

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CORNELL D.M. JUDGE CORNISH)	
)	
Plaintiff <i>Pro Se</i>)	
v.)	CASE 07-01719 (RWR)
)	
JON DUDAS, et al)	
)	
Defendants)	
_____)	

**AMENDED COMPLAINT FOR ATTACHMENT TO APPROVED MOTION FOR LEAVE
TO AMEND COMPLAINT UNDER FED. R.C.P RULE 15**

This is a timely Amended Complaint under Fed. R.C.P. 15 with the Court's consent, in accordance with the Minute Order of 8/14/08 approving a First Motion to Amend Plaintiff's Complaint as of right and as a matter of course. This will make this Amended Complaint effective on the date when the court approves it, which should be freely given as the justice of the case requires and as the case is not yet on the trial calendar and no responsive pleading has been made.

The Minute Order was received by snail mail after a one week delay from its date of 8/14/08. It is requested that this Amended Complaint be incorporated by reference as an attachment to an allowed Re-filed Motion For Leave to Amend the COMPLAINT.

Since the Defendants have not made any response, they would not be prejudiced in any

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by the short delay in attaching it to an approved Re-filed Motion to Amend.

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Such AN ATTACHMENT would in no way prejudice the Defendant because it is timely filed after I returned after the time the Order was received from a distant trip.

This First Motion to Amend the Complaint as of right is not intended as a substitute or replacement for the original Complaint. It is intended to date back to the original Complaint, and to Amend, Consolidate, Expand, Clarify and Extend the Original Complaint filed on 9/26/07 without prejudice by addition to the existing original and existing Complaint and causes of action as originally filed, and/or the several requests for relief, which remain substantially as they were as originally filed on 9/26/07 and thereafter, including challenges to the Constitutionality of 35 U.S.C 2(b)(2)(D), 6 and 32. This First Motion to Amend the complaint as of right, is intended, *inter alia*, to clearly and concisely support all of the same causes of action and all of the same requests for relief as requested in Tafas v. Dudas, et al, No. 1:07-cv-846 and GSK v. Dudas, et al, Case No. 1:07-cv-1008, filed in the Eastern District of Virginia. To this end, this First Amended Complete is intended to include a request for the same temporary and permanent equitable relief requested and granted in those cases, namely temporary and permanent injunctions restraining the Defendants' from enforcing their revised Final Rules (hereinafter, the "Final Rules").

That relief is requested although it has not so far been granted in my case without clarifying my original Complaint. it is noted that the injunctions were appealed by the Government Respondents/Appellants to the CAFC in Case No. 2008-1352, i.e., by Defendants Dudas and the Patent and Trademark Office (hereinafter USPTO or PTO),

appealed by the Government Respondents/Appellants to the CAFC in Case No. 2008-1352, i.e., by Defendants Dudas and the Patent and Trademark Office (hereinafter USPTO or PTO), the Defendants in this Case No. 07-01719. To this end, my Amended Causes of Action in this First Amended Complaint comprise the following:

MY FIRST AMENDED COMPLAINT AND CAUSES OF ACTION

My First Amended Complaint includes Causes of Action, which AMEND and are abstracted from and REPEAT the existing original Complaint as follows:

(A) **FIRST:** I Claim substantially the same Claims and Causes of Action as in Tafas, *Id.*, and GSK, *Id.*, against the same Final Rules against the same Defendants challenged in those cases, *and* including Constitutional and other challenges to the Final Rules proposed to be effective on November 1, 2007, for which I can be expected to gain approval and the success that was obtained in those cases by the Plaintiff-Petitioners, as outlined by the Appellants' brief in Case No. 2008-1352 in the CAFC.

(B) **SECOND:** My Claim includes a request for temporary and permanent equitable relief under the Administrative Procedures Act (APA) against enforcement of said Final Rules, which will irreparably harm me if they are enforced or the requested equitable relief is denied, and that will in no way injure or prejudice the government, the public or existing rules and law if they are not enforced because the existing rules and law are more than adequate to protect the Defendants and the public. This Second Claim includes a request for a Temporary Order of Restraint (TRO) to enjoin the Defendants from enforcing the radical and catastrophic substantive changes that the Final Rules would make in the existing rules and law governing the procedures for issuing patents and governing the conduct of attorneys, agents and others before the PTO under existing law, including actions by the Defendants in the Patent Office and the

Trademark Office under their proposed Final Rules. This Second Claim is for Constitutional violations under the First Amendment and the Due Process Clause. Without the requested TRO I will be irreparably harmed under the proposed Final Rules because they will change the burden of proof under which I can obtain a patent, they will remove my property right to enjoy the dedication of inventions by others without limit, the Final Rules will remove and exclude me from the Constitutionally guaranteed property right of "exclusion" in an unlimited number of Continuations, RCEs, Reexaminations and Claims; and the Final Rules will prevent me from obtaining patents issuing from Continuations, RCEs, Reexaminations and Claims more than a limited number specified in the Final Rules.

(C) THIRD: I Claim a Bivens claim for equitable relief for Constitutional violations, and damages, costs and attorney's fees for the secret tampering with my name, ID and Registration No. 19,240 without my permission, knowledge, consent or request by identity theft on or after about August 28, 1946, without notice to me or the public, without cause, and without due process, based upon facts that are in dispute.

(D) FOURTH: I Claim a Bivens claim for equitable relief and damages, costs and attorney's for holding an investigation in abeyance from on or about March 4, 1996 without a closing letter or a finding of probable cause, as a direct and proximate cause for causing irreparable harm to me, my career and my profession that can never be recovered by money damages alone.

(E) FIFTH: I Claim a Bivens claim for equitable relief and damages, costs and attorney's fees for Discipline, punishment, irreparable harm, and discrimination against me without probable cause because of my age-related,

life-function disabilities by thoughtlessness, indifference, and benign neglect, or otherwise by invidious animus, by holding an investigation in abeyance since 1946 without a closing letter or a probable cause finding.

(F) SIXTH: I Claim a Bivens claim for equitable relief and damages, costs and attorney's fees for discrimination against me because of my age-related disabilities by prior restraint of my Constitutional right to an unabridged freedom of choice in selecting the phraseology employed in advertising my name and identity in patent and trademark applications so as to truly point out and define my status as an unregistered or registered attorney in patents and trademark applications without interference or *prior restraint* of my registered common law federal and state registrations, including my U.S. Patent and Trademark Office Registration No. 3,466,096 for legal services.

(G) SEVENTH: I Claim a Bivens claim for equitable relief and damages, costs and attorney's fees for discrimination and *prior restraint* that prevents my equal access to advertise my name for legal services in an unlimited number of Continuations, RCEs, Reexaminations and Claims, as well as other applications and business in the PTO, including discrimination by withholding access and reasonable accommodations for my medically documented, age-related, life-function, disabilities for optional testing for Continuing Legal Education (CLE) purposes, including qualifying for access to be reinstated to take, review and retake again and again the same examinations taken in 2005, 2006, 2007, and 2008 an unlimited number of times for CLE purposes under 37 C.F.R. 11.7 (e).

(H) EIGHTH: I Claim a Bivens claim for equitable relief and damages, costs, attorney's fees that requires proof of two elements: (1) a violation of my constitutional rights, (2) by agents acting under color of federal law. See Bivens, 403 U.S. at 389; and the elements of a claim for tortuous interference, COMPRISING: (1) existence of a business relationship, (2) defendants' knowledge of the relationship, (3) intentional interference causing a termination of the relationship, and (4) resulting damage. See Chaves v. Johnson, 230 Va. 112, 120 (1985); and Goldstein v. Moatz, No. 03-1257 (CA 4th 2004). None of these elements requires resolution of a substantial question of federal patent law. In sum, although the circumstances giving rise to Goldstein's and my complaint and First Amended Complaint concern our ability to practice law before the PTO, our claims are neither created by federal patent law nor require the Court to resolve a substantial question of patent law. Therefore, this Court possesses jurisdiction pursuant to 28 U.S.C. 1291. This Bivens claim is not included in Tafas and GSK, *Id.*

FIRST AMENDED COMPLAINT INCLUDING ADDITIONAL CLAIMS AND
CAUSES OF ACTION INCORPORATING AND REPEATING THE ABOVE CLAIMS (A) –
(H)

NINTH: I Claim Bivens and other claims against Defendants Jon Dudas, in his Official Capacity as Under-Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, the United States Patent and Trademark Office, Harry I. Moatz, in his Official Capacity as Director Office of Enrollment and Discipline U.S. Patent and Trademark Office, and

William J. Griffin, in his Official Capacity as Staff Attorney Office of Enrollment and Discipline U.S. Patent and Trademark Office.

TENTH: I Claim still other Causes of Action and Claims substantially the same as those in Tafas, Id., and GSK, Id. They include other Causes of Action and Claims against enforcement of the said revised Final Rules by the said Jon Dudas and the U.S. Patent and Trademark Office (USPTO), for substantially the same equitable relief as in the several pre-enforcement Causes of Action, Claims and Requests for Relief against the same said Jon Dudas and the USPTO as in the District Court in Tafas, Id., and GSK, Id.

My Claims in this case No. 07-01719 comprise Claims under the Administrative Procedures Act (APA) challenging the validity of the same revised Final Rules of the Defendants that were to be effective November 1, 2007. The substantial similarity of Claims, Causes of Action issues, facts, record and Defendants are incorporated by reference herein for easy and accurate identification of the Revised Final Rules ("Final Rules" and "revised Final Rules") for which temporary and permanent injunctions were obtained in Tafas, Id., and GSK, Id., and that are requested in this my First Amended Complaint.

The Causes of Action in my original above-identified District Court Case, hereinafter "my Case," and in this my First Amended Complaint include substantially the same Causes of Action, which are included in the cited Tafas and GSK Cases Id., which were under the Administrative Procedures Act (APA) 5 U.S.C. 701 et seq., based upon the same Administrative Record in the USPTO as

in my subject Case No. 07-01719 and vice versa (See Appellants Appeal Brief in Case No. 2008-1352).

FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION
INCORPORATING AND REPEATING THE ABOVE CLAIMS AND CAUSES OF ACTION
INCLUDING NINE – TEN CITED ABOVE

ELEVENTH: Plaintiff herein, via a pre-enforcement challenge under the APA, challenges the cited revised Final Rules as not being consistent with law governing the conduct of proceedings in the PTO, the conduct of *pro se* applicants and applicant attorneys like me, and the conduct of their attorneys, agents and other persons representing applicants or other parties before the PTO when so represented, with or without being registered to practice in the Patent Office, and not within the scope of the U.S. Patent and Trademark Office's statutory rulemaking authority.

FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION
INCORPORATING AND REPEATING THE ABOVE CLAIMS AND CAUSES OF ACTION
INCLUDING CLAIM ELEVEN

TWELFTH: Plaintiff herein, via a pre-enforcement challenge under the APA, challenges the cited revised Final Rules as being beyond the scope of authority of the Defendants.

FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION
INCORPORATING AND REPEATING THE ABOVE CLAIMS AND CAUSES OF ACTION
INCLUDING THE ABOVE CITED CLAIM TWELVE

THIRTEENTH: Plaintiff herein, via a pre-enforcement challenge under the APA, challenges the cited revised Final Rules as not being within the scope of the U.S. Patent Laws.

FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION
INCORPORATING AND REPEATING THE ABOVE CLAIMS AND CAUSES OF ACTION
INCLUDING CLAIM THIRTEEN

FOURTEENTH: Plaintiff herein, via a pre-enforcement challenge under the APA and 35 U.S.C. 2 (b)(2), challenges the cited revised Final Rules as making arbitrary and capricious *substantive* changes in existing law that would radically change existing law and rules, including the burden of proof on the Appellants.

As held in Cooper Techs v. Dudas (Fed. Cir. 2008), citing Merk & Co. v. Kessler, (80 Fed. Cir. 1996), 35 U.S.C. 2 (b) (2) does not authorize the Patent Office to issue “substantive” rules. “A rule is ‘substantive’ when it ‘effects a change in existing law or policy’ which ‘affect[s] individual rights and obligations.’” And if the agency’s interpretation affects and changes existing law radically, as the Final Rules do, they clearly do so erroneously, and they are not entitled to Chevron, deference, particularly, as here, where the broad language of First Amendment and 35 U.S.C. 101, are so broad that the Final Rules are not based upon a permissible construction of their broad statutory language.

In fact, Defendants’ interpretation of the language is so broad as to make 35 U.S.C. 2 (b)(2)(D), 6 and 32 unconstitutionally inconsistent by both

encouraging and discouraging Continuations, RCEs, Reexamination, both ex parte and inter partes, and Claims in unlimited numbers.

FIFTEENTH: The Final Rules are unconstitutional and their interpretation by the defendants is clearly arbitrary, capricious, erroneous and not in accordance with law under the APA by changing the burden of proof, and by not giving applicants wide latitude and by abridging their freedom of choice in stating their claims in the number and with the phraseology employed and chosen by them without censorship or editing to truly point out and define their inventions in their Continuations, RCEs, Reexaminations and claims.

FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION
INCORPORATING AND REPEATING THE ABOVE CLAIMS AND CAUSES OF ACTION
INCLUDING THE ABOVE-CITED CLAIMS FOURTEEN AND FIFTEEN

SIXTEENTH: Plaintiff herein, via a pre-enforcement challenge under the APA, challenges the cited revised Final Rules as being ambiguous and capricious, unconstitutional and without jurisdiction.

FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION
INCORPORATING AND REPEATING THE ABOVE CLAIMS AND CAUSES OF ACTION
INCLUDING CLAIM SIXTEEN

SEVENTEENTH: Plaintiff asks for the same equitable relief requested and granted in Tafas and GSK Id., namely temporary and permanent injunctions against the same Defendants as the Defendants in this case, i.e., by enjoining Jon Dudas and the USPTO from enforcing the cited Final Rules, and including a Temporary Restraining Order against enforcement of the Final Rules so as to

enjoin the *prior restraint* and illegal taking, not in accordance with law, and without due process or a finding of probable cause, by eminent domain or otherwise, of my right to exclude in an unlimited number of Continuations, RCEs and Claims without just compensation and/or due process, and by changing existing law by shifting the burden of proof from the Plaintiffs.

FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION AND
INCORPORATING AND REPEATING THE ABOVE CLAIMS AND CAUSES OF ACTION

EIGHTEENTH: I challenge the Defendants' *prior restraint* and taking of my right of exclusion in an unlimited number of Continuation patent applications, RCEs Reexaminations and claims so as to cause me irreparable injury not compensated by money damages if the equitable relief requested is denied.

FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION
INCORPORATING AND REPEATING THE ABOVE CLAIMS AND CAUSES OF ACTION

NINETEENTH: Plaintiff challenges the cited Revised Final Rules challenged in the cited cases of Tafas and GSK, Id., as being in conflict with the Patent Act, and the Constitution of the United States, including the First Amendment, the Due Process Clause, and Article I, Section 8, paragraph 8, in that the Final Rules both unconstitutionally and inconsistently encourage and discourage the filing of unlimited numbers of Continuations, RCEs, Reexaminations and Claims.

FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION
INCORPORATING AND REPETING THE ABOVE CLAIMS AND CAUSES OF ACTION

TWENTIETH: Plaintiff, via a pre-enforcement challenge under the APA, challenges the cited revised Final Rules as being within the scope of the SHIELD AND RESTRICTIONS OF THE First Amendment of the U.S. Constitution by

establishing the Patent Examiners and the Office of Enrollment and Discipline as censors of the expression and phraseology of my Continuations, RCEs, Reexaminations and Claims beyond a certain number, and, thereby, they are already acting despite the injunctions that they are subject to, and will act if they are allowed to enforce the Final Rules, by *prior restraint* without Constitutional safeguards to exclude my expression and phraseology without meeting their burden of proof to show that my expression and phraseology is unprotected by the Constitution; who by *prior restraint* without Constitutional safeguards are excluding my expression and phraseology without meeting their burden of proof that the *prior restraint* is not limited to the *status quo* and for the shortest period of time compatible with sound judicial procedure; who by *prior restraint* without Constitutional safeguards are excluding my expression and phraseology without meeting their existing burden of proof and without assuring a prompt final judicial determination of unconstitutionality; who by *prior restraint* without Constitutional safeguards are excluding the expression and phraseology of my advertisements without meeting their existing burden of proof that the Final Rules are designed to change without providing a procedure of adequate safeguards against undue inhibition of protected expression that renders the statutory requirement of prior submission to censorship an invalid previous restraint; who by *prior restraint* without Constitutional safeguards are excluding my expression and phraseology without meeting the burden of proof that the Final Rules change by changing the heavy presumption against constitutional

validity of prior restraint of expression. Bantam Books, Inc. v. Sullivan, 373 U.S. 58, 70.P.57 (1963); Freedman v. Maryland, 380 U.S. 51 (1965); and Parker v. Chakrabarty, 477 U.S. 303 (1980), under which anything under the sun that is made by man is patentable.

FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION
INCORPORATING THE ABOVE CLAIMS AND CAUSES OF ACTION

TWENTY-FIRST: I Claim a Bivens claim for equitable relief and damages, costs and attorney's fees for discrimination against me because of my age-related disabilities by withholding access to an unlimited number of Continuations, RCEs, Reexaminations and Claims. To this end, Congress has performed its constitutional role in defining patentable subject matter broadly in 35 U.S.C. 101. The Supreme Court performed its constitutional role in construing the language Congress has employed. In so doing, the Court's obligation is to take statutes as the Court finds them, guided, if ambiguity appears, by the legislative history and statutory purpose of promoting the Progress of Science and useful Arts, by securing for limited Times to authors and Inventors the exclusive Right to their respective Writings and Discoveries. Article I, Section 8, paragraph 8.

It is argued by the Defendants that the Court should weigh the "potential hazards" of editing patent applications to "facilitate and expedite the processing of patent applications," and governing "the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office." 35 U.S.C. 2 (b) (2) (C)-(D). But they are only speculative "hazards." And

those hazards have already been fully dealt with by Congress in accordance of the intention of the Constitution under Article I, Section 8, Paragraph 8 and the First Amendment, which was passed, *inter alia*, to restrict the PTO's authority to edit the expression and phraseology used by registered and unregistered *pro se* applicants like me, and also by their attorneys, agents and other persons representing them.

Defendants allege that there is "potential" editorial "risk" of "delay." They alleged a need for "greater diligence and care in the preparation of the initial applications" (Fed. Reg. 46719). And allegedly there has been an "increase in the number of claims" which allegedly "has contributed to the Office's backlog of unexamined applications. JA182 (Administrative Record ("AR") 07099, JA57 (72 fed. Reg. 46721), cited e.g., at pages 3,5, 9 of Appellants brief in Case No. 2008-1352 in the CAFC. They claim increased costs.

However, the costs have been overcome by a recent 5% increase in fees by the PTO. And, anyway, the PTO is self-sustaining by the fees it collects.

Also, the PTO has not taken into account the surprising efficacy of existing law that encourages Inter Partes Reexamination. "An Analysis of the Factors Responsible for Its 73% Kill Rate . . ." Andrew S. Baluch and Stephen B. Maebius, Foley and Larnder LLP[i] © 2008, smaebius@foley.com.

FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION
INCORPORATING THE ABOVE CLAIMS AND CAUSES OF ACTION

TWENTY-SECOND: Plaintiff, via a pre-enforcement challenge under the APA, challenges the same cited revised Final Rules as not being within the scope of authority of the United States Patent and Trademark Office (USPTO or PTO) as those challenged in Tafas and GSK, Id., based upon the same Administrative Record in those cases and in my case, in that the USPTO must, but did not, give or obtain sufficient public notice and/or comment in accordance with the requirements of the Administrative Procedures Act (“APA”).

**FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION
INCORPORATING THE ABOVE CLAIMS AND CAUSES OF ACTION**

TWENTY-THIRD: Plaintiff, via a pre-enforcement challenge under the APA, challenges the cited revised Final Rules as not being within the scope of The Administrative Record in the USPTO upon which a Temporary Restraining Order was denied in my Case in the District Court of the District of Columbia, Case No. 07-01719, and on which Plaintiff has made a request for intervention and appeal in Case 2008-1352 in the CAFC.

**FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION
INCORPORATING THE ABOVE CLAIMS AND CAUSES OF ACTION**

TWENTY-FOURTH: Plaintiff, via a pre-enforcement challenge under the APA, challenges the Order denying me a Temporary Restraining Order in my Case No. 07-01719 for lack of irreparable injury as being clearly erroneous as a matter of law on the facts, the law and the record in the USPTO.

**FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION (A)
INCORPORATING THE ABOVE CLAIMS AND CAUSES OF ACTION**

TWENTY-FIFTH: Plaintiff, via a pre-enforcement challenge under the APA, challenges the Order denying me a Temporary Restraining Order (TRO) in my Case No. 07-01719 for lack of irreparable injury because the Order was clearly erroneous as a matter of law on the facts, the law and the record in the USPTO, and is subject to a decision *de novo* on appeal and remand to the District Court in Case No. 08-5089 (CA DC 2008), which has been asked to decide whether the Defendants are absolutely immune to Bivens damages, costs and attorney's fees.

FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION
INCORPORATING THE ABOVE CLAIMS AND CAUSES OF ACTION

TWENTY-SIXTH: Plaintiff, via a pre-enforcement challenge under the APA, challenges the cited Order denying my Motion for a TRO under the revised Final Rules as not being based upon a complete record, and because the Order was clearly erroneous on the law and the facts, including the record in the USPTO in that the Order was made on the basis of a finding that there was no irreparable harm to me by the *prior restraint* of the Final Rules and/or by unconstitutional censorship and *prior restraint* that cannot be compensated for by money damages alone.

FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION
INCORPORATING THE ABOVE CLAIMS AND CAUSES OF ACTION

TWENTY-SEVENTH: Plaintiff, via a pre-enforcement challenge under the APA, challenges the cited revised Four Final Rules (collectively "the Final Rules") that were appealed to the CAFC in Case No. 2008-1352.

FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION
INCORPORATING THE ABOVE CLAIMS AND CAUSES OF ACTION

TWENTY-EIGHTH: Plaintiff, via a pre-enforcement challenge under the APA, challenges the same four revised Final Rules (collectively “the Final Rules”) that were held to be inconsistent with law in the cited Tafas and GSK, Id. Cases.

TWENTY-NINTH: I challenge those Final Rules as being unconstitutional, arbitrary and capricious, and inconsistent with the existing law and the metes and bounds of existing law that relate to the Defendants ability to “govern the conduct of proceedings in the Office,” under 35 U.S.C. 101, 102, 103, 112, and 2 (b) (2) (C)-(D), i.e., in both the Trademark and Patent Offices.

The challenged Final Rules in my Case and in Tafas and GSK, Id., were based upon the same Administrative Record (Administrative Record (“AR”) 07099). See pages 9 and vii in the Defendants’ appeal brief beginning with 70 Fed. Reg. 10488 (March 4, 2005). (See pages 10 to 50 of Defendants’ Brief on Appeal in Case No. 2008-1352 (CAFC 2008)).

The challenged Final Rules were Final Rules 78 and 114, described at pages 4 to 9 of Defendants’ Appeal Brief in Case No. 2008-1352, and Final Rules 75 and 265, which were described on pages 9 to 13, et seq of their Appeal Brief.

FIRST AMENDED COMPLAINT AND ADDITIONAL CAUSES OF ACTION
INCORPORATING THE ABOVE CLAIMS AND CAUSES OF ACTION AND THOSE OF
THE THIRTIETH – FORTIETH CLAIMS AND CAUSES OF ACTION

THIRTIETH AMENDED CAUSE OF ACTION:

Plaintiff , via a pre-enforcement challenge under the APA, challenges the cited revised Final Rules, including Rule 114(f)(g), which the District Court concluded deprived applicants of rights conferred on them by 35 U.S.C. 132 (b).

THIRTY-FIRST AMENDED CAUSE OF ACTION:

Plaintiff, via a pre-enforcement challenge under the APA, challenges the cited revised Final Rules as not being within the scope of or in accordance with the Administrative Procedures Act (APA), 5 U.S.C. 701 et. seq.

THIRTY-SECOND AMENDED CAUSE OF ACTION:

Plaintiff, via a pre-enforcement challenge under the APA, challenges the cited revised Final Rules as preventing me from practicing as an unregistered, *pro se* attorney-inventor-practitioner within the scope of the U.S. Patent Rules although I am admitted and in good standing to practice intellectual property law *pro se* in the Patent and Trademark Office under the following name and registered state and federal common law trademark for legal services No. 3,466,096:

Cornell D. M. Judge Cornish

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THIRTY-THIRD AMENDED CAUSE OF ACTION:

Plaintiff, via a pre-enforcement challenge under the APA, challenges the cited revised Final Rules as not allowing me by *prior restraint* of my expression and phraseology from advertising my name and registered state and federal common law service mark No. 3,466,096 for legal services in my Patent Application S.N. 29/273,295, filed 2/26/07 in the U.S Patent and Trademark Office.

THIRTY-FOURTH AMENDED CAUSE OF ACTION:

Plaintiff , via a pre-enforcement challenge under the APA, challenges the cited revised Final Rules as irreparably harming me by violating my Constitutional rights, for which I am seeking equitable relief including injunctions to enjoin the enforcement of the "Final Rules," which would illegally restrain me by *prior restraint* and unconstitutional censoring of my expression and phraseology in my above-cited patent application, including the expression and phraseology of my registered name, marks and ID for legal services, in violation of the Administrative Procedures Act , 5 U.S.C. 701 et seq., and my Constitutional rights or otherwise to file unlimited numbers of Continuations, RCEs and claims derived from my above-identified patent application by implementation of the cited "Final Rules," which were published in the Federal Register on August 21, 2007 to be effective and enforceable on November 1, 2007, for governing practice in patent cases, and governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the "Office," referred to herein as the Patent and Trademark Office, and including four revised rules (collectively "the Final Rules"), namely Final Rules 78, 114, 75 and 265, as described in Appellants brief filed July 18, 2008.

In this case, we do not confront a complete legislative vacuum. The sweeping language of the Patent Act of 1790 was restricted by the broad language of the First Amendment in 1791. The new restricted Patent Act of

1793, which incorporated the restriction of the First Amendment, was re-enacted in 1952 to substantively reassert the broad language of the 1793 Act and the First Amendment in 35 U.S.C. 101. That broad language has remained undisturbed, except for 42 U.S.C. 2181, which exempted from patent protection inventions “useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon,” the purpose being national defense. And, 35 U.S.C. 183 provides for adequate compensation and Constitutional safeguards for the taking of the invention for the national defense by a secrecy order. Such Constitutional safeguards are lacking in the Final Rules.

THIRTY-FIFTH AMENDED CAUSE OF ACTION:

The Final Rules VIOLATE AND SUBSTANTIVELY CHANGE THE BROAD LANGUAGE OF 35 U.S.C. 101. They do not involve the other “conditions and requirements” of the patent laws, such as novelty and non-obviousness under 35 U.S.C. 102 and 103. Such substantive changes in the basic patent rules cannot be imposed by the PTO on their own authority without the endorsement of Congress, as in 35 U.S.C. 181. To impose such substantive changes unilaterally without authority or jurisdiction is not a procedural adjustment according to law. It restricts the existing patent rights in areas wholly unforeseen and unauthorized by Congress or the Constitution. Those changes substantively reduce and narrow existing law unconstitutionally.

What is needed is caution to keep the PTO within the bounds of its authority and jurisdiction by requiring it to abide by the existing burden of proof

regarding patentable subject matter, and the presumption against the constitutional validity of *prior restraints* of expression and phraseology. Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70.P.57 (1963); and Freedman v. Maryland, 380 U.S. 51 (1964).

The Court must keep the PTO from unilaterally, arbitrarily, capriciously, and without authority or jurisdiction, and not in accordance with well-established, long-standing law, radically reduce the areas and procedures for patenting that have already been foreseen; while also keeping the PTO, and especially the OED, from increasing the areas for disciplining applicants without due process and other Constitutional safeguards, as has already been foreseen and approved of by Congress in 35 U.S.C. 33. The Final Rules unconstitutionally overrule the requirements of due process and Constitutional safeguards imposed by Congress, including those imposed by 35 U.S.C. 33.

This Court must base its decision on the Constitution and the existing law going back to the broad language of the First Amendment of 1791 and the Patent Act of 1793. This Court must not allow deference to the PTO to make substantive changes in the burden of proof by the Final Rules. They greatly and unconstitutionally increase the authority of OED to discipline me and other attorneys without due process.

The Final Rules greatly and unnecessarily increase costs without due process in order to decrease and discourage filing. They require unbearable and costly submissions for prior review and editing of expressions and phraseology

by procedures that lack adequate safeguards against undue inhibition of protected expression and phraseology, and they render the requirement of prior submission to censorship an invalid previous restraint.

They substantively regulate the subject matter of “what” can be supplied in Continuations, RCEs, Reexaminations and Claims by limiting their numbers. This is not a procedural limitation of “when” that subject matter can be submitted. It is substantive limitation of “what” can be submitted. It is not like the procedural limitation of Fed. Rule of P. 15, because it is not limiting “amendments.” The Final Rules limit and abridge the freedom to present new and original expressions and phraseology, and especially “new” Constitutionally protected subject matter, which is required in all Continuations, and especially Continuations-in-part and each and every one of an unlimited number of Claims. Applicants cannot patent the same subject matter twice, but they have a constitutionally protected freedom of choice that cannot be abridged in selecting new phraseology that truly points out and defines their inventions and relates back to the date of the original claim. And even under Rule 15, the submission of Supplemental Pleadings is not barred by *prior restraint* because the Court can and should freely give leave when justice requires. That is a Constitutional safeguard that is lacking in the Final Rules. Under the Final Rules, the censor’s *prior restraint*, or editor’s diktat, is final without Constitutional safeguards.

THIRTY-SIXTH AMENDED CAUSE OF ACTION:

Plaintiff , via a pre-enforcement challenge under the APA and otherwise, challenges both the actions of the Defendants and the cited revised Final Rules as not being within the scope of their authority, and not according to law, under 35 U.S.C. 2 (b)(2)(D), 6 and 32 or otherwise, because they are facially vague, overly broad and unconstitutional for inconsistently both encouraging and discouraging repetitive use of continuations, continuations-in-part and Reexamination applications, RCEs and multitudinous claims under the Final Rules or otherwise by changing the burden of proof for patentability, *inter alia* under 35 U.S.C. 101, and/or as cited in the Appellants brief in Case No. 2008-1352 on page 3 et seq.

THIRTY-SEVENTH AMENDED CAUSE OF ACTION:

Plaintiff , via a pre-enforcement challenge under the APA and otherwise, challenges the cited revised Final Rules and the actions of the Defendants as being without Due Process and/or Constitutional safeguards to prevent excluding my expression and phraseology without meeting the burden of proof that my expressions and phraseology are unprotected by the Constitution.

THIRTY-EIGHTH AMENDED CAUSE OF ACTION:

Plaintiff , via a pre-enforcement under the APA and otherwise, challenges the cited revised Final Rules and the actions of the Defendants as not being within the requirements of the Disability Acts, and I request equitable relief by obtaining an injunction against direct or indirect discrimination by the denial of reasonable accommodations for my medically documented age-related, life-

function disabilities, causing irreparable damage to my right to publish, advertise and exclude under the Final Rules or otherwise, based upon my giving up of my secrecy to my inventions, discoveries and copyrightable writings in exchange for publication and a patent on my inventions, discoveries and copyrightable writings.

THIRTY-NINTH AMENDED CAUSE OF ACTION:

Plaintiff , via a pre-enforcement challenge of the Final Rules under the APA and otherwise, including challenges the cited revised Final Rules and actions of the Defendants for censoring, editing and *prior restraint* of my unabridged right to the freedom of choice in my expressions and phraseology in advertising my name for legal services, and in stating my claims without limitation of the number and phraseology employed in Continuation, RCEs, Reexaminations, and/or otherwise in other patent applications, and/or in my holding myself out as an attorney in *pro se* patent applications, and with a power of attorney for co-inventors who are alive, dead, hostile or unavailable, and/or as an administrator or executor, and for others in trademark applications, and in selecting my phraseology that truly points out and defines my inventions, discoveries and legal services truthfully without deception with or without enforcement of the Final Rules, and with or without registration in the PTO, or in violation of the First Amendment, Due Process and Privileges and Immunities Clauses, and/or the Patent Laws.

FOURTIETH AMENDED CAUSE OF ACTION:

Plaintiff challenges of the cited revised Final Rules and other actions of the Defendants preventing me from seeking equitable relief under the APA or otherwise, to obtain a decision by this Court restraining the use of the Final Rules and/or other actions of the Defendants to directly or indirectly punish and discipline me illegally under 35 U.S.C. 33 or otherwise by holding an investigation in abeyance from on or about March 4, 1996 to the present, and by secret identity theft of my ID and name for legal services on or about August 28, 1996, without notice to me or the public.

CONCLUSION AND RELIEF REQUESTED AS OF RIGHT

It is concluded on the basis of the above AND THE RECORD in this case, that Plaintiff has a right to amend his complaint as claimed in this First Amended Complaint, and the attached affidavit describing facts and Compelling Questions of law and fact that are in dispute in this case, or as the justice of the case requires.

"Attorney, Agent or Firm – Cornell D.M. Judge Cornish" or "Attorney, Agent or Firm – Cornell D.M. Judge Cornish™ SM"

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Respectfully submitted,

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Date: 9/2/08

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Plaintiff's Motion, Amended Complaint and proposed Order granting said Motion has been served by hand by delivering a copy thereof to:

W. Mark Nebeker
Assistant United States Attorney
Civil Division
555 4th Street, NW
Washington, DC 20530
(202) 514-7230 fax (202) 514-8780

On this 2nd day of September, 2008.

Date: 9/2/08

Cornell D. M. Judge Cornish

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