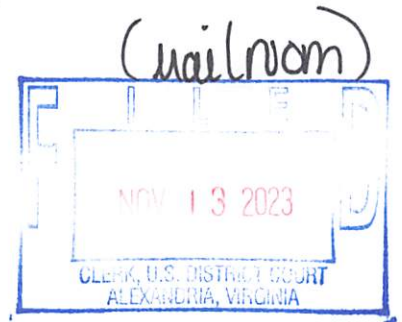


UNITED STATES DISTRICT COURT

for the  
Eastern District of Virginia  
Alexandria Division



\_\_\_\_\_  
Dr. Mark D Reid PhD  
Plaintiff

) Case No. 1:23 CV 1544

) Jury Trial: [ X ] Yes

-v-

)  
)  
United States Patent and Trademark Office  
Defendant  
\_\_\_\_\_

**Complaint for Violation of Due Process in the Patenting Process**

**Nature of Action**

This is an action for judicial review of the United States Patent and Trademark Office's ("USPTO") decision to abandon Plaintiff's patent application.

**The Parties to This Complaint**

The Plaintiff

Dr. Mark D Reid PhD  
208 67<sup>th</sup> St B  
Virginia Beach (Virginia Beach County)  
VA 23451  
(610) 316-9199  
dr.mark.d.reid@gmail.com

## The Defendant

United States Patent and Trademark Office (USPTO)  
Office of the General Counsel  
P.O. Box 12686 Alexandria, VA 22313

## The Basis for Jurisdiction

- A. The basis for jurisdiction is a federal question. The Plaintiff, a US citizen, sued the federal agency the United States Patent and Trademark Office.
- B. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, which grants federal district courts jurisdiction over federal question cases, and the relevant federal statutes are
  1. the Patent Act (35 U.S.C. §§ 1-376)
  2. the Administrative Procedure Act (5 U.S.C. §§ 551-559)
  3. and the relevant provision of the United States Constitution is the Due Process Clause of the Fifth Amendment.

## Parties

3. Plaintiff, Dr. Mark D Reid PhD, is a resident of Virginia. Throughout the time of working on the patent (2014-2021) and submitting both the provisional and non-provisional patent forms on December 27, 2021, and December 27, 2022, respectively, the Plaintiff Dr. Mark D Reid PhD was a resident of Pennsylvania and the sole owner of 269 E. Dutton Mill Rd., Brookhaven, PA 19015. During 2023, the Plaintiff became a resident of Virginia.
4. Defendant, USPTO, is a federal agency responsible for administering the patent laws of the United States.

## Facts

5. On December 27, 2021, Plaintiff filed the provisional patent application with the USPTO for an invention titled "Graphene Parachute at Lagrange Point L1 to Dim the Sun" under provisional patent application number 63/266,041, as stated on the USPTO Electronic Payment Receipt (Exhibit A).
6. On December 27, 2022, Plaintiff filed the non-provisional patent application with the USPTO for an invention titled "Graphene Parachute at Lagrange Point L1 to Dim the Sun" App. No. 18/146,466 with priority date December 27, 2021, and official Non-provisional filing date of 12/27/2022.
7. The USPTO therefore received the *specification* and *figures* in this copy of the December 27, 2022, submission attached here (Exhibit B) and payment verification receipt here (Exhibit C).
8. On January 25, the USPTO sent a notice to the Plaintiff, informing him that the USPTO received his nonprovisional patent application but the descriptions of his nine figures must be collected all together on a single page. In other words, the Plaintiff needed each

of his descriptions of his nine figures to appear on a single page of text. The Plaintiff responded on February 12, 2023. Along with an exact copy of the written specification submitted on December 27, 2022, the Plaintiff collected all nine descriptions on a single page as shown in the attached copy (Exhibit D). Before submitting, the Plaintiff wanted to check with USPTO help and support to make sure that everything was done correctly.

9. The instructions on the NOTICE were not clear, and some words were ambiguous. The Plaintiff was therefore careful to discuss with the USPTO help and support desk what exactly needs to be submitted. The USPTO help and support personnel instructed the Plaintiff to submit all changes, and therefore all the descriptions in Exhibit D **marked**. And by 'marked,' the USPTO means underlined.
10. USPTO help and support instructed the Plaintiff to submit a new specification with a page with all the brief written descriptions of the figures marked. In other words, USPTO help and support assured the Plaintiff that the page of descriptions of the figures is to be underlined.
11. Therefore, following the instructions of USPTO help and support, on or about February 13, 2023, the Plaintiff submitted a substitute (exact copy) of the specification. Because the USPTO did not require any changes to be made to the written body of the specification itself, the Plaintiff submitted a substitute . Following the instructions that the USPTO help and support desk gave him, 'in reply to "NOTICE TO FILE CORRECTED APPLICATION PAPERS"', the Plaintiff submitted the page of nine collected descriptions as in Exhibit D but **marked**, meaning underlined. Along with an exact copy of the written specification, i.e., with no changes made to the specification submitted on December 27, 2022 (Exhibit B), the Plaintiff collected all nine descriptions on a single page as shown in the attached copy (Exhibit E).
12. On April 12, 2023, the USPTO again responded with a "NOTICE to FILE CORRECTED APPLICATION PAPERS". Everything was acceptable based on the USPTO review of the Plaintiff's submission, except one thing. The Plaintiff was supposed to submit an unmarked copy. In other words, the USPTO said that the underline needs to be removed from the one page of changes, the descriptions of the figures and drawings.
13. Plaintiff was again unsure of the meaning of the terms. And the Plaintiff made sure of the meaning of the terms with the help and support desk. The Plaintiff was concerned because he followed the instructions precisely and even double checked the instructions precisely with the USPTO help and support. However, according to the USPTO decision-makers, or whatever the source of the NOTICES to file corrections, the changes the Plaintiff made were incorrect because they needed to be not underlined. Therefore how does the Plaintiff make sure that his next submission will be according to what the USPTO decision-makers require?
14. On August 24, 2023, the Plaintiff filed corrected application papers. The Plaintiff filed corrected application papers after lengthy discussions with the help and support desk. The help and support desk at the USPTO explained that the application may be accepted if it is received after the deadline as long as it has a certificate of mailing.

15. The Plaintiff mailed the corrected application papers on August 24, 2023, and included with his submitted papers, as the table of contents shows, was a certificate of mailing.
16. The payment receipt to the USPS (Exhibit F) shows August 24, 2023, and the receipt lists the tracking number to be 9505 5131 0541 3236 7084 73. The tracking history (Exhibit G) shows the shipment was created in Virginia Beach Virginia on August 24, 2023, and the shipment was delivered to the USPTO's PO Box at 9:03 AM in Alexandria Virginia on August 26, 2023.
17. The tracking history online through December 22, 2023, shows the same results, for example, if the tracking number is pasted into Google or USPS.
18. Included with his corrected application papers that he mailed to the USPTO on August 24, 2023, was a certificate of mailing which according to the code of rules for the USPTO is sufficient to satisfy the due date. Since the Plaintiff's CORRECTED APPLICATION PAPERS included a certificate of mailing on August 24, 2023, and the due date was August 25, 2023, the Plaintiff's certificate of mailing satisfies the due date.
19. On October 11, 2023, the USPTO issued a Notice of Abandonment to Plaintiff, stating that Plaintiff's patent application was being abandoned because his submission was untimely. However the USPTO is not correct. The application was submitted sufficiently timely that it satisfied the deadline or due date.
20. The Due Process Clause of the Fifth Amendment to the United States Constitution protects individuals from arbitrary and capricious government action. This includes the right to a fair and impartial hearing before a deprivation of life, liberty, or property.
21. In the context of patent applications, the USPTO must provide applicants with a fair and impartial opportunity to be heard before rejecting their applications. This means that the USPTO must provide clear and unambiguous instructions to applicants and must not reject applications for minor technicalities.
22. In this case, the USPTO failed to provide Plaintiff with clear and unambiguous instructions. The USPTO first told Plaintiff to underline the descriptions of the figures, and then later told him to remove the underline. Plaintiff complied with both instructions, but the USPTO still rejected his application.
23. The USPTO's rejection of Plaintiff's application was also arbitrary and capricious. The USPTO's rules allow applicants to submit certificates of mailing to satisfy due dates. Plaintiff submitted a certificate of mailing with his corrected application papers, but the USPTO nonetheless rejected the application for being untimely.

### **Conclusion and Closing**

24. The USPTO's decision to abandon Plaintiff's patent application violates Plaintiff's right to patent under the Patent Act and Plaintiff's right to due process under the Fifth Amendment. For the foregoing reasons, the USPTO's violation of Plaintiff's Due Process rights should be reversed and Plaintiff's patent application should be reinstated.

## Relief Requested

WHEREFORE, Plaintiff prays that this Court:

- (a) Reverse the USPTO's decision to abandon Plaintiff's patent application so that it may be evaluated based on its merits and not illegally disqualified because the USPTO provided the Plaintiff with incorrect instructions about whether to underline a page or not or because the USPTO made a mistake in judging a timely submission to be untimely.
- (b) Order the USPTO to process Plaintiff's patent application in accordance with the law; and
- (c) Grant Plaintiff such other and further relief as the Court deems just and equitable, at least including a refund of the excessive fees generated due to the capricious notices and requirements to resend the same material underlined or not underlined, which is \$455.

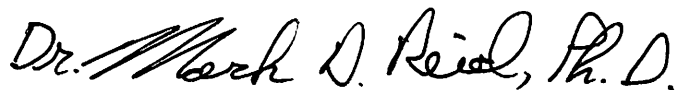
## Demand for Jury Trial

Plaintiff demands a trial by jury of all issues so triable.

## Certification

- 25. Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.
- 26. I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Dated: November 7, 2023



Dr. Mark D. Reid PhD  
208 67 St B  
Virginia Beach, VA 23451