "**Non-Publication,**" the
10 USPTO unlawfully and impermissibly posted PERRY's patent specifications, drawing and claim patent
11 Application No.: 15/382,598 online in USPTO "PublicPair²⁷Portal" – "EFS-Web" for anyone to see.

12 35) The Defendants USPTO has West Coast regional offices in the Silicon Valley, California
13 that is located in the Wing Building of San Jose City Hall, (built in 2005). The USPTO West Coast
14 regional offices in the Silicon Valley address: 26 S. Fourth Street, San Jose, CA 95113. Phone: 408-918-
15 9900. Email: SiliconValley@USPTO.GOV.²⁸

16 **VI. NATURE OF THE ACTION**

17 36) The USPTO has a nondiscretionary duty to examine patent applications and in right and
18 proper manner to issue patent applications that present patentable claims. 35 U.S.C. §§ 131. Likewise,
19 an applicant who satisfies the conditions for patentability "**shall be entitled to a patent.**" 35 U.S.C. §
20 102(a). Under the Patent Act, the USPTO is "**responsible for the granting and issuing of patents.**" 35
21 USC §2(a)(1). When an inventor applies for a patent, an examiner reviews the proposed claims²⁹ and the
22 prior art to determine if the claims meet the statutory requirements. See §§112, 131.

23 37) Those requirements include utility, novelty, and non-obviousness based on the prior art.
24 §§101, 102, 103. The Director of the PTO then approves or rejects the application. See §§131, 132(a). An
25 applicant can seek judicial review of a final rejection. §§141(a) and 145. The USPTO is governed by the

26 ²⁶ See Rules Enabling Act, 28 U.S.C. §§ 2071–2077. 28 U.S.C. § 2072. Rules of procedure and
27 evidence; power to prescribe: (a) The Supreme Court shall have the power to prescribe general rules of
28 practice and procedure and rules of evidence for cases in the United States district courts (including
proceedings before magistrates thereof) and courts of appeals. (b) Such rules shall not abridge,
enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further
force or effect after such rules have taken effect..."

²⁷ <https://portal.uspto.gov/pair/PublicPair>.

²⁸ <https://www.uspto.gov/about-us/uspto-locations/silicon-valley-california>.

²⁹ 37 CFR 1.75 - Claim(s) - §1.75(b) which states that a patent application may contain more than
one claim provided that they differ substantially from each other and are not unduly multiple.

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1 Patent Act and its own regulations, and the MPEP provides further guidance.

2 38) 37 CFR § 42.100: “[T]he Office will apply the standard used in federal courts, in other
3 words, the claim construction standard that would be used to construe the claim in a civil action under 35
4 U.S.C. 282(b), which is articulated in Phillips. This rule reflects that the PTAB in an AIA proceeding will
5 apply the same standard applied in federal courts to construe patent claims.”

6 39) The Patent Act established the USPTO, making the USPTO “**responsible for the**
7 **granting and issuing of patents,**” and authorizing it to establish regulations to “govern the conduct of
8 proceedings in the Office.” See 5 CFR. Part § 2635³⁰ set Standards of Ethics Conduct and 35 U.S.C. §
9 2(a)(1), (b)(2)(A).

10 40) The USPTO—like all federal agencies operating under the Administrative Procedure Act
11 (APA) may also adopt guidance, consistent with its statutes and regulations, covering “interpretative
12 rules, general statements of policy, or rules of agency organization, procedure, or practice.” 5 U.S.C. §
13 553(b)(A). The USPTO Manual of Patent Examination Procedure (MPEP)³¹ that lays out, in detail,
14 procedures that guide patent examination by the USPTO. It interprets relevant regulations, provides
15 explanations of specific scenarios that may arise, and gives patent examiners guidance on how to respond
16 to certain situations.

17 41) In the case of Plaintiff, Mr. Perry, the USPTO process of patent prosecution and the evil
18 malicious examination and the petitions decision process³² which covers up USPTO improprieties with
19 continuance petitions, has consistently violated Plaintiff’s due process in his four patents applications
20 pursuant to the Administrative Procedures Act, 5 USC § 701 et. seq., and damaged Plaintiff with no other
21 fair remedy other than civil action in a district court against the USPTO Director who intend to use
22 continued reexamination with no end. See Arnold v. Dudas, 362 F.3d 1338; 2004 U.S. App. LEXIS
23 5513; 70 USPQ2d 1311 (Fed. Cir. 2004). To succeed under 5 USC § 701 et. seq., the Plaintiff must
24 show that the decisions by the USPTO complained of were:

- 25 1. Arbitrary, capricious, an abuse of discretion, or otherwise not in
26 accordance with law;
- 27 2. Contrary to constitutional right, power, privilege, or immunity;
- 28

³⁰ Employees of the Executive Branch are subject to provisions of 5 CFR. Part 2635 which set forth Standards of Ethics Conduct.

³¹ The MPEP is publicly available at <http://www.uspto.gov/web/offices/pac/mpep/>, including current and archived versions. Unless noted otherwise, citations refer to the current version.

³² Petitions contain factual assertions. Factual assertions in petitions are material within the sense of rule 56. General Electro Music Corp. v. Samick Music Corp., 19 F.2d 1405, 30 USPQ2d 1149, 1154 (Fed. Cir. 1994)(“Relating to false statements in a petition to make special regarding existence of prior art search”).

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- 1 3. in excess of statutory jurisdiction, authority, or limitations, or short of
statutory right;
- 2 4. Without observance of procedure required by law;
- 3 5. Unsupported by substantial evidence in a case subject to sections 556 and
557 of this title or otherwise reviewed on the record of an agency hearing
4 provided by statute; or
- 5 6. Unwarranted by the facts to the extent that the facts are subject to trial de
novo by the reviewing court. [5 USC 706(2).]

6 **VII. FACTS**

7 42) Plaintiff Moshe A. Perry ("Mr. Perry") filed four patent applications and after he paid all
8 of his patent prosecution fees the USPTO intentionally engaged in deception in one patent examination
9 No.:14/794,807, and intentional delayed processing the patent application and accrued extension fees to
10 caused ALL of Mr. Perry's four (4) patent applications to be abandoned: No.:14/794,807; No.,
11 15/382,598, No.:15/709,307 and No. 16/599,131, for alleged frivolous extension fees.

12 43) Only one Application No.:14/794,807 had reached a final agency action, entitled: "**HOME**
13 **GROCERIES SHOPPING AND/WITH HOME CHEF COOKING SERVICES AND/WITH ONLY**
14 **GROCERIES SHOPPING BY DRIVER/CHEFS."** When Mr. Perry requested accounting of all the
15 fees he paid of the USPTO fees, the USPTO delayed giving him accounting and after Mr. Perry paid his
16 appeal fees, the USPTO without notice abandoned his four patent applications: No.:14/794,807; No.,
17 15/382,598, No.:15/709,307 and No. 16/599,131, claiming he owed extension fees. However, upon
18 proof he paid all of his fees, the USPTO claimed they owe him no duty to provide his notice of the
19 extension fees.

20 44) On Mar 27, 2018, 9:18 AM, Dale M. Shaw, the Deputy Director Stakeholder Outreach
and Patents Ombudsman United States Patent and Trademark Office called Mr. PERRY and left him a
voicemail. This while PERRY several of PERRY's petitions were pending on his patent applications:

21 "Mr. Perry this is Dale Shaw from the pens Ombudsman program. We have
22 found your petition to petition is now back in the file as unfortunately is my
23 letter to the two that you sent to me. It is also part of the record. If you put it
24 in the same envelope, that's how it's supposed to be that's the rules so that's
25 how that is going sent you a file the petition I suggest that you wait until the
26 petition decision is decided that is what the Ombudsman program would be
27 doing we would tell you to send it to petitions to file your petition. **The**
28 **Ombudsman cannot revive the case and, the Ombudsman cannot**
reactivate the case change your examiner or any of that type of the
scenario. So at this point in time you have to wait for the petition decision
from...from the office of petitions if you have questions, please feel free to
give me a call 571-272-5555. Thank you. Goodbye."

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1 45) Finally on July 19, 2018, the USPTO provided PERRY an incomprehensible, inadequate
2 letters that failed to account to each and every payment made, and explain all the fees that PERRY had
3 paid timely on each of the four applications. (No.:14/794,807; No., 15/382,598, No.:15/709,307 and No.
4 16/599,131). However, reviving applications are not necessary when patent Application would be
5 reinstated with no fees pursuant to 37 C.F.R §2.64(a).³³

6 **VIII. BACKGROUND**

7 46) Mr. Perry is a Pro Se inventor of four (4) patents applications No.:14/794,807;
8 15/382,598, No.:15/709,307 and No. 16/599,131. Plaintiff claims that the PTO has unlawfully abandoned
9 through actions that he is challenging. The PTO has prejudged Mr. PERRY's patent applications.

10 47) Plaintiff contends that the USPTO intended to abandon all of his patent applications
11 No.:14/794,807; 15/382,598, No.:15/709,307 And No. 16/599,131 the USPTO protracted delays to incur
12 extensions fees against PERRY, leading to the abandonment of his applications. The USPTO has issued
13 Office Actions containing misleading prosecution laches rejections in Mr. Perry's applications, and
14 intended to enter prosecution laches rejections in all of Mr. Perry's applications.

15 **IX. STATEMENT**

16 48) Fed. R. Civ. P. 8(d) Pleading To Be Concise And Direct; Alternative Statements;
17 Inconsistency. (1) In General. Each allegation must be simple, concise, and direct. No technical form is
18 required. (2) Alternative Statements of a Claim or Defense. A party may set out 2 or more statements of
19 a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones.
20 If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient. (3)
21 Inconsistent Claims or Defenses. A party may state as many separate claims or defenses as it has,
22 regardless of consistency.

23 49) Fed. R. Civ. Proc. 8(d)(2): Alternative Statements of a Claim or Defense: **A party may**
24 **set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single**
25 **count or defense or in separate ones. If a party makes alternative statements, the pleading is**
26 **sufficient if any one of them is sufficient.** *Jones v. Bock*, 549 U.S. 199, 127 S. Ct. 910, 166 L. Ed. 2d
27 798 (2007).

28 ³³ See 37 C.F.R §2.64(a). "If an applicant has proof that an application was inadvertently abandoned due to a USPTO error, an applicant may file a request to reinstate the application, instead of a formal petition to revive. There is no fee for a request for reinstatement."

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1 50) A plaintiff must set forth “the grounds of his entitlement to relief[,]” which “requires more
2 than labels and conclusions, and a formulaic recitation of the elements of a cause of action....” Id. at
3 1964-65 (internal quotations and citations omitted). A plaintiff must set forth “the grounds of his
4 entitlement to relief[,]” which “requires more than labels and conclusions, and a formulaic recitation of
5 the elements of a cause of action....” Id. at 1964-65 (internal quotations and citations omitted).

6 51) See Twombly, 550 U.S. at 556: “[A] court **“must accept as true all the factual**
7 **allegations in the complaint.”** Leatherman, 507 U.S. at 164. See also Jones v. Bock, 549 U.S. 199, 221
8 (2007): “[A]s a general matter, if a complaint contains both good and bad claims, the court
9 **proceeds with the good and leaves the bad.”**... “[O]nly the bad claims are dismissed; the complaint as a
10 whole is not. If Congress meant to depart from this norm, we would expect some indication of that, and
11 we find none.” Robinson v. Page, 170 F.3d 747, 748-749 (C.A.7 1999). See also Fed. R.Civ. P. 8(d)(2)(a)
12 “[p]arty may set out 2 or more statements of a claim or defense alternatively or hypothetically,... [and]
13 the pleading is sufficient if any one of them is sufficient.”

14 52) See Twombly, 550 U.S. at 566: “[A] complaint may proceed even if it strikes a savvy
15 judge that actual proof of those facts is improbable”). **“Even if one were to determine that the**
16 **allegations of the harassment campaign are unlikely, they are not out of the realm of possibility.**
17 **“Unlikely” is also not the standard which a complaint may be dismissed under Fed. R. Civ. P. 12(B)(6).**

18 53) Notwithstanding, to **“dismiss [even factual allegations deemed] as frivolous without**
19 **any factual development is to disregard the age-old insight that many allegations might be**
20 **“strange, but true; for truth is always strange, Stranger than fiction.”** Denton v. Hernandez, 504 U.S.
21 25, 33 (1992) (quoting Lord Byron, *Don Juan*, canto XIV, stanza 101 (T. Steffan, E. Steffan, W. Pratt
22 eds. 1977)).” (“Citations”)

23 54) See King v. Burwell, 135 S.Ct. 2480 (2015); Utility Air Regulatory Group v. E.P.A., 134
24 S.Ct. 2427 (2014): **“The Court's decision reflects the philosophy that judges should endure**
25 **whatever interpretive distortions it takes in order to correct a supposed flaw in the statutory**
26 **machinery. That philosophy ignores the American people's decision to give Congress “[a]ll**
27 **legislative Powers” enumerated in the Constitution. Art. I, § 1. They made Congress, not this Court,**
28 **responsible for both making laws and mending them. This Court holds only the judicial power—the**
power to pronounce the law as Congress has enacted it. We lack the prerogative to repair laws that do
not work out in practice, just as the people lack the ability to throw us out of office if they dislike
the solutions we concoct. We must always remember, therefore, that “[o]ur task is to apply the text, not

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1 to improve upon it." Pavelic & LeFlore v. Marvel Entertainment Group, Div. of Cadence Industries
2 Corp., 493 U.S. 120, 126, 110 S.Ct. 456, 107 L.Ed.2d 438 (1989)."

3 **FIRST CAUSE OF ACTION**

4 [Cause of Action Under 42 U.S.C. § 1983 The USPTO's "Deliberate
5 Ignorance"³⁴ Implicates Fraud For Deprivation of Constitutional Rights
6 Under The Fourteenth Amendment To Due Process And Equal Protection
7 of The Laws For Violations of The Fifth Or Fourteenth Amendment;
8 Depriving Plaintiff's Right To Appeal To The PTAB after He already Paid
9 His Appeal Fees, And For Retaliation After Mr. Perry Complained
10 Against The Examiner Kristen Clarette Matter Intentionally Ignored 37
11 CFR 41.41 By Filing Her "Advisory Action Before The Filing of An
12 Appeal Brief" (Exhibit # 383) In Violation of MPEP § 1208; 37 C.F.R.
13 41.40 "After Receipt of A Reply Brief Under 37 CFR 41.41, Jurisdiction
14 Over The Appeal Passes To The Board."]

15 1) Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
16 paragraphs 1 above through 265 inclusive, as though fully set forth herein.

17 1) On July 9, 2015, Plaintiff filed/registered/submitted his nonprovisional patent
18 "Application Data Sheet 37 CFR 1.76," No.:14/794/,807, on the USPTO Online filing system "EFS-Web
19 Registered." (**Id. Ex. # 101**). Mr. Perry's patent states: "***HOME GROCERIES SHOPPING***
20 ***AND/WITH HOME CHEF COOKING SERVICES AND/WITH ONLY GROCERIES SHOPPING***
21 ***BY DRIVER/CHEFS.***"

22 i. **The USPTO Examiner Kristine Clarette Matter's Used Manipulation**
23 **And Rhetoric Many Times In Contradiction of Other Statement She**
24 **Made In Order To Misapply Patent Laws To Confuse Mr. Perry's**
25 **English A Second Language To Discriminate Against Him; The**
26 **Examiner Knowingly and Intentionally Engaged In Deception During**
27 **Prosecution of Mr. Perry's Patent Application," No.:14/794/,807.**

28 ³⁴ The application of "Deliberate Ignorance" theory to establish fraudulent knowledge regarding material facts surrounding Mr. Perry's invention is tantamount to knowingly violating patent law, would constitute "knowledge" of fraud as a matter of law. PERRY may establish deliberate ignorance by offering circumstantial evidence. "The record need not contain direct evidence....that the defendant deliberately avoided knowledge of wrongdoing; all that is necessary is evidence from which the jury could infer deliberate avoidance of knowledge." United States v. Whittington, 26 F.3d 456, 463 (4th Cir. 1994). In determining whether the evidence supports the charge, the evidence and all reasonable inferences that may be drawn from it are viewed in the light most favorable to the government. See United States v. Sharpe, 193 F.3d 852, 871 (5th Cir. 1999). "It is not required that the evidence supporting such an instruction be introduced by the government rather than by the defense." United States v. Bautista, 252 F.3d 141, 147 (2d Cir.2001).

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1 2) On March 13, 2017, USPTO Examiner Kristine Clarette Matter and her supervisor
2 Katherine Matecki, Director Patent Technology Center 3600 issued an "Office Action Summary" citing
3 as "Kitchensurfing" (Kosoff et. al.) was not a patent, but it anticipated Mr. Perry's patent claim and
4 specification. The examiner referred to "ingredients" in "Kitchensurfing" as general term to
5 "groceries," ignoring completely Mr. Perry's reference to combination of chef services and groceries.

6 3) The Examiner intentionally ignored Mr. Perry's assertions in his patent application
7 referring to "groceries" as a whole to mean to all groceries found in a grocery store, food, and none
8 foods items, frozen and non frozen foods, cleaning materials, pet foods, and all other types of items that
9 can found in a grocery store. But the bias and hostile Examiner Kristine Clarette Matter arbitrarily
10 misconstrued the meaning of his patent application as referring to only "groceries" and insisted it was to
11 be limited to "ingredients for meals," (food) by "Kitchensurfing" ("Kosoff et. al.").

12 4) The Examiner refused to consider the merits of Mr. Perry's arguments and she denied his
13 application was more likely a result of her being a hired gun by monopolies the likes of companies as
14 Amazon.com and InstaCart. The Examiner claimed Mr. Perry's abstract failed to provide a statement
15 of technical disclosure; it had multiple paragraphs and more than 150 words.

16 5) See claim construction³⁵ in Phillips v. AWH Corp., 415 F.3d 1303 (Fed. Cir. 2005),
17 holding that "**[b]ecause extrinsic evidence can help educate the court regarding the field of the
18 invention and can help the court determine what a person of ordinary skill in the art would**

19 ³⁵ See claim construction in Phillips v. AWH Corp., 415 F.3d 1303 (Fed. Cir. 2005), and the Federal
20 Register, Volume 83 Issue 197 (Thursday, October 11, 2018). [Rules and Regulations], pages 51340-
21 51359: "[claim construction begins with the language of the claims. Phillips, 415 F.3d at 1312-14.
22 The "words of a claim are generally given their ordinary and customary meaning," which is "the
23 meaning that the term would have to a person of ordinary skill in the art in question at the time of
24 the invention, i.e., as of the effective filing date of the patent application." Id. at 1312-13. The
25 specification is "the single best guide to the meaning of a disputed term and...acts as a dictionary when
26 it expressly defines terms used in the claims or when it defines terms by implication." Id. at 1321
27 (internal quotation marks omitted). Although the prosecution history "often lacks the clarity of the
28 specification and thus is less useful for claim construction purposes." it is another source of
intrinsic evidence that can "inform the meaning of the claim language by demonstrating how the
inventor understood the invention and whether the inventor limited the invention in the course of
prosecution, making the claim scope narrower than it would otherwise be." Id. at 1317. Extrinsic
evidence, such as expert testimony and dictionaries, may be useful in educating the court regarding the
field of the invention or helping determine what a person of ordinary skill in the art would understand
claim terms to mean. Id. at 1318-19. However, extrinsic evidence in general is viewed as less reliable
than intrinsic evidence. Id. Additionally, to the extent that federal courts and the ITC apply the doctrine
of construing claims to preserve their validity as described in Phillips, the Office will apply this doctrine
in those rare circumstances in AIA proceedings. Phillips, 415 F.3d at 1327-28. As the Federal Circuit
recognized in Phillips, this doctrine is "of limited utility." Id. at 1328."

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1 understand claim terms to mean, it is permissible for the district court in its sound discretion to
2 admit and use such evidence".

3 6) The subject matter eligibility inquiry set forth by the Supreme Court in *Alice Corp. Pty.*
4 *Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014) and *Mayo Collaborative Services v. Prometheus*
5 *Laboratories, Inc.*, 566 U.S. (2012), summarized as a two step test in which step one is the determination
6 of whether the claims are directed to a patent-ineligible concept, such as an abstract idea, and step two is
7 the determination of whether the claims limitations (either individually or as an ordered combination)
8 amount to significantly more than the patent-ineligible concept thus transforming the claim into a patent-
9 eligible application of the concept.

10 7) The Examiner Kristine Clarette Matter based her rejections on 35 U.S.C. §§ 101, 102, 103
11 and 35 U.S.C. 112(b), while she failed to take step 1, step 2A, Step 2B under *Alice Corp. Pty. Ltd. v. CLS*
12 *Bank Intern.*, 134 S. Ct. 2347 (2014).

13 8) The USPTO had already granted patents to other patent application of other combinations
14 in unrelated patent applications, for example as "Groceries Delivery" in Patent # US6871184B1 –
15 "Method of delivering groceries purchased over the internet"; or Patent # 8,635,113 "Integrated
16 online store." But why would the USPTO discriminate against Mr. Perry by blocking him the
17 opportunity to be granted a patent?

18 9) But no patent was similar to Mr. Perry's patent application was ever sought or granted for
19 a method combination element in Mr. Perry's groceries and chef services purchased online, satisfies 35
20 U.S.C. § 112(f) specification as an "inventive concept" sufficient to 'transform' the claimed abstract idea
21 into a patent eligible application" under *Alice Corp. Pty. Ltd. v. CLS Bank Intern.*, 134 S. Ct. 2347
22 (2014).³⁶ The Supreme Court test for 35 U.S.C. §101 patent-eligibility, articulated a two-step

23 ³⁶ The test for 35 U.S.C. §101 patent-eligibility under *Alice Corp. Pty. Ltd. v. CLS Bank Intern.*,
24 134 S. Ct. 2347 - Supreme Court 2014, where the Court articulated a two-step framework "for
25 distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that
26 claim patent-eligible applications of those concepts." (1) are the claims directed to a patent-ineligible
27 concept such as an abstract idea (Id. at 2355) and, (2) if so, do "additional elements of each claim
28 represent an "inventive concept" sufficient to 'transform' the claimed abstract idea into a patent
eligible application?" Id. at 2357. — i.e., an element or combination of elements that is "sufficient
to ensure that the patent in practice amounts to significantly more than a patent upon the
[ineligible concept] itself." Id., at, In *Mayo* 566 U.S., 132 S.Ct., at 1294." A claim that recites an
abstract idea must include "additional features" to ensure "that the [claim] is more than a drafting effort
designed to monopolize the [abstract idea]." Id., at, 132 S.Ct., at 1297. Mayo made clear that
transformation into a patent-eligible application requires "more than simply stat[ing] the [abstract idea]
while adding the words 'apply it.'" Id., at, 132 S.Ct., at 1294.

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1 framework:

2 "[f]or distinguishing patents that claim laws of nature, natural
3 phenomena, and abstract ideas from those that claim patent-eligible
4 applications of those concepts." (1) are the claims directed to a patent-
5 ineligible concept such as an abstract idea (Id. at 2355) and, (2) if so,
6 do "additional elements of each claim represent an "inventive
7 concept" sufficient to 'transform' the claimed abstract idea into a
8 patent eligible application." Id. at 2357. — i.e., an element or
9 combination of elements that is "sufficient to ensure that the patent in
10 practice amounts to significantly more than a patent upon the
11 [ineligible concept] itself." Id., at, In Mayo 566 U.S., 132 S.Ct., at 1294:
12 "[A] claim that recites an abstract idea must include "additional
13 features" to ensure "that the [claim] is more than a drafting effort
14 designed to monopolize the [abstract idea]." Id., at, 132 S. Ct., at 1297."

10 10) In Mayo made clear that transformation into a patent-eligible application requires "more
11 than simply stat[ing] the [abstract idea] while adding the words 'apply it.'" Id., at, 132 S.Ct., at 1294.
12 Like the other patents which the USPTO granted patents, Mr. Perry "Groceries And Chef Services
13 Purchased Online" method combination³⁷overcame the "additional features" to ensure "that the [claim]
14 is more than a drafting effort designed to monopolize the abstract idea.

14 11) Yet, the USPTO's Examiner Office action of March 13, 2017 discriminated against Mr.
15 Perry's patent application No.:14/794,807 by falsely stating: "*The abstract of the disclosure is objected*
16 *to because it is not concise and exceeds 150 words in length. Correction is required.*" See MPEP §
17 *608.01(b).*" However, the USPTO Manual of Patent Examination Procedure (MPEP) does not have the
18 force of law, and it is not binding on patent applicants as Mr. Perry.

19 12) Here, the USPTO Examiner Kristin Matter failed to properly and timely respond to a
20 statutory requirement created by Congress under 35 U.S.C. § 101. See 35 U.S. Code § 282 -
21 Presumption of validity; defenses:

21 (a) ***IN GENERAL.***—

22 A patent shall be presumed valid. Each claim of a patent (whether in
23 independent, dependent, or multiple dependent form) shall be presumed
24 valid independently of the validity of other claims; dependent or multiple
25 dependent claims shall be presumed valid even though dependent upon an
26 invalid claim. The burden of establishing invalidity of a patent or any claim
27 thereof shall rest on the party asserting such invalidity."

26 ³⁷ 35 U.S.C. § 112 - Specification (f) "**[E]lement in Claim for a Combination**: An element in a
27 claim for a combination may be expressed as a means or step for performing a specified function without
28 the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the
corresponding structure, material, or acts described in the specification and equivalents thereof."

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1 13) No USPTO rule imposes a word-length limitation on abstracts, and, in any event, the
2 recommendation in MPEP § 608.01(b) (6th ed. Jan. 1995) at the time Mr. Perry filed these applications
3 specified that abstracts should be between 50 to 150 words.

4 14) On June 2, 2017 Mr. PERRY filed with the USPTO a **“Complaint against USPTO
5 Examiner, Kristen Matter,”** in patent application No.:14/794,807.³⁸

6 15) On June 5, 2017 Mr. PERRY filed with the USPTO an amendment that contained no new
7 matter, along with **“Arguments And Statement Disputing The Examiner’s Finding, The Claims, And
8 Perry Provided Sufficient Elements To Amount To Significantly More Than What The Examiner
9 Claimed As Judicial Exception In Patent Applications No.:14/794,807.”**

10 16) Mr. Perry requested that since his patent application was filed Perry electronically with the
11 USPTO on 07/09/2015, to establish a Graham-112 docket whereby applications meeting the above
12 mandates are examined ahead of other applications on an examiner's docket, i.e., the examiner maintains
13 a differential between Graham- 112 docket applications and all others. The USPTO examiner ignored
14 Mr. Perry’s letter and never addressed it.

15 17) On June 10, 2017, Mr. Perry filed request in Patent Applications No.:14/794,807 for the
16 USPTO not to early publish his patent. Soon thereafter, the USPTO ignored Mr. Perry and he threatened
17 the USPTO and their ombudsman Dale Shaw with a lawsuit and the USPTO ceased its efforts to publish
18 patent application No.:14/794,807.

19 18) On July 6, 2017, USPTO Examiner Kristine Clarette Matter **retaliated** against Mr. Perry
20 by issuing an **“Office Action Summary”** on Mr. Perry’s patent specification and claim invention citing a
21 second prior art after she earlier claimed Mr. Perry anticipated the first prior art of **“Kitchensurfing”**
22 (**Kosoff et. al.,**). The USPTO Examiner Kristine Clarette Matter second prior art belittled Mr. Perry’s
23 patent claim invention as **“a mere home nursing aid.” (Id. Exhibits # 187, # 212-239; # 242):**

24 “Applicant notes that the essence of applicant’s invention is shopping
25 groceries by a chef or driver, preparing a meal, and leaving un-used
26 portions of the groceries (food and/or non foods) at the client’s home.
27 **This explanation sounds like a mere home nursing aid,** for example, in
28 addition to the applied prior art (see the attached cited reference, item
11)...”

19) The USPTO examiners’ Kristen Clarette Matter fraud is imputed from the examiner’s
deliberately and maliciously misconstrued the law with intentional disregard to the law with intentional

³⁸ All Service Mr. Perry’s mailing to the USPTO was done by 2-days USPS Priority Mail and have receipt confirmations.

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1 ignorance and error and concealment of PERRY's arguments about his "novel" invention. See her letter
2 dated August 11, 2017, in response to Igor Borissov assertions that he perceived Mr. Perry's invention
3 "Novel" as an "inventive concept."³⁹

4 20) "As additional limitations are added to a proper claim, the current 35 USC 112 and 102
5 rejections could possibly be overcome, but the 35 USC 101 issue would remain. **It was noted that**
6 **although an invention may be "novel" or "non-obvious" over available prior art, it still might not**
7 **be patentable under current US patent law.**"⁴⁰

8 21) The USPTO examiners' Kristen Clarette Matter fraud is imputed from deliberate
9 ignorance and deception when asserting in her letter dated August 11, 2017 that Mr. Perry's invention is
10 not patentable under current US patent law: "It was noted that although an invention may be "novel"
11 or "non-obvious" over available prior art, it still might not be patentable under current US patent
12 law."

13 22) Mr. Perry's asserted to Examiner Kristen Clarette Matter that under Mayo Collaborative
14 Services v. Prometheus Laboratories, Inc., 566 U.S., 132 S.Ct. 1289, 182 L.Ed.2d 321 (2012), at 1293-
15 1294. At some level, "all inventions...embody, use, reflect, rest upon, or apply laws of nature, natural
16 phenomena, or abstract ideas." Id., at 132 S.Ct., at 1293. But his arguments fell on deaf ears.

17 **ii. Out of 20 Art Units In The USPTO, Eight Are In The 3600's With**
18 **The Lowest Patent Allowance Rates,**

19 23) The USPTO 20 art units with the lowest allowance rates, eight are in the 3600's. This is
20 not surprising, because the 3600's host many business-method art units. In Alice Corp. Pty. Ltd. v. CLS

21 ³⁹

22 ⁴⁰ See USPTO training manual, Legal Administration: "Evaluating Subject Matter Eligibility under
23 35 USC § 101: August 2012 Update." Slide # 40: **Natural Principles and Additional Elements/Steps –**
24 **Do the steps add a novel or non-obvious feature?"**

25 https://www.uspto.gov/sites/default/files/patents/law/exam/101_training_aug2012.pdf.

26 2104 Inventions Patentable - Requirements of 35 U.S.C. 101 [R-08.2017], 35 U.S.C. 101,
27 Inventions patentable "MPEP 2116.01 Novel, Unobvious Starting Material or End Product [R-08.2012]:
28 "**All the limitations of a claim must be considered when weighing the differences between the**
claimed invention and the prior art in determining the obviousness of a process or method claim."
See MPEP § 2143.03."

<https://www.uspto.gov/web/offices/pac/mpep/s2116.html#d0e201660>.

"As explained in MPEP § 2106, there are two criteria for determining subject matter eligibility: (a)
first, a claimed invention must fall within one of the four statutory categories of invention, i.e., process,
machine, manufacture, or composition of matter; and (b) second, a claimed invention must be directed to
patent-eligible subject matter and not a judicial exception (**unless the claim as a whole includes**
additional limitations amounting to significantly more than the exception). See MPEP § 2106 for a
detailed discussion of the subject matter eligibility requirements and MPEP § 2105 for special
considerations for living subject matter."

<https://www.uspto.gov/web/offices/pac/mpep/s2104.html>

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1 Bank Intern., 134 S. Ct. 2347 (2014), where the Supreme Court rejected claims describing a method for
 2 mitigating settlement risk. According to the Court, the claims did not contain an “**inventive concept**”
 3 sufficient to “transform” the abstract idea into a patent-eligible application. Since that case, and
 4 particularly after the June 25, 2014, USPTO memo, there was a significant jump in section 101 rejections
 5 especially with regard to related business methods. This increase is well documented. See the “**20**
 6 **Hardest and Easiest Art Units.**”⁴¹

7 24) The prejudice Examiner constantly supplemented her rejections with new rejections and
 8 denied she ever made them. She also disputed eligibility of Mr. Perry’s under (35 U.S.C. § 102⁴² and
 9 misleadingly stated she did not reject PERRY’s invention eligibility under 35 U.S.C. § 103.⁴³ However,
 10 that was not true. In her **non-final rejection** of March 13, 2017 she clearly states rejection under 35
 11 U.S.C. § 103:

12 “**Claim Rejections -35 USC § 102.** In the event the determination of the
 13 status of the application as subject to AIA **35 U.S.C. 102 and 103** (or as
 14 subject to pre-AIA 35 U.S.C. **102 and 103**) is **incorrect**, any correction of
 15 the statutory basis for the rejection will not be considered a new ground of
 16 rejection if the prior art relied upon, and the rationale supporting the
 17 rejection, would be the same under either status.”

18 25) In Examiner Kristen Clarette Matter **final-action** letter of July 6, 2017, she repeated
 19 herself by stating **35 USC 102/103** rejections.⁴⁴ PERRY was allowed to respond to the examiner revised
 20 reference of prior art that was changed from “**Kitchensurfing**” to “**Nurse Aid**” stating in her September
 21 11, 2017 “**Advisory Action Before The Filing Of An Appeal Brief**”: “**Addressing these additional steps**
 22 **with prior art would require reconsideration and/or an updated search and thus does not simplify**
 23 **issues for appeal.**”

24 26) In Examiner Kristen Clarette Matter “**Final Rejection**” of July 6, 2017, she noted 35 USC
 25 102/103 rejections but later denied she never mentioned them:

26 “Section 37 - It is first noted that applicant is arguing about "additional
 27 elements" in the claim without specifically pointing out what those
 28 additional elements are and where they are located in the claims. Examiner
 agrees a prior art search is not necessary to determine **if an element is**

41 <http://www.ipwatchdog.com/2015/05/21/hardest-easiest-art-units/id=57864/>

42 35 U.S.C. § 102 - Conditions for patentability; novelty.

43 35 U.S.C. § 103: Conditions for Patentability; Non-Obvious Subject Matter.

44 See In re Kaghan, 387 F.2d 398, 156 USPQ 130 (CCPA 1967) (prior decision by Board of Appeals, final rejection on prior art withdrawn by examiner “to simplify the issue,” differences in claims; holding of waiver based on language in MPEP at the time); In re Ackermann, 444 F.2d 1172, 170 USPQ 340 (CCPA 1971) (prior decision by Board of Appeals, new evidence, rejection on prior art reversed by court).

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1 well-understood, routine conventional activity and notes that 35 USC
 2 102/103 rejections are not to be confused with 35 USC 101
 3 rejections...."

4 "Applicant notes that the essence of applicant's invention is shopping of
 5 groceries by a chef or driver, preparing a meal, and leaving un-used
 6 portions of the groceries (foods and/or non-foods) at the client's home.
 7 **This explanation sounds like a mere home nursing aid⁴⁵**, for example,
 8 in addition to the applied prior art (see the attached cited reference, item
 9 11). As noted in the non-final rejection, the claim for purposes of
 10 examination was considered to be..."

SECOND CAUSE OF ACTION

11 [Cause of Action Under 42 U.S.C. § 1983 For The USPTO's Employee/s
 12 Violation of 18 U.S.C. § 1001⁴⁶ By Using False Statements; Intentional,

13 ⁴⁵ See the Federal Register Vol. 76, No. 225, Part III, Tuesday, November 22, 2011, United States
 14 Patent and Trademark Office: **Another comment opposed the explanation of new ground of rejection**
 15 in the notice of proposed rulemaking and commented that In re DeBlauwe, 736 F.2d 699, 706 n.9 (Fed.
 16 Cir. 1984), contains a stronger limitation than the NPRM with respect to **what constitutes a new ground**
 17 **of rejection? This comment suggested that a ground of rejection should be considered "new"**
 18 **whenever it departs from a previous statement of a ground of rejection, be it by relying on a**
 19 **different portion of the same reference, a different reference or merely different examiner**
 20 **reasoning**. The comment further stated that the "fact specific" approach proposed by the Office invites
 21 abuse by the examining corps.

22 Response: The USPTO appreciates the comments submitted on the proposed guidance on new
 23 grounds of rejection. The USPTO will follow applicable law in determining on a case-by-case basis
 24 whether a new ground of rejection has been made. While the examples provided in the NPRM are
 25 intended to provide sample factual situations based on actual case law, as noted in the notice of proposed
 26 rulemaking, the inquiry of whether a new ground of rejection has been made in each case is highly fact
 27 specific. See, e.g., In re Kronig, 539 F.2d 1300, 1303 (CCPA 1976). The general test that the USPTO will
 28 apply is to determine whether the appellant has had a fair opportunity to respond to the basic thrust of the
 rejection. Id.

⁴⁶ 18 U.S.C. § 1001 provides: "(a): "[E]xcept as otherwise provided in this section, whoever, in any
 matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the
 United States, knowingly and willfully—(1) falsifies, conceals, or covers up by any trick, scheme, or
 device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or
 representation; or (3) makes or uses any false writing or document knowing the same to contain any
 materially false, fictitious, or fraudulent statement or entry; shall be fined under this title,..."

Elements of 18 U.S.C. § 1001 are violated if someone: (1) "falsifies, conceals or covers up by any
 trick, scheme or device a material fact," (2) "makes any false, fictitious or fraudulent statements or
 representations," (3) "makes or uses any false writing or document knowing the same to contain any
 false, fictitious or fraudulent statement or entry" (4) and, for cases arising after the 1996 amendments, the
 item at issue was material. Whether the above acts are criminal depends on whether there is an
 affirmative response to each of the following questions: (1) Was the act or statement material? (2) Was
 the act within the jurisdiction of a department or agency of the United States? And (3) Was the act done
 knowingly and willfully?

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Negligent And Wrongful Acts And Omissions]

1
2 27) Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
3 paragraphs 1 above through 257 inclusive, as though fully set forth herein.

4 28) 18 U.S.C. § 1001 has a wide application to government activities, as with other broad
5 fraud statutes (see §§ 1341 and 1343). In describing the situations in which the prohibited conduct must
6 occur, the courts have construed the statute broadly and stressed that Section 1001 protects the
7 government "[f]rom the perversion which might result from the deceptive practices described."
8 Bryson v. United States, 396 U.S. 64 (1969).

9 **iii. Conflict And Disagreement Between Examiners Kristen Clarette**
10 **Matter In A Three Way Telephonic Interview Conversation She**
11 **Initiated With Igor N. Borissov And Mr. Perry Ended With Borissov**
12 **Recommending Mr. Perry's Patent Claim Is A "Novel" And Has**
13 **Inventive Concept" And Should Be Granted A Patent Under 35**
14 **U.S.C. § 101.**

15 29) The Examiner Kristen Clarette Matter letter of August 11, 2017 initiated a three way
16 telephonic conversation between Mr. Perry, the Examiner Kristen Clarette Matter and another USPTO
17 Primary Examiner Igor N. Borissov on August 9, 2017. But after the three way conversation Examiner
18 Kristen Clarette Matter had reneged on an agreement with Mr. Perry and Primary Examiner Igor N.
19 Borissov to grant Mr. Perry a patent if he proves to her his patent claim is a "Novel" and has Inventive
20 Concept" under 35 U.S.C. § 101. (Id. Exhibit # 242-243). One of Primary Examiner Igor N. Borissov
21 Gmail emails he sent to Mr. Perry was erased during the hacking of about November 2019.

22 30) The USPTO Examiner Kristen Clarette Matter issued a non-final rejection on March 13,
23 2017, even after it followed an agreement on August 9, 2017 in a three way telephonic interview with
24 Primary Examiner Igor N. Borissov and Mr. Perry. In her letter dated August 11, 2017, on page 2,
25 Examiner Kristine Matter finally acknowledged Mr. Perry's invention as a "Novel" concept in patent
26 application No.: 14/794,807.⁴⁷ But after the three way conversation agreement, Examiner Kristen
27 Clarette Matter falsely asserted: "[S]he also noted that there still isn't a clear claim in the proper
28 format." (Quotation). (Id. Exhibit # 243).

29 31) But in her letter of March 13, 2017 The USPTO she disagrees with fellow Examiner with

⁴⁷ Mr. Perry's Gmail account was later hacked and the email from Primary Examiner Igor N. Borissov acknowledging Mr. Perry's invention as "Novel" concept was erased from his Gmail, along with a list of related case law finding his invention as a "Novel" concept.

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1 Primary Examiner Igor N. Borissov, after she joined him in a three way conversation, she still disputed
2 his assertion of Mr. Perry's eligibility of invention as a "Novel" concept under patent laws (35 U.S.C. §
3 101). Primary Examiner Igor N. Borissov forwarded (CC) copy of the Gmail email to Examiner Kristine
4 Clarette Matter. But Examiner Kristen Clarette Matter misled Mr. Perry by asserting:

5 **"[t]he 35 U.S.C. § 101 issue would remain. It was noted that although**
6 **an invention may be "novel" or "non-obvious" over available prior**
7 **art, it still might not be eligible for patent under current US patent**
8 **law."**

9 32) The July 6, 2017 "Final Action" by Examiner Kristin Matter was not a final because the
10 asserted new ground for rejection making them non-final. The proper thing to do was for the USPTO
11 processes first and second non-final action before any final action is made. The USPTO Examiners
12 use a loop hole to generate intentional and frivolous rejections of valid applications, when
13 reopening of a patent application prosecution takes place or by including the rejection in the
14 Examiner's Answer, which then lead them to assert new grounds of rejections, and again all the
15 process repeat itself for years of more delays, harassment and frustrations by the USPTO to patent
16 applicants. See MPEP § 1208.01.⁴⁸

17 33) On July 6, 2017, PERRY filed with the USPTO on separate sheets a "Listing of Claims;
18 Patent Steps/Elements"; "Claim and Specifications (35 U.S.C. § 112); Drawing; and "Remarks And
19 Arguments," in compliance with USPTO examiner Kristin Clarette Matter "Final Rejection" of July 6,
20 2017. However, even this did not satisfy the Examiner and in her "Advisory Action Before The Filing
21 of An Appeal Brief" mailed on September 11, 2017, she complained of Mr. Perry doing so. Yet, she
22 asked that he follow 37 CFR 1.121(c) to file the "Claim Amendment" must be in a separate sheets.

23 34) On August 8, 2017, Mr. Perry filed on the USPTO a "Petition To The USPTO Director
24 Under MPEP § 1.181 For Request To Seek Review Of The USPTO Primary Examiner Kristine
25 Clarette Matter's Final Rejection Of 07/062017; Request That The USPTO Director Reopen The
26 Prosecution Of The Patent Case."

27 35) On August 18, 2017, PERRY filed a response to response to the final Office Action
28 mailed March 13, 2017, and the July 6, 2017, and having a period for response set to expire on
September 6, 2017, Applicant amended his Patent Applications No.:14/794,807 in the manner set forth in
this Amendment as a specific and limiting recitation of online of perishable and non-perishable groceries

⁴⁸ See MPEP § 1208.01 (Nov. 1953) ("A new ground of rejection (new reference or otherwise) may be introduced after appeal either by reopening the prosecution or by including the rejection in the Examiner's Answer...."). The USPTO adopted Rule 39 with the preexisting ability to reopen prosecution in mind. A6-9.

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1 shopping and of chef services technologies/industries, technical field/s to a particular, similar
2 technological environment. See, e.g., Diehr, 450 U. S., at 177-178.

3 36) On August 24, 2017, PERRY filed an **“Applicant's Reply To Address The Basis Of The**
4 **First And Final Rejection Request To Withdraw Of Rejection For The Reasons Stated Below.”** On
5 August 25, 2017, PERRY filed a Revised **“Applicant's Reply And Submission To Address The Basis**
6 **Of The First And Final Rejection Request To Withdraw Of Rejection For The Reasons Stated**
7 **Below.”**⁴⁹

8 37) On August 24 and 25, 2017, Mr. Perry mailed the USPTO examiner Kristine Clarette
9 Matter a timely **“Reply”** within 2 months after USPTO examiner Kristine Clarette Matter issued her final
10 Action on 07/06/2017. However, the examiner intentionally delayed for several of weeks her advisory
11 action in response to PERRY’s Reply for the Non-Final action and Final action⁵⁰ in the following
12 sentence. Such delays affected PERRY’s extension fees.⁵¹

13 38) On September 22, 2017, PERRY filed a letter of complaint **“Petition And Complaint To**
14 **The USPTO Director For Removal Of Examiner Kristin Clarette Matter As Being Underhanded,**
15 **Out Rightly Hostile, Dishonest And Adversarial Examiner/Pre-Litigation Warning Letter For**
16 **Fraud And Deception.”** Mr. Perry explained that he endured more recent deception statements by
17 Examiner Kristine Clarette Matter’s **“Advisory Action Before The Filing of An Appeal Brief”** mailed
18 on September 11, 2017. (Id. Exhibit # 382).

19 39) At his point the USPTO Examiner Kristin Clarette Matter contemplated whether to
20 acknowledge PERRY’s August 18, 2017 **“Notice of Appeal”** and his authorized **“Credit Card Payment**

21 ⁴⁹ 37 C.F.R. § 1.134 (2018)(setting forth the general rule established by the Director: **“[a]n Office**
22 **action will notify the applicant of any non-statutory or shortened statutory time period set for reply**
23 **to an Office action. Unless the applicant is notified in writing that a reply is required in less than**
24 **six months, a maximum period of six months is allowed.”**)

25 ⁵⁰ See Cuozzo Speed Technologies, LLC v. Lee, 136 S. Ct. 2131 - Supreme Court 2016. **“If the**
26 **examiner rejects a claim, the applicant can resubmit a narrowed (or otherwise modified) claim,**
27 **which the examiner will consider anew, measuring the new claim against the same patent law**
28 **requirements. If the examiner rejects the new claim, the inventor typically has yet another chance**
to respond with yet another amended claim. Ultimately, the Patent Office makes a final decision
allowing or rejecting the application. The applicant may seek judicial review of any final rejection. See
§§ 141(a), 145.”

⁵¹ 35 U.S. Code § 133 - Time for prosecuting application: Upon failure of the applicant to prosecute
the application within six months after any action therein, of which notice has been given or mailed to the
applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action,
the application shall be regarded as abandoned by the parties thereto. (July 19, 1952, ch. 950, 66 Stat.
801; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536,
1501A–582; Pub. L. 107–273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906; Pub. L.
112–211, title II, § 202(b)(5), Dec. 18, 2012, 126 Stat. 1536.)

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1 **Form – PTO 2038**” (with credit card number noted on the forms). For the reason she mailed him the
2 **“Advisory Action Before The Filing Of An Appeal Brief”** But Examiner Kristine Clarette Matter later
3 decided to ignore it, claiming in her advisory that Mr. Perry never filed a Notice of appeal.

4 40) On September 25, 2017, Mr. Perry filed a complaint against the deceptive USPTO
5 Examiner Kristen Clarette Matter was mailed to the USPTO Ombudsman **Dale Shaw** (571) 272-5555,
6 and also to attention of the Office of the USPTO General Counsel **Mike Cygan** (571) 272-7700, as
7 provided in § 104.2 of this Chapter, and was directed to the attention of the Solicitor. But Mr. Perry’s
8 complaint was ignored and no USPTO respond to it.

9 41) On November 16, 2017 PERRY filed a **“Reply”** response and an amendment listing of his
10 claims, along with all patent steps/elements, remarks and arguments, claims and specifications describing
11 how Customers will use his process if interested in buying groceries and order Chef services online or by
12 using mobile and other media to make orders of Home and Office Grocery shopping and Chef Services,
13 in Patent Applications No.:14/794,807.

14 42) Soon thereafter on February 8, 2018 Examiner Kristine Clarette Matter prematurely closed
15 prosecution of Mr. Perry’s patent application No.: 14/794,807 (**Id. Exhibits # 436-437**), had violated Mr.
16 Perry’s constitutional due process private right to appeal by making misleading statement that Mr. Perry
17 appeal could not move forward because she claim he did not pay extension fees. So, she abandoned Mr.
18 Perry’s patent application and attempted to publish it. Only after Mr. Perry’s petition threaten with a
19 lawsuit the USPTO backed off.

20 43) On February 27, 2018, PERRY filed a **“Petition And Complaint To The USPTO**
21 **Director For Removal Of Examiner Kristin Clarette Matter As Being Underhanded, Out Rightly**
22 **Hostile, Dishonest And Adversarial Examiner/Pre-Litigation Warning Letter For Fraud And**
23 **Deception.”** PERRY also filed with the USPTO a **“PRE LAWSUIT DEMAND LETTER”** to cure
24 problems with the dishonesties of the USPTO Examiner Kristin Clarette Matter.

25 44) On April 9, 2018, PERRY filed a **“Petition To Disqualify Examiners Supplemental**
26 **To Petitioner’s Application/Petition For The USPTO Director To Waive , Set Aside Or Adjust**
27 **The Fees For Appeal And Extension Of Time Extension Of Time To File An Amendment, To**
28 **Reopen Prosecution**⁵³, **And/Or To Grant Patent And Allowance.”**

45) On April 9, 2018, PERRY filed a **“Respond To The Letter Of May 3, 2018 In**

⁵² USPTO MPEP 1714.01: Procedural requirements for filing petition to revive and to supplement petition, and 37 CFR 1.135(c).

⁵³ Petitioner misstated “Prospection” for prosecution.

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Reconsideration On Petition And Final Pre-Lawsuit Warning From The Pattern Of Concealment And Conspiracy (Last Chance to Resolve Issues.”

46) On July 11, 2018, PERRY filed a “**Supplemental To Moshe Avram Perry’s Reconsideration**” to the USPTO Director may and is able to waive any extension fees charged unlawfully for the USPTO Application Department and anyone within the USPTO who refuse to provide accounting.

47) On July 16, 2018, PERRY filed a “**Moshe Avram Perry’s Petition to The USPTO Director To Waive Extension And Appeal Fees (35 U.S. CODE § 41).**” (Id. Exhibit # 569-579), Following the advice from Patricia Mallari on behalf of U.S. Department of Commerce and USPTO, Sr. Examiners Advisor Mike Razavi. (571) 272-8600, PERRY submitted petitions that may be taken to the Director, 37 CFR 1.181(a): Petition to the Director and to invoke the supervisory authority of the Director in appropriate circumstances to waive extension fees in cases of USPTO own negligence.

48) In her letter dated August 11, 2017 The USPTO Examiner Kristen Clarette Matter asserted: “[A]ny question as to prematureness of a final rejection is a purely a question of practice, wholly distinct from the tenability of the rejection.⁵⁴ It may therefore not be advanced as ground for appeal, or made basis of complaint before the Patent Trial and Appeal Board.” (Id. Line 9 from the bottom on page 2, see as Ex. # 243).⁵⁵

49) However, issuing final rejection prematurely do not advance and prematurely close patent prosecutions would defeat the USPTO’s purpose and would forego the tenability of the rejection, unfairly discriminate with Director’s petition the rejections. (“[t]he ultimate criterion of whether a rejection is considered ‘new’ is whether appellants have had fair opportunity to react to the thrust of the rejection.” Kronig, 539 F.2d at 1302).

50) PERRY realized that the USPTO was hostile and adversarial to Pro Se Applicants and practiced a scheme to trick and confuse Pro Se. When PERRY called the USPTO to confirm the fees he paid and to ask the representatives for accounting of all fees he paid, he was not late at that point prosecuting his patent application. The USPTO representative then gave PERRY false promises that they

⁵⁴ MPEP 706 Rejection of Claims [R-07.2015].

⁵⁵ See Oil States Energy Services, LLC v. Greene’s Energy Group, LLC. (16-712, 04-24-2018). JUSTICE BREYER, with whom JUSTICE GINSBURG and JUSTICE SOTOMAYOR join, concurring: “[B]ut the Court’s opinion should not be read to say that matters involving private rights may never be adjudicated other than by Article III courts, say, sometimes by agencies. Our precedent is to the contrary. Stern v. Marshall, 564 U. S. 462, 494 (2011); Commodity Futures Trading Comm’n v. Schor, 478 U. S. 833, 853–856 (1986); see also Stern, *supra*, at 513 (BREYER, J., dissenting) (“The presence of ‘private rights’ does not automatically determine the outcome of the question but requires a more ‘searching’ examination of the relevant factors”).

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1 will give him accounting, was promised by the USPTO Finance Office, and on three occasions the
2 USPTO Ombudsman Dale Shaw.

3 51) So, while Mr. Perry was in waiting for the USPTO to provide him accounting, the USPTO
4 use the delays and refusing to provide accounting, instead they accrued more extension fees. When Mr.
5 Perry complained, the USPTO representatives would refer him to the USPTO Ombudsman Dale who
6 instructed Mr. Perry to file petitions with the USPTO Director were all denied.

7 52) The petitions to the USPTO Director were arbitrarily denied, claiming that filing the
8 petition did not stay the period to respond (37 CFR § 1.181(f)).⁵⁶ Mr. Perry was forced to file four (4)
9 petitions to dispute USPTO Examiner Kristine Clarette Matter unfair examinations and the four petitions
10 (each three months) were delayed prosecution of the Patent Application for 1 year and accrued unfair
11 extension fees, and when PERRY waited for the last petition, his Patent application was abandoned.
12 PERRY has audio recorded the deception by the USPTO representative and will present in Court.

13 53) Plaintiff notes that of statutory interpretation that the plain language of 35 U.S.C. § 101
14 was clear and unambiguous to grant patent in cases of novelty where the claim contain an "inventive
15 concept" sufficient to "transform" the abstract idea into a patent-eligible application.⁵⁷

16 54) The USPTO practice discrimination in granting patents to eligible applicants and
17 Examiner Kristen Clarette Matter admission that the July 6, 2017 final rejection was premature,
18 (claiming Mr. Perry does not have cause to appeal her decision) only proves further this practices of
19 discrimination.

20 55) This opportune the USPTO to unjustly generate and charge exuberant extension fees and
21 revival fees to Patent Applicants as Mr. Perry. The USPTO then use this to contrive a scheme to deprive
22 Applicants as Mr. Perry a review (after appeal fees were paid) in the Patent Trial and Appeal Board

21 ⁵⁶ 37 CFR § 1.181 (f) **The mere filing of a petition will not stay any period for reply** that may be
22 running against the application, nor act as a stay of other proceedings. Any petition under this part not
23 filed within two months of the mailing date of the action or notice from which relief is requested may be
24 dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

25 ⁵⁷ "[s]tatutory interpretation begins with the plain meaning of the statute's language, [and] [w]here
26 the statutory language is clear and consistent with the statutory scheme at issue, the plain language of the
27 statute is conclusive and the judicial inquiry is at an end." Botosan v. Paul McNally Realty, 216 F.3d
28 827, 831 (9th Cir. 2000) (citations omitted); see also BP Am. Prod. Co. v. Burton, 127 S. Ct. 638, 643
(2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their
ordinary meaning."). Only where a statute yields to more than one reasonable interpretation, should a
court turn to the statute's legislative history for evidence of congressional intent. United States v. Daas,
198 F.3d 1167, 1174 (9th Cir. 1999); see also United States v. Gonzales, 520 U.S. 1, 6 (1997) ("Given
the straightforward statutory command, there is no reason to resort to legislative history.").

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1 (“PTAB”). The premise by the USPTO’s practice was to lose the drawing and specification in order to
2 extend time to charge Mr. Perry unlawful extension fees while he still prosecute his patent applications.

3 56) But this was not a mistake, it was a vicious practice to discriminate in the grant of patents
4 where the USPTO intentionally doing illegal things and covering up facts with more illegal practices and
5 petitions that deprived Mr. Perry (and likely others) of their valid patents. **“While federal officials will
6 not be liable for mere mistakes in judgment, whether the mistake is one of fact or one of law, there
7 is no substantial basis for holding that executive officers generally may with impunity discharge
8 their duties in a way that is known to them to violate the Constitution, or in a manner that they
9 should know transgresses a clearly established constitutional rule. Pp. 438 U. S. 504-508.”** (*Butz v.
10 Economou* 438 U.S. 478 (1978)).

11 57) The U.S. Supreme Court never ruled in that patent applications appeals can be cancelled
12 because extension fees were not paid and paid late. A Patent Applicant may seek judicial review of the
13 final rejection. See in *Oil States Energy Services, LLC v. Greene's Energy Group, LLC*. (16-712, 04-24-
14 2018):

15 “Under the Patent Act, the PTO is “responsible for the granting and
16 issuing of patents.” 35 U. S. C. §2(a)(1). When an inventor applies for a
17 patent, an examiner reviews the proposed claims and the prior art to
18 determine if the claims meet the statutory requirements. See §§112, 131.
19 Those requirements include utility, novelty, and nonobviousness based on
20 the prior art. §§101, 102, 103. The Director of the PTO then approves or
21 rejects the application. See §§131, 132(a). An applicant can seek judicial
22 review of a final rejection. §§141(a), 145.”

23 58) So, Mr. Perry could seek a judicial review of the examiner unfair, arbitrary and capricious
24 **premature final rejection** by the USPTO **Examiner Kristen Clarette Matter** deprived PERRY his due
25 process appeal rights when alleging he did not pay extension fees, after the USPTO had kept asking for
26 more fees; refused to give Mr. Perry request for accounting, and even already having received payments
27 of the appeal and extension on August 18, 2017, the abandoned all his applications fees. **(See some of**
28 **Mr. Perry’s payments as Exhibits # 307 (i-xxvii); # 495-497; # 524; # 641-644;).**

29 59) For that reason there was non-final rejections in light of prior art as evidence. See *Festo*
30 *Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 234 F.3d 558, 618 (Fed. Cir. 2000) (Michel, J.
31 dissenting) (“Patent prosecution is an iterative process in which the applicant typically submits
32 claims that are thought allowable, the examiner rejects the claims in view of the prior art, and the
33 applicant then amends the claims to traverse the examiner’s patentability rejections.”).

34 60) The USPTO MPEP 706 **“Rejection of Claims”** [R-07.2015] clearly explains the need that

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1 “the examiner should never overlook the importance of his or her role in allowing claims which properly
2 define the invention if it is found after being acknowledged as a “novel” concept:

3 “After the application has been read and the claimed invention
4 understood, a prior art search for the claimed invention is made. With
5 the results of the prior art search, including any references provided
6 by the applicant, the patent application should be reviewed and
7 analyzed in conjunction with the state of the prior art to determine
8 whether the claims define a useful, novel, nonobvious, and enabled
9 invention that has been clearly described in the specification. The goal
10 of examination is to clearly articulate any rejection early in the prosecution
11 process so that the applicant has the opportunity to provide evidence of
12 patentability and otherwise reply completely at the earliest opportunity.
13 The examiner then reviews all the evidence, including arguments and
14 evidence responsive to any rejection, before issuing the next Office action.
15 Where the examiner determines that information reasonably necessary for
16 the examination should be required from the applicant under 37 CFR
17 1.105, such a requirement should generally be made either prior to or with
18 the first Office action on the merits and should follow the procedures in
19 MPEP § 704.10et seq. Although this part of the Manual explains the
20 procedure in rejecting claims, the examiner should never overlook the
21 importance of his or her role in allowing claims which properly define the
22 invention.”

23 61) The USPTO Examiner Kristen Clarette Matter **“Advisory Action Before The Filing of
24 An Appeal Brief”** adding new more objections mailed on September 11, 2017, (after Mr. Perry already
25 answered Examiner Kristen Clarette Matter previous objections that his amendment was not in the
26 correct format). This time the Examiner new objection, deceptively stated Mr. Perry did not provide
27 elements and limitation from specification (ignoring his **“Reply”** and arguments with amendments of
28 **August 18, 2017, August 24, 2017, and August 25, 2017** that corrected and stated elements and
limitation.

62) The USPTO Examiner Kristen Clarette Matter prematurely rejected Mr. Perry’s **“Novel”**
claim, ignored Mr. Perry’s payments for the appeal that was paid on August 18, 2017, and she accrued
frivolous extension fees and then abandoned Mr. Perry’s patent Application and claim on August 27,
2018. The USPTO Examiner Kristen Clarette Matter intentionally did not forwarded Mr. Perry’s Appeal
to the USPTO Patent Trial and Appeal Board (“PTAB”).

63) Under 37 CFR 41.31(c), an appeal is presumed to be taken from the rejection of all claims
under rejection in a particular application unless cancelled by an amendment filed by the applicant and
entered by the Office. Thus, an appeal is presumed to be taken from the rejection of all pending claims

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1 under rejection in the application regardless of whether the notice of appeal identifies fewer or more than
2 all pending claims under rejection.

3 64) The examiner had no right to abandoned Mr. Perry's patent application No.:14/794,807.
4 See MPEP § 1208; 37 C.F.R. 41.40: "[A]fter receipt of a reply brief under 37 CFR 41.41, jurisdiction
5 over the appeal passes to the Board."⁵⁸ See Exhibit # 383, where the USPTO Examiner Kristen
6 Clarette Matter intentionally ignored 37 CFR 41.41 in her "Advisory Action Before The Filing of An
7 Appeal Brief":

8 "Regarding item 50 on page 18, examiner again notes that it isn't entirely
9 clear what applicant intends to be the claim or the abstract or the
10 specification due to the informal nature of the case and the improper
11 formatting. The claim cannot be the entire specification and limitation
12 from the specification are not read into the claims. The application was
13 not deemed to be "incomprehensible" because the examiner
14 understands the inventive concept and thus a reasonable search could
15 be made and the concept identified as directed to an abstract idea.
16 Examiner has consistently and repeatedly pointed out the points of
17 informality in the application and informed applicant of his burden to
18 revise the application to render it in proper form for a complete
19 examination. Applicant has not revised the application to place it in proper
20 form."

21 "Items 52-54 beginning on page 20 of the remarks are mere conclusory
22 statements by the applicant and thus were not considered under 37 CFR
23 1.132 standards. These arguments are not convincing further because
24 the rejection is one of anticipation not obviousness and because there
25 is no nexus between the evidence/statements and the claim. Similarly,
26 applicant's "affidavit" on pages 59-62 is not sufficient to overcome the 35
27 USC 102 rejection under Kitchensurfing because A) the rejection is a 35
28 USC 102 rejection and B) even if the rejection were a 35 USC § 103
rejection, the affidavit refer(s) only to the process described in the instant
application and not to the individual claim(s) of the application. Thus,
there is no showing that the objective evidence of nonobviousness is
commensurate in scope with the claims. See MPEP § 716."

"Regarding the finality of the previous rejection (see arguments starting
on page 22 of the remarks), examiner again notes that the rejection in the
Non-Final and Final Office actions is identical and thus was properly

58 See the USPTO Manual of Patent Examination Procedure ("MPEP") § 1208: Reply Briefs and
Fee for Forwarding Appeal [R-11.2013]. 37 C.F.R. 41.40: Tolling of Time Period To File A Reply
Brief. II. Examiner's Response To A Reply Brief: After receipt of a reply brief under 37 CFR
41.41, jurisdiction over the appeal passes to the Board. Normally, the examiner does not need to
acknowledge the reply brief and will not have an opportunity for further argument prior to a decision by
the Board. However, the Board may remand the appeal to the examiner to furnish a substitute examiner's
answer responsive to the remand."

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1 made final even without amendments being made by the applicant (i.e., no
2 new grounds of rejection were made and the rejection was in a second
3 action on the merits).”

4 “Regarding the argument on page 27-46 and examiner’s ‘prima facie case
5 of obviousness,’ it is noted that there is not 35 U.S.C. § 103 rejection in
6 this case so these argument are moot.”

7 “Applicant’s arguments on 51-59 fail to particularly and distinctly
8 specify which claim elements make the claimed invention significantly
9 more than the abstract idea and thus are not convincing.”

10 65) Examiner Kristine Clarette Matter addressed some of Mr. Perry’s complaint issues but
11 ignore the merits of his arguments, and so on August 9, 2017 examiner Kristine Clarette Matter called in
12 a three-way conversation with her, Mr. Perry and another Primary Examiner Igor N. Borissov Igor
13 Borissov. (See confirmation letter dated august 11, 2017 as Exhibit # 242-243).

14 66) After a lengthy explanation, Igor Borissov admitted to Mr. Perry and Kristine Matter that
15 it looks to him that Mr. Perry’s claim invention is “Novel” patent or as he called it an “Inventive
16 Concept” idea. Kristine Matter said nothing in resentment and was silent most of the conversation and
17 interrupted intermittently to disagree, with resentful comments and both examiners appear to disagree on
18 Mr. Perry’s inventive concept. Mr. Perry had audio recorded the conversation.

19 67) USPTO Examiner Kristine Clarette Matter falsely accused Mr. Perry for failing to
20 prosecute his patent application No.:14/794/,807, by submitting an unsatisfactory amendments pursuant
21 to 35 U.S.C. § 133. She requested that Mr. Perry should timely resubmit the required amendment ASAP,
22 but then rejected all of them

23 68) The examiner Kristen Clarette Matter falsified denials of facts stated in Mr. Perry’s
24 patents claims after the initial rejection, she presented new ground for rejection in a July 16, 2017 final
25 rejection. The Examiner claimed that Mr. Perry did not file a notice of appeal, and failed to pay
26 extension fees and she abandoned his patent application without notice on the eve the fees were due. (Id.
27 Exhibits # 399)

28 69) Mr. Perry’s notice of the appeal was filed/mailed on August 18, 2017 stating that his
claim was twice rejected with malice and deception by the Examiner Kristine Matter and her supervisor
Katherine Matecki actions were contrary to MPEP rules and examination practice adopted by the USPTO
were facially inconsistent with long standing statutes and precedent. See supervisor Katherine Matecki
response to Mr. Perry’s petition was double standards and contrary in serving as both manager to
Examiner Kristine Matter and also overseeing petitions filed by Mr. Perry. (Id. Exhibits # 391-396).

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1 70) This rule of law is implemented in 37 CFR 1.191(a)(1) by the statement that "Every
2 applicant ... any of whose claims has been twice or finally (§ 1.113) rejected, may appeal...to the
3 Board...." Thus, Mr. Perry's rights to appeal to the Patent Trial and Appeal Board ("PTAB") whenever
4 the subject application has been examined and twice rejected.

5 71) USPTO representatives are required to provide notices of actions to pro se applicants. In
6 such a context, judicial review protects the rights affected by the agency action. However, despite its
7 broad power to grant or deny patents, the Patent and Trademark Office does not have the responsibility,
8 or the authority, to depart from the law, or to make or change the policy embodied in the law, or to
9 reinterpret the statute in a way that departs from congressional intention or judicial interpretation. The
10 Administrative Procedure Act implements this obligation, but not the USPTO examiners.

11 72) The USPTO examiners' Kristen Clarette Matter fraud is imputed from deliberate
12 concealment of Mr. Perry's submission of the Notice of Appeal on August 18, 2017 along with payments
13 to the USPTO of the PTO 2038 Credit Card Payment forms. But USPTO Examiners Unit 3600 refused
14 to acknowledge the receipt PTO 2038 forms, and Kristen Clarette Matter letter of dated September 29,
15 2017 had lied and wrote misleading information that Mr. Perry never submitted any PTO 2038 forms.
16 See on p. 1: "The reply filed 28 august 2017 fails to place this application in condition for allowance.
17 No notice of appeal filed." (Id. Exhibit # 386; # 435).

18 iv. The USPTO Examiner Kristen Clarette Matter's Fraud Imputed
19 From Her Deliberate ignorance And Concealment of Mr. Perry's
20 Submission of The Notice of Appeal On August 18, 2017.

21 73) The USPTO examiners' Kristen Clarette Matter fraud is imputed from deliberate
22 ignorance and concealment of Mr. Perry's submission of the Notice of Appeal on August 18, 2017. See
23 letter dated August 11, 2017 on p. 1 "NO NOTICE OF APPEAL FILED."⁵⁹ (Id. Exhibit # 382). See
24 Mr. Perry's notice of appeal was filed on August 18, 2017. (Id. Exhibit # 307 xi).

25 74) The USPTO examiners' Kristen Clarette Matter fraud may be imputed from deliberate
26 ignorance and concealment of Mr. Perry's statements fell on deaf ears that he submitted the Notice of
27 Appeal on August 18, 2017 and submitted payments to the USPTO of the PTO 2038 Credit Card
28 Payment forms on August 18, 2017 and Unit 3600, and if Mr. Perry was missing any fees, the USPTO
Examiner had failed since August 18, 2017 to give Mr. Perry any "Notice of Deficient of Fees";

⁵⁹ See, e.g., American Power & Light Co. v. SEC, 329 U.S. 90, 105 (1946) ("Private rights are protected by access to the courts to test the application of the policy in the light of these legislative declarations.").

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1 75) The USPTO examiners' Kristen Clarette Matter fraud also concealed the acceptance of
2 Mr. Perry's payments of all fees for the appeal in patent applications No.:14/794/,807 and the extensions
3 fees they charged him \$250 on January 5, 2018 in a credit card and another \$250 taken in a check on
4 January 4, 2018). This was all done in order to deprive Mr. Perry from having his board appeal be heard.

5 76) The USPTO examiners' supervisor Katherine Matecki fraud also deliberately concealed
6 what she discussed with Mr. Perry on a phone call conversations on January 3, 2018 (1) 12:44PM 10
7 min, 34 sec; (2) 2:57PM, 2 mi., 4 sec.; (3) 2:21PM, 42 sec. On February 8, 2018 Katherine Matecki
8 caused the cancelation of a \$250 pending withdrawal of Mr. Perry's credit card, without giving Mr. Perry
9 notice of the pending \$250 cancellation when there were left two (2) additional outstanding extensions
10 fees she asserted he failed to pay on February 7, 2018. This when Mr. Perry already paid for 1 extension
11 and the other would be covered by the \$250 credit card Katherine Matecki canceled. Mr. Perry made a
12 total of \$500 in payments to the USPTO on January 4, and 5, 2018 that covered all outstanding fees.

13 77) The USPTO examiners' supervisor Katherine Matecki extended her hostility and fraud in
14 a phone call to Mr. Perry on February 7, 2018, (571) 270-5745, at 10:47PM, 2 min., 9sec., and at
15 1:16PM, 2 min. 9 sec., and on February 8, 2018 12:43PM, 10 min. 19 seconds when in trickery she again
16 called Mr. Perry to personally tell him she refunded his \$250 credit card payment that caused his
17 application to be abandoned in order to "stick the knife deeper" in resentment, Mrs. Katherine Matecki
18 falsely denied she ever called Mr. Perry to discuss the cancellation of \$250 credit card payment on
19 January 3, 2018 to cause his patent application to be abandon. (Mr. Perry audio recorded the
20 conversation). Katherine Matecki further claimed that PERRY failed to pay the 2 additional outstanding
21 extensions fees, and for that reason his Board appeal would not proceed any further and that he should
22 file a petition asking for a refund of his paid appeal fees.

23 78) The USPTO examiners' Kristen Clarette Matter and supervisor Katherine Matecki
24 hostility and discrimination continued against Mr. Perry during prosecution by failing to provide him a
25 notice of deficiency letter for 5 months that 2 additional months for extension fees are due. See also 37
26 CFR 1.29(k)(1)(iii) The deficiency notice of owed amount; (iv) The total deficiency payment owed & 37
27 CFR 1.29(k)(2), (3), (4).

28 79) The USPTO examiners' Kristen Clarette Matter and supervisor Katherine Matecki
hostility, discrimination and malicious conduct during patent prosecution against PERRY by failing to
explain to Mr. Perry that a refund is not advisable when he must pay 2 additional extension fees.⁶⁰ This

⁶⁰ 37 CFR 1.26 Refunds. (a) The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as **when a party desires to withdraw a**

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1 misconduct amounted to 'bad faith'⁶¹ 'unclean hands,' and 'inequity.' While according to 37 CFR
2 1.26- Refunds, Mr. Perry was not at all entitled to a refund of such fee.

3 80) The USPTO examiners' Kristen Clarette Matter hostility, discrimination and bias against
4 Mr. Perry during prosecution of his patent application No.:14/794/,807 was based on Mr. Perry's culture
5 and country of origin (Israel), and the inexplicable vendetta against Mr. Perry from obtaining a fair patent
6 application prosecution.

7 81) The USPTO examiners practiced fraud may be imputed from during prosecution never
8 timely responding to petitions filed by Mr. Perry. The USPTO examiners' Kristen Clarette Matter and
9 supervisor Katherine Matecki, and Darnell Jayne fraudulent conduct in causing disgrace and
10 embarrassment to the American Patent Office acting with malice and fraud by stealing⁶² patent inventive
11 concepts from innocent applicants and the shame by violating the public confidence and reliance, where
12 the USPTO concealed Mr. Perry's submission of notice of appeal and extension fees payments to the
13 USPTO of the PTO 2038 Credit Card Payment forms were timely submitted on August 18 2017 before
14 the time to appeal expired.

15 82) Mr. Perry had several conversations with Darlene Lyon (conversation was recorded, 18
16 U.S.C. §2511(2)(d)) where she offered Mr. Perry to forward his payments and notice of appeal along
17 with the PTO 2038 credit card payment forms to USPTO Examiner Kristen Clarette Matter in Unit 3600
18 to process. Afterward, Examiner Kristen Clarette Matter lost the payment submission and Mr. Perry's
19 notice of appeal. This "**deliberate ignorance**" implicates fraud by Examiner Kristen Clarette Matter and
20 her supervisor Katherine Matecki.

21 **patent filing for which the fee was paid, including an application, an appeal, or a request for an
22 oral hearing, will not entitle a party to a refund of such fee.**

23 ⁶¹ The claimed invention must be (1) comprised of patent eligible subject matter; (2) useful; (3)
24 novel; (4) nonobvious; and (5) adequately described. [MPEP 706 Rejection of Claims [R-07.2015] 37
25 CFR 1.104 Nature of examination I. UNIFORM APPLICATION OF THE PATENTABILITY
26 STANDARD]. <https://www.uspto.gov/web/offices/pac/mpep/s706.html>

27 See 37 CFR 1.104 Nature of examination: "The standards of patentability applied in the examination of
28 claims must be the same throughout the Office. In every art, whether it be considered "**complex.**" "**newly
developed.**" "**crowded.**" or "**competitive.**" all of the requirements for patentability (e.g., **patent eligible,
useful, novel, nonobvious, enabled, and clearly described as provided in 35 U.S.C. 101, 102, 103 and
112**) must be met before a claim is allowed. The mere fact that a claim recites in detail all of the features
of an invention (i.e., is a "picture" claim) is never, in itself, justification for the allowance of such a
claim." <https://www.uspto.gov/web/offices/pac/mpep/s706.html>.

⁶² See how the USPTO TC 3600 & 3700 created a "Customer Partnership Meeting" with companies
across the United States that create, unveiled unlawfully abandoned stolen published patents to customer
partnership meetings and road shows.

<http://www.aipla.org/learningcenter/library/papers/roadshows/2016PIP/PIP16%20Materials/Customer%20Partnership%20Meeting%20Folder.pdf>

<http://www.patentdocs.org/2018/06/tc-2600-partnership-meeting.html>

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1 83) As a result of each of all the defendants' conduct, plaintiff seeks punitive damages subject
2 to change or increase, in addition to the alleged compensatory damages as stated in his administrative
3 claims to the agency and a criminal/non-criminal referral to the United States Attorney General - U.S.
4 Justice Dep. (18 U.S.C. § 1957(e) and 18 U.S.C. § 3333) for a civil investigative demand report under 18
5 u.s. code § 1968 investigation of such alleged racketeering violation.

THIRD CAUSE OF ACTION

6
7 [Cause of Action Under 42 U.S.C. § 1983 For Plaintiff's 'Private Rights'
8 For Violation of 18 U.S.C. § 1030, et seq.; Against The USPTO And
9 Agents Illegal Hacking Into Mr. Perry's Wi-Fi Into And Gmail Had
10 Erased Emails He Received From The USPTO.⁶³Hacking Into Plaintiff's
11 Personal Computer Implanting A Virus. Defendants' Had Refused To
12 Answer Mr. Perry's Motion For Protective Order Before The Hacking Is
13 Questionable. The Stored Communications Act ("SCA"), 18 U.S.C. §
14 2701, et seq., the Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. §
15 1001 et.seq.,⁶⁴ And The California Penal Code § 502 And California
16 Computer Data Access And Fraud Act (CDAFA); Obstruction of Justice
17 And The Related Racketeering Under 18 U.S.C. § 1952]

18 84) Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
19 paragraphs 1 above through 265 inclusive, as though fully set forth herein.

20 85) During litigation in the United States Court of Federal Claims ("USCFC") the USPTO
21 official and one or more of their agents had "**hacked**" into Mr. Perry's personal computer and his Google
22 mail account⁶⁵ on about November 2019, and erasing a chunk of emails that were exchanged between
23 Mr. Perry and the USPTO ombudsman Dale Shaw and USPTO upper management Supervisors
24 Katharine Matecki from Department 3469 from November 23, 2016 to April 5, 2017, one email from
25 USPTO Primary Examiner Igor N. Borissov following a three way interview conversation with Examiner
26 Kristine Clarette Matter were also deleted from Mr. Perry's Gmail (Google) account. But other non-
27 USPTO emails from November 23, 2016 to April 5, 2017 had remained.

28 ⁶³ See one example of Gmail from Primary Examiner Igor N. Borissov from August 9, 2017 as exhibit # 240.

⁶⁴ One who makes an illegal hacking into Mr. Perry's Wi-Fi, and into his personal Gmail to erase emails sent from the USPTO to Mr. Perry, then puts a virus in Mr. Perry's computer is making a statement which is covered under 18 U.S.C. § 1001 that provides: "(a): "[E]xcept as otherwise provided in this section, **whoever**, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, **knowingly and willfully**—(1)....**covers up by any trick, scheme, or device a material fact...**"

⁶⁵ [https://www.consumer.ftc.gov/articles/how-recover-your-hacked-email-or-social-media-account.](https://www.consumer.ftc.gov/articles/how-recover-your-hacked-email-or-social-media-account)

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1 86) See Federal Rules of Civil Procedure, Rule 37, Committee Notes on Rules—2015
2 Amendment, the USPTO's spoliation of Mr. Perry's evidence during the litigation in the United State
3 Court of Federal Claims is an "[A]dverse-inference instructions...developed on the premise that a
4 party's intentional....destruction of evidence to prevent its use in litigation gives rise to a
5 reasonable inference that the evidence was unfavorable to the party responsible for loss or
6 destruction of the evidence." (The spoliation doctrine is invoked when a party alleges that its opposing
7 party has caused a crucial piece of evidence to be unavailable. Black's Law Dictionary 1437 (8th ed.
8 2004).

9 87) The federal courts may see fit to punish the party responsible for destroying evidence
10 while litigation is pending. See West v. Goodyear Tire & Rubber Co., 167 F.3d 776, 779 (2d Cir. 1999).
11 The inherent authority of courts to punish perpetrators of spoliation is recognized in Chambers v.
12 NASCO, Inc., 501 U.S. 32, 43-51 (1991). The rationale for this punishment is rooted in the theory that
13 the destruction of documents hinders the discovery process and unfairly prejudices the requesting party
14 because potentially relevant evidence is unavailable to them due to the conduct of their adversary. As
15 such, the party in the wrong must be held accountable for its actions. Zubulake v. UBS Warburg LLC,
16 220 F.R.D. 212, 216 (S.D.N.Y. 2003).

17 88) The spoliation doctrine interplays with the duty to preserve. The concept of the "duty to
18 preserve" is founded on the idea that parties to litigation are required to preserve documents or other
19 materials that may be requested as potential evidence during the discovery process. See, e.g., Beil v.
20 Lakewood Eng'g & Mfg. Co., 15 F.3d 546, 552 (6th Cir. 1994); Green Leaf Nursery v. E.I. DuPont De
21 Nemours & Co., 341 F.3d 1292, 1308 (11th Cir. 2003). This duty is long standing, widely recognized, and
22 established in federal law. See FujitsuLtd. v. Fed. Express Corp., 247 F.3d 423, 436 (2d Cir. 2001);
23 Silvestri v. Gen. Motors Corp., 271 F.3d 583, 590 (4th Cir. 2001); Turner v. Hudson Transit Lines, Inc.,
24 142 F.R.D. 68, 72 (S.D.N.Y. 1991).

25 89) Mr. Perry application for protective order filed on November 20, 2019 was never heard by
26 either Assigned **Judge Nancy B. Firestone** because **Judge Matthew H. Solomson** replaced her, and Mr.
27 Perry's application for restraining order which was not yet made or discussed the hacking in Mr. Perry's
28 original complaint of November 20, 2019, because the hacking took place during a pending litigation.

29 90) On March 11, 2020 (Dkt. #22) Mr. Perry also made an application for a preliminary
30 and/or permanent injunction against the defendants. The Federal Claims Court Opinion of June 17, 2020
31 on page 41, never heard Mr. Perry's application of the hacking, or allowed defendant to reply in defense.
32 Mr. Perry made the allegations of hacking 5 months after he filed his complaint and three months after

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1 defendants refused to answer Mr. Perry's motion for protective order.

2 91) Mr. Perry was never given an opportunity to prove his allegations. The Federal Claims
3 Court Judge Solomson had stricken the motions from the docket because Mr. Perry's computer virus had
4 submitted multiple copies to the Claims Court of the same application for restraining order. (Id. Claims
5 Court Case No. 1:10-cv-01797-MHS, Dkt. # 22). The Claims Court Judge asserted misleading
6 statements in his order dismissing the complaint on June 17, 2020:

7 "[A]lthough this Court may not dismiss an IFP complaint merely because
8 plaintiff's allegations are "**unlikely**," this court must dismiss a claim as
9 frivolous if the alleged facts present "**fantastic**" or "**delusional**"
10 **scenarios**. Taylor, 568 F. App'x at 891 (quoting Neitzke v. Williams, 490
11 U.S. 319, 327 (1989)); see Denton, 504 U.S. at 33 (emphasizing that "a
12 finding of factual frivolousness is appropriate when the facts alleged rise
13 to the level of the irrational or the wholly incredible"). A "**tale of**
14 **...intrigue**" — like parts of Mr. Perry's **Complaint** — may be deemed
15 **frivolous where "the factual allegations asserted are so unbelievable**
16 **that there is no need for an evidentiary hearing to determine their**
17 **veracity."** Taylor, 568 F. App'x at 891. Accordingly, Mr. Perry's request
18 for injunctive relief is denied, and his claim for relief is dismissed."

19 92) It's perplexing how the Claims Court Judge Solomson would come to a conclusion that
20 the facts alleged wouldn't "raise a reasonable expectation that discovery will reveal evidence of illegal
21 conduct, when he switched facts and asserted misleading statement as if Mr. Perry filed the allegations of
22 hacking in his original complaint was an outright lie, when the allegations was made 5 months later on a
23 motion for a restraining order.

24 93) Mr. Perry was never given an opportunity to prove his allegations it in discovery or an
25 evidentiary hearing and this case is a clear example of a "**heightened [pleading] standard**" that federal
26 courts have applied to civil actions. If one was to determine that these allegation had no merit, but yet
27 Judge Matthew H. Solomson contradict himself by refusing to hear Mr. Perry allegations of unlawful
28 hacking into his Gmail and personal computer. Judge Solomson never wanted to find out the truth.

94) How can Mr. Perry proves a set of facts of the hacking into his Gmail account and his
personal computer infected with a virus without an evidently hearing in the United States District Court.
Mr. Perry retained audio recording on flash cards were taken of conversations with USPTO ombudsman
Dale Shaw and USPTO upper management Supervisors Katharine Matecki from Art Unit No. 3649 are
kept in safe place.

95) Mr. Perry also has receipts from Dell Computer Repairs Service of the damage done to his
computer that he had to change his mother board three times, and twice his hard drive. When Mr. Perry

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1 communicated to Google customer service to complain, they explained to him that those emails he
2 showed he has copies in paper were erased from Gmail and cannot be recovered.

3 96) On July 13, 2021, the United States Court of Appeals For The Federal Circuit (“CAFC”)
4 issue an Opinion⁶⁶ discussing among other things that if Mr. Perry’s can prove his allegations of the
5 hacking, would entitle him to a money judgment against the USPTO:

6 Page 5: “[A]dditionally, as to Mr. Perry’s requests for injunctive
7 relief and for a restraining order against the USPTO based on his
8 allegations that the USPTO hacked into his email account and deleted
9 his emails, the trial court dismissed those claims for lack of jurisdiction
10 and as frivolous. Mr. Perry appeals to this court. We have jurisdiction
11 pursuant to 28 U.S.C. § 1295(a)(3).”

12 Pages 9-10: “[M]r. Perry alleged that his email account was hacked
13 by agents of the USPTO who deleted various emails he had received
14 from the agency. The trial court first dismissed this claim as failing to
15 plead any facts, which if proven would entitle him to a money
16 judgment. It also dismissed this claim as frivolous, explaining that it
17 “must dismiss a claim as frivolous if the alleged facts present ‘fantastic’ or
18 ‘delusional’ scenarios.” Perry, 149 Fed. Cl. at 36 (quoting Taylor v.
19 United States, 568 F. App’x 890, 891 (Fed. Cir. 2014)).” (“Citations”).

20 97) As a direct, legal and proximate result of the harm, by defendants’ unlawful actions were
21 intentional, willful, malicious, and done with total disregard to Plaintiff’ rights to be free from violation
22 of his privacy rights in application of federal laws. Plaintiff had sustained economic, compensatory
23 damages from all the defendants and that he will continue to sustain, to be proven at trial, in addition to
24 the alleged compensatory damages as stated in his administrative claims to the agency

25 98) As a result of each of all the defendants’ conduct, plaintiff seeks punitive damages subject
26 to change or increase and a criminal referral to the Department of Justice.

27 **FOURTH CAUSE OF ACTION**

28 **[Cause of Action Under 42 U.S.C. § 1983 For The USPTO’s Employee/s**
Intentional, Negligent And Wrongful Act And Omission In Violation of
The Federal Tort Claims Act (“FTCA”) 28 U.S.C. § 2675(a)⁶⁷ And 5

⁶⁶ The CAFC had issued OPINION and JUDGMENT filed for the court by Per Curiam on July 13, 2021, and issued its ORDER denying Mr. Perry’s petition for panel rehearing and rehearing en banc on August 30, 2021, and issued its Mandate on September 17, 2021.

⁶⁷ Defendants had failed to respond to plaintiff’s timely presented administrative claims to the USPTO pursuant to 28 U.S.C. § 2675(a). Thus, the USPTO failure to response makes the Government’s (“USPTO”) sovereign immunity as waived, and any objection to compensatory relief in the form of monetary damages is also waived, is a competent evidence of liability as to the amount of damages

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U.S.C. §552a(g)(1)(a)-(d) (28 U.S.C. §§ 2671-2680) And 28 U.S.C. § 1346(b)(1)⁶⁸ Against The USPTO’s Personnel’s Fraud In Changing Mr. Perry’s Patent Application No.:15/382,598 Filing Date From December 16, 2016 To December 26, 2017 (1 Year Later); USPTO Conspiracy; Tortious Harassment; Retaliation; And Discrimination Over Issues Involving Due Process Violations of The Fifth Or Fourteenth Amendment By Illegally Revising Records Belonging To Plaintiff’s⁶⁹ The USPTO’s Illegal Infringement Under 28 U.S.C. § 1498(a) In The Coercive Publication Online of Mr. Perry’s Non-Publish Patent Application No.:15/382,598 Unlawfully Offering It For Sale On The USPTO “PublicPair” Portal⁷⁰ In Violation of 18 U.S.C. § 1957, Leading To Theft of Mr. Perry’s Intellectual Properties In Violation of Mr. Perry’s Constitutional And Properry Rights Under 35 U.S.C. § 102(a)(2)⁷¹] 37

sought by Mr. Perry request for compensatory damages in the amount of \$ 150,000,000 as to his non-publish patent application No.:15/382,598.

See 28 U.S.C. § 2675(a): “An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury..., unless the claimant shall have first presented the claim to the appropriate Federal agency...The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section.”....”(b) Action under this section shall not be instituted for any sum in excess of the amount of the claim presented to the federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.”

⁶⁸ 28 U.S.C. § 1346(b)(1).

⁶⁹ 5 U.S.C. § 552 is applicable to Mr. Perry as a United States Citizen. See 5 U.S.C. § 552a(a) (2): “[t]he term “**individual**” means a citizen of the United States or an alien lawfully admitted for permanent residence; 5 U.S.C. § 552a(a)(4) the term “**record**” means any item, collection, or grouping of information about an individual that is maintained by an agency. 5 U.S.C. § 552a (g) allows two civil causes of action that provide for injunctive relief – amendment lawsuits under (g)(1)(A) and access lawsuits under (g)(1)(B). The remaining two causes of action provide for compensatory relief in the form of monetary damages – damages lawsuits under (g)(1)(C) and (g)(1)(D).

⁷⁰ Violation of 18 U.S.C. § 1957 relating to engaging in monetary transactions in property derived from specified unlawful activity. The USPTO had made money offering Mr. Perry’s patent application No.:15/382,598 and ideas for sale on the USPTO “**PublicPair**” Portal, while Mr. Perry did not gain even a penny from his patent application. Thus, the USPTO thievery.

⁷¹ In 35 U.S.C. § 102(a)(2): “[t]he claimed invention was described in a patent issued under section 151, **or in an application for patent published or deemed published under section 122(b), in which the patent or application**, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.” This language of the **statute conveys ownership and property rights** and grant itself rights of ownership to control, **make, use, offer for sale**, sell, import or publish. <https://www.uspto.gov/patents-getting-started/general-information-concerning-patents#heading-4>.

See 35 U.S.C. 261: “The Patent and Trademark Office shall maintain a register of interests in patents and **applications for patents** and shall record any document related thereto upon request, and may require a fee therefor. **Applications for patent,....shall be assignable in law by an instrument in**

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CFR § 1.29- Application Data Sheet Under 37 CFR 1.76]

1
2 99) The Plaintiff incorporates by reference as if fully set forth herein the allegations contained
3 in paragraphs 1 above through 265 inclusive, as though fully set forth herein..

4 100) 35 U.S.C. §122(a) does not allow the USPTO Director to disclose information concerning
5 Mr. Perry’s then pending non-publish⁷² patent application No.:15/382,598, unless it “**necessary to carry**
6 **out the provisions of an Act of Congress or in such special circumstances as may be determined by**
7 **the Director.**” Such discretion is not absolute and such authority committed to the Director to determine
8 whatsoever “**special circumstances**” is not without justification for publication of a non-publish patent
9 application.

10 101) The USPTO took the complete value of Mr. Perry’s statutory property rights by
11 publishing patent application No.: 15/382,598 on August 23, 2018. (**Id. Exhibit # 613**) without
12 permission or issuance of a claim on allowable subject matter contained in his patent application. The
13 USPTO’s coercive publication online was illegal, and infringed on Mr. Perry’s property as a non-publish
14 patent application by unlawfully selling it on the USPTO “**PublicPair**” portal, leading to the theft of Mr.
15 Perry’s intellectual properties. The USPTO publication of Mr. Perry’s non-publish application no.
16 ignored exceptions to the eighteen-month publication of patent applications.⁷³

17
18 102) Under 37 CFR 3.73(a) “[T]he original applicant is presumed to be the owner of an

19 **writing. The applicant, patentee, or his assigns or legal representatives may in like manner grant and**
20 **convey an exclusive right under his application for patent, or patents, to the whole or any specified**
21 **part of the United States.”**

22 ⁷² **EXCEPTIONS To The Eighteen-Month Publication of Patent Applications: 2)— (A) An**
23 **application shall not be published if that application is—(i) no longer pending; (ii) subject to a**
24 **secrecy order under section 181; (iii) a provisional application filed under section 111(b); or (iv) an**
25 **application for a design patent filed under chapter 16;**

26 **II. EXCEPTIONS: An application will not be published if one of the following exceptions as**
27 **set forth in 37 CFR 1.211 applies: (A) The application is recognized by the Office as no longer**
28 **pending; for information on express abandonment to avoid publication see 37 CFR 1.138(c) and**
MPEP § 1125; (B) The application is national security classified (see 37 CFR 5.2(c), subject to a secrecy
order under 35 U.S.C. 181, or under national security review; (C) The application has issued as a patent
in sufficient time to be removed from the publication process; or (D) The application was filed with a
nonpublication request in compliance with 37 CFR 1.213(a). See MPEP § 1122-1124.
<https://www.uspto.gov/web/offices/pac/mpep/s1120.html>.

⁷³ See, e.g., **American Power & Light Co. v. SEC**, 329 U.S. 90, 105 (1946) (“**Private rights are**
protected by access to the courts to test the application of the policy in the light of these legislative
declarations.”).

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1 **application for an original patent.”**⁷⁴ The Supreme Court held that depriving patent applicant property
 2 rights would be an invasion of the judicial branch of the government by the executive. Patent
 3 applications are property for the purpose of the See in McCormick Harvesting Machine v. Aultman, 169
 4 U.S. 606, 612 (1898) that “[t]o deprive the applicant of his property without due process of law, and
 5 **would be in fact an invasion of the judicial branch of the government by the executive.”**⁷⁵

6 103) USPTO’s examination guidance, training, and explanatory examples discuss the
 7 substantive law on eligibility is discussed in USPTO MPEP79 §§ 2106.03 through 2106.06 and establish
 8 the policies and procedures to be followed by examiners in evaluating patent applications for compliance
 9 with the substantive law, but do not serve as a basis for a rejection. The USPTO’s defines ownership of
 10 patent and patent applications in MPEP⁷⁶ §§ 2106.03. See Beech Aircraft Corp. v. EDO Corp., 990 F.2d
 11 1237, 1248, 26 USPQ2d 1572, 1582 (Fed. Cir. 1993). **“However, patent applications filed on or after
 12 September 16, 2012, the original applicant is presumed to be the owner of the application for an
 13 original patent.”** (“Citation”).

14 104) The USPTO infringement under 28 U.S.C. § 1498(a) was in the illegally and without

15 ⁷⁴ 37 CFR 3.1 Definitions. For purposes of this part, the following definitions shall apply:
 16 Application means a national application for patent, an international patent application that designates the
 17 United States of America, an international design application that designates the United States of
 18 America, or an application to register a trademark under section 1 or 44 of the Trademark Act, 15 U.S.C.
 19 1051 or 15 U.S.C. 1126, unless otherwise indicated

20 ⁷⁵ The APA does not preclude judicial review only in justified **“Special Circumstances”** where
 21 “agency action is committed to agency discretion by law.” 5 U.S.C. § 701(a)(2). This **“very narrow
 22 exception”** to the presumption of judicial review is applicable only “in those rare instances where
 23 ‘statutes are drawn in such broad terms that in a given case there is no law to apply.’” Citizens to Pres.
 24 Overton Park, Inc. v. Volpe, 401 U.S. 402, 410 (1971) (quoting S. Rep. No. 79-752, at 26 (1945)).

25 See Hyatt v. United States Patent And Trademark Office No. 2014–1596 (Fed. Cir. August 20,
 26 2015): “[I]ndeed, the PTO conceded at oral argument that if § 122(a) was unreviewable the PTO
 27 could disclose essentially any information about any patent application, with no review and no
 28 recourse, so long as there was no constitutional violation. See Oral Argument at 30:30–37, 34:40–57,
 available at <http://oralarguments.cafc.uscourts.gov/default.aspx?fl=2014-1596.mp3>. **“We need not
 doubt the [PTO’s] trustworthiness, or its fidelity to law,** to shy away from that result. We need only
 know—and know that Congress knows—that legal lapses and violations occur, and especially so when
 they have no consequence.” Mach Mining, 135 S. Ct. at 1652–53. Congress did not intend for the
 exception to swallow the rule.”...“The PTO must not only determine that special circumstances exist, but
 also that the special circumstances justify the specific content to be disclosed.”] (“Citations”).

⁷⁶ **“The MPEP [is] commonly relied upon as a guide to patent attorneys and patent examiners
 on procedural matters. While the MPEP does not have the force of law, it is entitled to judicial
 notice as an official interpretation of statutes or regulations as long as it is not in conflict
 therewith.”** Molins PLC v. Textron, Inc., 48 F.3d 1172, 1180 n.10 (Fed. Cir. 1995) (alteration in
 original) (citation and internal quotation marks omitted).

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1 permission, publishing, posting Online and selling Mr. Perry's patent application No.: 15/382,598 on the
 2 USPTO "**PublicPair.**" See Golden v. United States, 955 F.3d 981, 987-88 (Fed. Cir. 2020), and Taylor
 3 v. United States, 19-1901 (Opinion, 1588580) (Fed. Cir. 2020) citing A&D Auto Sales, Inc. v. United
 4 States, 748 F.3d 1142, 1154 (Fed. Cir. 2014): "[T]he challenged action by....personnel did...have a
 5 "legal effect or impose a direct legal obligation on any party." Dimare Fresh, Inc. v. United States,
 6 808 F.3d 1301, 1309 (Fed. Cir. 2015)." ("Citation").

6 105) The USPTO policies of discrimination had no "special circumstances" to publish Mr.
 7 Perry's patent application to frustrate and delay Mr. Perry's prosecution of his patent applications before
 8 the USPTO, to prevent Mr. Perry from obtaining final agency action subject to judicial review, and to
 9 force the abandonment of his applications, and to prevent the issuance of patent to him.

10 106) On December 16, 2016. The USPTO advised Mr. Perry in a phone conversation that if he
 11 has any documentation showing he submitted the application on the "EFS-Web Registered" on
 12 December 16, 2016, he should mail them a copy of it with a letter explaining this to the USPTO, and they
 13 promised they will fix the filing date back to December 26, 2017 from December 16, 2016. The USPTO
 14 also promised they will reduce the amount of fees due for the Patent Application by \$200. (The cost the
 15 USPTO charge for filing Date Application by mail.)⁷⁷

15 107) On December 16, 2016, Plaintiff filed/registered/submitted his second non-provisional
 16 patent "**Application Data Sheet 37 CFR 1.76**" ("**ADS**"), No.:15/382,598; "**Certification of Micro-**
 17 **Entity**" (as "Fee Information") (Id. Ex.# 448). ; and some "drawing" on the USPTO Online filing
 18 system "EFS-Web Registered." When Plaintiff submitted the application online the system showed a
 19 "**Warning**" for the Data Application, but nevertheless it accepted it.⁷⁸ (Id. Ex.# 439). The "EFS-Web
 20 Registered" system is very difficult to use and would often gives errors). For nearly a year Plaintiff
 21 PERRY waited for a response from the USPTO.

21 108) Finally on July 24, 2017, the USPTO mailed Plaintiff the **first** "**Notice of Incomplete**
 22 **Nonprovisional Application (Filed Under 37 CFR 1.53(B).**" Finally acknowledged receipt of Plaintiff's
 23 application with a "**Confirmation No. Filing Receipt**" "Filing or 371(c) Date" of December 16, 2016.
 24 (Id. Ex.453). PERRY submitted the USTPO the specification and drawing on December 16, 2016, not

25
 26 ⁷⁷ <https://www.uspto.gov/patents-getting-started/patent-basics/types-patent-applications/nonprovisional-utility-patent>.

27 ⁷⁸ 35 U.S. Code § 111(a)(4)—Filing date: "**The filing date of an application shall be the date on**
 28 **which a specification, with or without claims, is received in the United States Patent and**
Trademark Office."

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1 December 26, 2017.⁷⁹ Thus, the USPTO failed to give PERRY justification why they took one year
2 (from December 16, 2016 to December 26, 2017) to process his data application?

3 109) Patent Applicants are not required to submit application the basic filing fee, search fee, or
4 examination fee in order to accorded a filing date pursuant to paragraph 37 CFR § 1.53(b) unless a
5 specification is included, but this does not include the claim or the inventor's oath or declaration (§§
6 1.63, 1.64, 1.162 or 1.175). See 37 CFR § 1.53(f) Completion of application subsequent to filing⁸⁰ —
7 Nonprovisional (including continued prosecution or reissue) application.⁸¹

8 110) On October 12, 2017, the USPTO mailed Plaintiff a **second** "Notice of Incomplete
9 **Nonprovisional Application (Filed Under 37 CFR 1.53(B))**" with a "Confirmation No. Filing
10 **Receipt**" "Filing Or 371(c) Date" of December 16, 2016. (**Id. Ex. 455**).

11 111) All of a sudden on January 5, 2017, over a year after Plaintiff filed application
12 No.:15/382,598, the USPTO had mailed Plaintiff a **third** "Confirmation No. Filing Receipt" was
13 illegally and without authorization changed the filing date of Mr. Perry's patent application from
14 **December 16, 2016** to a year later on **December 26, 2017**. (**Id. Ex.488**).

15 112) The reason for the USPTO fraud in changing Mr. Perry's patent application
16 No.:15/382,598 filing date was likely to allow it to another inventor as if he was first, before Mr. Perry.

17 ⁷⁹ **MPEP 506 Completeness of Original Application [R-07.2015]. 37 CFR 1.53: Application**
18 **number, filing date, and completion of application.** (f) (4) If the excess claims fees required by §
19 1.16(h) and (i) and multiple dependent claim fee required by § 1.16(j) are not paid on filing or on later
20 presentation of the claims for which the excess claims or multiple dependent claim fees are due, the fees
21 required by § 1.16(h), (i), and (j), must be paid or the claims canceled by amendment prior to the
22 expiration of the time period set for reply by the Office in any notice of fee deficiency. If the application
23 size fee required by § 1.16(s) (if any) is not paid on filing or on later presentation of the amendment
24 necessitating a fee or additional fee under § 1.16(s), the fee required by § 1.16(s) must be paid prior to the
25 expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid
26 abandonment.

27 ⁸⁰ 37 CFR § 1.53(f): "Completion of application subsequent to filing — Nonprovisional
28 (including continued prosecution or reissue) application. (1) If an application which has been
accorded a filing date pursuant to paragraph (b) or (d) of this section does not include the basic filing fee,
search fee, or examination fee, or if an application which has been accorded a filing date pursuant to
paragraph (b) of this section does not include at least one claim or the inventor's oath or declaration (§§
1.63, 1.64, 1.162 or 1.175), and the applicant has provided a correspondence address (§ 1.33(a)), the
applicant will be notified and given a period of time within which to file a claim or claims, pay the basic
filing fee, search fee, and examination fee, and pay the surcharge if required by § 1.16(f), to avoid
abandonment."

⁸¹ 37 CFR § 1.53: Application Number, Filing Date, And Completion of Application: "**The filing**
date of an application for patent filed under this section, other than an application for a design
patent or a provisional application under paragraph (c) of this section, is the date on which a
specification, with or without claims, is received in the Office. The filing date of an application for
a design patent filed under this section, except for a continued prosecution application under paragraph
(d) of this section, is the date on which the specification as prescribed by 35 U.S.C. 112, including at
least one claim, and any required drawings are received in the Office."

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1 See USPTO revised 37 CFR § 1.53 **“The filing date of an application for patent filed under this**
 2 **section,”** to MPEP 2121.01: **“[I]n the introduction, changed “date of invention” to “effective filing**
 3 **date of the claimed invention for applications or patents subject to the first inventor to file**
 4 **provisions of the AIA or the time the invention was made for applications or patents subject to pre-**
 5 **AIA law.”** <https://www.uspto.gov/web/offices/pac/mpep/mpep-0005-change-summary.pdf>.⁸²

6 113) See the USPTO **“MANUAL OF PATENT EXAMINING PROCEDURE”** (“MPEP”)
 7 Ninth Edition, Latest Revision June 2020, Executive Summary occurred after Mr. Perry had filed his
 8 lawsuits. The USPTO had changed **“effective filing date of the United States application”** to
 9 **“effective filing date of the claimed invention in the United States.”**

10 114) On December 11, 2017, Mr. Perry mailed the Patent Claim/s with Specification, and on
 11 April 21, 2018, Mr. Perry confronted the USPTO on some issues as to the application fees and requested
 12 that the USPTO provide him with accounting of all of his payments.

13 115) Plaintiff complained about why the USPTO changed the filing date? The USPTO
 14 representatives said was because Mr. Perry did not pay his fees and did not submit his **“Application**
 15 **Data Sheet 37 CFR 1.76”** on the USPTO **“EFS-Web Registered”**⁸³

16 ⁸² **“(MPEP) 403: “[I]n subsection II, revised to update discussion of patent applications filed**
 17 **without a correspondence address, to include discussion of the procedures when a patent**
 18 **application as filed has been accorded a filing date but is not complete, the applicant is notified and**
 19 **given a period of time within which to file the missing parts to complete the application and pay the**
 20 **applicable surcharge. Added a cross-reference to MPEP § 601.01 et seq. for discussion of the**
 21 **requirements for a complete application.”...”(MPEP) 804: [I]n subsection I.B.1.(a), clarified text**
 22 **defining effective U.S. filing date for original applications and added text to define the effective U.S.**
 23 **filing date for reissue applications.”...”(MPEP) 2121.01: In the introduction, changed “date of**
 24 **invention” to “effective filing date of the claimed invention for applications or patents subject to the**
 25 **first inventor to file provisions of the AIA or the time the invention was made for applications or patents**
 26 **subject to pre-AIA law.”...”(MPEP) 2124 —Changed the title to “Exception to the Rule That the**
 27 **Reference Must Be Prior Art.” —Added “showing the state of the art existing after the effective filing**
 28 **date of the application” after “later factual reference.” Corrected the pinpoint citation of In re Koller**
 and added a citation to and discussion of Amgen Inc. v. Sanofi, 872 F.3d 1367, 124 USPQ2d 1354 (Fed.
 Cir. 2017).”...”(MPEP) 2133.01: “Added text to clarify that the effective filing date of a claimed
 invention is determined on a claim-by-claim basis. Added to the discussion of determining the
 effective filing date for a claim in a CIP, including adding citations to and discussion of Santarus,
Inc. v. Par Pharmaceutical, Inc., 694 F.3d 1344, 104 USPQ2d 1641 (Fed. Cir. 2012) and
Studiengesellschaft Kohle, m.b.H. v. Shell Oil Co., 112 F.3d 1561, 42 USPQ2d 1674 (Fed. Cir.
 1997).”...”(MPEP) 2135: “[R]evised to incorporate subject matter from previous MPEP § 706.02(e). —
 In subsection I, changed **“effective filing date of the United States application”** to **“effective filing**
date of the claimed invention in the United States” in item (A).”

⁸³ See 37 CFR 1.22: “[w]ith the exception that under § 1.53 applications for patent may be assigned
 a filing date without payment of the basic filing fee.”

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1 116) On February 2, 2018, Plaintiff mailed a letter with a screenshot of the submission of his
2 documents on the USPTO “**EFS-Web Registered**” and a copy of the December 16, 2016 “**Application**
3 **Data Sheet 37 CFR 1.76**” with a Claim/s, Specifications, drawings, and copies of checks and bank
4 statement showing payments. (Id. Ex. 500-506). Mr. PERRY requested that the USPTO provide him
5 with accounting of all of his payments. The USPTO representative told PERRY they will get back to
6 him and they never did. Plaintiff called to complain to Dale M. Shaw, the Deputy Director Stakeholder
7 Outreach and Patents Ombudsman United States Patent and Trademark Office who belittled Mr. Perry
8 that the USPTO never makes mistakes in charging extension fees.

9 117) On February 23, 2018, the USPTO generated a fourth letter “**Confirmation No. Filing**
10 **Receipt**” with a Revised Filing Date Of December 26, 2017. The letter requested (on page 2) that
11 Plaintiff submit “A properly executed inventor’s oath or declaration has not been received for the
12 following inventor(s). The letter claimed that PERRY owed: “**\$205 Total Balance Due.**” (Id. Ex.
13 507).

14 118) Plaintiff accused the USPTO for intentionally revising his filing date and delaying the
15 processing of his “**Application Data Sheet 37 CFR 1.76**” as though to allow some outside competing
16 interests have had his patent ideas before him. For the reason the USPTO delayed their notice for over
17 year (1) in finally acknowledging Mr. Perry’s non-provisional patent application of December 16, 2016
18 to December 26, 2017.

19 119) On April 21, 2018, Mr. PERRY mailed a “**Declaration For Utility Design Patent**
20 **Application (37 CFR 1.63)**”; a “**Declaration – Utility Or Design Patent Application**”; a “**Certificate**
21 **Of Mailing Or Transmission Under CFR 1.8**” with a screen shot of filing the data application
22 “**Application Data Sheet 37 CFR 1.76,**” for patent application No.:15/382,598, with a corrected
23 declaration. He also mailed statements under “**37 CFR 1.78 Claiming Benefit Of An Earlier Filing**
24 **Date, And Cross Reference To Other Applications.**”

25 120) On May 15, 2018, the USPTO mailed Mr. PERRY a “Notice Of Incomplete Reply
26 (Nonprovisional)” stating that he paid only “(\$150) Previous Unapplied Payment Amount.” (“A
27 Previous payment of \$150 will be applied to the additional fees indicated above.) (Id. Ex. 538). Mr.
28 PERRY paid \$140 (09/22/17) + \$40 (02/02/18) + \$205 (07/11/18) = \$385. If Mr. PERRY was asked to
pay only a Total of \$295 in Patent Application No.:15/709,307, he was asked more in Patent Application
No.:15/382,598.

 121) However, in Patent Application No.:15/709,307 Mr. PERRY paid only \$295 in fees. The
USPTO request for undefined fee amount was the reason PERRY asked for accounting. The fees should

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1 be the same as with Patent Application No.:15/382,598. So, Mr. PERRY overpaid \$90 in Patent
2 Application No.:15/382,598, and he overpaid \$250 in Patent Application No.:15/709,307.

3 122) On July 11, 2018, Mr. Perry mailed a “**Re: Request for Accounting of All Credit Cards**
4 **And Check Payments And How It Was Applied.**”

5 123) On July 16, 2018, Mr. Perry mailed a “**Moshe Avram Perry’s Petition To The USPTO**
6 **Director To Waive Extension And Appeal Fees (35 U.S.C. § 41)**” for patent applications
7 No.:14/794,807; No., 15/382,598, and No.:15/709,307 (Id. Exhibits # 569-579), with a copy of a screen
8 shot of the Patent Application registration on December 16, 2016 and a “**Application Data Sheet 37**
9 **CFR 1.76,**” No.:15/382,598.

10 124) On July 23, 2018, the USPTO mailed Mr. Perry a “Notice of Incomplete Reply,” asking
11 PERRY to pay extension fees.

12 125) Adding insult to injury, the USPTO on 23, 2018, the USPTO mailed a “**Notice Of**
13 **Abandonment Under 37 CFR 1.53(f) OR (g).**” On August 27, 2018 the USPTO mailed Mr. PERRY a
14 “Notice of Publication of Application” was contrary to 35 U.S.C. 122(a),⁸⁴ by ignoring Mr. PERRY’s
15 “Request Not To Publish” that neither was "necessary to carry out the provisions of an act of congress"
16 or was it a "such special circumstances.”

17 126) On September 12, 2018, PERRY mailed a “**Re: Complaint And Petition To**
18 **Remove/Reverse Publication Because of Violation Of Confidentiality 35 U.S.C. 122: The Notice Of**
19 **Publication Of Application 08/23/2018 Was Arbitrary, For Reinstatement Of The Original Filing**
20 **Date Of 12/16/2016 Replace The 12/26/2017 Revise Filing Date.**” (Id. Ex.# 580-588).

21 127) Publication and nonpublication are only stated in the ADS application. Here the USPTO
22 subverts their duties to patents applicants as PERRY by disregarding their own rules and regulations and
23 the abusively negated the purpose of nonpublication. See Pine Tree Med. Assocs. v. Health & Human
24 Serv., 127 F.3d at 121 (“[M]ere filing of an application is not the kind of completed transaction in
25 which a party could fairly expect stability in the relevant laws as of the transaction date.”).

26 ⁸⁴ See Citizens To Pres. Overton Park, Inc. v. Volpe, 401 U.S. 402, 410, 91 S.Ct. 814, 28 l.ed.2d
27 136 (1971) (quoting s.rep. no. 79-752, at 26 (1945)). Section 122(a) lays out a broad rule prohibiting the
28 disclosure of patent applications, subject to two exceptions: **applications for patents shall be kept in**
confidence by the [PTO] and no information concerning the same given without authority of the
applicant or owner unless necessary to carry out the provisions of an act of congress or in such special
circumstances as may be determined by the director. thus, applications may be disclosed only if (1) the
disclosure is "necessary to carry out the provisions of an act of congress" or (2) there are "such
special circumstances as may be determined by the director." § 122(a).

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1 128) Since a request was contained within an Application Data Sheet and if it was based on the
2 filing date to make the Application or publication a completed transaction. This is because Mr. Perry did
3 not know the USPTO would ignore his request not to publish until too late. Had he known earlier, that
4 he can only changed it if the USPTO granted PERRY a filing affective date (although a year late) was
5 granted on December 26, 2017. Thus, Mr. Perry's application requesting Non-Publication was valid and
6 the USPTO should not have changed the Non-Publication past the filing date. (Id. Ex. 441).

7 129) When Plaintiff complained not to publish, he was rebuffed and ignored, with USPTO
8 representatives lashing out at him with hostility and prejudice. When Plaintiff complained to the USPTO
9 Ombudsman Dale Shaw, the Deputy Director Stakeholder Outreach and Patents Ombudsman United
10 States Patent and Trademark Office belittled Mr. PERRY. Dale Shaw excused the publishing and stated
11 it was because Plaintiff application data sheet was field and mailed on December 16, 2016.

12 130) After Plaintiff paid all his fees for patent application prosecution, but the USPTO delayed
13 prosecution and mailed him a letter after letter which contained false and misleading information as if
14 they did not receive his documents, his drawing and specifications, and that made Mr. Perry realize that
15 the USPTO adversarial treatment was practicing a scheme to trick and confuse him as a Pro Se by giving
16 wrong information to pro se applicants as if the "\$150 previous unapplied payment amount." This was
17 when the USTPO formalities letter from February 23, 2018 alleged Mr. Perry only paid \$150 when he
18 already paid all of his patent applications fees. The reason was for the USPTO to create more delays to
19 accrue extension fees and abandonment of Mr. Perry's patent applications.

20 131) The so-called "petition for extension of time" fee. The extension fees are in effect a late
21 fee created by a mix of statutory and regulatory⁸⁵ command. USPTO regulations may not promote
22 practices that undermine patent applications by Startup companies in the United States in order to
23 charge⁸⁶ frivolous, fraudulent extension feesand expensive petition for extension of time that is intended
24 to lead to abandonment of valid and paid patent applications. Such frivolous extension fees do not
25 facilitate the prompt conclusion of application processing but instead lengthen patent prosecution.

26 132) After the USPTO charged the frivolous extension fees it abandoned Mr. Perry's patent
27 applications without warning to generate abandonment of his patent applications, and make more
28

⁸⁵ See "Regulatory Impact Analysis", supra note 81, at 111.

⁸⁶ In 2020 (the last year for which such data was available), the USPTO had charged slightly in excess of\$ \$3.45 billion in fees, of which roughly \$3 billion were attributable to patent fees and the rest to extension fees. One of the fees contributing to this surplus (accounting for \$151 million 35 in 2015).

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1 money⁸⁷ in the process after Mr. Perry paid all his examination fees. Then the USPTO prompted Mr.
2 Perry to file petitions to the “USPTO Director” which are then forward to the USPTO staff attorneys
3 who render arbitrary denials.

4 133) This was all done in the USPTO carrying out its illegal and impermissible policy of
5 publishing Mr. Perry’s non-publish application No.: 15/382,598 (Id. Ex. 547-561), and preventing any of
6 Mr. Perry’s patent applications from further prosecution after fees were already paid, depriving him the
7 issuance of patents, the USPTO had taken Mr. Perry’s property rights and constitutional rights.

8 134) The harm caused to Mr. Perry by the defendants was an act and omission constituting
9 willful and criminal misconduct, malicious, wanton, intentional, outrageous misconduct, and a conscious
10 flagrant indifference to the rights of Mr. Perry’s rights and entitlement to a fair and honest examinations
11 of his patent applications, intentional misconduct, resulting in Mr. Perry suffering economic and
12 emotional distress, and injuries.

13 135) As a direct, legal and proximate result of the harm, by defendants’ unlawful actions were
14 intentional, willful, malicious, and done with total disregard to Plaintiff’ right for equal protection of the
15 laws and to be free from discrimination of application of federal laws based on national origin, Plaintiff
16 had sustained economic, compensatory damages from all the defendants and that he will continue to
17 sustain, to be proven at trial.

18 136) Plaintiff further seeks reasonable punitive damages for pain and suffering; loss of
19 earnings, special compensatory damages, for mental anguish is entitled to liquidated damages. Plaintiff
20 also seeks for all other injunctive, declaratory, and monetary relief available for the violations at trial,
21 including liquidated damages for all willful violations, and other compensation for violation of the
22 federal laws.

23 137) But for an FTCA⁸⁸ claim to be properly before the Court, a plaintiff must first present an
24 administrative claim to the agency allegedly responsible for the plaintiff's injury. See 28 U.S.C. §
25 2675(a).

26 138) The FTCA provides a limited waiver of sovereign immunity for actions based on common
27 law torts. 28 U.S.C. § 1346(b)(1) provides: [T]he district courts...shall have exclusive jurisdiction of
28 civil actions on claims against the United States, for money damages....for injury or loss of property, or
personal injury or death caused by the negligent or wrongful act or omission of any employee of the
Government while acting within the scope of his office or employment...”

⁸⁷ 37 C.F.R. § 1.17 (2018).

⁸⁸ The FTCA includes a waiver for actions for tortious harassment campaign.

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1 139) As a direct, legal and proximate result of the harm, by defendants' unlawful actions were
2 intentional, willful, malicious actions was done with total disregard to Plaintiff' right for equal protection
3 of the laws and to be free from discrimination of application of federal laws based on national origin,
4 Plaintiff had sustained economic, compensatory damages from all the defendants and that he will
5 continue to sustain, to be proven at trial.

FIFTH CAUSE OF ACTION

6 [Cause of Action Under 42 U.S.C. § 1983 For The USPTO Scheme of
7 Fabrication, Procuring Frivolous Extension Fees, Fraud And Spoilage of
8 Plaintiff's Four (4) Patent Applications No.:14/794,807; 15/382,598,
9 No.:15/709,307 No. 16/599,131 In A Span of 7 Years Were All
10 Maliciously Abandoned Without Recommencing Any Examination In
11 Violation of 18 U.S.C. § 1001. Every Patent Application Mr. Perry Had
12 Filed Was Abandoned Right After He Paid All The Fees. The USPTO
13 Illegal Incentive⁸⁹ Is To Abandon Good Patent Applications Is Patterned
14 To Post Applications Online On "PublicPair" Portal ASAP For Sale And
15 To Steal Patents Ideas To Make More Money].

16 140) Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
17 paragraphs 1 above through 265 inclusive, as though fully set forth herein.

18 141) On information and belief, USPTO officials of said "Hyatt Unit" personnel are
19 responsible for the undue delays and denial of Mr. Perry's timely actions in the processing his patent
20 application petitions in order to accrue extensions fees to cause un-noticed abandonment of already paid
21 patent applications.

22 142) The likelihood of Mr. Perry's four (4) patent applications No.:14/794,807; 15/382,598,
23 No.:15/709,307 No. 16/599,131 accruing extensions fees in order to be all abandoned in a span of 7
24 Years **without recommencing examination** of the patent applications is way too high to believe was
25 accidental. The USPTO's patent prosecution is malicious and intentful to abandon the examination of
26 patent applications No.:14/794,807; 15/382,598, No.:15/709,307 No. 16/599,131. (Patent application
27 No.:14/794,807 was recommenced but later abandoned by Examiner Kristine Clarette Matter who lied
28 claiming Mr. Perry did not file his notice of appeal, his appeal fees or pay his extension fees).

⁸⁹ The USPTO incentive to abandon patent applications is clear to make more money and steal
patent ideas. In 2020 (the last year for which such data was available), the USPTO had charged slightly
in excess of \$ 3.45 billion in fees, of which roughly \$3 billion were attributable to patent fees and the
rest to extension fees. One of the fees contributing to this surplus (accounting for \$151 million 35 in
2015).

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1 143) Since filing his patent application No.:14/794,807 in 2015 the USPTO made fabrications
2 claims that they have “**not received**” or “**misplaced**” or “**lost**” Mr. Perry amendments and all mailed
3 paperwork mailed by USPTO Priority and Certified Mail of his patent applications No.:14/794,807;
4 15/382,598, No.:15/709,307 And No. 16/599,131, the USPTO had kept losing papers, then use protracted
5 delays and blames Mr. Perry for not answering their letters, they demand him to pay extension fees.

6 144) In the mid pandemic, the USTPO had waited 10 months to respond back to Mr. Perry’s
7 patent application No. 16/599,131, they lied and claimed he did not mail them all documents, corrections
8 and information for his claim and specification, they abandoned his application without notice, and
9 instructed him to file a petition which is now pending for over six (6) months. The same had happened in
10 all of Mr. Perry’s patent applications. How is it possible that every patent application Mr. Perry had filed
11 had been abandoned right after he paid all the fees?

12 145) The USPTO representatives would then claim they are under no duty to give Mr. Perry
13 notice of extension fees before the USPTO issue “**NOTICE OF ABANDONMENT**”⁹⁰ without
14 **recommencing**⁹¹ of any examination of his patent applications. Not surprising this is more than a
15 pattern; the USPTO has a sad history of policies where the USPTO is intentionally “losing” papers to
16 accrue extension fees in order to abandon already paid patent applications.⁹²

17 146) Every delay in Mr. Perry’s patent application was caused by the USPTO and not by Mr.
18 Perry who submitted his response timely. The time for the USPTO to reply back to Mr. Perry should not
19 affect the period given to Mr. Perry for the prosecution of his patent application/s. The USPTO staff and
20

21 ⁹⁰ Abandonment can only occur when either the applicant expressly notifies the USPTO of its
22 intent to abandon, [37 C.F.R. 1.138(a) (“An application may be expressly abandoned by filing a
23 written declaration of abandonment identifying the application in the United States Patent and
24 Trademark Office.”)], or when the applicant fails to respond to an office action or other USPTO
25 action within the required statutory period. [See, e.g., 37 C.F.R. 1.137(a)] (“If an applicant of a patent
26 application fails to reply within the time period provided, the application will become abandoned unless
27 an Office action indicates otherwise.”)].

28 ⁹¹ See Hyatt v. United States Patent and Trademark Office, No. 17-1722 (Fed. Cir. 9-24-2018).
“[T]he Eastern Virginia district court granted summary judgment for the PTO on the grounds that Mr.
Hyatt lacked a remedy because the PTO had **recommenced examination of his applications**. Id. at
787.“....“[H]yatt’s prior petition for a writ of mandamus on the basis of unreasonable delay failed
because the PTO had already **recommenced its examination of his applications** by the time the
district court reached the case’s merits. Hyatt, 146 F. Supp. 3d at 785–86.”

⁹² See Hyatt v. United States Patent And Trademark Office No. 2014–1596 (Fed. Cir. August 20,
2015): In 2014, Hyatt sued, alleging the PTO unreasonably delayed examination of his applications by
preventing his PTAB appeals from being heard. The APA offers a remedy for such situations by
enabling reviewing courts to compel agency actions unlawfully withheld or unreasonably delayed
without adequate reason or justification. 5 U.S.C. §§ 702, 706(1).

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1 examiners' intentionally lies about time of receipts from the date mailing of applicants' corrections
 2 clearly violates Fed. R. Civ. P. Rule 5(b)(2)(B) and Fed. R. Civ. P. Rule 6 provisions making mail service
 3 complete on mailing not receiving.⁹³ In the present case, the USPTO mailed their First "Formalities
 4 Letter" on November 6, 2019 and requested Mr. Perry to resubmit a corrected, substitute specification, to
 5 add description to the drawing and submit an abstract.

- 6 i. The USPTO Improperly Miscalculate The Eighteen (18) Months
 7 Under 35 U.S.C. § 122 And The Six Months Under 35 U.S.C. § 133 In
 8 Order To Charge Mr. Perry Frivolous Extension Fees To Abandon
 9 His Four (4) Patent Applications No.:14/794,807; No.,15/382,598,
 10 No.:15/709,307 and No. 16/599,131.

11 147) Calculation of the Eighteen (18) months under 35 U.S.C. § 122 was improperly applied to
 12 Mr. Perry had timely replied and amended. For example, the USPTO's formalities letter require Mr.
 13 Perry to respond within two months. (Id. Exhibits # 101, 116, 120, 128, 538, 594, 667, 741, 763). Thus,
 14 the time for Mr. Perry to reply is individually allotted up to six months even if it spread out, because Mr.
 15 Perry had replied timely within the two months. (See 35 U.S.C. § 133):" "[U]pon failure of the
 16 **applicant to prosecute the application within six months after any action therein....the application**
 17 **shall be regarded as abandoned by the parties thereto.**") However, Mr. Perry had never failed to
 18 prosecute his patent applications within six months.

19 148) The USPTO would take months from six up to ten months (patent application No.
 20 16/599,131) to respond to Mr. Perry's replies, then it collected extension fees and abandoned Mr. Perry's
 21 patent applications. The USPTO calculation of time is incoherently made in order to prejudice Mr.
 22 Perry's patent applications to charge him frivolous extension fees in order to abandon his four (4) patent
 23 applications.

24 149) 37 CFR 1.136(a) clearly indicates that no extension can carry the date for reply beyond
 25 the maximum period of six months set by statute (35 U.S.C. § 133). Which means that the delays
 26 knowingly been caused by the USPTO who violated 35 U.S.C. 13, it cannot attribute the USPTO delays
 27 to Mr. Perry who timely replies to cause waste of time within the period of 18 months under 35 U.S.C. §

28 ⁹³ FRCP Rule 5(b)(2)(B) provision making mail service complete on mailing. See also Federal rules
 of civil procedure applicable to patent laws, See Fed.R.Civ.P. Rule 6: Computing and Extending Time.
 Rule 6(d): "[i]ntermediate Saturdays, Sundays, and legal holidays are excluded in determining when the
 period expires under Rule 6(a)": "(a) **Computing Time. The following rules apply in computing any**
time period specified in these rules, in any local rule or court order, or in any statute that does not
specify a method of computing time."(d) Additional Time After Certain Kinds of Service. When a
 party may or must act within a specified time after being served and service is made under Rule
 5(b)(2)(C)...., 3 days are added after the period would otherwise expire under Rule 6(a)."

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1 122.

2 150) For example, on October 14, 2019 and on December 24, 2019 by correcting the
3 specification, adding a description o the drawing and an abstract on separate sheet. But this did not
4 satisfy the USPTO who made a new request for corrections that ignored Mr. Perry's previous mailed
5 corrections. So after the USPTO waited 10 months they made a new request for corrections that were not
6 mention in their first "Formalities Letter." (Calculate from 11/06/2019 to 12-14-2019 = 8 days in total).

7 151) On the USPTO **Second "Formalities Letter"** of January 16, 2020 the USPTO again
8 requested Mr. Perry to resubmit a second a substitute specification, and to add again a description to the
9 drawing, (that he already submitted), and now asked for a "**Replacement claim/s**" and a "Replacement
10 Abstract" on a separate sheet, that they did not request in their first "**Formalities Letter**" of November 6,
11 2019.

12 152) Mr. Perry replied again on March 11, 2020 with a corrected, substitute specification and
13 the non-marked-up copy, a description to the drawing, (that he already submitted), a "Replacement
14 claim/s" and a "Replacement Abstract" on a separate sheet, that the USPTO did not ask in the first
15 "Formalities Letter" of November 6, 2019. (Calculating from 01/16/2020 to March 11, 2020 = 55 days in
16 total).

17 153) On March 31, 2020 the USPTO mailed their **Third "Formalities Letter"** requesting Mr.
18 Perry submit a new corrected, substitute specification, a description to the drawing, (that he already
19 submitted), a " Replacement claim/s" and a "**Replacement Abstract**" on a separate sheet (that he already
20 done).

21 154) On May 8, 2020 Mr. Perry timely replied to the USPTO by submitting a corrected,
22 substitute specification with the non-marked-up copy, and a description to the drawing, (that he already
23 submitted), a "Replacement claim/s" and a "Replacement Abstract" on a separate sheet (that he already
24 done). (Calculating from 03/31/2020 to 05/08/2020 = 38 days in total).

25 155) When the USPTO mailed their third "Formalities Letter" on March 31, 2020, they
26 intentionally ignored that Mr. Perry had already replied timely on May 8, 2020. So, the USPTO had
27 waited five more months to mail their **Forth "Formalities Letter"** until October 29, 2020. The USPTO
28 "Withdrawal Notice" letter of October 29, 2020 arrogantly requested that Mr. Perry "disregard" the
previous notices they mailed to him on 01/16/2020 and 03/31/2020. But then they requested extension
fees??? The USPTO delay from 05/08/2020 to 10/29/2020 = 174 days in total). The USPTO attribute to
Mr. Perry the delays of 174 days in order to incur extension fees against him.

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1 156) On January 11, 2021 the USPTO again mailed their fifth "Formalities Letter" for Mr.
2 Perry to avoid abandonment, and they requested he submit another substitute specification, falsely
3 claimed he never submitted the substitute specification of 12/29/2020 with the non-marked up copy, they
4 arrogantly demanded more extension fees. All extension requests are decided by the Technology Center
5 (TC) Director. But the USPTO had never really given Mr. Perry the full six months that Congress
6 established under 35 U.S.C. § 133:

7 157) Moreover, Mr. Perry never failed to prosecute his patent application because he did mail
8 his reply letters timely to the USPTO. For the USPTO to find as that Mr. Perry failed to prosecute when
9 he timely replied to all their formalities letters is manifest injustice. See Federal Rules of Civil Procedure,
10 Rule 41(b), "[i]f the plaintiff fails to prosecute or to comply with....a court order"-such s by failing to file
11 an amended complaint after being ordered failed to prosecute when he timely replied to all their
12 formalities letters is manifest injustice. See Federal Rules of Civil Procedure, Rule 41(b), "[i]f the
13 plaintiff fails to prosecute or to comply with....a court order"-such s by failing to file an amended
14 complaint after being ordered to do so." See *Huey v. Teledyne, Inc.*, 608 F.2d 1234, 1240 (9th Cir.
15 1979): "We have read Rule 41(b) "to require prosecution with 'reasonable diligence' if a plaintiff is
16 to avoid dismissal." *Anderson v. Air West, Inc.*, 542 F.2d 522,524 (9th Cir. 1976)"... "

17 158) For example, see MPEP § 710.02(c): "The failure to timely reply will not affect the
18 prosecution of the application (assuming that it is still pending), but will result in the Office
19 rendering a decision on the petition for access without considering any objections by the applicant."
20 See MPEP § 103. See 620 - For Extensions of Time (37 CFR 1.136(b)). MPEP 710.02(e) Extension
21 of Time:

22 **"An extension of time under 37 CFR 1.136 is not necessary when
23 submitting a supplemental reply to an Office action if a complete
24 first reply was timely filed in reply to the Office action."**

25 159) The USPTO had used the same trickery in Mr. Perry's four other patent application by
26 **incurring and charging frivolous extension fees to cause abandon Mr. Perry's non-published**
27 **patent applications in order to publish and offering it for sale on the USPTO "PublicPair"**
28 **website. (The Patent Application Information Retrieval (PAIR) system).**

 160) Mr. Perry had already sued the USPTO for charging wrongful extension fees in order
to abandon his patent applications in order to illegally publishing Mr. Perry's non-publish patent
applications No.,15/382,598 for sale on the USPTO "PublicPair" website. Mr. Perry's startup

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1 company patent applications by diminishing competition using illegal and wrongful extension fees
2 for profit in order to cause abandonment of his patent applicant.

3 161) Please correct your formalities letters and stop harassing Mr. Perry using all sorts of
4 misleading information and misquoting regulations in your letter of March 31, 2020, October 29,
5 2020 and January 11, 2021 in order to request frivolous extension fees, and proceed to Mr. Perry's
6 patent examination without further delays, erroneously understating the receipt of Mr. Perry replies
and mailing date. See 35 U.S.C. § 21.

7 162) Mr. Perry received a letter from the USPTO dated March 31, 2020, and he was not sure
8 the USPTO knew that that were all in midst of COVID-19, Coronavirus pandemic days and are acting as
9 if all is normal business. Yet, the USPTO abandoned his applications No. 16/599,131 based on 35
10 U.S.C. 111(a) and § 1.53(b), and published his patent application under 35 U.S.C. 122(b).

11 163) You may not make any frivolous demands for extension fees, and you may not misquote
12 37 CFR 1.17, which is based on 35 U.S.C. § 21: Filing date and day for taking action is when the paper is
13 deposit in the United States Postal Service, and not upon receipt:

14 **“(a)The Director may by rule prescribe that any paper or fee required**
15 **to be filed in the Patent and Trademark Office will be considered filed**
16 **in the Office on the date on which it was deposited with the United**
17 **States Postal Service or would have been deposited with the United**
18 **States Postal Service but for postal service interruptions or**
19 **emergencies designated by the Director. (b)When the day, or the last**
20 **day, for taking any action or paying any fee in the United States Patent**
21 **and Trademark Office falls on Saturday, Sunday, or a Federal holiday**
22 **within the District of Columbia, the action may be taken, or the fee paid,**
23 **on the next succeeding secular or business day.”**

24 164) The USPTO still using deception in their **“Formalities Letters”**, including the March 31,
25 2020 letter requesting frivolous extension fees, misquoting patent laws and demanding new correction
26 previously not requested. As far as what constitute the proper determination of when is a proper filing is
27 upon the mailing date, and not upon receipt. Any delay in mailing because of Covid-19 is not my fault,
28 and the late receipt of such reply mail should never be counted against the applicant (me) to be
considered as late filing, in an eighteen month period to restore the application to pending status, with the
need to procure extension fees.

165) Additionally, under 37 CFR 1.137, it is sufficient that an applicant make a statement that
the entire delay in filing the required reply was unintentional on the part of the USPS. This follows that
“[t]he Director may require additional information where there is a question whether the delay
was unintentional” (37 CFR 1.137(b)(4)). The USPTO revised the rules of practice to implement the 18-

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1 month publication provisions of section 4503 of the AIPA in September 2000. This included revising the
 2 rules of practice pertaining to the acceptance of unintentionally delayed priority or benefit claims and
 3 prosecution of patent applications. See Changes to Implement Eighteen-Month Publication of Patent
 4 Applications, 65 FR 57023, 57024-25, 57030-31, 57053-55 (September 20, 2000). [Andrei Iancu, Dated:
 5 February 18, 2020].

6 166) The USPTO alleged that only upon receipt of Mr. Perry mailing would constitute timely
 7 filing is wrong. A mailing date of a paper is the proper filing date on the day it was deposited in the
 8 USPS, not the day the USPTO received the mail. See 35 U.S.C. § 21: “[a]ny paper or fee required to
 9 be filed in the Patent and Trademark Office will be considered filed in the Office on the date on
 10 which it was deposited with the United States Postal Service....but for postal service interruptions
 11 or emergencies designated by the Director.” So, isn’t COVID-19, Coronavirus pandemic is a national
 12 emergency that the USPTO must not ignore or not?

13 167) One other reason for the USPTO delays or extended period would require the publication
 14 of applications from the earliest filing date. (Id. 35 U.S.C. § 122). Any period that is delayed by the
 15 USPTO is extended for the period for the applicant to respond without fees, especially in the resent case
 16 where the USPTO took seven months delay⁹⁴ to respond back to Mr. Perry reply letter of May 8, 2020.

17 168) The USPTO delaying for seven months their fourth "Formalities Letter" is a failure of
 18 the USPTO, not Mr. Perry. The USPTO is refusing to follow procedures that lead them to charge Mr.
 19 Perry frivolous extension fees and unnecessary claims that the delays caused delays in the prosecution of
 20 Mr. Perry's patent application in order to cause abandonment of Mr. Perry's patent applications after he
 21 paid all patent prosecution fees, when the USPTO issues a decision "plainly erroneous or inconsistent
 22 with the regulation." *Auer v. Robbins*, 519 U.S. 452,461 (1997).

23 169) It also apparent that the United States Patent and Trademark Office ("USPTO") is
 24 one of the few agencies of the federal government that makes a profit-it⁹⁵ and earns more in user fees
 25 than it spends on operations, thus generating a surplus from unlawful and frivolous extension fees. Unlike

26 ⁹⁴ 77 Fed. Reg. 55028, 55032 ("The proposed fee structure helps facilitate effective administration
 27 of the patent system by encouraging applicants or patent holders to engage in certain activities that
 28 facilitate an effective patent system. In particular, setting fees at the particular levels proposed here will:
 (1) encourage the submission of applications or other actions that enable examiners to provide prompt,
 quality interim and final decisions; (2) encourage the prompt conclusion of prosecution of an
 application, which results in pendency reduction, faster dissemination of information, and certainty in
 patented inventions; and (3) help recover the additional costs imposed by some applicants' more intensive
 use of certain services that strain the patent system.").

⁹⁵ See USPTO Congressional Budget Justification supra note 1.

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1 most government operations, the USPTO makes a profit.

2 170) The USPTO special expertise with respect to its own regulations, vary when they
3 intentionally "lost" and "misplaced" Mr. Perry's corrected documents and the revised, non-marked-up
4 copy of the specification in order to accrue frivolous extension fees Mr. Perry's applications
5 No.:14/794,807; No.,15/382,598, No.:15/709,307 and No. 16/599,131. This is important since it is the
6 USPTO who sets the deadlines for responding and processing patent applications prosecution to 18
7 months.

8 171) Instead of engaging in prosecution of patent applications. The USPTO took charge over
9 charging frivolous extension fees; they intentionally and especially shortened the period for replies that is
10 plainly inconsistent with the six months set by Congress. (See 35 U.S.C. § 133).

11 172) Mr. Perry paid fees to the USPTO for a timely, fair, and impartial examination of his
12 patent applications in accordance with the Patent Act and USPTO rules and procedures, which he was
13 entitled to occurred only in patent application No.:14/794,807, but which did not occur in patent
14 applications: 15/382,598, No.:15/709,307 and No. 16/599,131, which the USPTO unlawfully and
15 unreasonably delayed in order to charge him extension fees.

16 173) The USPTO's actions violated Mr. Perry's constitutional rights to due process and to just
17 compensation for a taking of his property.

18 174) The USPTO's actions in abandoning Perry's Applications were arbitrary, capricious, an
19 abuse of discretion, or otherwise not in accordance with law and also contrary to constitutional right,
20 power, privilege, or immunity.

21 175) The USPTO's actions in abandoning Mr. Perry's Applications were undertaken in bad
22 faith.

23 176) Mr. Perry is therefore entitled to specific relief: issuing a patent in Application and
24 No.:14/794,807; and fair examinations of applications 15/382,598, No.:15/709,307 and No. 16/599,131.

25 177) For example, Mr. Perry's patent specification No. 16/599,131 was mailed to the USPTO
26 on December 29, 2020 and again on January 24, 2021 as demonstrated by the USPS envelope, and any
27 statement Mr. Perry did not submit the specification is misleading. See envelope and receipt of January
28 24, 2021 that contained the specification, claim, drawing and all other papers requested by the USPTO to
be corrected were corrected and submitted.

178) USPTO regulations may not promote practices that undermine patent applications by
Startup companies in the United States in order to charge them frivolous, fraudulent extension fees and
expensive petition for extension of time that is intended to lead to abandonment of valid and paid patent

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1 applications. Such frivolous extension fees do not facilitate the prompt conclusion of application
2 processing but instead lengthen patent prosecution.⁹⁶

3 179) Although deference is favored to the USPTO special expertise with respect to its own
4 regulations,⁹⁷ this vary when the USPTO is losing and misplacing Mr. Perry's corrected documents and
5 the revised, non-marked-up copy of the specification in order to accrue frivolous extension fees when it
6 supposed to have the expertise in setting deadlines for processing patent applications. This is especially
7 bothersome when setting the USPTO is only in charge over extension fees instead of prosecution of
8 patent applications, especially when the USPTO gives patent applicants as Mr. Perry a shortened period
9 for replies that is plainly inconsistent with the six months set by Congress. (See 35 U.S.C. § 133).

10 180) The harm caused to Mr. Perry by the defendants was an act and omission constituting
11 willful and criminal misconduct, malicious, wanton, intentional, outrageous misconduct, and a conscious
12 flagrant indifference to the rights of Mr. Perry's rights and entitlement to a fair and honest examinations
13 of his patent applications, intentional misconduct, resulting in Mr. Perry suffering economic and
14 emotional distress, and injuries.

15 181) As a direct, legal and proximate result of the harm result of defendants' unlawful actions
16 were intentional, willful, malicious, and done with total disregard to Plaintiff' right for equal protection
17 of the laws and to be free from discrimination of application of federal laws based on national origin,
18 Plaintiff had sustained economic, compensatory damages from all the defendants, and for other expenses
19 that he will continue to sustain, to be proven at trial..

20 182) Plaintiff is entitled to reasonable punitive damages for pain and suffering; loss of earnings,
21 special compensatory damages, for mental anguish is entitled to liquidated damages. Plaintiff also seeks
22 for all other injunctive, declaratory, and monetary relief available for the violations at trial, including
23 liquidated damages for all willful violations, and other compensation for violation of federal laws.

24 183) The so-called "petition for extension of time" fee. The extension fees are in effect a late
25 fee created by a mix of statutory and regulatory⁹⁸command. USPTO regulations may not promote
26 practices that undermine patent applications by Startup companies in the United States in order to charge
27 frivolous, fraudulent extension fees and expensive petition for extension of time that is intended to lead to
28 abandonment of valid and paid patent applications. Such frivolous extension fees do not facilitate the

⁹⁶ See "Regulatory Impact Analysis", supra note 81, at 111.

⁹⁷ King v. Burwell, 135 S.Ct. 2480 (2015); Utility Air Regulatory Group v. E.P.A., 134 S.Ct. 2427 (2014).

⁹⁸ See "Regulatory Impact Analysis", supra note 81, at 111.

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1 prompt conclusion of application processing but instead lengthen patent prosecution.⁹⁹

2 184) After the USPTO charged the frivolous extension fees¹⁰⁰ it abandoned Mr. Perry's patent
3 applications without warning. Then the USPTO prompted Mr. Perry to file petitions to the "**USPTO**
4 **Director**" which are then forward to the USPTO staff attorneys who render arbitrary denials.

5 185) See exhibits #391-396 conflict of interests in Re.: Decision on Mr. Perry's petitions were
6 all dismissed by Katharine Matecki, Director of Patent Technology Center 3600, who was also the direct
7 supervisor Kristine Clarette Matter, the examiner who abandoned Mr. Perry's patent application
8 No.:14/794,807 on February 8, 2018. (**Id. Exhibit # 399**).

9 186) An applicant who files a timely reply before the expiration of the shortened statutory
10 period (and before the expiration of the statutory six month period), the reply must be accepted and does
11 not need to be accompanied by a petition for extension of time and the required fee. MPEP § 710.02(e)
12 ("If an applicant is required to reply within a shortened statutory time period, applicant may extend the
13 time period for reply if a petition for an extension of time and the fee are filed."). Thus, the USPTO may
14 not abandon an application which was timely replied. 35 U.S.C. § 133; MPEP § 710.

15 187) See 37 CFR 1.134: "Time period for reply to an Office action. An Office action will notify
16 the applicant of any non-statutory or shortened statutory time period set for reply to an Office action.
17 Unless the applicant is notified in writing that a reply is required in less than six months, a maximum
18 period of six months is allowed. The USPTO asking Mr. Perry to pay for extension is misquoting 37
19 CFR 1.17, which must be based on 35 U.S.C. § 21¹⁰¹: See also 37 CFR 1.8(a).¹⁰²

18 ⁹⁹ 37 C.F.R. § 1.17 (2018).

19 ¹⁰⁰ In 2020 (the last year for which such data was available), the USPTO had charged slightly in
20 excess of \$3.45 billion in fees, of which roughly \$3 billion were attributable to patent fees and the rest
21 to extension fees. One of the fees contributing to this surplus (accounting for \$151 million in 2015).

22 ¹⁰¹ 35 U.S.C. § 21: "[F]iling date and day for taking action: **"[(a) The Director may by rule**
23 **prescribe that any paper fee required to be filed in the Patent and Trademark Office be considered**
24 **filed in the Office on the date on which it was deposited with the United States Postal Service or**
25 **Could have been deposited with the United States Postal Service but for postal service**
26 **interruptions or emergencies designated by the Director. (b) When the day, or the last day, for taking**
27 **any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday,**
28 **or a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next**
succeeding secular or business day. (July 19, 1952, ch. 950, 66 Stat. 794; Pub. L. 93-596, § 1, Jan. 2,
1975, 88 Stat. 1949; Pub. L. 97-247, § 12, Aug. 27, 1982, 96 Stat. 321; Pub. L. 106--113, div. B §
1000(a)(9) [title IV, § 4732(a)(1)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582; Pub. L. 107-273,
div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)"

¹⁰² 37 CFR 1.8(a): "[C]ertificate of mailing or transmission. (1) Correspondence will be considered as
being timely filed if: "(i) The correspondence is mailed or transmitted **prior to expiration** of the set
period of time by being: (A) Addressed as set out in § 1.1 (a) and **deposited** with the U.S. Postal Service

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1 188) This means that Mr. Perry's envelope shows the USPS deposit date stamp, and the date of
 2 which he deposited it in the USPS deposit date cannot be determined only under 37 CFR 1.8. Because
 3 under 37 CFR 1.10(2): The date of deposit with USPS is shown by the "date accepted." If the USPS
 4 deposit date can be determined, the correspondence will be accorded the USPTO receipt date as the filing
 5 date. See § 1.6(a).

6 189) The USPTO must apply the standard of law as used in federal courts, in other words, the
 7 mail deposited it in the USPS¹⁰³ claim and construction standard that would be used to construe the claim
 8 in a civil action must follow federal law as under 35 U.S.C. 282(b), which is articulated in Phillips v.
 9 AWH Corp., 415 F.3d 1303 (Fed. Cir. 2005).

10 190) The patent statutes gives applicants six months to respond to correspondence from the
 11 USPTO, but also makes sure the Director of the USPTO authority to set a shorter period for response
 12 does not shorten Mr. Perry's time. The 1836 patent statute (the first to provide for examination of
 13 applications by a patent office) did not set any time limit for responding to patent office
 14 correspondence.¹⁰⁴

SIXTH CAUSE OF ACTION

15 [Cause of Action Under 42 U.S.C. § 1983 For Conspiracy Against The
 16 USPTO Examiners, Representatives And USPTO Ombudsman Scheme,
 17 Rights¹⁰⁵ Under 18 U.S. Code § 241 And Tortious Harassment Campaign;

18 with sufficient postage as first class mail..."

19 ¹⁰³ 37 CFR 1.8(a): "[C]ertificate of mailing or transmission. (1) Correspondence will be considered as
 20 being timely filed if: "(i) The correspondence is mailed or transmitted prior to expiration of the set
 21 period of time by being: (A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service
 22 with sufficient postage as first class mail..."

23 ¹⁰⁴ 35 U.S.C. § 133 (2012): ["U]pon failure of the applicant to prosecute the application within
 24 six months after any action therein, of which notice has been given or mailed to the applicant, or
 25 within such shorter time, not less than thirty day, as fixed by the Director in such action, the
 26 application shall be regarded as abandoned by the parties hereto."). The 1836 patent statute (the
 27 first to provide for examination of applications by a patent office) did not set any time limit for
 28 responding to patent office correspondence. The statute was amended to require an applicant to
 respond within a year, then amended again to shorten the time for response to six months. Finally, in
 1939, the statute was again amended to give the Commissioner the power to set a shorter time limit for
 response." HR 6878 (1939)(amending what was then 35 U.S.C. § 37).

¹⁰⁵ Referral to the DOJ Defendants violation of 18 U.S.C. § 241: If two or more persons conspire to
 injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or
 District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or
 laws of the United States,..."

A conspiracy claim brought under section 1983 requires proof of "an agreement or meeting of
 the minds to violate constitutional rights," Franklin v. Fox, 312 F.3d 423, 441 (9th Cir. 2001) (quoting

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Retaliation Against Mr. Perry's National Origin After He Filed His Patent Applications, They Intentionally Delayed Them In Order To Accrue Frivolous Extension Fees Used To Cause Abandonment Before Patent Prosecution Then They Prompted Mr. Perry to File Petitions To The Director Which They Arbitrarily Denied In His Patent Applications No.:14/794,807; No.,15/382,598; No.:15/709,307; And No. 16/599,131]

191) Plaintiff incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 above through 265 inclusive, as though fully set forth herein.

192) This waiver includes actions for tortious harassment campaign, and retaliation; so long as they are otherwise proper before the Court.

193) Mr. Perry was subjected to harassment and retaliation by the Defendants because of his national origin, Israeli and defendants did not exercise reasonable care to prevent the harassment, and did not exercise reasonable care to promptly correct any harassing behavior that did occur.

194) As a direct, legal and proximate result of the harassment, Plaintiff have sustained, and will continue to sustain, economic and emotional injuries, resulting in damages in an amount to be proven at trial.

195) Defendants' unlawful actions were intentional, willful, malicious, and/or done with complete disregard to Plaintiff's rights to be free from harassment and discrimination based on race, national or country of origin. If racial or ethnic discrimination could be shown to have driven a decision to, then an injunction could be possible on equal protection grounds unless other evidence makes clear the jurisdiction would have resumed evictions anyway. See *Hunter v. Underwood*, 471 U.S. 222, 228 (1985) ("Once racial discrimination is shown to have been a 'substantial' or 'motivating' factor behind enactment of the law, the burden shifts to the law's defenders to demonstrate that the law would have been enacted without this factor.").

United Steel Workers of Am. v. Phelps Dodge Corp., 865 F.2d 1539, 1540-41 (9th Cir. 1989) (citation omitted)), and an actual deprivation of constitutional rights, Hart v. Parks, 450 F.3d 1059, 1071 (9th Cir. 2006) (quoting Woodrum v. Woodward County, Oklahoma, 866 F.2d 1121, 1126 (9th Cir. 1989)). **"To be liable, each participant in the conspiracy need not know the exact details of the plan, but each participant must at least share the common objective of the conspiracy."** Franklin v. Fox, 312 F.3d at 441 (quoting United Steel Workers v. Phelps Dodge Corp., 865 F.2d at 1541).

The federal system is one of notice pleading, and the court **may not apply a heightened pleading standard to Plaintiff's allegations of conspiracy.** Empress LLC v. City and County of San Francisco, 419 F.3d 1052, 1056 (9th Cir. 2005); Galbraith v. County of Santa Clara, 307 F.3d 1119, 1126 (2002). However, although accepted as true, the "[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level..." Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1965 (2007) (citations omitted).

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1 196) Plaintiff is entitled to reasonable compensatory, punitive damages if appropriate, for pain
2 and suffering, for mental anguish, attorneys' fees (if obtained), and costs of suit.

3 **SEVENTH CAUSE OF ACTION**

4 [Cause of Action Under 42 U.S.C. § 1983 For Relief from the PTO's
5 Unlawful Policies on Mr. Perry's Patent Applications No.:14/794,807;
6 No., 15/382,598, and No.:15/709,307, and No. 16/599,131]

7 197) Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
8 paragraphs 1 above through 265 inclusive, as though fully set forth herein.

9 198) The APA provides a cause of action to challenge final agency action. 5 U.S.C. § 704.

10 199) These actions violate Mr. Perry's rights under the Patent Act, PTO regulations, the
11 Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment to the United States
12 Constitution.

13 200) These agency actions are arbitrary, capricious, an abuse of discretion, and/or otherwise not
14 in accordance with law; contrary to constitutional right, power, privilege, or immunity; and in excess of
15 statutory jurisdiction, authority, or limitations, within the meaning of 5 U.S.C. § 706.

16 201) The USPTO has acted to adopt de facto or de jure policies of discrimination to frustrate
17 and delay Mr. Perry's prosecution of his patent applications before the USPTO, to prevent Mr. Perry
18 from obtaining final agency action subject to judicial review, and to force the abandonment of his
19 applications, and to prevent the issuance of patents to him.

20 202) Mr. Perry therefore has no other remedy in a court in dealing with these agency actions.

21 203) Mr. PERRY is therefore entitled to orders setting aside these agency actions in Patent
22 Applications: No.:14/794,807; No., 15/382,598, and No.:15/709,307, and No. 16/599,131 that were
23 unreasonably and unfairly delayed to cause illegal and frivolous extension fees and abandonment.

24 204) Plaintiff is entitled to reasonable compensatory, punitive damages if appropriate, for pain
25 and suffering, for mental anguish, attorneys' fees (if obtained), and costs of suit.
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EIGHTH CAUSE OF ACTION

[Cause of Action Under 42 U.S.C. § 1983 5 U.S.C. §§ 702, 706(1) Against The USPTO Pursuant To 37 CFR § 1.22(b) For Its Refusing of Obligation To Provide Notice of Fees Due After Collecting All Patent Applications Prosecution Fees From Plaintiff But Refusing His Request To Provide Him With Itemize List of All Fees Due And Paid In Applications No.:14/794,807; 15/382,598, No.:15/709,307 and No. 16/599,131 Before Abandonment Notice Are Issued]

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7 205) The Plaintiff incorporates by reference as if fully set forth herein the allegations contained
8 in paragraphs 1 above through 265 inclusive, as though fully set forth herein.

9 206) Mr. Perry paid all of his fees for the USPTO for timely, fair, and impartial examination of
10 his applications in accordance with the Patent Act and PTO rules and procedures, and he was entitled to
11 itemized accounting of all fees paid in each individual patent application. (Id. Exhibits # 562-568), But
12 the USPTO used the time Mr. Perry request accounting itemized to delay providing them in order to
13 charge frivolous extension fees.

14 207) The USPTO unlawfully delayed and withheld from Mr. Perry timely, fair, and impartial
15 examination of Mr. PERRY's patent applications in accordance with the Patent Act and USPTO rules
16 and procedures. The USPTO, acted in bad faith and in violation of Mr. Perry's constitutional and
17 statutory rights under the Patent Act and APA, requires that Mr. Perry pay numerous fees to avoid
18 abandonment of his applications or other consequences that would be detrimental to his applications or
19 any patents that may eventually be issued to him, including without limitation fees for extensions of time,
20 for issue fees on applications that it did not issue, and for filing administrative appeals.

21 208) The USPTO collected fees from Mr. Perry for examination-related activities on four (4)
22 patent applications No.:14/794,807; 15/382,598, No.:15/709,307, and No. 16/599,131 and for one appeal
23 and retained those fees even after he paid for them by credit card and checks for Mr. Perry's applications
24 in 2018, wiping out any results of the activities and appeals for which Mr. Perry had paid those fees.

25 209) The USPTO's assessment, acceptance, and retention of these fees without consideration
26 and performance was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
27 law and also contrary to constitutional right, power, privilege, or immunity, and was inequitable.

28 210) When PERRY requested the USPTO for accounting of all the fees he paid, he was told by
the USPTO that patent applicants are not entitled to such itemized list, and how it was applied, and that
the USPTO don't have to give him accounting. However, this is a contrary assertion to the purpose of 37

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1 CFR § 1.22(b):

2 “The Office attempts to notify applicants of deficiencies in their responses
3 in a manner permitting a timely correction. **However, the Office has no**
4 **obligation to notify parties of deficiencies in their responses in a**
5 **manner permitting a timely correction. In re Colombo, Inc., 33**
6 **USPQ2d 1530, 1532 (Comm’r Pat. 1994) The fact that the Office failed**
7 **to mail a fee deficiency notice within 5 days window or timely reply does**
8 **not shift the burden of timely and proper reply to the final Office action of**
9 **July 6, 2017 from applicant.”**

7 211) The USPTO claimed it is not obliged to provide Mr. Perry any copies of lists of itemize
8 payments Mr. Perry’s he had paid. However, this is clearly contrary to the purpose stated under 37 CFR
9 § 1.22(b):

10 **“All fees paid to the United States Patent and Trademark Office must**
11 **be itemized in each individual application, patent, or other proceeding**
12 **in such a manner that it is clear for which purpose the fees are**
13 **paid.”¹⁰⁶**

12 212) Hence, the USPTO must itemize all fees paid in each individual patent application in such
13 a manner that it is clear for both Applicants and the USPTO which purpose of the fees were paid and how
14 they were applied during a patent prosecution. So, when Mr. Perry timely requested accounting because
15 the USPTO intended to confused him to over pay fees, it is as of right of a patent applicant to ask such
16 itemized accounting notice, and a duty of the USPTO to provide such Mr. Perry accounting timely
17 because 37 CFR § 1.22(b) requires them to do so, and because to avoid delays used the USPTO to charge
18 Mr. Perry exuberant extension fees.

18 213) In re Colombo, Inc., 33 USPQ2d 1530, 1532 (Comm'r Pat. 1994) is inapplicable to Mr.
19 Perry’s because it infra with regard to an error in name was the only party identified as the applicant in a
20 post-publication amendments. While in Mr. Perry’s case a notice of what fees are due is required **before**
21 abandonment notice are issued. In general 263 In re Kinsman, 33 U.S.P.Q.2d 1057 (Comm’r Pats. 1993)
22 applications was abandoned since the requirement for verification was statutory and cannot be waived).
23 In re Colombo Inc., 33 U.S.P.Q.2d 1530, 1531 (Comm’r Pats. 1994):

24 "In this case, there was no ambiguity in the Statement of Use; CMHC, Inc.,

25 ¹⁰⁶ 37 CFR 1.22(b): “All fees paid to the United States Patent and Trademark Office must be
26 itemized in each individual application, patent, or other proceeding in such a manner that it is clear for
27 which purpose the fees are paid. The Office may return fees that are not itemized as required by this
28 paragraph. The provisions of § 1.5(a) do not apply to the resubmission of fees returned pursuant to this
paragraph.” [68 FR 48288, Aug. 13, 2003]

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1 was the only party identified as the applicant. The **'error'** that occurred is
2 **more than a mere misidentification of the proper name of the**
3 **applicant; it identifies another entity as the applicant. This cannot be**
4 **corrected by amendment after expiration of the statutory filing period.**
5 The fact that the person who signed the Statement of Use on behalf of
6 CMHC, Inc. is an Officer of the true owner, Colombo, Inc., is irrelevant
7 **where the Statement of Use was filed in the name of the wrong party."**

8 214) In *Taylor v. United States PTO*, 339 F. App'x. 995 (Fed. Cir. 2009), the patentee
9 erroneously paid \$10 less than was owed in maintenance fees. Id. at 996. The USPTO cashed his check
10 and then deemed his patent expired for failure to pay the additional \$10 owed, never notifying the
11 patentee of the deficiency in payment. Id. at 996. When the expiration error was noticed by the patentee
12 at the time he tried to pay his next maintenance fee, The USPTO required him to submit a petition (with
13 \$200 fee), but dismissed his petition without considering the merits because he could not afford, and thus
14 did not pay, the \$200 petition fee. Id.

15 215) The patentee was told his patent could not be reinstated. Id. The Federal Circuit strongly
16 disagreed, finding that "the Office's course of action in accepting Mr. Taylor's deficient payment on the
17 one hand, while on the other hand expiring his patent without notifying him under MPEP § 2531 that his
18 payment was inadequate, was arbitrary and capricious." (Id. at 998). Although the USPTO decided to
19 refund the patentee's original maintenance fee payment and invited the patentee to submit a petition to
20 reinstate his patent (with the \$200 petition fee), the Federal Circuit "**perceive[d] no need for Mr. Taylor**
21 **to submit further petitions.**" (Id. at 999). In a resoundingly just decree, the court held that:

22 "[i]n this case, equity would counsel that the PTO should reinstate
23 Mr. Taylor's patent upon receipt of his payment for all outstanding
24 maintenance fees. This relief will remedy, to this court's best
25 estimation, the PTO's arbitrary and capricious actions.".....This court
26 determines that the appropriate relief in this case is equitable. A district
27 court's equity jurisdiction provides broad and flexible powers to
28 deliver justice in unique factual circumstances. "The essence of a
court's equity power lies in its inherent capacity to adjust remedies in
a feasible and practical way to eliminate the conditions or redress the
injuries caused by unlawful action. Equitable remedies must be flexible
if these underlying principles are to be enforced with fairness and
precision." Freeman v. Pitts, 503 U.S. 467, 487 (1992). In this case, equity
would counsel that the PTO should reinstate Mr. Taylor's patent upon
receipt of his payment for all outstanding maintenance fees. This relief
will remedy, to this court's best estimation, the PTO's arbitrary and
capricious actions." Id.

216) Mr. Perry realized that the USPTO sorted excuses was a display of hostility and

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1 adversarial of him as a Pro Se Applicant, the USPTO exercised and practiced a scheme to trick and
2 confuse Pro Se and then deny them itemized accounting to lead or cause abandonment of Patent
3 Applications.

4 217) When Mr. Perry called the USPTO to confirm the fees he paid and to ask the
5 representatives for accounting of all fees he paid, he was not late at that point prosecuting his patent
6 application. The USPTO representative then gave Mr. Perry false promises that they will give him
7 accounting, was promised by the USPTO Finance Office, and on three occasions the USPTO
8 Ombudsman Dale Shaw.

9 218) So, while Mr. Perry was waited for accounting the USPTO use the delays in refusing to
10 provide accounting, they accrued extension fees. Meantime, USPTO representatives would then refer
11 Mr. Perry to the USPTO Ombudsman Dale who instructed him to file petitions with the USPTO Director
12 to remove the extension fees, and while waiting for the petitions for three months more extension fees
13 would accrue. The USPTO petition to the Director would be denied arbitrarily, claiming that filing the
14 petition did not stay the period to respond (37 CFR § 1.181(f)). Meanwhile extension fees were accrued
15 and owed, and if not paid the application would be abandoned. Mr. Perry has audio recorded the
16 deception by the USPTO representative and will present in Court.

17 219) So, Mr. Perry called the USPTO to confirm why the USPTO say he only paid \$150, the
18 USPTO representative asked him to pay more fees. By understated the amount of the fees that Mr. Perry
19 paid, the USPTO made him (as well as to other Pro Se Applicants) to ask for accounting of all fees he
20 paid. At that point Mr. Perry was not late in prosecuting his patent application. The USPTO
21 representatives would then refer Mr. Perry to the USPTO Ombudsman Dale Shaw who would instruct
22 him to file petitions with the USPTO Director and the petitions months after would be arbitrarily denied.

23 220) But when Mr. Perry called the USPTO representative who gave him false promises that
24 they will give him accounting of all the fees he paid, the USPTO would delays for months and did not
25 send the accounting as promised. So, Mr. Perry asked for accounting of the fees he paid and he received
26 nothing. Mr. Perry asked and was promised by the USPTO Finance Office delivery of an itemized
27 accounting.

28 221) Over period extending over 6 and 7 months on three occasions from June 2015 to
December 2017 the USPTO Finance Office and the USPTO Ombudsman Office had refused to provide
Mr. Perry the itemized accounting of all his payments on the three patent applications No.:14/794,807;
No.,15/382,598; No.:15/709,307. PERRY had audio recorded the deception by the USPTO
representative and will present the recording in Court.

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1 222) While Mr. Perry was waiting for accounting the USPTO use the delays they created in
2 refusing to provide accounting to ask for extension fees. When Mr. Perry in Pro Se was confused, the
3 USPTO abandoned his Patent Application on August 23, 2018, and immediately thereafter on August 27,
4 2018 posted Mr. Perry's Patent Application and specification on the USPTO's "PublicPair" Online
portal.

5 223) In spite of Plaintiff protests not to publish on the USPTO "PublicPair"¹⁰⁷ Portal his patent
6 applications pursuant to 37 CFR 1.213. This spiteful publication ignored plaintiff's Application Data
7 Sheet No.:14/794,807 under 37 CFR 1.76 "REQUEST NOT TO PUBLISH" under CFR § 1.29. Yet,
8 the USPTO Ombudsman Dale Shaw stated that Mr. Perry the patent application and specification would
9 nevertheless be published. (Id. Exhibit # 441).

10 224) The APA authorizes this Court to hear and decide claims against federal agencies seeking
11 "relief other than money damages." 5 U.S.C. § 702. Specific relief is such a remedy. See generally
Bowen v. Massachusetts, 487 U.S. 879 (1988).

12 225) Mr. Perry is therefore also entitled to patent on patent application No.,15/382,598, and
13 specific performance and consideration on the fees he already paid on patent applications
14 No.:14/794,807; No.,15/382,598; No.:15/709,307 and No. 16/599,131.

15 226) Plaintiff is entitled to reasonable compensatory, punitive damages if appropriate, for pain
16 and suffering, for mental anguish, attorneys' fees (if obtained), and costs of suit.

NINTH CAUSE OF ACTION

[Injunctive Relief Under The All Writs Act, 28 U.S.C. § 1651) On Patent
18 Applications No.:14/794,807; No.,15/382,598; No.:15/709,307 And No.
19 16/599,131]

20 227) The Plaintiff incorporates by reference as if fully set forth herein the allegations contained
21 in paragraphs 1 above through 265 inclusive, as though fully set forth herein.

22 228) As stated in paragraphs 153-227, as a direct, legal and proximate result of the harm, by
23 defendants' unlawful actions were intentional, willful, malicious actions was done with total disregard to
24 Plaintiff' right for equal protection of the laws and to be free from discrimination of application of federal
25 laws based on national origin, Plaintiff had sustained economic, compensatory damages from all the
26 defendants and that he will continue to sustain, to be proven at trial.

27
28 ¹⁰⁷ <https://portal.uspto.gov/pair/PublicPair>.

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1 229) The USPTO has unlawfully withheld or unreasonably delayed timely, fair, and impartial
2 examination of the No.:14/794,807 and unlawfully withheld and unreasonably delayed allowance of
3 patent and Mr. Perry appeal in patent applications No.:14/794/,807 and illegally generated extension fees
4 to abandon patent applications No.:14/794/,807; 15/382,598, and No.:15/709,307 and No. 16/599,131
5 after all fees were paid was in violation of 5 U.S.C. §§ 702, 706(1).

6 230) The Patent Act, USPTO regulations, and the Due Process Clause of the Fifth Amendment
7 to the United States Constitution entitle Mr. Perry to fair and impartial examination of each of his
8 applications to determine whether he is entitled to a patent under the law, to allowance of allowable
9 subject matter, to timely decisions on his petitions, to issuance of patent claims on such subject matter as
10 a patent following payment of the issue fee, and to final agency action from the Appeal Board on
11 examiner rejections. See 35 U.S.C. §§ 102(a), 131, 151, 6, 134(a).

12 231) Defendants have a duty to fairly, impartially, and timely examine Mr. Perry's applications
13 in accordance with the requirements of the Patent Act, USPTO regulations, and the Due Process Clause;
14 to allow patentable subject matter; to issue patent applications claiming such patentable subject matter as
15 patents upon payment of the issue fee; to decide Mr. PERRY's petitions; and to permit Mr. PERRY to
16 obtain final agency action from the Appeal Board on examiner rejections.

17 232) Defendants have unlawfully withheld and unreasonably delayed agency action on Mr.
18 Perry's patent applications, instead miring them in administrative purgatory and preventing Mr. PERRY
19 from obtaining fair and impartial examination of his applications in accordance with law and ultimately
20 from receiving patents to which he is entitled.

21 233) Mr. Perry is therefore entitled to an injunction enjoining Defendants from treating his
22 applications in bad faith, capriciously, and contrary to law and compelling them expeditiously to conduct
23 a fair, impartial, and timely examination of his applications in accordance with law, to allow patentable
24 subject matter, to issue patents claiming such patentable such subject matter upon payment of the issue
25 fee, to provide timely action on Mr. Perry's petitions, and to permit him to obtain a patent after the final
26 agency action on Kristine Clarette Matter (examiner) rejections.

27 234) Mr. Perry is entitled to an injunction compelling Defendants to allow the No.:14/794/,807
28 Application and, upon payment of the issue fee, to issue a patent for the invention claimed in patent
applications No.:14/794,807 and No.,15/382,598, and examination prosecution of patent applications;
No.:15/709,307 And No. 16/599,131.

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TENTH CAUSE OF ACTION

[Writ of Mandamus Under 28 U.S.C. § 1361 To Compel Action On Mr. Perry's Four (4) Patent Applications No.:14/794,807; No.,15/382,598; No.:15/709,307 And No. 16/599,131, in Accordance With Law Remedy For Such Situations By Enabling Reviewing Courts To Compel Agency Actions for Unlawfully Withholding Or Unreasonably Delaying Without Adequate Reason Or Justification. 5 U.S.C. §§ 702, 706(1)]

235) The Plaintiff incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 above through 265 inclusive, as though fully set forth herein.

236) As stated in paragraphs 153-200, as a direct, legal and proximate result of the harm, by defendants' unlawful actions were intentional, willful, malicious actions was done with total disregard to Plaintiff' right for equal protection of the laws and to be free from discrimination of application of federal laws based on national origin, Plaintiff had sustained economic, compensatory damages from all the defendants and that he will continue to sustain, to be proven at trial.

237) The USPTO had intentionally delayed Mr. Perry's patent applications after all payments were made for the purpose of further delaying review deprived Mr. Perry his appeal rights in the Patent Trial and Appeal Board ("PTAB") in order to abandon his patent application No.:14/794,807, leading him to file the lawsuit in the District Court and in the Federal Claims Court, which was not yet was heard on the merits.¹⁰⁸ In fact, the USPTO intentionally delayed petitions they asked Mr. Perry to file, the latest petition still in waiting for over six months (patent application No. 16/599,131), after they told him to file the petitions, as was done in his other patent applications: No.:14/794,807 15/382,598, No.:15/709,307. Patent application No.:14/794,807 was prosecuted by was not heard after Mr. Perry paid his appeal fees in the Patent Trial and Appeal Board ("PTAB").

238) Mr. Perry seeks a petition for a writ of mandamus on the basis of unreasonable, malicious delays because the USPTO had never recommenced any examination of Mr. Perry's four patent applications by the time Mr. Perry reached for the Federal Claims Court or the District court for relief. See Hyatt, 146 F. Supp. 3d at 785-86.

¹⁰⁸ The Patent Act, USPTO regulations, and the due process and equal protection clause of the Fourteenth Amendment entitle Mr. Perry to fair and impartial examination of each of his applications to determine whether he is entitled to a patent under the law, to allowance of allowable subject matter, to decisions on his petitions, to issuance of patent claims on such subject matter as a patent following payment of the issue fee, and to final agency action from the Appeal Board on examiner rejections. See 35 U.S.C. §§ 102(a), 131, 151, 6, 134(a).

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1 239) The USPTO defendants have a duty to be fair, impartial, and timely examine Mr. Perry's
2 applications in accordance with the requirements of the Patent Act, USPTO regulations, and the due
3 process clause; to allow patentable subject matter; to reverse decisions on Mr. Perry's petitions; to issue
4 patent applications claiming such patentable subject matter as patents upon payment of the issue fee on
5 application No.:14/794,807; and to permit Mr. Perry to obtain final agency action from the Appeal Board
6 on examiner rejections on applications No.: 15/382,598; No.:15/709,307 and No. 16/599,131.

7 240) Given the USPTO's bad-faith treatment of Mr. Perry's applications and that Mr. Perry has
8 no adequate remedy is available in dealing with the USPTO discrimination.

9 241) Mr. Perry is therefore entitled to a writ of mandamus compelling Defendants expeditiously
10 to conduct a fair, impartial, and timely examination of his applications in accordance with law, to allow
11 patentable subject matter, to issue patents claiming such patentable such subject matter upon payment of
12 the issue fee, to provide timely action on Mr. Perry's petitions, and to permit him to obtain timely final
13 agency action on rejections from the Appeal Board and fair examination of applications No.:14/794,807;
14 15/382,598, and No.:15/709,307 and No. 16/599,131.

15 242) Mr. Perry is entitled to a writ of mandamus compelling Defendants to allow the
16 No.:14/794,807 Application and, upon payment of the issue fee, to issue a patent for the invention
17 claimed in the No.:14/794,807 Application, and to fairly and honestly determined patentability of
18 applications

19 243) If a federal official, however, goes far beyond "any rational exercise of discretion,"
20 mandamus may lie even when the action is within the statutory authority granted. The significance of
21 this statute as a separate source of federal jurisdiction has faded with the abolition of the amount in
22 controversy requirement for federal question jurisdiction and with the elimination of the sovereign
23 immunity defense to suits against federal agencies, officers, and employees for injunctive relief.

24 244) Mr. Perry is entitled to allowance and, upon payment of the issue fee, to issuance his
25 patent application No.:14/794,807.

26 245) Defendants have a duty to allow and, upon payment of the issue fee, to issue a patent on
27 the No.:14/794,807 Application.

28 246) The USPTO has no discretion to deny allowance and issuance of a patent on an
application that satisfies the statutory criteria for patentability.

 247) Given the USPTO's bad-faith treatment of Mr. PERRY's applications, no other adequate
remedy is available.

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ELEVENTH CAUSE OF ACTION

[Cause of Action Under 42 U.S.C. § 1983 For Declaratory Relief Under Declaratory Judgment Act, 28 U.S.C. § 2201 (§§ 2201-02)]

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4 248) The Plaintiff incorporates by reference as if fully set forth herein the allegations contained
in paragraphs 1 above through 265 inclusive, as though fully set forth herein.

5 249) As stated in paragraphs 153-200, as a direct, legal and proximate result of the harm, by
6 defendants' unlawful actions were intentional, willful, malicious actions was done with total disregard to
7 Plaintiff' right for equal protection of the laws and to be free from discrimination of application of federal
8 laws based on national origin, Plaintiff had sustained economic, compensatory damages from all the
9 defendants and that he will continue to sustain, to be proven at trial.

10 250) The Patent Act entitles Mr. Perry, upon payment of the issue fee, to receive a patent on the
No.:14/794,807 Application.

11 251) An actual controversy exists between Mr. Perry and the Defendants regarding his
12 entitlement to receive a patent on applications: No.:14/794,807; 15/382,598, No.:15/709,307 and No.
13 16/599,131.

14 252) Mr. PERRY is entitled to a declaration of rights that he is entitled to allowance of the
15 No.:14/794,807 Application and, upon payment of the issue fee, to receive a patent on application the
16 No.:14/794,807 and 15/382,598, No.:15/709,307 and No. 16/599,131.

TWELFTH CAUSE OF ACTION

[Cause of Action Under Cause of Action Under 42 U.S.C. § 1983 Combined With The Administrative Procedure Act ("APA") Offers A Remedy By Enabling Reviewing Courts To Compel Agency Actions Unlawfully Withheld Or Unreasonably Delayed Without Adequate Reason Or Justification. 5 U.S.C. §§ 702, 706(1) On Plaintiff's Patent Applications No.:14/794/,807; 15/382,598, and No.:15/709,307 and No. 16/599,131]

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23 253) Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
paragraphs 1 above through 265 inclusive, as though fully set forth herein.

24 254) As stated in paragraphs 153-200, as a direct, legal and proximate result of the harm, by
25 defendants' unlawful actions were intentional, willful, malicious actions was done with total disregard to
26 Plaintiff' right for equal protection of the laws and to be free from discrimination of application of federal
27 laws based on national origin, Plaintiff had sustained economic, compensatory damages from all the
28 defendants and that he will continue to sustain, to be proven at trial.

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1 255) The Act eliminates the defense of sovereign immunity in cases seeking relief other than
2 money damages and claiming that a federal agency, officer, or employee acted or failed to act in an
3 official capacity or under color of legal authority.

4 256) Where federal question jurisdiction under § 1331 is typically available for claims under
5 the APA. The Administrative Procedure Act creates a cause of action against agencies of the federal
6 government acting under federal law. The Act authorizes judicial review, establishes the form and venue
7 of judicial review proceedings, states what agency actions are reviewable, and describes the scope of
8 review of such actions.

9 257) Plaintiff is entitled to compel agency actions unlawfully withheld or unreasonably delayed
10 without adequate reason or justification. 5 U.S.C. §§ 702, 706(1) [On Plaintiff's Patent Applications
11 No.:14/794,807; 15/382,598, and No.:15/709,307 and No. 16/599,131] and for reasonable compensatory,
12 punitive damages if appropriate, for pain and suffering, for mental anguish, attorneys' fees (if obtained),
13 and costs of suit.

THIRTEENTH CAUSE OF ACTION

14 [Cause of Action Under 42 U.S.C. § 1983 For Request for Equitable
15 Relief Upon waiver of sovereign immunity for such claims Under 5
16 U.S.C. § 702 Administrative Procedure Act ("APA")]

17 258) Plaintiff incorporates by reference as if fully set forth herein the allegations contained in
18 paragraphs 1 above through 265 inclusive, as though fully set forth herein.

19 259) In *Ministerio Roca Solida v. McKelvey*, 13-16808 (9th Cir, 4 May 2016) (Published)
20 concluded "*Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388
21 (1971):

22 **"The unique, judicially-created Bivens remedy provides plaintiffs an**
23 **avenue for damages against constitutional violations by federal**
24 **officers." In a Bivens action one may seek equitable relief against the**
25 **federal government, because the Administrative Procedure Act waives**
26 **sovereign immunity for such claims. 5 U.S.C. § 702 ("An action in a**
27 **court of the United States seeking relief other than money damages**
28 **and stating a claim that an agency or an officer or employee thereof**
acted or failed to act in an official capacity or under color of legal
authority shall not be dismissed nor relief therein be denied on the
ground that it is against the United States.....").

("Citations")

26 260) Plaintiff is entitled to equitable relief against the USPTO and its agents, where equitable
27 relief is available upon waiver of sovereign immunity federal question jurisdiction under § 1331 is
28 typically available for claims under the APA.

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1 amount of damages sought by Mr. Perry request for compensatory damages in the
2 amount of \$ 150,000,000 as to his non-publish patent application No.:15/382,598.

- 3 (6) For orders an award of just compensation for this taking of Mr. Perry's property,
4 finding that the USPTO took Mr. Perry's property with respect to his
5 involuntarily abandoned patent applications, without providing just compensation;
- 6 (7) For orders finding that the USPTO improperly and inequitably accepted and
7 retained Mr. Perry's fees for his patent applications which they late abandoned
8 without justification;
- 9 (8) For orders finding that Mr. Perry is entitled to specific relief, in the form of
10 granting his four (4) patents which after the USPTO retained those fees, they did
11 not examined to final agency decision besides patent application No.:14/794,807
12 which after Mr. Perry paid all of prosecution fees to the USPTO, and after appeal
13 fees to the USPTO who abandoned all the applications No.:14/794,807;
14 No.,15/382,598; No.:15/709,307 And No. 16/599,131 without valid justification.
- 15 (9) For orders directing the USPTO to provide Mr. Perry with specific relief, in the
16 form of granting the three patents, which the USPTO retained those fees;
- 17 (10) For orders setting aside the USPTO's actions adopting unlawful policies for
18 the treatment of Mr. PERRY's applications;
- 19 (11) For orders an injunction enjoining Defendants from treating in bad faith Mr.
20 Perry's patent applications: No.:14/794,807, No., 15/382,598; No.:15/709,307 and
21 No. 16/599,131), capriciously, and contrary to law and compelling them
22 expeditiously to conduct a fair, impartial, and timely examination of his
23 applications in accordance with law, to allow patentable subject matter, to issue
24 patents.
- 25 (12) For orders that such patentable such subject matter on payments made or upon
26 payment of the issue fee, to provide timely action on Mr. Perry's petitions, and to
27 waive the resulting accrued extension fees on the three patent applications, to
28 grant Mr. Perry the patent in Application No.: from the untimely final agency
action, after Perry paid his appeal fees to the Appeal Board on examiner Kristin
Matter's rejections;
- (13) For a writ of mandamus compelling Defendants to expeditiously to conduct a
fair, impartial, and timely examination of his three applications in accordance
with law, to allow fair examination and allow patentable subject matter, to issue
patents claiming such patentable, and such subject matter after the payment of the
issue fee, to provide action relief from the petitions timely on Mr. Perry's, and to
permit him to obtain the patents and if necessary be heard by the Appeal Board on

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1 examiner rejections and allow patent application No.:14/794,807 and, upon said
2 payment of the issue fee, to issue a patent for the invention claimed in the
3 No.:14/794,807, and reinstatement of Mr. Perry's patent applications No.,
15/382,598, No.:15/709,307 and No. 16/599,131;

4 (14) For an injunction and a declaration compelling defendants for that the
5 No.:14/794,807 Application satisfies the statutory conditions for patentability and
6 that Mr. Perry is entitled to reinstatement and allowance of the No.:14/794,807
7 Application, and, upon payment of the issue fee, to issue a patent for the invention
8 claimed in patent applications No.:14/794,807 and No., 15/382,598, and
reinstatement and examination prosecution of patent applications; No.:15/709,307
And No. 16/599,131.

9 (15) Retain jurisdiction in order to ensure compliance with the Court's orders and
10 writs on Mr. Perry's patent applications No., 15/382,598, No.:15/709,307 and No.
11 16/599,131, and issue a STAY OF EXECUTION of any further actions by the
USPTO pending this litigation; and

12 (16) All other relief to which the Court and Plaintiff may show himself to be
13 entitled.

14 **REQUEST FOR A STAY OF ALL USPTO ACTIONS PENDING**
15 **RESOLUTION OF THIS CASE.**

16 263) Plaintiff PERRY respectfully for a stay of all the USPTO action until all matters and
17 proceedings pending/ending in the District Court and Appellate Court/s on Mr. PERRY's Patent
Application: No.:14/794,807; No., 15/382,598; No.:15/709,307 and No. 16/599,131.

18 **JURY DEMAND ON THE HACKING, FRAUD TORT AND UNDER**
19 **42 U.S.C. § 1983.**

20 264) Plaintiff PERRY respectfully demands a trial by jury of all issues triable by a jury in his
21 Complaint.

22 **DECLARATION OF AVRAM MOSHE PERRY**

23 I declare under penalty of perjury that I have read the foregoing above, that it is true and correct to
24 the best of my information and belief.

25 DATED: September 21, 2022

26 By: 
27 Moshe Avram Perry
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CERTIFICATE OF SERVICE

I hereby certify that, on this 21th day of September, 2022, a true and complete copy of the foregoing: Verified Complaint With Subject Matter Jurisdiction Invested In the United States District Court As Asserted By The Court of Appeal For the Federal Circuit, Pursuant To 28 U.S.C. § 1338(a); federal question exception under 28 U.S.C. § 1331; Violation of Plaintiff’s Civil Rights Under Bivens v. Six Unknown Fed. Narcotics Agents, 403 U. S. 388; RICO 18 U.S.C. § 1961 By Means of 42 U.S.C. §1983; 28 U.S.C. § 1332 - Diversity of Citizenship; Under The Administrative Procedure Act (“APA”) 5 U.S.C. § 701-§ 706; With Civil Remedies Under 18 U.S.C. § 1964 Against The USPTO Director; Examiners And All Other Defendants For Fraud, Concealment, Conspiracy In Violation of 18 U.S.C. § 1001 (As Referenced) ; Tortious Harassment; Retaliation; Intentionally Deceiving Plaintiff Entitlement For Patent; Obstruction of Justice; Violation of The Federal Tort Claims Act (“FTCA”) FTCA, 28 U.S.C. §§ 2671-2680 And 28 U.S.C. § 1346(b)(1); Theft of Plaintiff’s Intellectual Properties, Patent Ideas For Publication of Non- Publish Patent Applications And Posting Them Online For Sale In The USPTO “PublicPair” Portal In Violation of 18 U.S.C. § 1957; Unfair Competition Affecting Commerce ; Discrimination Practices In Depriving Plaintiff’s Right To Appeal To The PTAB after He already Paid His Appeal Fees, USPTO Accrued Frivolous Extension Fees In Order To Abandon Plaintiff’s Four (4) Patent Applications In Violation of Plaintiff’s Constitutional Rights; Refusing To Grant Patents In Violation of 28 U.S.C. § 1337; USPTO And Agents Illegally Hacked Into Plaintiff’s Gmail And Personal Computer And Erased Emails HE Received From The USPTO; In Violation of 18 U.S.C. § 1030 Which Directly Prohibits Criminal Activity Using Computers; 5 CFR Part § 2635 Standards of Ethics; Request For Criminal/Non-Criminal Referral To The United States Attorney General - U.S. Justice Dep. (18 U.S.C. § 1957(e) And 18 U.S.C. § 3333) For A Civil Investigative Demand Report Under 18 U.S. Code § 1968 Investigation of Such Alleged Racketeering Violation. Request For Relief To Obtain A Patent Pursuant To 35 U.S.C. § 145 From The USPTO; Request For Declaratory Judgment Under 28 U.S.C. § 2201; Injunctive Relief Under 15 U.S.C. § 1116, And Mandamus Under 28 U.S.C. § 1361; For Damages For Injuries Under Federal Laws (28 U.S.C. § 1357); Request For A Stay All of USPTO’s Actions; Demand For A Bifurcated Jury Trial On Certain Issues Covered Under A Jury; Preserving Issues Deprived After They Were Brought To Appeal Before The Patent And Trademark Office Under Fed. R. Civ. P. 50. (Plaintiff had presented timely administrative claims to the USPTO Pursuant to 28 U.S.C. § 2675(a), The USPTO failed to response and waived the Government’s sovereign immunity. This Related Sealed case was originally filed in the United States Central District Court 1:19-cv-00637(RGK-JCx) on January 28, 2019 and was administratively closed on February 1, 2019. The case was then was heard in the United State Court of Federal Claims in case No. 1:19-cv-01797(MHS), who dismissed for lack of jurisdiction. The CAFC in case No. 20-2084, affirmed that jurisdiction must be in the district court.) On December 28, 2021 Mr. Perry attempted to reopen the 1:19-cv-00637(RGK-JCx) was denied on January 20, 2022. Mr. Perry appealed the order to the CAFC Docket No. 22-1720 who on August 9, 2022 issued an Order terminating and dismissing Mr. Perry’s appeal, has been duly served upon all parties of record in the lower state proceedings, to-wit: By placing the original a true copy thereof enclosed in a sealed envelope Addressed as follows:

Patent Director of the United States Patent and Trademark Office Mail Stop: Commissioner for Patents P.O. Box 1450 Alexandria, VA, 22313-1450	United States Department of Justice P.O. Box 480 Ben Franklin Station Washington D.C. 20044	
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(BY MAIL) as follows:
I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Tarzana, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

(FEDERAL) I hereby certify that a true and complete copy of the foregoing by depositing the same in the United States mail, postage prepaid, has been duly served upon all parties of record above.

Executed on September 21, 2022 at Tarzana, California



Roni Asseraf

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CLEAR FORM

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY(S)
OR OF PARTY APPEARING IN PRO PER

MOSHE A. PERRY
23705 VANOWEN ST. # 262
WEST HILLS, CA, 91307
(747) 224-9515

ORIGINAL

ATTORNEY(S) FOR:

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

MOSHE A. PERRY Plaintiff(s), v. UNITED STATES PATENT AND TRADEMARK OFFICE ("USPTO"); ANDREI IANCU. et. al. Defendant(s)	CASE NUMBER: <p style="font-size: 1.5em; text-align: center;">1:22 CV 1126</p> CERTIFICATION AND NOTICE OF INTERESTED PARTIES
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TO: THE COURT AND ALL PARTIES OF RECORD:

The undersigned, counsel of record for MOSHE A. PERRY or party appearing in pro per, certifies that the following listed party (or parties) may have a pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or recusal.

(List the names of all such parties and identify their connection and interest. Use additional sheet if necessary.)

PARTY	CONNECTION / INTEREST
1. MOSHE A. PERRY	PLAINTIFF
2. United States Patent And Trademark Office ("USPTO") Andrei Iancu,	DEFENDANT
3. Wendy Garber, Director Patent Technology Center 3600 (No. 3649)	DEFENDANT
4. Darnell Jayne, Director (No. 3649)	DEFENDANT
5. Dale Shaw (The Deputy Director Stakeholder Outreach And Patents Ombudsman United States Patent And Trademark Office)	DEFENDANT
6. Kristine Clarette Matter, (Examiner)	DEFENDANT
7. Katherine Matecki, (Group Director, Technology Center No. 3600-3649)	DEFENDANT
8. Laura Martin (Examiner)	DEFENDANT
9. Shirene Willis Brantley, (Attorney Advisor At The USPTO Petition Department)	DEFENDANT
10. Charles Steven Brantley, (Attorney Advisor At The USPTO Petition Department)	DEFENDANT

09/21/2022
Date


Signature

Attorney of record for (or name of party appearing in pro per):
MOSHE A. PERRY