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## Judge Backs Inventor In Suit Over Long-Stalled Patent Apps

By Ryan Davis

*Law360 (August 7, 2018, 7:41 PM EDT)* -- A federal judge has ordered the U.S. Patent and Trademark Office to issue three patents to prolific inventor Gilbert Hyatt, finding that many of his patent claims were incorrectly rejected, a win for Hyatt in his case alleging the office is wrongly stalling his patent applications.

Following a series of bench trials over the past year, U.S. District Judge Royce Lamberth of the District of Columbia issued opinions Aug. 1 rejecting the USPTO's argument that the applications should be denied because Hyatt unreasonably and inexplicably delayed examination.

The judge noted that much of the delay was because the applications "spent an inordinate time in a proverbial Never-Never Land" where the office's own procedures prevented Hyatt from prosecuting the applications.

The judge then analyzed the office's rejections of Hyatt's applications and found that many of them should not have been rejected. He therefore ordered the USPTO to issue Hyatt three patents on image processing and adaptive memory covering those claims.

The judge had pointed criticism for the USPTO, writing at one point that the office's statement that it was forced to develop special procedures to deal with Hyatt's applications because of his litigation over their rejections was "somewhere between vexing and outright galling."

"It takes a certain amount of chutzpah for a government agency to chafe against citizens seeking to vindicate their rights thought lawfully available means, even in those cases where the opposing party's litigious zeal is itself remarkable for any number of reasons," he wrote.

The three patents at issue in the decision represent a small fraction of the nearly 400 applications Hyatt has pending at the USPTO. He alleges in a related suit that the office is using a variety of unlawful tactics to ensure those applications are never approved.

Hyatt's attorney, Andrew Grossman of Baker & Hostetler LLP, said Tuesday that Judge Lamberth's decision is an important development in the case that shows when Hyatt's applications are given fair and impartial review, he will win.

"The decision is a vindication of Gilbert Hyatt's vision as an inventor and persistence in the face of an

agency that was determined to violate his rights at every turn," Grossman said. "The PTO played hardball against Mr. Hyatt, and that makes its loss all the more devastating for the agency and all the more valuable for Mr. Hyatt."

Hyatt was issued nearly 75 patents between 1973 and 1997 for technology like microprocessors and has reportedly earned tens of millions of dollars licensing them to major electronics companies.

He claims that at some point, the USPTO made a unilateral decision not to issue him any more patents and has since tied up his nearly 400 pending applications in red tape to keep them from getting approval.

The three patents Judge Lamberth ordered the USPTO to issue were among the last of Hyatt's applications that were reviewed by the Patent Trial and Appeal Board, Grossman said. Hundreds of others have never made it to that point and have been pending at the office for years, and in some cases for decades.

The USPTO argued Hyatt's extremely lengthy and complex patent applications have taxed the agency's resources. It says Hyatt's actions in filing them amounted to unreasonable delays that mean the applications should all be denied and his lawsuits should be dismissed. Judge Lamberth rejected that argument.

"The court concludes that Mr. Hyatt's conduct did not cause unreasonable and unexplained delay under the totality of the circumstances relevant here sufficient to warrant dismissal," he wrote.

The judge then analyzed numerous individual claims of the three applications at issue and concluded that the office erred in rejecting several them as obvious or lacking sufficient written description.

Grossman said that given the USPTO's actions to date, he and Hyatt have "no expectation that the PTO will comply with the law or with Judge Lamberth's decisions."

In order to secure court rulings aimed at ensuring the USPTO will issue him patents, Hyatt has a separate suit pending in the Eastern District of Virginia alleging the office's extensive delays violate the U.S. Constitution and the Administrative Procedure Act. The USPTO recently **moved to dismiss** that suit, arguing Hyatt has no right to sue over ongoing examinations.

Hyatt filed a response Monday, arguing the "only material difference" between the three patents that Judge Lamberth ordered to be issued and the nearly 400 that are pending "is that Mr. Hyatt was able to obtain a fair and impartial review on the merits of those applications."

"The PTO has a clear duty to issue him patents to which he is entitled. And this court has the authority to order the PTO to carry out those obligations," the response said.

The USPTO does not comment on pending litigation.

Hyatt is represented by Andrew Grossman, Mark DeLaquil, Jason Hoffman and Paul Levine of Baker & Hostetler LLP.

The USPTO is represented by U.S. Attorney Jessie Liu, Assistant U.S. Attorney Jason Cohen, U.S. Department of Justice Civil Division Chief Daniel Van Horn and Michael Forman and Monica Lateef of the

USPTO's Office of the Solicitor.

The cases are *Hyatt v. Iancu*, case numbers 1:09-cv-01869, 1:09-cv-01864, 1:09-cv-01872 and 1:05-cv-02310, in the U.S. District Court for the District of Columbia, and *Hyatt v. USPTO*, case number 1:18-cv-00546, in the U.S. District Court for the Eastern District of Virginia.

--Editing by Marygrace Murphy.

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