

IN THE SUPREME COURT OF THE UNITED STATES

STEVE WILSON BRIGGS,

Petitioner,

v.

SONY PICTURES ENTERTAINMENT, INC.,

NEILL BLOMKAMP, ET AL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

STEVE WILSON BRIGGS

Petitioner

In Propria Persona

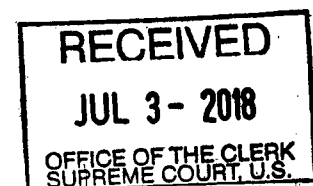
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Petitioner



QUESTIONS PRESENTED

1. Whether by failing to clarify and update internet *widespread dissemination* access guidelines, U.S. courts imperil the rights of U.S. intellectual property owners.
2. Whether a decision based on the falsified report of a man who later confessed on FOX News that he was a “fixer” for President Clinton, can stand and set U.S. copyright precedent.
3. Whether a ruling that ignores superseding law, to base itself in subordinate law, can be valid.
4. Whether a plaintiff has the right to state his own copyright claims, or if the court has authority to omit and substantially alter a plaintiff’s claims?

PARTIES TO THE PROCEEDING:

The Petitioner is Steve Wilson Briggs.

The Respondents are Neill Blomkamp, Sony Pictures Entertainment. Inc.,
Media Rights Capital II LP, TriStar Pictures Inc., and QED International

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Steve Wilson Briggs respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The panel opinion (memorandum) of the Court of Appeals is not published, but it is included in Petitioner's Appendix at A (p 1a to 3a). The denial of the petition for rehearing en banc is included in Petitioner's Appendix at D (p 53a). The district court order granting Defendants' motion to dismiss is not published (*Briggs v Blomkamp, et al*, 4:13-cv-04679 PJH), but included in Petitioner's Appendix at B (p 4a to 51a). The district court judgment is included in Petitioner's Appendix at C (p 52a).

JURISDICTION

On October 3, 2014, the district court granted the defendants' motion to dismiss. Plaintiff Steve Wilson Briggs (Petitioner) filed a timely Notice of Appeal to the Ninth Circuit Court of Appeals on October 31, 2014, filed a timely appeal on February 9, 2018, and filed a timely substitute-corrected brief on February 23, 2015. On February 28, 2018, a Ninth Circuit Court panel affirmed the dismissal. On March 13, 2018, Petitioner filed a timely petition for rehearing en banc. On April 6, 2018, a Ninth Circuit Court panel denied the petition. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S. Code § 1338; 17 U.S.C. (§§ 101 et seq.)

STATEMENT

In this matter, Petitioner Steve Wilson Briggs alleges that the Respondents accessed his screenplay on a popular online social network, then misappropriated his ideas and produced a blockbuster film. The lower courts held that merely posting a work online is insufficient to establish *widespread dissemination*; underpinning the district court order, upheld by the Court of Appeals.

The Ninth Circuit represents the fifth largest economy in the world; ground zero of our new digital economy; home of Amazon.com, seller of 65% of all books sold in America—through one website. And in this new economy, unknown artists, using services like CDBaby.com and CreateSpace.com, can post their songs and books on iTunes and Amazon, and have their wares available around the world. Facts that upend the circuit court's current thinking.

The rules of commerce and access have changed. Yet the Ninth's "widespread dissemination" theory fails to consider the new array of online publishers, social networks, and niche markets thriving in this economy, while it tacitly sanctions corporate access and infringement of undiscovered artists.

But perhaps more problematic than the Ninth's outdated access theory, in this case, was the lower court's refusal to cite or apply standards set in the Ninth's prevailing, most contemporary and comprehensive widespread dissemination opinion, *L.A. Printex Indus. Inc. v Aeropostale, Inc.*, 102 U.S.P.Q.2nd (BNA)(9th Cir 2012), and the fact that the lower court decisions relied on a falsified *expert* report, produced by a self-confessed "fixer" for President Bill Clinton.

A. PROCEEDINGS IN DISTRICT COURT

On October 8, 2013, the Petitioner filed a Complaint for copyright infringement against the Respondents, in the United States District Court for the Northern District of California (Briggs v Blomkamp, et al, assigned to the honorable Phyllis J Hamilton in the Oakland Division). Under 28 U.S. Code § 1338 copyright disputes fall under federal jurisdiction. The Petitioner's lawsuit alleged that the 2013 film *Elysium* was an infringement of his screenplay, *Butterfly Driver*. Petitioner alleged that Respondent Neill Blomkamp likely accessed Petitioner's screenplay in 2007, while it was posted on Trigger Street (triggerstreet.com). In 2002, Trigger Street was created and endorsed by Academy Award winning actor Kevin Spacey. In 2004 TIME Magazine voted Trigger Street one of the internet's 50 best websites. By 2009 Trigger Street had grown to 400,000 members. From 2002 to 2014 Trigger Street was the world's first and only social network for screenwriters and filmmakers. Six days after the Petitioner filed Notice of Appeal, Trigger Street went out of business, without explanation.

The Petitioner's 38-page first amended complaint (FAC) detailed what may be the most extensive infringement claim in film history. Petitioner attached screenplays of both works to his FAC, and claimed that *Elysium* infringed on his screenplay's plot (on an impoverished Earth, a poor hero must get to a giant satellite city for the super-rich, to obtain life-saving medicine), setting, characters (including a poor hero with a unique headache condition, who must get to a satellite city for the super-rich to get

medical aid), hero's affliction headache, hero's keepsake necklace, central conflict, catalyst, crisis, climax, inciting incident, themes, and more.

During discovery, after receiving and reading a copy of the Respondents' expert witness report (captioned: Expert Report Of Jeff Rovin), on June 12, 2014, The Petitioner filed a motion to disqualify (exclude) Jeff Rovin's report, due to the rampant fraud and falsification it contained. The Petitioner's motion contained about 12 examples of Rovin's fraud. The motion also noted that Mr. Rovin falsified and misstated his qualifications in his CV, and noted that Rovin was not a copyright expert and had no known education beyond high school. The court deferred judgment until Motions For Summary Judgment could be heard.

On July 30, 2014, Petitioner filed a Motion for Summary Judgment (MFSJ).

On July 30, 2014 the Respondents also filed a Motion for Summary Judgment. That same day the Respondents filed the sworn Declaration Of Jeff Rovin in Support of the Respondents' Motion For Summary Judgment. The signed Expert Report of Jeff Rovin (which the Petitioner moved to exclude) was attached to the Declaration.

On October 3, 2014, the honorable Judge Phyllis J Hamilton entered her Order re motions for summary judgment (and Judgment): granting the Respondents' Motion for Summary Judgment, and denying the Petitioner's motion to disqualify/exclude the expert report of Jeff Rovin, and denying the Petitioner's motion for summary judgment.

The Petitioner observed numerous problems with the district order:

1. The order ignored and did not contemplate *L.A. Printex Indus. Inc. v Aeropostale, Inc.*, which revises current standards and methods for assessing widespread dissemination;
2. The court failed to assess *objective similarities in protectable elements*, as required by *L.A. Printex Indus. Inc. v Aeropostale, Inc.*;
3. The order hinged on Jeff Rovin's falsified report ;
4. The order relied on discredited dissection analysis;
5. The order omitted, dramatically altered and reconfigured Petitioner's copyright claims.

B. PROCEEDINGS IN COURT OF APPEALS

October 31, 2014, Petitioner filed Notice of Appeal to the Ninth Circuit, and submitted his substitute-corrected brief on February 23, 2015. The Petitioner's brief made the following nine arguments:

1. The court's access ruling errs as it failed to apply access standards from *L.A. Printex v. Aeropostale* (9th cir, 2012) and relies on reversed case law, and holds plaintiff to a separate standard.
2. The court erred in its substantial similarity test; by omitting *L.A. Printex* the court failed to test "objective similarities in protectable elements" & failed to give plaintiff "broad" protection.

3. The court erred in using dissection analysis, (discredited by *L.A. Printex*); thus, failed to analyze objective similarities in protectable elements.
4. The order errs as it is predicated on the omission & misstatement of central facts & claims.
5. The court erred in not choosing a case law standard to define “striking similarity”.
6. The court erred in its direct comparison ruling.
7. The order errs as it did not test for “striking similarity”
8. The court erred in granting summary judgment when the credibility of the parties is at issue.
9. The order errs as the court misused its discretion and prejudicially ruled against plaintiff.

Three years after filing his Notice of Appeal, on February 28, 2018, the Court of Appeals issued an unpublished Memorandum that affirmed the district court order and judgment. The brief memorandum ignored Petitioner’s arguments #2, #3, #4, #5, #6, #7, and #8, and summarily rejected the petitioners #1 and # 9 arguments, without explication.

On March 13, 2018, Briggs submitted a Petition For Rehearing And Rehearing En Banc to the Court of Appeals.

On April 6, 2018, the Court of Appeals issued an Order denying the petition for rehearing.

REASONS FOR GRANTING THE PETITION

I

THE QUESTION PRESENTED IS OF EXCEPTIONAL IMPORTANCE, AND THIS CASE IS A SUPERIOR VEHICLE FOR ADDRESSING THIS QUESTION

(The Need to Clarify the Concept of

Widespread Dissemination)

In the fall of 2013, news of the Petitioner's lawsuit against the Respondents (Briggs v Blomkamp, et al) spread quickly. It was soon carried on hundreds of news and legal websites around the world. One of the most interesting of these articles was written by attorney Audrey Jing Faber (J.D.), in an article entitled *Copyright Disputes in the Digital Age* (12/18/2014). Faber wrote:

“...The court's holding in *Briggs* is consistent with the general rule that mere posting of a work on the Internet does not constitute widespread dissemination, but it nonetheless raises the interesting question of how courts will continue to address and define what constitutes widespread dissemination in the context of the Internet. There are multitudes of ways that someone can publish or share content on the Internet, including on websites, blogs, video-sharing sites such as YouTube, and on social media. Today's technology, and mobile devices in particular, make that content extremely accessible – even third graders can share and access content. That simply was not the case ten years ago, and cases are increasingly reflecting that trend...

Briggs struck me as interesting because there is not much case law addressing when and under what circumstances posting a copyrighted work on the Internet constitutes widespread dissemination... [I]t is inevitable that we will see more copyright plaintiffs arguing that defendants had access to their work via the Internet.”

In her article, almost four years ago, Faber identified the imperative question raised by this case: in this age of e-commerce, do America's digital creators and marketers deserve a *widespread dissemination* access theory that contemplates today's online market and access realities?

Although she accurately identifies the problem, as an attorney, Faber failed to notice that not only did the district order fail to shed light on *widespread dissemination*, it also failed to give any consideration to Briggs' widespread dissemination argument—by not so much as mentioning *L.A. Printex Industries, Inc. v Aeropostale, Inc.*, the widely known and central case cited by Briggs (literally the first case cited in the petitioner's MFSJ). Rather, the district cited obscure and older cases: *Jason v. Fonda*, 698 F.2d 966, 967 (9th Cir. 1982), and *Art Attacks Ink v MGA Entertainment Inc.*, 581 F.3d at 1144 (9th Cir. 2009).

Ironically, after the district ignored the Petitioner's citation of *L.A. Printex v Aeropostale*, when the Petitioner brought this oversight to the circuit court, the Court of Appeals also ignored the Plaintiff's arguments and citation of *L.A. Printex v Aeropostale* —but they cited *L.A. Printex* to reject the Petitioner's arguments for considering that very case. (See Appendix A, p3a, ¶¶ 4, 5)

Contemplating *L.A. Printex Indus. Inc. v Aeropostale, Inc.* is of paramount importance for every Ninth Circuit infringement case, because *L.A. Printex* goes beyond *Art Attacks Ink v MGA Entertainment Inc.*, 581 F.3d at 1144 (9th Cir. 2009), and refines the metrics for assessing the widespread dissemination, and instructs courts to contemplate factors such as whether the parties were engaged in

the same industry at the same time (as Briggs and Respondent Blomkamp were engaged in the same industry—film production—at the same time).

L.A. Printex Indus. Inc. v Aeropostale, Inc. makes reasoned clarifications to existing law. Whereas, in this matter, the Court of Appeals' unpublished memorandum merely rejects the Petitioner's first and last arguments, then wholly ignores seven of the Petitioner's nine arguments?

The current guideline in the Ninth, that *merely posting a work on a website is not sufficient to establish widespread dissemination*, is far too vague, and doesn't address imperative questions, such as: (1) If Amazon.com has 300 million active users, can someone argue that a book or film posted there is not widely disseminated (as Amazon is just a website)?; (2) If so, does that mean artists who have exclusive contracts with companies like iTunes, TIDAL and Netflix cannot claim *widely disseminated* status to protect their copyrighted work from infringement?; (3) Is the *widely disseminated* designation equitably conferred in the Ninth, or reserved for celebrities? (4) Would a jury see a "reasonable possibility" of access if a work is posted on an online social network, exclusively for screenwriters and filmmakers, with a few hundred thousand members?

The Ninth Circuit produces more patents and copyright registrations than anywhere in the U.S.A.

The copyright holders of this circuit deserve clarity —to promote and protect creativity and innovation, as directed by the Copyright Clause of the U.S. Constitution.

**THE LOWER COURTS' RULINGS IGNORE THE PETITIONER'S
CITATION OF SUPERSEDING AND PREVAILING LAW, AND
RELY ON SUBORDINATE / REVERSED LAW**

In the district court, Petitioner's motion for summary judgment relied on *L.A. Printex Industries. Inc. v Aeropostale, Inc.*, (9th Cir 2012), while the Respondents motion for summary judgment relied on *Art Attacks Ink v MGA Entertainment Inc.*, 581 F.3d at 1144 (9th Cir. 2009). Conversely, The Petitioner did not cite *Art Attacks Ink*, and the Respondents did not cite *L.A. Printex v Aeropostale*. The district court, however, cited the Respondents' *Art Attacks Ink and Jason v. Fonda*, 526 F. Supp. 774, but did not consider or mention the Petitioner's citation of *L.A. Printex Industries. Inc. v Aeropostale, Inc.* which is now the most commonly cited of these cases. In so doing the district court ignored and discarded superseding and prevailing law, in favor of citing subordinate law.

In the circuit court, perhaps wrongly believing that the appellate court would clearly see (or perhaps already understand) how *L.A. Printex Industries. Inc. v Aeropostale* supersedes and effectively reverses *Art Attacks Ink, Three Boys Music Corp. v. Bolton*, 212 F.3d 477, 481 (9th Cir. 2000) and *Jason v. Fonda*, the Petitioner's argument only mentioned this "reversal",

without development, in order to focus on the repercussions of the *L.A. Printex* opinion (see Petitioner's appellate brief, pp 13-17)."

The Petitioner informed the circuit court that the district court ignored the Petitioner's arguments and citations of *L.A. Printex Indus v Aeropostale*. However, the Court of Appeals, out of hand, upheld the district court's oversight by simply stating "We reject Briggs's argument...", without clarification, in a brief 3 or 4 page memorandum (See Appendix A, p 3a ¶ 5).

To help this court understand how *L.A. Printex* reverses *Art Attacks Ink*, etc., the Petitioner refers this Court to ¶¶ 13-17 of the *L.A. Printex Industries, Inc. v Aeropostale Inc* opinion (See Appendix E p 40a ¶ 4 to 42a ¶ 1). The aforementioned text of the *L.A. Printex v Aeropostale* opinion establishes:

1. Prior to the *L.A. Printex v Aeropostale* opinion, *Art Attacks*, *Three Boys Music*, and *Rice v. Fox Broadcasting* (9th Cir. 2003) were the prevailing guidelines to test widespread dissemination; thus, the defendant (Aeropostale) cited those cases to counter the Plaintiff's (*L.A. Printex Industries*) access claims. The district court ruled in favor of the defendant.
2. The Court of Appeals, referring to *Art Attacks Ink*, *Three Boys Music* and *Rice v Fox Broadcasting* opined that: "The circumstances here differ from those of our prior cases, and so those cases, though instructive, are not dispositive."
3. The Court then explained why those previous cases are unacceptable, writing: "In *Rice*, the dissemination occurred worldwide, over a thirteen-year period. 330 F.3d at 1173. In *Art Attacks Ink*, the respective parties sold different goods, T-shirts and dolls. 581 F.3d at 1142."

4. Thus, with that previous statement, the court clearly ruled that *Art Attacks Ink*, *Three Boys Music* and *Rice v Fox* were not appropriate models to assess all widespread dissemination.
5. The Circuit Court then provided a new method to assess widespread dissemination: assessing whether or not the litigants were engaged in the same industry, in the same area.

The preceding shows that *L.A. Printex v Aeropostale*: (1) expressly contemplates the provisions of *Art Attacks Ink*, *Three Boys Music*, and *Rice v Fox*; (2) ruled that *Art Attacks Ink*, *Three Boys Music*, and *Rice v Fox Broadcasting*, were not dispositive in all cases; (3) created a new metric to assess widespread dissemination that considers whether the litigants were engaged in the same industry, at the same time.

By contrast, the prior cases (*Art Attacks*, *Three Boys*, *Rice*) could not possibly contemplate the subsequent *L.A. Printex v Aeropostale* opinion; nor could they offer the expanded considerations of *L.A. Printex*. Thus, *Art Attacks Ink*, *Three Boys Music* and *Rice* are superseded by *L.A. Printex Industries v Aeropostale Inc.* Further, since *L.A. Printex v Aeropostale* was reversed and remanded because the district court had only considered prior law (*Art Attacks Ink*, *Three Boys Music*, etc.) and not the new guidelines outlined in the new opinion, *L.A. Printex v Aeropostale* effectively vacates *Art Attacks*, *Three Boys*, *Rice*, etc., since any subsequent order that does not contemplate the expanded provisions of *L.A. Printex* would also be expected to be reversed.

By not contemplating *L.A. Printex Industries v Aeropostale Inc.*, although so advised by the Petitioner, the district court's ruling was improper and incorrect. The lower courts also ignored the petitioner's citation of *L.A. Printex v Aeropostale* concerning proper methods to assess substantial and striking similarity.

Once advised by the Petitioner that the district court did not consider *L.A. Printex Industries v Aeropostale Inc.*, The Court of Appeals should have reversed and remanded the case. It did not. Therefore, the Court of Appeals decision is incorrect.

III

THE LOWER COURT DECISIONS CONFLICT WITH THIS COURT, OTHER CIRCUITS, AND OTHER NINTH CIRCUIT DECISIONS,

(And Relies On Rejected "Dissection Analysis," And Fails To Test Objective Similarity)

By failing to contemplate and apply the principles of *L.A. Printex Indus. Inc. v Aeropostale, Inc.*, 102 U.S.P.Q.2nd (BNA)(9th Cir 2012), the lower courts overlooked L.A. Printex's substantial and striking similarity assessment.

A. The Court Improperly Used "Dissection Analysis,"

Rejected By L.A. Printex

The lower court's decisions are improper because the district court, and the Respondents' *expert* Jeff Rovin used dissection analysis to assess striking and substantial similarity (Rovin also improperly applied these techniques, by

misstating and changing the Petitioner's claims), and because the court and the Respondents' expert failed to test "objective similarities in protectable elements."

L.A. Printex v Aeropostale expressly rejects dissection analysis for assessing striking or substantial similarity, and requires that the court assess "objective similarities in protectible elements." The lower courts failed to uphold these precepts.

¶ 23 of *L.A. Printex Indus v Aeropostale Inc* the Ninth Circuit rejects dissection analysis, as the court wrote (see Appendix E, 43a ¶ 4):

"Original selection, coordination, and arrangement of unprotectible elements may be protectible expression. See *Feist Publ'ns*, 499 U.S. at 362; *Cavalier*, 297 F.3d at 826–27; *Metcalf v. Bochco*, 294 F.3d 1069, 1074 (9th Cir.2002) ("Each note in a scale, for example, is not protectable, but a pattern of notes in a tune may earn copyright protection."). For this reason, the Second Circuit has rejected the argument that, "in comparing [fabric] designs for copyright infringement," a court must "dissect them into their separate components, and compare only those elements which are in themselves copyrightable." *Knitwaves, Inc. v. Lollytogs Ltd.*, 71 F.3d 996, 1003 (2d Cir.1995) ("[I]f we took this argument to its logical conclusion, we might have to decide that there can be no originality in a painting because all colors of paint have been used somewhere in the past." (internal quotation marks omitted))."

Then ¶¶ 26-29 of *L.A. Printex v Aeropostale* (Appendix E, p 44a ¶ 3 to 45a ¶ 4) confirm the protectability of the object similarities of protectable elements, stating:

¶ 26. "...Because there is "a wide range of expression" for selecting, coordinating, and arranging floral elements in stylized fabric designs, "copyright protection is 'broad' and a work will infringe if it's 'substantially similar' to the copyrighted work." *Mattel, Inc. v. MGA Entm't, Inc.*, 616 F.3d 904, 913–14 (9th Cir.2010). That is, "there are gazillions of ways" to combine petals, buds, stems, leaves, and colors in floral designs on fabric, in contrast to the limited number of ways to, for example, "paint

a red bouncy ball on black canvas” or make a lifelike glass-in-glass jellyfish sculpture. See *id.*; *Satava*, 323 F.3d at 812.

¶ 27. “Our comparison of Defendants’ allegedly infringing design and C30020 reveals objective similarities in protectable elements...

¶ 29. “...The differences noted by the district court do not compel the conclusion that no reasonable juror could find that Defendants’ design is substantially similar to C30020. Rather, in light of the similarities described above, the differences support the opposite conclusion, that there is a genuine dispute of material fact on substantial similarity. See 4 *Nimmer* on Copyright § 13.03[B] [1][a] (“It is entirely immaterial that, in many respects, plaintiff’s and defendant’s works are dissimilar, if in other respects, similarity as to a substantial element of plaintiff’s work can be shown.”

B. The Court Failed To Test Objective

Similarities of Protectable Elements

The Petitioner advised both the district court and the circuit court of *L.A. Printex v. Aeropostale*. The Petitioner also advised the Court of Appeals that the district overlooked *L.A. Printex v Aeropostale*, which contemplates new metrics for assessing widespread dissemination, discredits dissection analysis, and affirms the need to test objective similarities of protectable elements. The Petitioner also advised the circuit court that both the district court and the Respondents’ expert used dissection analysis, and failed to test objective similarities of protectable elements (See pp 17-19 appellate brief), under the argument headings reading:

“2. The Court Erred In Its Substantial Similarity Test; By Omitting *L.A. Printex* The Court Failed To Test “Objective Similarities In Protectable Elements” & Failed To Give Plaintiff “Broad” Protection;”

and:

“3. The Court Erred In Using Dissection Analysis, (Discredited By L.A. Printex); Thus, Failed To Analyze Objective Similarities In Protectable Elements.”

Testing objective similarities of protectible elements requires examining each of a plaintiff's copyright claims (without dissection), then comparing these claims to the Defendant's work.

This was never done.

It should also be observed that, as a highly creative work, the Petitioner's screenplay was entitled to *broad* protection, as contemplated by *L.A. Printex v Aeropostale* (etc.). The Petitioner requested this protection. Both lower courts ignored the Petitioner's request, thus, denying due protection.

Due to its failure to apply the precepts of *L.A. Printex v Aeropostale*, namely by improperly using discredited dissection analysis, failing to test objective similarities in protectable elements, and not granting Petitioner's work *broad* protection, the district order is misguided and incorrect.

Moreover, by not reversing and/or remanding the case to the lower court to correct these deficiencies, the Court of Appeals' unpublished memorandum is mistaken and incorrect.

IV

**THE DISTRICT COURT OMITTED, DISMANTLED, ALTERED
& RECONFIGURED PETITIONER'S COPYRIGHT CLAIMS
(Denying Petitioner the Right to State and Defend His Own
Copyright Claims)**

An idea is not copyrightable. An expression is copyrightable. An expression is a minimally creative grouping of a few ideas or features. Thus, if you were to sketch a big-headed, baldish boy in shorts and a short sleeve shirt with a zig-zag stripe on it, you might infringe on Charles Schulz's copyrighted character, Charlie Brown.

In the Petitioner's first amended complaint and motion for summary judgment, he provided numerous detailed, unique arrangements of features comprising his specific copyright claims. For example, in ¶¶ 46, 47 of the FAC, the Petitioner claimed the following 14 features formed the plot of his screenplay (most important elements first):

PETITIONER'S PLOT CLAIM

"SUMMARY: Plot Infringement

¶ " 46. The Plaintiff's plot features:

- 1) a giant satellite world for the super-rich;
- 2) a hero prone to excruciating headaches (which knock him to his knees);
- 3) a villain who has been genetically reprogrammed to appear much younger than he/she is;
- 4) advanced medicine found on the satellite world;
- 5) a hero who must get to the satellite world for medicine (medical care);
- 6) a "plight of immigrant" theme;
- 7) a sick girl, who will die without the hero's action;
- 8) a hero who is poor, and needs I.D. and transport to a satellite world;
- 9) an "anguish of living without healthcare" theme;
- 10) a disabled transporter who helps the hero;
- 11) an agent (sent by the villain to apprehend the hero) who accepts the assignment after negotiating;
- 12) a keepsake necklace, carried by the hero, which factors into the story's conclusion;
- 13) an overpopulated, impoverished Earth, where police vehicles loom in the sky and brutalize the poor, ruled by a rich elite who live on the satellite world;

14) a hero who threatens the villain with detonating an explosive device...

¶ “47. The unique collection of plot features, in paragraph 46, outline a crafted expression, the plot of the Plaintiff's screenplay, *Butterfly Driver*; copyright of the plaintiff.”

But in the district order's plot analysis omitted the Petitioner's most important elements (omitting his first four plot claims entirely —removing the satellite city for the rich, the hero's headaches, and the genetically reprogrammed villain). Then the court added and reworked eight secondary elements mentioned elsewhere in the FAC; then randomly and inexplicably attributed the following claim to the petitioner (See Appendix B pp 20a ¶ 3 to 24a ¶ 2):

DISTRICT COURT'S OMISSION, RESTATEMENT &

REARRANGEMENT OF PETITIONER'S PLOT CLAIM

1. “a hero who must get to the satellite world for medicine or medical care;
2. “the hero in the “*Butterfly Driver*” screenplay is poor, witnesses the death of his best friend, and needs I.D. and transport to a satellite world
3. “there is a disabled transporter who helps the hero's emigration plan, on condition that the hero accept a dangerous mission.
4. “there is an agent in each work who is sent by the villain to apprehend the hero, and who accepts the assignment after negotiating.
5. “the hero carries a “keepsake necklace,” which factors in to the story's conclusion.
6. “the hero threatens the villain with detonating an explosive device.

7. "the screenplay and the film have "techie" programmers who help the hero with fake identification to get into the satellite world.
8. "each work includes a primary character who negotiates with insurers (or a hospital) for the life of his/her child.
9. "both "Butterfly Driver" and "Elysium" include a climatic battle between the hero and the villain, during which the hero suffers a terrible headache.
10. "a "globally significant resolution."

DISTRICT COURT'S PLOT OMISSIONS

The district court omitted any semblance of the following aspects of Petitioner's "plot" claim:

- 1) a giant satellite world for the super-rich;
- 2) a hero prone to excruciating headaches (which knock him to his knees);
- 3) a villain who has been genetically reprogrammed to appear much younger than he/she is;
- 4) advanced medicine found on the satellite world;
- 6) a "plight of immigrant" theme;
- 7) a sick girl, who will die without the hero's action;
- 9) an "anguish of living without healthcare" theme;
- 13) an overpopulated, impoverished Earth, where police vehicles loom in the sky and brutalize the poor, ruled by a rich elite who live on the satellite world.

A. The Order Omits Dozens of Other Copyright Claims

Made by Petitioner

Like the detailed plot claim, above, in his FAC and MFSJ the Petitioner's made dozens of other detailed copyright claims to unique collections of features forming various copyrightable story structures of his screenplay. The Petitioner's FAC made methodical, detailed claims for protection for each the following story structure (each of which was inexplicably omitted or drastically altered by the court):

1. Giant Satellite City for the Rich;
2. Hero;
3. Hero's Affliction Headache;
4. Hero' Keepsake Necklace;
5. Villain;
6. Sick Child;
7. Dystopian Earth;
8. Conjoined Setting: Rich Satellite World, Poor Dystopic Earth;
9. Central Conflict;
10. Themes;
11. Catalyst;
12. Crisis;
13. Climax;
14. Inciting Incident;
15. Future Technological 'Vision'.

The Petitioner elaborately described each of these claims (omitted here, in respect for this Court's time). However, again, the district court order either omitted or dramatically dismantled and reconfigured each of these copyright protected story structures.

B. The Order Paraphrases "Expert" Rovin's Falsified Report, and Makes Same or Similar Misstatements.

Virtually every paragraph of analysis in the district court order closely paraphrased Jeff Rovin's falsified expert report (which Petitioner moved to exclude). As such, the district court's paraphrases also contain Rovin's inaccuracies. Consider page 15-16 of Rovin's expert report, as he wrote:

Rovin, Example #1:

"By contrast, in Plaintiff's screenplay, citizens on Earth enjoy "100 percent employment" and "almost no crime" (screenplay, p. 4). Plaintiff describes Earth as being overpopulated (15 billion people) with "pollution and congestion," but not unlivable. In the screenplay, New York's Manhattan retains the recognizable contours and personality of a major city: there are upscale areas and slums, apartment complexes, shopping malls, subways, and the like. Citizens drive skycars, sky-cycles, and hover-jets using freeways in the sky."

Now compare, as the district court opines, echoing Rovin's words (See Appendix B p 32a ¶ 2):

District Court, Example #1:

..."The Global State has "100 per cent employment" and "almost no crime." While there is some poverty in the "Zones," the City of Manhattan is portrayed like a typical major city with apartment complexes, shopping malls, and subways. Citizens on Earth drive sky-cars, sky-cycles, and hover-jets."

The court's near mirroring of Rovin's words is striking, as the preceding *Rovin* example concludes:

“....apartment complexes, shopping malls, subways, and the like. Citizens drive skycars, sky-cycles, and hover-jets...”
And the preceding court example concludes:

“...apartment complexes, shopping malls, and subways. Citizens on Earth drive sky-cars, sky-cycles, and hover-jets.”

Only nuanced changes. As disconcerting as the court's near copying of Rovin's falsified work, are the errors the Court makes as it does so. For example, in *District Court, Example #1* the court minimizes the extent of poverty in the Petitioner's script, writing: “*While there is some poverty in the "Zones"...*”

But most observers would confirm the screenplay depicts staggering poverty pervades the *zones*. This is central story structure.

Now consider, page 72 ¶ 1 of Rovin's report:

Rovin, Example 2:

...“The “reveal” in Plaintiff's screenplay (p. 94) is that the main villain, President Drexler, only claims to have been genetically reprogrammed. In fact, he is actually the soldier Midland who adopted the identity of a soldier named “Drexler” and underwent plastic surgery. President Drexler looks younger than he claims to be only as a secondary byproduct of this subterfuge.”

To protect the Respondents' interests, Rovin fraudulently concludes Drexler did not have his DNA reprogrammed, but looks much younger because of plastic surgery. But nothing in the Petitioner's script supports this. And Drexler decisively affirms his DNA reprogramming when he says to Arlo in their epic final battle (See FAC, attachment A, p 99):

“DREXLER: You think I need a gun to kill you? Your body is aging, slowing down... I’m immortal.”

Then the district court opines, similar in tone to Rovin, asserting another mistaken conclusion, writing (See Appendix B, p 28a ¶ 2):

District Court, Example #2:

...“In “Butterfly Driver,” Drexler had his DNA “reprogrammed,” with the result that his “bulging biceps” were three times normal strength and he appeared younger, but the screenplay also makes clear that Drexler had his DNA modified because he was really Midland but was trying to pass as Drexler.”

The court is closer to the truth, but mistakenly states that Drexler had his DNA modified because he was really Midland, trying to pass as Drexler.

But the Petitioner’s screenplay makes it clear that Drexler (Midland) is the only person in the world who has been reprogrammed, and Midland assumed Drexler’s identity approximately 14 years earlier, and had his DNA reprogrammed 4 years after assuming Drexler’s identity (See screenplay: FAC attachment A, pp 22, 36, explained by the *TV Reporter*). Finally, having successfully stolen Drexler’s identity four years earlier, Drexler (Midland) reprogrammed himself because he owned the technology and wanted to live forever —not because he was trying to pass as Drexler (as the district court mistakenly opined).

Another example of the court paraphrasing Rovin’s report, including his mistakes, is seen contrasting Rovin’s report (p 51 ¶ 2), as Rovin writes:

Rovin, Example #3:

...“While the hero Arlo does need a fake ID to sneak on to Uberopolis, that is only because he’s a fugitive.”

Then the court writes (Appendix B, p 21a ¶ 1):

District Court, Example #3:

...“In the screenplay, Arlo requires a fake ID because he is a fugitive on the run from the authorities and can't travel to Uberopolis under his own identity.”

Both Rovin and the court select similar plot details to make the same mistaken conclusion: Arlo can't get into Uberopolis because he's a fugitive. Nowhere in the script is that suggested. The script explains (repeatedly) Arlo needs fake I.D. and a passport to get into Uberopolis because he's not a citizen of the Global State (See FAC attachment A, pp 52 *Benni*, 57 *Rabbi*). In fact, the shuttle that Arlo is trying to take to Uberopolis is called a “citizen commuter shuttle” (See FAC, attachment A, p 29) because you must be a State citizen to ride. The court also references the citizen commuter shuttles in the district order (See Appendix B, p 8a ¶ 4).

V

**THE JUDGEMENT IS BASED ON THE FALSIFIED REPORT
OF AN ELITE “FIXER”**

The lower courts' decisions were based on the falsified “expert” report of an uneducated conman, who on October 24, 2016 (two years after the district court order/judgment, but 16 months before the circuit court decision) went on FOX News' nationally telecast “*Sean Hannity Show*” to describe himself as a “fixer” (in the worst sense of the word), and confess that he worked, for years, for President Bill Clinton (during Clinton's presidency) as Clinton's fixer. Rovin's interview with Hannity can be seen at <https://www.youtube.com/watch?v=L3mzoKuFN5o>.

In the interview Rovin explains that as Clinton's fixer he orchestrated false "smear" reports on people who disparaged President Bill and Hillary Clinton. Rovin claimed he then published these smear articles in tabloid newspapers like the National ENQUIRER.

Two year before Rovin's confession, still in district court, as soon as the Petitioner read Rovin's report, the Petitioner investigated Rovin's claims and found most of them to be false. In addition to the falsified report, the Petitioner discovered that Rovin appeared to have only a high school education.

The Petitioner moved the court to disqualify (exclude) Rovin's report, detailing the many false claims in Rovin's report.

Petitioner's motion was denied, and the falsified report became the basis of the district order. In the final paragraph of the order, before *Conclusion*, the honorable Judge Phyllis J Hamilton wrote:

"“Mr. Rovin is knowledgeable and an expert in the area of "science-fiction genre" – and his testimony has "a reliable basis in the knowledge and experience of his discipline." *Kumho Tire Co. v. Carmichael* 526 U.S. 137, 148 (1999). As such, Mr. Rovin cites to many previously published works to show that plot features, settings, and characters in "Butterfly Driver" are not new or original as plaintiff suggests, but reflect themes that have appeared numerous times in the past. As defendants' motion makes clear, Mr. Rovin's testimony supports defendants' argument that many of the plot features, themes, characters, and other features of the "Butterfly Driver" screenplay are "stock" or "generic" elements or scènes-à-faire, which are not protectable; and to support their argument that the "Butterfly Driver" screenplay and the "Elysium" film are not strikingly similar or even substantially similar.”"

Because Rovin made the admission that he was a “fixer” two years after this matter moved to appeals, the Petitioner was not able to present this information to the circuit court in his appellate brief.

No U.S. court should accept as an *expert* someone who defines himself as a “fixer,” and who has admitted to writing nationally published, false “smear” stories for various tabloids.

By not excluding Rovin’s falsified report, the lower courts failed to protect the Petitioner’s right to due process and a fair hearing.

The Court of Appeals had the opportunity to confirm the Petitioner’s incontrovertible claims concerning Rovin’s specious report, then reverse the district’s mistaken order. Rather, the Court of Appeals upheld the order. The Court of Appeals’ decision/memorandum was incorrect.

CONCLUSION

The petition for a writ of certiorari should be granted.

DATED: June, 2018

Respectfully submitted,

Steve Wilson Briggs

Petitioner