

No. 24-236

ORIGINAL

In The
Supreme Court of the United States

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AUG 28 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

STEVE CAMPBELL,

Petitioner,

v.

TUBE-MAC INDUSTRIES, INC., ET AL.,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Federal Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. As Congress has signed the United States of America to the rules and stipulations of the WIPO Patent Cooperation Treaty and the Federal Circuit through *Voda v. Cordis*, 476 F.3d 887 (2007), ruled that Federal Courts do not have jurisdiction over foreign patents, was the ruling by the District Court that the Patentee and Assignee take the necessary steps to add new co-inventors to foreign patents where said co-inventors had not assigned its claimed rights to the Assignee of record in violation of these rules, the Federal Circuit ruling, and the international Patent Cooperation Treaty?
2. Regarding foreign and domestic patents, where a Patentee has assigned all patent rights to an Assignee, is it moot for a district court to order that Patentee to add co-inventors?
3. Where claimed co-inventors from another country have directed themselves through a company from another country with a fictitious "obligation to assign" their claimed inventive rights to a subsidiary US company, registered as domestic, is this not a fraud on the court?
4. Are frauds on the court such as changing the core of the argument after discovery, perjury, subornation of perjury, and directly lying to the court by attorneys when questioned by the court, reasons to dismiss a case under the doctrine of unclean hands?
5. Though the law in the United States stipulates that the clock on Laches is to start once a patent has

been granted and published by the USPTO, is it not within the principles of Laches and potentially Equitable Estoppel to start the clock when complainants and their attorneys are confirmed to have had and read the patent application in question?

6. Can there be co-inventors added when the claimed contribution is not in any claim of a patent?

I. Parties to the Proceeding

Steven Campbell Pro Se – Petitioner

Gary MacKay Alleged Co-Inventor and Plaintiff

Dan Hewson Alleged Co-Inventor and Plaintiff

Tube-Mac Industries Inc. Plaintiff

Director of the USPTO – a Respondent, question #9

USPTO Madison Building 600 Dulany Street
Alexandria , VA 22314

Chief Executive Officer Canadian Intellectual
Property Office (CIPO). – a Respondent, question #7

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II. Corporate Disclosure Statement (not
required Petitioner is Pro Se)

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V. Opinions Below

“The territorial limits of the rights granted by patents are similar to those conferred by land grants. A patent right is limited by the metes and bounds of the jurisdictional territory that granted the right to exclude. Therefore, a patent right to exclude only arises from the legal right granted and recognized by the sovereign within whose territory the right is located. It would be incongruent to allow the sovereign power of one to be infringed or limited by another sovereign’s extension of its jurisdiction. Therefore, while our Patent Act declares that “patents shall have the attributes of personal property,” 35 U.S.C. § 261, and not real property, the local action doctrine constitutes an informative doctrine counseling us that exercising supplemental jurisdiction over Voda’s foreign patent claims could prejudice the rights of the foreign governments.”

Voda v. Cordis, 476 F.3d 887 (2007)

VI. Jurisdiction

While 28 U.S.C. §§ 1254 grants the actual Jurisdiction to hear this matter, the defendants are filing this last chance appeal as a result of 2:19-cv-01192-RJC Dkt. 64 which transferred this action to the United States District Court for the Eastern District of Virginia pursuant to 28 U.S.C. § 1631. Petition has been filed within the 90 days of sad order of the Federal Circuit,

VII. Constitutional and Statutory Provisions

- a. 5th and 14th Amendment of the United States Constitution. Re Due Process
- b. Magna Carta clauses 39 and 40:¹
“No free man shall be seized, imprisoned, dispossessed, outlawed, exiled or ruined in any way, nor in any way proceeded against, except by the lawful judgement of his peers and the law of the land.”

“To no one will we sell, to no one will we deny or delay right or justice.”
- c. 28 U.S.C. §§ 1254
- d. 35 U.S.C. § 256
- e. 28 U.S.C. § 1631.
- f. 18 U.S.C. § 1621,
- g. 18 U.S.C. § 1622
- h. 18 U.S.C. § 1623
- i. 18 U.S. Code § 1512 - Tampering with a witness, victim, or an informant.
- j. WIPO regulation on starting point for Laches for PCT's

VIII. Statement of the Case

Steven Campbell has been perfecting the transportation of Gaseous Fluids for 25 years

¹ <https://www.parliament.uk/about/living-heritage/evolutionofparliament/originsofparliament/birthofparliament/overview/magnacarta/magnacartaclauses/>

beginning with his first US 6339996B1 ('996) patent AppxI0042 through US 9,376,049 B2 see AppxIV0993 the '049 'patent at suit' covering a span of 4 different patents. All have centered around using very large Type 4 (Polymeric Liner with fibre wound shells) pressure vessels. The original technology had 7 years of design maturity before the plaintiffs were involved. Said development was undertaken under the corporate umbrella of Trans Ocean Gas Inc. AppxIX2340 and 22-2170 Document: 95-3 Page: 61, ("TOG") a Newfoundland Corporation incorporated 2001-10-26 and funded by some 49 mom and pop investors before meeting the MacKay Family who still own 10.79% of TOG.

All of the events leading to the alleged claim of co-inventorship took place exclusively in Canada and all the parties involved, except Tube-Mac Industries Inc. ("Inc.") a Pennsylvania "Domestic" Corporation with a vague role as Tube-Mac Canada's subsidiary US Sales office, are Canadian. All the events that led to the alleged co-inventorship occurred between May of 2007 and December 2009, over a decade before this litigation started.

Despite false claims they were prevented from manufacturing what is embodied in the '049 and the '996 patent before it, there were/are still in effect three binding legal agreements (22-2170 Dkt. 95-3, pages 160 to 182 Attachment's 5 to 7) executed in Province of Newfoundland on 2011-11-15, that recognized Ontario Courts and Ontario Law as the Only legal venue for dispute resolution.

The entity at suit Tranz Gaz Inc, renamed from Steven Campbell Consulting Ltd. on 2012-05-16 was incorporated on 2011-12-05 as a direct result of said agreements of 2011-11-15 see AppxVI1610. Said agreements were all signed by the parties at suit with full knowledge that inventor of record, Steven Campbell had filed a new patent on 2011-08-22 (becoming the '049 patent) as had been planned and fully disclosed in writing to all parties in the years between 2009 and said agreements. See AppxIII0657. The 996' patent and others were always filed precisely in time as PCT's as per WIPO rules, the Plaintiffs and their dual counsel were fully aware of that fact.

Said '049 Patent was assigned to TOG at the point of filing See AppxIII0723 and "Provisional Cover Sheet (SB16) TOGI-003ACS.pdf" as Tranz Gas as a corporate body proper, did not come into being until 2011-12-05 and only became the filing entity when and for the WIPO PCT, filed Aug. 22, 2012 See AppxIV0993. This was after TOG shareholders were forced to vote to cease conducting business to prevent MacKay et al from seizing the patents See AppxIV0947-8. The Plaintiffs have repeatedly denied the continued existence of TOG, for example on 2020-03-27 Ontario Court Filing 20-72277. AppxVI1498 ¶47

Despite the existing agreements between all parties (except Inc. in PA) on venue, this matter was filed as a "No Sum Certain" complaint (Cause: 35:145) in the Western District of PA (PAED), a court which had no personal jurisdiction over the Defendants and said

District court later stated “Plaintiffs’ jurisdictional claims are clearly frivolous in this action”. See AppxVI1532. Despite the Plaintiffs claiming they wanted a Jury Trial; the defendants were summarily enrolled in the Alternate Dispute Resolution Process (ADR) again despite there already being an arbitration agreement that did not demand or require legal representation. It is alleged that this was attempted entrapment as this was the only way that the Plaintiffs could use for the court to establish jurisdiction in the matter was if the defendants were to unwittingly accept the authority of the court to adjudicate a resolution.

The defendants were forced to show contempt and refuse to enter the ADR process. Previously there were 9 jurisdiction challenges before the PAWD court changed judges and the new judge requested briefs “Court hereby directs the parties to submit additional briefing with respect to only the issue of personal jurisdiction” [bolding by court]. AppxV1438 ¶2 However, this limited scope given to the Defendants prohibited them from challenging if “Inc.” had the capacity to bring suit as per Drake Manufacturing Co., Appellee v. Polyflow, Inc. Appellant. No. 959 WDA 2014.

Campbell was on the verge of bankruptcy (which was officially filed in 2021) and neither he nor McGrath could get counsel in PAED. Since Tranz Gaz did not come into being until after the US patent was filed with the USPTO and also after 3 said agreements signed on Nov 15th, 2011 it was never the filing entity for US patent and only the

assignee, it was only the filing entity for the WIPO PCT application. McGrath rescinded the '049 patent back to Campbell in January of 2020 (which was confirmed by the USPTO) and sent the statement via certified mail in a notarized affidavit to the court saying that it was no longer the owner of said patent. Despite, being physically received by the PAED court as confirmed by the USPS certified mail tracking, it was never acknowledged as being received by said court.

Campbell later included the complete McGrath affidavit in his filing 2:20-cv-00197-RCY-LRL Dkt. 54-14 AppxV1253-1355. Only the US patent was rescinded, not because it was a sham rescission as suggested, but according to *Voda v. Cordis*, 476 F.3d 887 (2007) the US District courts had no supplemental jurisdiction over foreign patents and the \$5000 required to rescind all the foreign patents could be better spent in fighting the co-invention matter of the US Patent. It is a point of contention that if the PAED court was in total want of personal jurisdiction to hear the case, what authority did they make a default ruling that was carried over to the VAED court?

The PAED court showed 'friendly court' favoritism to the plaintiff's counsel across the street by allowing the matter to be transferred to the VAED court with an intact default from their court that had no jurisdiction to even hear the matter. Similarly, "Inc." was never confirmed to have capacity to bring suit in Pennsylvania per Drake and their standing in the case was on a fictitious "Obligation to Assign". 2:19-

cv-01192-RJC Dkt. 11 ¶26 AppxV1211. Should the PAED court have demanded the Plaintiff's refile their complaint in a court with Jurisdiction? Especially given all the parties had signed dispute resolution documents specifying said jurisdiction was in Ontario that they later confirmed in their 2020-03-27 Ontario Court Filing 20-72277. AppxVI1497 ¶39. Once in the VAED court Campbell was given leave to file a Counter claim against the Plaintiffs. Once the counter claim was filed, the Plaintiffs filed said Canadian Suit. which was a "Sum Certain" complaint with specified damages. There was email evidence that the American and Canadian counsel were actively colluding on the joint court cases see AppxV1397. The Canadian filing was in regards to Canadian Patent No. 2,845, 724 ("the 724 patent") and in particular they wanted to prevent Tranz Gaz from rescinding the Canadian patent which was filed under WPIO PCT rules. There were numerous falsehoods in said Ontario motion. As in AppxVI1496 ¶30 it appears that the "Obligation to Assign" spans the Canadian-US border to different corporate entities and reading '2019-06-14 Last Alstadt Letter to Steve Campbells Canadian Patent Lawyers" AppxV1199

"If we do not receive the requested materials by June 30, Gary Mackay and Dan Hewson will file a lawsuit against Mr. Campbell and Tranzgas asking the Court to add Mr. Mackay and Mr. Hewson as inventors and co-owners of the '049 patent. Then they will assign their ownership rights to Tube-Mac

Industries, Inc. as directed by their employer Tube-Mac Piping Technologies, Ltd.

Because we are confident that the Court will grant that request, Tube-Mac Industries, Inc. has begun plans to make and sell the system that is disclosed and claimed in the '049 patent to customers in the United States. They may introduce the product within the next 60 days."

AppxVI1498 ¶47, contrary to false claims Trans Ocean no longer existed, it was and is still in business. Also see AppxV1198. The section Bad Faith Conduct AppxVI1498 ¶50 to ¶52 are all false as are claims in the US courts and under oath that they did not know a patent has been filed. Similarly, on 2011-11-16 the Plaintiffs were given the same receipt showing a patent filing had been made with the USPTO as had been sent to McGrath. It was received two days later. 22-2170 Dkt. 95-3 Page: 210. They not only had full proof that a patent filing application had been filed but also had the serial number # 61/526020 of the filing that would allow them to also find the PCT application that was filed. All plaintiff and counsel claims to the contrary are felony perjury, they did not accidentally find the PCT at a later date but were given the roadmap to find it on Nov 16, 2011.

Like the Plaintiff's fictional claims of jurisdiction in the PAED court, falsehoods did not reach the ultimate level until the actual testimony in VAED court.

Tranz Gas was forced to hire a lawyer, who was not a patent specialist, to deal with the default carried over from a court in want of personal jurisdiction and the initial \$10,000.00 retainer became a \approx \$130,000 bill.

While Mr. Robert McFarland was not a patent lawyer, he was certainly aware of the level of lawfare conducted by the Plaintiff's in this case and presented many good arguments and posed very good questions when in court but which were all for naught and ignored by the district court.

He was powerless to counter the lawfare and perjury repeatedly committed by the plaintiff's and two of their three counsel. It is worthy of note that Tranz Gaz Inc. was "Dissolved 2021-07-20 under Articles of Dissolution" AppxVI1610 and prior appropriate corporate paper work was done to assign all the remaining patents back to Campbell before dissolution. This was stated before the court under oath by Desmond McGrath via the transcript 2:20-cv-00197-RCY-LRL Dkt 174 Page 213, line 6 AppxVII1915. The actual legal process to rescind these patents back to Campbell was not done prior to the bench trial due to the approximate \$5000.00 cost. The last was completed earlier this year. When McGrath was on the stand Tranz Gaz no longer existed AppxVI1610; McGrath and TranzGaz, who never had a bank account AppxVII1960, had already completed the paperwork washing their hands of the ownership of said patents. This was recorded in the transcript, 2:20-cv-00197-RCY-LRL Dkt. 174 Page 213 AppxVII1915

This was a “No Sum Certain” co-inventorship case and had nothing to do with ownership of said patents that were filed by and for TOG before Tranz Gaz came into existence. Therefore, from McGrath’s perspective as 99.99% owner of Tranz Gaz this was a frivolous and vexatious lawsuit. The insistences in the Canadian action to demand Tranz Gaz get legal counsel confirm that the goal was to financially disparage McGrath and Tranz Gaz. McGrath’s involvement in this lawsuit was already foretold in the Agreement he refused to sign in October of 2017. AppxV1353 ¶10.

Because of COVID 19, the Plaintiffs witness Darrell Hawkins who refused to testify in person, was allowed to testify nearly 2 months before trial remotely and the defendants were deprived of the due process of cross examining him in court where his statements contradicted those of the plaintiffs. Essentially this violated the defendants due process of having corroborating witnesses leave the court during testimony and worked against the best interests of the defendants.

It is alleged this full access to Hawkins testimony by the other witness nearly over 7 weeks before the bench trail allowed the plaintiffs to be coached to get their story straight and set up the strategy whereby, they changed the problem that they were allegedly asked to solve from leakage to slippage. Per Ferring there is not one email or document where the Plaintiffs were asked to fix either a leakage or slippage problem. The only email where a solution to slippage was sought by Spencer Composites of

Campbell is 2007-10-12 Campbell Response Spencer Composites Slippage of Pyplok Port Boss at AppxII0355

This was followed by a multifold abuse of due process as:

1. There was no discovery on slippage.

2. The Plaintiffs then objected to defendant witness Larry McCorkle who was present for all the MacKay-Campbell meetings at OTC 07 and again Stoney Creek.

3. The Plaintiffs Objected to the McGrath Affidavit which contained two documents written before the suit was filed:
 - a. One from June of 2018 where McGrath admitted first-hand knowledge of Jason Searle's CAD model work on the Port Bosses and production of all the '049 patent figures, it also documented the timeline and design considerations for adding a Pyplok to the compression plates.

 - b. The contemporaneous email record of meeting in Stoney Creek where the formal request was made to add a Pyplok fitting to the already reduced to practice plates. This original meeting of Campbell and MacKay was understood and witnessed by both

Larry McCorkle and McGrath and provided corroborating proof that completely refuted the Plaintiffs story of what they were asked to do. They were asked to add a pyplok to the TOG/CAL port boss plates.

“The Plaintiffs Objection to the said record of meeting:

Exhibit 14 in Campbell’s proposed Exhibit 8 is a meandering affidavit of John Desmond McGrath who both Defendants intend to call as a witness at trial. This document contains hearsay, and its contents are irrelevant to any issue in this case. TranzGaz’s own interrogatory answers, which were verified by Mr. McGrath, say that Mr. McGrath has no knowledge of any conception related to claims of the patent in suit or the crimped port boss disclosed and claimed in this patent. (Dkt. 128-17 at 4, interrogatory answer and its supplement for interrogatory 5). Mr. McGrath can testify at trial about anything that may be of relevance in this declaration. This meandering and confusing declaration is irrelevant, and will only waste time and confuse the issues. It should therefore be excluded.”

4. Given that leakage and slippage were two completely different mechanisms with leakage effecting the final purpose of the patent and slippage only a nuisance during fabrication, it should be noted that there are no claims in the patent that cover slippage or torsional rigidity. This was also

confirmed under oath by Plaintiff Gary MacKay 2:20-cv-00197-RCY-LRL Dkt 174 Page 82 Line 21-22 AppxVII1785 & Dan Hewson under oath 2:20-cv-00197-RCY-LRL Dkt 174 Page 164 whole page AppxVII1866. Had slippage been claimed as what they were asked to solve up front in their complaint Jason Searle, who produced all the figures for the patent and with Campbell worked on several different slippage solutions would have been requested to be a witness at trial. Despite there being no claims in the patent regarding slippage both the District and Federal Circuit court make a point of mentioning it on their rulings.

5. The Plaintiffs acknowledged the lack of evidence that Campbell and the importance of the McGrath Affidavit in a court filing before trial and then lied to the court to have it removed as inconsequential and irrelevant to the case. Nothing could be further from the truth as the request to add a Pyplok came from McGrath and had nothing to do with slippage or leakage. While the McGrath affidavit and record of meeting was dismissed before trial, the McGrath effort to recover previously lost documents uncovered another email chain "2007-05-10 Initial Email from Campbell re FRP tank Connectors through 2007-06-06 (FCAFC DKT 65-9) Gary, Geoff & Rob MacKay plus Darrel Hawkins knew meeting was about adding Pyplok to TOGs FRP Bottles" AppxI0252-56

All of the above is tantamount to lawfare and unfortunately the district court continually aided the effort as clearly documented in the petition plus attachments to for rehearing. Dkts. 95, 97 & 100.

These briefs and attachments were written to counter the fact that the Federal Circuit repeatedly refused to accept briefs regarding unclean hands and claimed there was no unclean hands at play. They are essentially the briefs that the Appellant was refused leave to enter before the court. In Dkt 100, after discovering that requesting en banc hearings without amicus support was nearly impossible; a motion request for delay was presented to allow time to find Amici to support our filing. It was quickly rejected.

Repeatedly at district court trial, Campbell requested that the McGrath affidavit be included as evidence on both days and on both days at trial it was rejected. on the basis that McGrath had testified on what he was asked and eliminated the corroborating evidence before the court. 2:20-cv-00197-RCY-LRL Document 175 Filed 11/08/21 Pages 259-260 AppxVII1966-7

MR. CAMPBELL: Your Honor, then if that is the case, I would like to recall Mr. Gary Mackay to the stand.

THE COURT: All right. Hold on a second. So, firstly, before you call anyone, you made a motion about Mr. McGrath's affidavit yesterday.

MR. CAMPBELL: I did, Your Honor, yes.

THE COURT: And I said my inclination was to overrule that because Mr. McGrath had the opportunity to testify. But was there something specific you were looking to get out of that affidavit?

MR. CAMPBELL: It was his synopsis, Your Honor, of the May 22nd, 23rd meeting where he had asked the plaintiffs if they were interested in doing a custom end fitting for us.

THE COURT: Didn't he testify about that already?

MR. CAMPBELL: Yes, Your Honor, he has.

THE COURT: Okay. All right. So, again, for the reasons I said yesterday then we don't need the affidavit.

Then *ibid* page 256-7 AppxVII1968-9

THE COURT: Okay. Now I know I heard about leaking somewhere, but we're not going to debate that right here because that's not the focus of what I'm talking to you about. The purpose is that we're not going to go back through everybody's testimony, do we understand each other?

Then *ibid* page 257 AppxVII1969-70

MR. CAMPBELL: I understand now that was Deutsch Industries was the -- who you had acquired the technology from, is that correct?

A That's correct.

MR. ALSTADT: Object, Your Honor. This was covered yesterday during his testimony.

THE COURT: Well, I'm going to let him at least do a lead-in question because he might be getting to a new point. So overruled at this point.

Then *ibid* page 266 AppxVII1973

MR. CAMPBELL: Okay. And so you're telling the Court that there was no torsional rigidity problem with Spencer Composites trying to wind using this device?

THE COURT: Asked and answered.

Clearly the district court prevented any questioning about leaking, for example why they changed their story from leaking to slippage and also prevented Campbell from getting a straight answer from MacKay on the fact his connectors on the boss plates were slipping while being wound at Spencer Composites. Furthermore, by preventing Campbell from asking any questions about the previous days testimony it was effectively prohibiting Campbell from obtaining proof of perjury.

The biggest point being that as per Ferring, McGraths evidence and testimony was deliberately and systematically trivialized to not carry any weight and had the document in question allowed to have been entered that showed the meetings in May 2007 were about adding a Pyplok to the existing Port Boss Plates.

The Supplemental Authority introduced by the plaintiffs the 2023-06-20 [CAFC] Dkt 68 Appellants Response To Appellees' Citation Of Supplemental Authority Under Federal Rules Of Appellate

Procedure 28(J) - Blue Gentian, Llc V. Tristar Products, Inc. AppxIX2398 – 401, note AppxIX2400 in particular as to why, had the McGrath affidavit not been suppressed and the Campbell email after the OTC 07 meeting actually been considered by the Federal Circuit instead of using their “Not in the Merits Briefing” excuse, referencing said authority would have rejected any notion of MacKay & Hewson co-inventorship. Is allowing said supplementary authority while ignoring the well documented after discovered evidence including that of plaintiff perjury another example of denying due process to the defendants?

In court it became obvious that the Plaintiffs were repeatedly perjuring themselves and the weekend before it became obvious that Hawkins was a potential beneficiary of the outcome of the trial having participated in a patent fence filing AppxIX2349- AppxIX2374 Dec. 5, 2011 just over two weeks after the 2011-11-15 exclusive agreements for the Plaintiff's to manufacture the items in Campbell's Patents including the '049 patent at suit. They repeatedly, including counsel, stated under oath and declarations that there was no evidence that a patent had been filed despite the actual evidence being included in their own exhibits before the court in regards to application #61/526020. If they had actually ever done any searching, what are the odds that they would have come across any of Hawkins and Nettis patents in particular for example 2011-12-05 US9644791 System and Method for Loading, Storing and Offloading Natural Gas

from Ships AppxIV0887 or 2011-12-05 WO2013083150A1 Nettis and Hawkins Et Al (Clone of '996 patent) (FCAFC DKT 65-43) AppxIV0911 or 2011-12-05 IWO2013083181a1 Isomodal Container - Nettis with TOG Figure AppxIV0846.

Given that there is an actual TOG rendering done by Jason Searle Fig 22 of IWO2013083181a1 AppxIV0880 that replicates Fig 13 of the '049 patent AppxIV1008. What are the odds that Nettis employee Darrell Hawkins would be the Plaintiff's only non-family witness and they would be claiming two different patent rights in the US (AppxV1211 ¶26) and (AppxV1211 ¶30) Canadian filings?

26. MACKAY and HEWSON have an obligation to assign their patent rights in the boss in Exhibit 3 to TUBE-MAC as well as their patent rights in the container and road trailer based system for transporting gaseous fluids that is disclosed and claimed in the '049 patent.

30. Mackay and Hewson have an obligation to assign their patent rights in the boss to TubeMac, as well as their patent rights in the container and road trailer based system for transporting gaseous fluids that is disclosed and claimed in the 724 patent.

Also, during the court testimony, it became evident that the only plausible reasons they did not contest co inventorship in 2011 was that it might expose the patent fence their primary witness was filing and/or might jeopardize a filing that they had filed themselves. The biggest challenges being the dearth of evidence available to defendants. The defendants

written closing brief raised the inconsistency of evidence and noted: AppxVII2017-

the defendants note that some basis for appeal such as perjury, falsehoods and unclean hands all of which are very difficult to prove until after the closing arguments/briefs are entered before the final finding of fact. This is why the conspiracy to commit something also carries much greater penalties under the law because conspiracies by their very nature are organized attempts to hide unlawful activities and the truth.

The USPTO repeatedly rejected every inquiry to expose a MacKay patent filing. 2022-10-05 USPTO Response to McGrath-Campbell letter to Director Vidal. AppxVIII2233

In your letter to the Director, you expressly ask about unpublished applications, seeking “a simple affirmative or negative answer” as to whether certain entities have or have not filed applications that have “overlapping IP content” with US9376049B2.1 In case there was any confusion, please be aware that by alerting you to the existence of unpublished patent applications, and their required confidentiality, the USPTO was not indicating that it had identified unpublished records responsive to your request. The Agency was simply alerting you, as it does for anyone requesting patent application file records, that certain records are not publicly available, and must be maintained in confidence.

That said, even if such records did exist in unpublished files, the Agency cannot disclose any

information about such files, including whether or not a particular application was filed. Irons & Sears v. Dann, 606 F.2d 1215, 1221-22 (D.C. Cir. 1979) (explaining that congress “seems to have intended to draw a bright line shielding from disclosure [a]ll information” concerning patent applications protected by § 122); see also Lee Pharma. v. Kreps, 577 F.2d 610, 617 (9th Cir. 1978) (“section 122 affirmatively requires confidentiality for the specific purpose of furthering the objections of the patent function”).

With respect to 35 U.S.C. § 122 - U.S. Code - Unannotated Title 35. Patents § 122. Confidential status of applications; publication of patent applications.

(a) Confidentiality.--Except as provided in subsection (b), applications for patents shall be kept in confidence by the Patent and Trademark Office 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.

The Federal circuit similarly rejected every motion to compel disclosure even the last one that allowed the Director of the USPTO to make said disclosure protected to the court which would be a ‘special circumstance’

The Defendants/Appellants had by the late fall 2022 recovered most of the missing TOG emails which included evidence that by June 2008 the Plaintiffs’

counsel was advising the plaintiffs on how to bypass the original '996 patent. 2008-06-06 Alstadt Advising Plaintiffs on what they have to do to bypass the '996 Patent Protections. AppxII0457. They were working on their own patent.

In 2010 the Plaintiffs' counsel was engaged by Campbell and TOG under false pretenses of a Lincoln Composites infringement on the insistence of Gary MacKay. AppxII0548 and AppxII0593 It gave them access to the examiner's memos and otherwise protected information 1 year before the Hawkins/Nettis Patent Fence was filed and during the time Hawkins was employed by Nettis' company Blue Power. Plaintiff's counsel Alstadt and Fisher have never disclosed to the court that they had been previously engaged by Campbell and TOG, instead falsely stated TOG no longer exists at several instances. See AppxV1198 before said court action was filed.

When the EDVA Memorandum of opinion was released, it was apparent that none of McGrath's testimony was considered and the timeline completely misrepresented the actual events and was based on the perjuries of the plaintiffs. The Defendants/Appellants still had not recovered any substantial evidence from TOG emails in encrypted Outlook *.pst files and being an unrepresented party the CAFC allowed an informal brief. As evidence was being slowly recovered from the damaged TOG backup system and computer that failed mid-summer of 2008. numerous motions were filed with

the Federal Circuit to allow after discovered (Corum Nobus) evidence to be filed with the court.

The full file of said after discovered evidence is 12/19/2023 22-2170 Dkt. 79. This also includes the most of the filings and entries filed with the PAED and VAED courts. In some instances, documents like the Defendants written closing and other defendant/appellant filings are stored in said appendix interspersed with cross-references to the Bates Numbering of after discovered/recovered evidence that proves the veracity of said filings done prior to the recovery of said evidence.

Specific Issues with Rulings in all three courts:

Passage of time with respect to Laches and equitable estoppel in respect to Statutes of Limitations.

This matter with soon be 5 years since it was filed in PAWD court. All of the statute of limitations on seeking redress from the plaintiff's action both in connection with this case and prior have expired or are rapidly expiring. For example, there is a 15-year ultimate limitation in Ontario. The events to which the Plaintiff claim their Co-inventorship occurred took place 17 years ago. Given that Campbell and McGrath have eventually been able to find and recover the full history of the Port Boss Design and been able to graphically depict AppxI0002 said history down to exact dates, does not explain why the Plaintiff's had to rely on Campbell/TOG documents provided by the defendants. In one

particularly egregious instance they had objected to all of 2:20-cv-00197-RCY-LRL Dkt. 54 (which also included McGrath's Affidavit) and the court ordered it removed from defendants exhibits only to allow the plaintiffs to claim a portion of it as theirs. 2:20-cv-00197-RCY-LRL Dkt. 54-8 AppxI0299-307 was an owner's review and never seen by the Plaintiffs until disclosure.

This was obviously a friendly court to the Plaintiff's counsel and it was alleged that this whole foray into PAWD court was to entrap the Plaintiffs into an ADR process.

The district court rejected all affirmative defenses and in particular referenced *Pei-Herng Hor v. Ching-Wu Chu*, 699 F.3d 1331, 1334 (Fed. Cir. 2012). As the standard by which a 6 years Laches was to be started

This a law of Congress and not the law of the land in the international jurisdictions of Campbell's foreign patents.

IX. Reasons for Granting the Petition

1. The case presents issues of national importance regarding international agreements made by Congress involving the Patent Cooperation Treaty, WIPO rules and, lack of US Jurisdiction regarding foreign patents.
2. The District Court and moreover, the Federal Circuit, contradicted itself from its past ruling re *Voda v. Cordis* regarding lack of jurisdiction over foreign patents.
3. Two accounts of Fraud on the US Federal Court, perjury, subordination of perjury, and unclean hands by Plaintiffs and Plaintiff's attorneys. The Notarized Complaint for Felony Perjury is located at Case: 22-2170 Document: 100 Page: 31.

X. Conclusion

For the reasons stated, the petition for Writ of Certiorari should be granted. The Judgement of the District Court should be reversed with extreme prejudice.

Respectfully submitted,

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