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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91206495
Party	Defendant Amy Gurvey
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD

SIGNAL SHARE, LLC,	)	**Opposition No. 91206495**
Opposer,	)	
vs.	)	**RESPONDENT'S RESPONSE TO ORDER**
	)	**Interlocutory Attorney: Hon. Robert H. Coggins**
AMY GURVEY,	)	
Respondent.	)	

Amy R. Gurvey, the "Respondent" in the instant TTAB ("Board") proceeding, who was previously represented only for continuing patent prosecution by the law firm of Ohlandt Greeley, Ruggiero & Perle (hereinafter "OGRP") until this proceeding was filed by Opposer SignalShare ("Opposer"), hereby answers and responds to the order of Hon. Robert H. Coggins entered on February 5, 2015 and also submits the SDNY and 2d Circuit documents requested by the Board in said order.

Before answering the Board's order, Respondent respectfully advises the Board that Respondent has been attempting to e-file the instant response since the due date of Saturday, March 7, 2015. Respondent was previously issued passwords by the USPTO Business Center in 2014 for use on her continuing patent prosecutions that have not worked. On Monday, March 9th, 2015 Respondent called the TTAB to get further instructions to e-file the instant response along with the PDF exhibits requested by the Board. Respondent has been issued two Reference Nos. 1-322954497 (Laquada); 1-322964761 (Dwayne) on the morning of March 9, 2015 at 8:31 a.m. and 8:53 a.m. respectively.

Now, in support of her answer and response, Respondent declares to the truth of the following statements under penalty of perjury.

1. Respondent Amy Gurvey is an inventor-entrepreneur and President of Founder of LIVE-Fi™ Technologies/LIVE-Fi™ Productions, LLC since 2005. LIVE-Fi™ Technologies, LLC was incorporated in the State of Delaware in 2005. The LIVE-Fi™ registered marks in categories 9, 38 and 41 have been in use since before the companies were organized in 2005.

2. In its order of February 5, 2015, this Board has requested information and documents from Respondent concerning her federal attorney patent misconduct lawsuit. *Gurvey v. Cowan Liebowitz & Latman, PC, et al.,* 06-cv-1202 (SDNY) has been pending before SDNY since 2006, and in 2012 the Second Circuit upheld Respondent's claims over sua sponte dismissal. Defendants filed Rule 12(b) motions; and did not file any answer prior to appeal. Respondent appeared *pro se* in that successful appeal. The Second Circuit upheld Respondent's patent malpractice, breach of fiduciary duty and breach of attorney client privilege claims against the firm. [1]

3. The District Court held on November 17, 2014 that Respondent's most recent amended complaint that is based on Cowan's first document production in December, 2012 and 2014 notices from the USPTO General Counsel, must be adjudicated before any disposition motions can be made in the lawsuit. This demonstrates that Opposer's most recent papers and exhibits referring to previous orders from the Magistrate are moot and a red herring. Respondent previously also won SDNY Arbitration against the Cowan firm on all counts in 2009. For some reason the Arbitrator Award was not docketed, which is a matter being investigated by the SDNY Grievance Panel. The relevant orders are appended. **(Exhibit 1)**

4. Moreover, as mentioned in para. 3, above, in June, 2014, prior to entry the operative orders of the District Court, the USPTO General Counsel noticed that the Cowan firm is under ongoing investigation for potentially criminal misconduct in connection with Respondent's patent retainer. **(Exhibit 2)** This demonstrates why it has been very difficult for Respondent to retain replacement patent

[1] 462 Fed. Appx. 26 (Feb 10 2012)

and trademark counsel; and why OGRP withdrew from Respondent's representation without returning Respondent's files. OGRP told Respondent it did not want to be involved in the Cowan lawsuit or be a witness in that case. Respondent still does not have her non-public patent files from OGRP or all her trademark files. In the instant proceeding, the Court is faced with an unusual fact pattern whereby a potential infringer of LIVE-Fi ™ patents is also using LIVE-Fi™ 's registered marks.

5. In December, 2012 on remand to the SDNY, Respondent got her first discovery from the Cowan firm after 7 years. The production was sorely incomplete and unresponsive. Cowan's attorney then filed untruthful Rule 26(a) disclosures.

6. Resdpondent's additional motions since 2013 before SDNY including to get signed subpoenas against OGRP and other NY attorneys to recover unlawfully withheld non-public USPTO files, to compel outstanding discovery, and to amend her complaint have still not yet been adjudicated. Nor has Redspondent's motion for Rule 28 USC 1927 sanctions against Cowan and its defense firm been adjudicated for continuing the lawsuit without merit and submitting altered patent evidence to the Court since 2006. It has become clear that altered patent evidence was submitted by the defense to conceal the "potentially criminal misconduct " noticed by the USPTO General Counsel. Plaintiff's important motions have still not been adjudicated after two years.

7. Second Circuit requested updates every 30 days on the status of discovery and Respondent's amended pleading. Respondent's most recent update to Second Circuit was filed in February, 2015. It is appended (**Exhibit 3**). This explains why Respondent still does not have all her non-public patent and trademark files returned. The SDNY lawsuit and her European Patent Office ("EPO") patent prosecution with attorneys in the US and Germany continued through 2015 took a good deal of her time and resources.

8. Respondent's amended claims against the Cowan firm now include, *inter alia*, fraud in the inducement, theft of Respondent's $50,000 patent retainer, unlawful retention and purging of

Respondent's efiles and patent files, intentionally withholding what it knew to be essential patent services under Respondent's retainer including waiving Respondent's expedited prosecution rights to get her issued US patent claims by 2004, breach of contract, breaching Respondent's attorney client privilege, allowing other clients to induce breach of fiduciary duty to Respondent, unlawfully disseminating Respondent's confidential inventions and ideas before commencing any work under Respondent's earlier patent retainer, and then abandoning Respondent's USPTO representation three weeks prior to the date formal patent applications were due for an "*admitted conflict of interest*" . The nature and source of the admitted conflicts was never disclosed.

9. In addition, because the Cowan firm committing forgery on the USPTO withdrawal form and did not effect service, the USPTO Commissioner, Hon. Wynn Coggins, noticed that Respondent's patent applications would have to be taken out of the queue for prosecution in due course until the issue of Cowan's improper attempt at withdrawal was resolved to USPTO's satisfaction.

10. Cowan's USPTO withdrawal notice allegedly filed in 2003 noticed only one of two patent applications the firm filed in Respondent's sole name. However, after filing two draft provisional applications in May, 2002 and never filing Respondent's long-form drafts, schematics, drawings, specifications and draft claims that the firm had since December, 2001, Respondent was issued her first two US patents based on those disclosures in 2009 and 2011 respective, an unprecedented 8-9 years after Cowan was retained to protect the relevant inventions. Respondent is also sole inventor of 21 related and novel CIP and divisional patent applications that remain pending before the USTPO and EPO. All applications have the benefit of an early May 22, 2002 priority date. Respondent's patents and pending applications before the USPTO and EPO disclose end-to end solutions for expanded event ticketing and registration operations, authenticated legal distribution of event and broadcast content to users, live audience members and broadcast viewers, and associated systems that enable viewer/audience interaction, apparatuses and advertising/sponsorship solutions.

11. The Cowan firm also somehow waived Respondent's right to expedited prosecution within 24 months and did not ever advise Plaintiff she had those rights, and then abandoned Plaintiff three weeks before formal applications were due, causing a 7-year hiatus before Plaintiff even got a patent office action.

12. Opposer herein is believed to be infringing Respondent's issued patents and patents pending. Respondent believes that the instant proceeding claiming Opposer's first use of LIVE-Fi ™ marks on September 13, 2009 - exactly one month before Respondent's first US patent issued - seems to be more than a coincidence. This proceeding, therefore, was likely filed to harass Respondent because of Opposer's concern that it is infringing Respondent's patents.

13. Upon belief, Opposer is acutely aware that LIVE-Fi™'s proprietary technology solutions, expanded ticketing and authenticated content distribution methods have been marketed since 2004 including to other clients of the Cowan firm such as Live Nation, Inc. Live Nation, the surviving entity of Clear Channel Entertainment Spinco in 2004, got prior, unlawful access to Respondent's confidential inventions in 2003 with the Cowan firm serving as Live Nation's NY agent. Respondent's confidential inventions, ideas and terms of art such as to "capture otherwise live lost content" were printed in an article in the *New York Times* Business Section on Monday, May 5, 2003, with Clear Channel introducing a new entity, Instant Live Concerts, LLC. Instant Live was then acquired by Live Nation in 2005 and a third-party inventor's recording patent that Live Nation acquired in the interim period, was then invalidated before the USTPO on motion of the Electronic Frontier Foundation in 2007. In the meantime, Live Nation was issuing false intentional press releases that it owned a monopoly on distributing live concert recordings.

14. Cowan's other mega-clients unlawfully outsourcing Respondent's patents relevant to this proceeding include MLB/MLB Advanced Media (owner of Ticket.com), Phish, and Ticketmaster (now part of Live Nation Entertainment, Inc.) Ticketmaster became merged with Live Nation in 2010 after

highly publicized proceedings involving the Dept. of Justice and 18 US states. The merged entity is now bound to a consent decree and competitive impact statement through 2020 issued by the DC District Court. (**Exhibit 5**)

15. Respondent offers the following qualifying factual information based on the order of the Board.

16. OGRP firm was retained in 2011 to continue and complete prosecution of the patent portfolio. It was never retained for trademark work and began trademark work without Respondent's consent after the instant proceeding was filed by Opposer.

17. When this proceeding was filed by Opposer, Respondent immediately moved before SDNY for signed subpoenas against OGRP and other NY attorneys. This is because partner Charles Ruggiero, Esq. refused to return Respondent's non-public patent files and her trademark files relevant to this proceeding. Ruggiero converted and stole Plaintiff's retainer monies and used them to assign other attorneys to defend this proceeding, when his firm was never retained to represent Plaintiff's interests in trademark matters.

18. In 2014, when the USPTO General Counsel noticed Respondent that the Cowan firm has been under ongoing investigation for potentially criminal misconduct in connection with Respondent's patent retainer, Ruggiero continued to refuse to return Respondent's files, believing they could be evidence against the Cowan firm. He and his firm say they know some of the innocent partners at the firm. OGRP's withholding Respondent's relevant files made it even more difficult for Respondent to retain an attorney to take over on both the patent prosecutions and to represent her in this proceeding. In fact, Ruggiero confirmed several times that the previous attorneys made a mess of Respondent's patent files by failing to timely perfect two provisional applications filed for Respondent as PCT and US applications. One of the firms put Respondent's original 2003 draft claims given to Cowan to edit in 2001, into the 2005 EPO and US CIP applications such that the two applications did not match.

19. In 2013, Respondent retained another US attorney with contacts in Europe to fix the EPO application to get out the claims filed in 2003, as amended in 2005. These claims may now finally issue after 12 years. That attorney was supposed to also represent Respondent in the instant trademark proceeding, but based on other commitments is unable to do so.

20. However, it took close to 18 months for the European firm's associate, Stacey Farmer, Esq. of the Grund firm in Germany, to work with Respondent and fix the mess made by the Cowan and subsequent US firms, and to get the EPO application in proper form for issuance before that Office.

21. For these reasons, Respondent is now forced to appear pro se in the instant trademark opposition proceeding.

22. Opposer filed a recent application to resume proceedings. This demonstrates that there can be no prejudice to Opposer if Respondent's previous application for an extension of time is granted. It is contended that Opposer continues to use Respondent's marks unlawfully.

23. However, at the appropriate time, Opposer will be forced to answer for both patent and trademark infringement and for filing the instant proceeding in bad faith.

WHEREFORE, Respondent prays that her previous application for an extension of time be granted and that the Board grant such other and further relief in her favor as it deems just and proper.

Dated Mach 7, 2015
Upper Montclair, NJ

AMY R. GURVEY
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CERTIFICATE OF SERVICE

Amy R. Gurvey, the Respondent *pro se* herein, certifies that on March 9th, 2015, she served a true and accurate copy of the within Respondent's Response to the February 5, 2015 order of the TTAB by efiling with the USPTO TTAB, by email, and also by depositing a true and accurate copy of Respondent's Response in a mailbox duly maintained by the US Postal Service via Priority Mail, postage prepaid, in an envelope addressed to the attorney of record for Opposer Signal Share in this proceeding. The envelope was addressed as follows:

Eric Stevens, Esq.
(Attorney of Record for Opposer Signal Share)
Poyner Spruill, LLC
PO Box 1801 (27062-1801)
301 Fayetteville Street, Suite 1900
Raleigh, NC 27601
estevens@poynerspruill.com

AMY R. GURVEY

UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF THE GENERAL COUNSEL

June 19, 2014

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Amy Gurvey
315 Highland Avenue
Upper Montclair, NJ 07043

RE: ***Freedom of Information Act Appeal A-14-00009 (Appeal of Request No. FP-14-00014)***

Dear Ms. Gurvey:

This determination responds to your letter dated May 15, 2014 and received by the United States Patent and Trademark Office ("USPTO" or "Agency") on May 22, 2014, and your e-mail dated May 22, 2014, appealing the USPTO's decision on your Freedom of Information Act (FOIA) Request, No. FP-14-00014. *See* FOIA Appeal No. A-14-00009.

In your FOIA request, you asked for a copy of:

> All documents pertaining to my patent applications and portfolio in premium ticket operations and an OED investigation against the first patent firm retained, Cowan Liebowitz & Latman PC.

See FOIA Request No. FP-14-00014.

On April 7, 2014, the Agency responded to your FOIA request. *See* Initial Determination (FP-14-00014). In response to your request for documents concerning your patent applications and portfolio in premium ticket operations, the Agency stated that it indexes and makes available for public inspection and copying all public files concerning issued patents, published applications, and reexamination files. *See id.* at 2. The Agency provided information to you about how to access those files online and in person, and how to order copies electronically and by mail. *See id.* In regard to your request for documents concerning an investigation of Cowan Liebowitz & Latman PC ("CLL") by the USPTO's Office of Enrollment and Discipline ("OED"), the Agency produced 151 pages of documents in full, and withheld records contained in open OED investigation files pursuant to FOIA Exemptions 7(A) and 7(C). *See id.* at 1-2.

The May 15 letter states that the documents produced by the Agency were "soaked with yellow staining on all the pages" and "most are stuck together." FOIA Appeal No. A-14-00009. On May 22, 2014, the Agency received the May 15 letter and promptly e-mailed you PDF copies of these documents. *See* E-mail from USPTO FOIA Office dated May 22, 2014.

The May 15 appeal letter also contests the Agency's withholding of documents pertaining to OED's pending investigation of CLL. *See* FOIA Appeal No. A-14-00009. Specifically, it states that you are "not seeking OED records that pertain to criminal law enforcement; just confirmation that my attorneys failed to perform according to the standard of care for patent attorneys." *Id.* at 2.[1]

For the reasons explained below, your appeal is denied.

A. Patent Applications and Portfolio in Premium Ticket Operations

The Agency's letter of April 7, 2014 previously informed you how to access and order copies of public files regarding issued patents, published patent applications, and reexamination files. *See* Initial Determination (FP-14-00009) at 2. Because these files are indexed and open to public inspection pursuant to 5 U.S.C. § 552(a)(2), the Agency need not produce copies of them in response to a FOIA request made under 5 U.S.C. § 552(a)(3). *See Schwartz v. U.S. Patent and Trademark Office*, 80 F.3d 558 (D.C. Cir. 1996) (holding that because USPTO makes patent files available for public inspection and copying under subsection (a)(2), it had satisfied its disclosure obligations under FOIA and was not obligated to provide records in response to a request under (a)(3)).

Unpublished patent applications generally must be kept confidential and are not available to the public. 35 U.S.C. § 122(a). However, to the extent that you are a named inventor on any unpublished patent applications, you may access these private files through the USPTO's Private Patent Application Information Retrieval system ("Private PAIR"). In order to access Private PAIR, you must: (1) be a registered patent attorney/agent, an inventor, or a person granted limited recognition; (2) have a customer number; and (3) have a digital PKI certificate. The Agency's website contains information about how to register for Private PAIR at http://www.uspto.gov/patents/process/files/efs/guidance/register.jsp. By way of summary, the first step is to obtain a Customer Number. You may do this by filling out the form located at http://www.uspto.gov/web/forms/sb0125_fill.pdf and faxing it to the Electronic Business Center at (571) 273-0177. To associate an existing patent application with your Customer Number, you should complete the form at http://www.uspto.gov/patents/ebc/cust_req_instructions.xls. The second step is to obtain a Digital PKI Certificate, which you may do by filling out the form located at http://www.uspto.gov/patents/ebc/certificateactionform.pdf, getting it notarized, and mailing it to the address on the top of the form. After this form is processed, you will receive an authorization code and reference number, which you can use to access your unpublished patent applications through Private PAIR.

Please note that the Patent Electronic Business Center ("EBC") issues, administers, and supports the use of customer numbers and digital certificates for the access and use of Private PAIR. The ECB also provides customer support for Private PAIR. ECB's hours of operations are Monday

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[1] Additionally, your appeal states: "I want all correspondence on my files from the Cowan firm . . . . All correspondence pertaining to my two provisional (60/382,710 and 60/382,979) are missing from your initial production, they were never perfected by Cowan and my retainer was converted and never refunded. I need all documents generated through September 2003 by any attorney at the Cowan firm." *Id.* at 3. To the extent this statement refers to the request for patent documents, see part A above.

through Friday 6 a.m. – midnight (EST/EDT). The EBC can be reached by telephone at 866-217-9197 (toll free) or 571-272-4100. The EBC can be reached by email at ebc@uspto.gov.

Because the Agency has provided you with the means to access public patent files, as well as private patent files for which you are a named inventor, the Agency need not provide you with copies of these files in response to your FOIA request. In this regard, it is well-established that an agency "need not respond to a FOIA request for copies of documents where the agency itself has provided an alternative form of access." *Tax Analysts v. Dep't of Justice*, 845 F.2d 1060, 1065 (D.C. Cir. 1988), *aff'd*, 492 U.S. 136 (1989); *see also Martinez v. Bureau of Prisons*, 444 F.3d 620 (D.C. Cir. 2006) (per curiam) (where agency allowed prison inmate to review his presentence reports, it was not required to produce copies of them); *Shurtleff v. United States Environmental Protection Agency*, 2013 WL 5423963, at *11 (D.D.C. Sept. 30, 2013) (holding that EPA discharged its FOIA duty by directing requestor to documents available online and at its offices – "when an agency has provided an alternative form of access, it has satisfied its requirement to make records available to the public"); *Salanitro v. United States Office of Personnel Mgmt., Retirement Operations Division*, 2011 WL 2670076, at *4 (M.D. Fla. July 8, 2011) (holding that OPM not required to produce documents in response to FOIA request where they were available on government websites); *Crews v. Internal Revenue Serv.*, 2000 WL 900800, at *6 (C.D. Cal. Apr. 26, 2000) ("The IRS has also produced documents that are publicly available either in the IRS reading room or on the internet, and thus not subject to production via FOIA requests."); *Hilaire v. Dep't of Justice, Office of Special Investigations*, 1991 WL 190089, at *2 (D.D.C. Sept. 10, 1981) (holding that NARA not required to produce copies of documents where they were available at archives building).

B. OED's Investigation of Cowan Liebowitz & Latman

The Agency properly withheld documents concerning a pending OED investigation of CLL attorneys under FOIA Exemptions 7(A) and 7(C). Exemption 7(A) allows agencies to withhold "records or information compiled for law enforcement purposes" where disclosure "could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). Exemption 7(C) permits the withholding of "records or information compiled for law enforcement purposes" where disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C).

As set forth below, the OED investigation records satisfy all the requirements under Exemptions 7(A) and 7(C).

Threshold Requirement Under Exemptions 7(A) and 7(C)

Exemptions 7(A) and 7(C) both have a threshold requirement that records be "compiled for law enforcement purposes," which is satisfied when an agency's files focus on specific alleged illegal acts which could result in civil or criminal sanctions. *See Jefferson v. Dep't of Justice*, 284 F.3d 172, 177 (D.C. Cir. 2002); *Rural Housing Alliance v. Dep't of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974). If the investigation that gave rise to the documents is related to the enforcement of federal laws and there is a rational nexus between the investigation and the agency's law enforcement duties, then the inquiry is for "law enforcement purposes." *Jefferson*, 284 F.3d at

177; *Pratt v. Webster*, 673 F.2d 408, 420-21 (D.C. Cir. 1982); *Rural Housing Alliance*, 498 F.2d at 82.

Here, OED has responsibility, *inter alia*, to investigate allegations of misconduct and violations of the USPTO's Rules of Professional Conduct by patent attorneys and agents practicing before the USPTO in patent cases and attorneys practicing before the USPTO in trademark matters. *See* 35 U.S.C. § 2(b)(2)(D) (USPTO may establish regulations governing "the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office"); 37 C.F.R. § 11.2(b)(4) (OED shall "[c]onduct investigations of matters involving possible grounds for discipline of practitioners"); 37 C.F.R. § 11.19(a) (describing practitioners subject to disciplinary jurisdiction); 37 C.F.R. § 11.22 (authorizing OED to investigate possible grounds for discipline and describing procedures for investigations). OED may gather evidence regarding possible grounds for discipline during investigations. 37 C.F.R. § 11.22(f). After an investigation, OED may close the matter, issue a warning to the practitioner, institute formal disciplinary charges upon approval by a Committee on Discipline, or enter into a settlement agreement with the practitioner. 37 C.F.R. § 11.22(h). Grounds for instituting disciplinary proceedings against practitioners include, but are not limited to, convictions of a serious crime, discipline on ethical grounds imposed in another jurisdiction, disqualification by a federal agency or from a federal program, violation of the USPTO's Rules of Professional Conduct, and violations of the oath or declaration taken by the practitioner. 37 C.F.R. §§ 11.19(b)(1), 11.25, 11.27. The USPTO's regulations contain specific procedures for the initiation and conduct of disciplinary proceedings. 37 C.F.R. §§ 11.19(a), 11.32. Disciplinary sanctions include exclusions and suspensions from practice before the USPTO, reprimand or censure, and probation. 37 C.F.R. § 11.20(a).

In this case, OED's investigation of CLL attorneys relates to the Agency's enforcement of federal laws (their compliance with rules governing their conduct in representing you in patent matters). Accordingly, records of OED's ongoing investigation meet the threshold requirement of Exemptions 7(A) and 7(C) that the records be "compiled for law enforcement purposes."

Exemption 7(A)

In addition to satisfying the threshold requirement, the withheld records also meet the requirement in Exemption 7(A) that disclosure "could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). To satisfy this Exemption, agencies must show that there is a pending or prospective law enforcement proceeding and the release of information about it could reasonably be expected to cause some articulable harm. *See, e.g.*, *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224 (1978); *Juarez v. Dep't of Justice*, 518 F.3d 54, 58-59 (D.C. Cir. 2008); *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1113-14 (D.C. Cir. 2007).

This test is met because OED's investigation of CLL is pending. As with almost any OED investigation, a premature disclosure of information could reasonably be expected to interfere with the investigation. For example, disclosure could provide insights into the scope, direction, and nature of OED's investigation. *See, e.g.*, *Faiella v. Internal Revenue Serv.*, 2006 WL 2040130, at 3 (D.N.H. July 20, 2006) (Exemption 7(A) applied where disclosure of information could prematurely disclose government's theories, issues, and evidentiary requirements); *Kay v.*

Federal Communications Comm'n, 867 F. Supp. 11, 19 (D.D.C. 1994) (Exemption 7(A) applied where disclosure could reveal scope and strength of FCC's case). Disclosure also could create the potential for witness intimidation and deter their cooperation. *See, e.g., Robbins Tire*, 437 U.S. at 239 (holding that NLRB established interference with its unfair labor practice enforcement proceeding by showing that release of witness statements could cause witness intimidation and deter their cooperation); *EDUCAP, Inc. v. Internal Revenue Serv.*, 2009 WL 416428, at *6 (D.D.C. Feb. 18, 2009) (similar). As a result, the Agency properly withheld records concerning OED's pending investigation under FOIA Exemption 7(A).

Exemption 7(C)

In addition, the withheld records similarly qualify for the protection in Exemption 7(C) because disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). Applying Exemption 7(C), the public interest in disclosure of those records must be weighed against the CLL attorneys' privacy interest in withholding them. *See United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 762 (1989); *Neely v. Federal Bureau of Investigation*, 208 F.3d 461, 463-64 (4th Cir. 2000). As to the former, Exemption 7(C) recognizes a public interest *only* in information bearing on an agency's performance of its statutory duties. *Reporters Committee*, 489 U.S. at 773 (rejecting assertion of public interest in rap sheet of a reputed Mafia crime boss because it told nothing about matters of substantive law enforcement policy); *Neely*, 208 F.3d at 464 (holding that public had negligible interest in names and identifying information of employees, suspects, and others mentioned in course of FBI investigation as there was no compelling allegation of agency corruption or illegality). Here, the records relate to the CLL attorneys. And, on the other hand, Exemption 7(C) "affords broad[] privacy rights to suspects, witnesses, and investigators." *SafeCard Servs., Inc. v. Securities and Exchange Comm'n*, 926 F.2d 1197, 1205 (D.C. Cir. 1991) (internal quotations omitted); *see also Neely*, 208 F.3d at 464 ("third parties mentioned or interviewed in the course of an investigation have well-recognized and substantial privacy interests" in law enforcement records under Exemption 7(C) "because of the potential for future harassment, annoyance, or embarrassment").

Here, the public has an insubstantial interest in the withheld records of OED's pending investigation because information about CLL's representation of you in patent matters is not probative of the Agency's behavior or performance of its duties. *See SafeCard Servs.*, 926 F.2d at 1205 (finding that names and addresses of potential witnesses or litigants in SEC stock manipulation investigations not probative of SEC's behavior or performance). Importantly, there is no credible allegation that the Agency is not performing its statutory duties or is engaged in any illegality. *See id.* at 1205-06 ("unless there is compelling evidence that the agency denying the FOIA request is engaged in illegal activity, and access to the names of private individuals appearing in the agency's law enforcement files is necessary to confirm or refute that evidence, there is no reason to believe that the incremental public interest in such information would ever be significant). By contrast, as explained above, the CLL attorneys have a substantial privacy interest in the withheld records of OED's investigation. *See SafeCard Servs.*, 926 F.2d at 1205; *Neely*, 208 F.3d at 464. Because the CLL attorneys' privacy interest strongly outweighs the public interest in OED's investigation records, the Agency properly withheld them under Exemption 7(C), as a separate ground in addition to Exemption 7(A).

Matters Raised on Appeal

The May 15 letter argues that you are "not seeking OED records that pertain to criminal law enforcement; just confirmation that my attorneys failed to perform according to the standard of care for patent attorneys." FOIA Appeal No. A-14-00009 at 2. However, Exemptions 7(A) and 7(C) are not limited to records involving criminal enforcement proceedings. Rather, they also cover records of civil, administrative, and regulatory enforcement proceedings. *See Jefferson v. Dep't of Justice*, 284 F.3d 172, 178 (D.C. Cir. 2002) (holding that Exemption 7 "covers investigatory files relating to enforcement of all kinds of laws, including those involving adjudicative proceedings") (internal quotations omitted); *Judicial Watch v. Rossotti*, 285 F. Supp. 2d 17, 29 (D.D.C. 2003) (documents relating to IRS civil investigation covered); *Rosenglick v. Internal Revenue Serv.*, 1998 U.S. Dist. LEXIS 3920, at *6 (M.D. Fla. Mar. 10, 1998) (holding that phrase "law enforcement purposes" includes "civil, criminal, and administrative statutes and regulations such as those promulgated and enforced by the IRS"); *Johnson v. Drug Enforcement Agency*, 1998 U.S. Dist. LEXIS 9802, at *9 (D.D.C. June 25, 1998) ("law being enforced may be . . . regulatory"). Also, it is well-established that the FOIA requester's purpose in seeking the records is irrelevant; what matters is the purpose of the agency's investigation at issue. *See Reporters Committee*, 489 U.S. at 771 ("the purposes for which the request for information is made . . . ha[ve] no bearing on the merits of his or her FOIA request.").

The May 15 letter also argues that "my patent attorneys' fiduciary duty to me is deemed by law paramount to their right to protect themselves from civil prosecution" and cited *Cold Spring Harbor Laboratory v. Ropes & Gray LLP*, 2011 WL 2884893 (D. Mass. July 19, 2011) for this proposition. FOIA Appeal No. A-14-00009 at 2. In *Cold Spring Harbor*, the district court held that a law firm's fiduciary duty to its client overrode the firm's claim of privilege for its internal investigation in a legal malpractice action brought by the client. 2001 WL 2884893, at *2. *Cold Spring Harbor*, however, does not apply here because the case did not involve government records or FOIA.

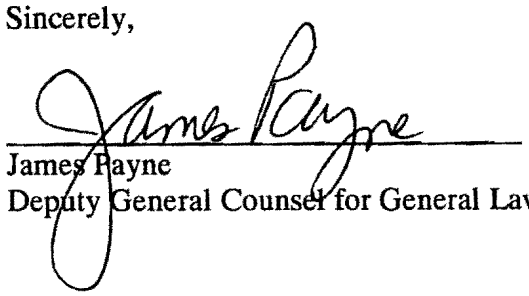
C. Final Decision and Appeal Rights

This is the final decision of the United States Patent and Trademark Office with respect to your appeal. You have the right to seek judicial review of this denial as provided in 5 U.S.C. § 552(a)(4)(B). Judicial review is available in the United States District Court for the district in which you reside or have a principal place of business, the United States District Court for the Eastern District of Virginia, or the United States District Court for the District of Columbia.

Additionally, as part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

Sincerely,



James Payne
Deputy General Counsel for General Law

315 Highland Avenue
Upper Montclair, NJ 07043
PH 917-733-9981
June 27, 2014

James Payne, Esq.
Deputy General Counsel, General Law
United States Patent and Trademark Office
Office of the General Counsel
PO Box 1450
Alexandria, VA 22313-1450

cc: Hon. Lorna G. Schofield, SDNY
Hon. Mag. Henry B. Pitman, SDNY

Re: *Gurvey v. Cowan Liebowitz & Latman, PC* 06-cv-1202 (SDNY)
Remand from Second Circuit, 462 Fed. Appx. 26 (February 10, 2012)
Inventor's USPTO Grievances 2004, 2012, 2013 OED # 14-00009

Dear Mr. Payne:

This application being served on SDNY and the Second Circuit, seeks reconsideration of your letters of April 7, 2014 and June 19, 2014 (Enclosed) denying my FOIA requests seeking USPTO's production of all *non-public and unpublished records* that pertain to retainer of my original NY patent attorneys at Cowan Liebowitz & Latman, PC in December, 2001 and all internal documents generated on my inventions, apparatus designs and ideas up to the time I got my first USPTO office action in 2008 (more than 6 ½ years later).

Your office does not dispute that my patent portfolio was severely damaged by Cowan's misconduct because the flagship 468 original application was not timely perfected or prepared. Nor was a PCT perfected in the ensuing 17 months before a US application to prevent publication. Cowan in fact performed no services at all for 6 months after being retained. As a result, the

468 application has still not issued in spite of conceded patentable subject matter (Jalatee Worjloh's statement to NY attorney Allan Chan, Esq.in 2009), and it remains in languished published prosecution. This in turn allowed other inventors to plagiarize my ideas and disclosures in their own applications. My 2004 CIP with the same and expanded disclosures issued as the first US patent to me out of sequence in October, 2009, but was missing claims and there are 17 divisionals and CIPs still pending in the US and Europe. (Gurvey US Patent No. 7, 603, 321; D610947S)

Based on the delayed prosecution, my first notice of patent damages, lost claims and priority dates, came in October, 2009, six months after Cowan defendants were already sua sponte dismissed by SDNY in April, 2009. This required a 2 ½ year appeal to the Second Circuit that I won pro se (462 Fed Appx. 26)(2d Cir. February 10, 2012). My 6AC stating the lost claims and priority dates including to Cowan's other client, Legend Films, is currently before the SDNY; and is based on Cowan first and only document production of December, 2012. Emails from this production were sent to OED in March, 2013, which opened your investigation (finally). It is now established after 11 years that Cowan served as Legend's NY agent in aiding and abetting theft of my claims, ideas, inventions and priority dates; and was "following the client's instructions" in purging my e-files in 2003.

Your June 2014 denial letter misinterprets my request. You write that I am requesting "public records" available on the USPTO website, which is wrong. *I am only requesting non-public (unpublished) documents.*

Second, you also write that OED may be investigating criminal misconduct and that publication of the OED proceedings that are ongoing might be embarrassing to Cowan lawyers.

I contend embarrassment is not justifiable grounds to withhold my non-public patent documents because Cowan's fiduciary duty to me as client is paramount to any issues of its own defense; and its torts adverse to my IP interests that include conspiracy to steal patent claims in consort with other

clients were egregious and reprehensible. [1] Cold Spring Harbor Laboratories v. Ropes & Gray, 2011 WL 2884893 (D. Mass 2011)(Transferred from EDNY because of disciplinary proceeding pending against Ropes & Gray attorneys in MA). If USPTO is now, finally, investigating what it concedes may be criminal misconduct after it ignored my first grievances filed in 2004, I cannot be charged or prejudiced for this delay.

Third, in 2003, USPTO called me for the first time to inform me that Cowan attorneys unilaterally attempted to withdraw from my representation for an "*admitted conflict of interest*" and there was no proof of service appended, requiring an investigation into Archives. In the interim, however, Cowan never perfected either of two text provisional applications they filed in May 2002 during the ensuing 17 months, never continued services on the second application from which they did not withdraw, and intentionally and fraudulently purged relevant patent files to deny me notice of the full scope of my claims (especially against Legend Films).

I contend in hindsight that had an earlier OED investigation been commenced, I might have been able to mitigate damages during the US prosecution of Legend's theretofore concealed PCT and US applications that integrated my inventions. Cowan intentionally did not list me as co-inventor in violation of 37CFR 1.48(a) because, as it admits, "*it was following instructions*". You were sent these emails. Upon belief, Legend's previous patent attorney, Lawrence Husick, Esq., who filed analog only applications in film colorization in or about 1990, was already cited by your office. Upon belief, he secretly encumbered applications of Legend's predecessor, American Film Technologies, with Legend CTO Barry Sandrew, who was Cowan's client. Sandrew was sued for breach of fiduciary duty before EDNY in 1999; and it was he and his new CEO, David Martin, who contacted Cowan attorneys behind my back.

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[1] In its order upholding my tort claims against Cowan, Second Circuit cited to Ulico v. Wilson Elser, et al., 56 AD 3d 1 (AD 1st Dept. 2008); and found there was credence to my claims that Cowan used my confidential acquired pursuant to the attorney client relationship to benefit itself and other clients.

Unbeknownst to me because Cowan did perfect a PCT for Legend in advance of a US application (preventing publication), Legend got its first *digital* patent in February, 2007 (7,181,081), based on Cowan's improper integration of certain of my ideas and digital conversion and editing inventions into that PCT (filed by Cowan on May 6, 2002). On May 7, 2002, the next day, Cowan lied and told me that no work had yet been done for Legend because they had no retainer and Legend had paid no fees. Then they purged the evidence of the work in an agreement with Legend (demonstrating intentional torts).

In the interim, Cowan, having already been retained as my attorney did nothing to protect my digital conversion ideas so that I would get the patent ahead of Legend. My long form patent applications drafts that I gave to Cowan included methods for editing, converting and legally distributing event and broadcast content in digital format in close to real time. Cowan also got my apparatus designs and drawings for mobile ticketing and distribution kiosks.

From what Commissioner Coggins relayed to me on the phone in 2003-4, and according to follow up calls from examiner Andrew Fisher, my applications had been taken out of the queue for prosecution in due course and remained held up until the issue of Cowan's incomplete withdrawal and conflict was resolved to USPTO's satisfaction. The memorialization(s) of these calls and notices are not on the PAIR web pages, are not published; and must be produced. I don't know how long the investigation went on.

In addition, I contend it is now also incumbent upon USPTO produce Cowan's OED files to ensure that USPTO did not improperly allow Cowan or its lawyers to induce breach of administrative duties owing to me.

Last year, the United States Supreme Court ruled that acts of malpractice undertaken by attorneys pre-patent issuance are not within the exclusive jurisdiction of the federal courts and are for the most part, state claims, unless a specific Patent Rule or Regulations proscribes the precise misconduct. In theory then, while inventors should now be getting help from the state attorney disciplinary committees, we are not. [See, *Gunn v. Minton*,

133 S. Ct. 1059 (USSC Tex. 2013) (Roberts, J.)]. NYS's DDCs still offers no help or recourse for inventors in contended violation of equal protection.

In the June, 2014 issue of NYU Journal on Legislation and Legal Ethics, NYU Law Ethics Professor Stephen Gillers submits his survey (attached) finding that the attorney disciplinary protocols among NY's four main judicial departments are not equal. Legitimate grievances filed by inventors in NYS against lawyers are still being ignored in violation of equal protection even through patents are federally protected property rights. Inventors are per se entitled to equal protection of NY Judiciary Law §§ 90, 487; and to have attorneys who violate ethics rules cited to avoid further prejudice to themselves and others.

In *Cold Spring Harbor Laboratories v. Ropes & Gray and Matthew P. Vincent*, 2011 WL 2884893 (discovery order), a case I previously cited, the NY inventors of RNA cancer methods (disciples of Watson & Crick of DNA fame) had their attorneys move to transfer their $180 mil patent malpractice case from EDNY to D. Mass. only because Massachusetts disciplined the lawyers and the Appellate Division of NY's Second Department did not. [2011 WL 2884893; 840 F. Supp. 2d 473 (D. Mass 2012); see also *Bernstein v. First Dept. Disciplinary Committee, Stephen Krane, Esq., Proskauer Rose Goetz & Mendelsohn et al.*, 07-vc-11196 (SDNY)]. The misconduct allegedly undertaken by the Ropes & Gray attorneys does not pale to what I suffered at the hands of Cowan lawyers.

Professor Gillers in reviewing gross inequities in NY's attorney disciplinary system, advocates an overhaul and adoption of protocols similar to California. He says that NY's Appellate Division Judges should not be involved in the disciplinary proceedings and instead there should be a separate disciplinary bar to assess punishment. This certainly would help avoid conflicts for certain DDC members, who as I recently discovered, dually serve as defense lawyers on retainer for the malpractice insurance carriers; bill hourly fees to defend reported lawyers; unduly extend litigations to continue stable legal fees in their own favor; and only whitewash DDC grievances filed against attorneys who become their defense clients.

In my case and unbeknownst to me until 2014, Cowan's lawyers at Hinshaw & Culbertson - Richard Supple, Esq. and Hal Lieberman, Esq. - were in fact Chief Counsels of the DDC when my grievances and those of other inventors were filed and ignored in violation of equal protection. Supple, then, without making proper disclosures, misused my confidential grievance information when taking up Cowan's defense. This explains how Cowan has been able to escape liability for what you yourself concede, is possibly criminal patent misconduct.

In conjunction therewith an in further support of my FOIA requests, I attach J. Caher's article published in the May 27, 2014 New York Law Journal linking to Professor Gillers' survey and coincidentally, interviewing none other than Supple and Lieberman.

Of particular relevance to FOIA request, is Caher's link to a 2013 letter written by Supple personally he addressed to NYS's Presiding Justices Hon(s). Jonathan Lippman and Luis Gonzalez, of the NY Court of Appeals and Appellate Division First Dept. In this letter, Supple, in his previously undisclosed capacity as Chair of NYC's Committee on Attorney Ethics and Discipline, advocates uniform standards of disbarment or suspension for the precise ethics violations committed by Cowan attorneys against my patent interests. He also appends a list of ethics violations, at least 12 of which Cowan violated. Yet he and Lieberman whitewashed my grievances based on these same violations.

For eight years now, Supple has been unlawfully using my confidential DDC grievance information, to assist in Cowan's defense before SDNY. I have now been defending frivolous motions appending doctored evidence for 8 years. Supple never disclosed to me, to SDNY or to Second Circuit that he and Lieberman were on the team that got my grievances whitewashed in violation of equal protection. I am therefore legitimately concerned Supple has also contacted my subsequent patent lawyers and/or the USPTO examiners, which could explain the unprecedented delay and prejudice. There is no USPTO statute to proscribe Supple's style of unlawful intervention to protect the inventor, or require hearings, consistent with due process.

Supple's secret 2013 letter to the NY Presiding Judges was written in his "other" capacity as NYC Ethics Counsel (attached). He obviously leads a double life with clear unobstructed access to decision makers who can hurt inventors who have been injured by bad lawyers.

I reemphasize that Supple himself submitted doctored (materially forged) evidence to SDNY as Cowan's authorized agent for 8 years. I contend, therefore, that his patent misconduct should be investigated part of the OED investigation against Cowan; because he was Cowan's agent. I also contend that am entitled to see Cowan's proffered submissions in response to my OED grievances; because Supple probably contributed or edited what Cowan submitted; and forged documents may be appended.

Supple and Cowan both jointly falsely swore to the SDNY in January, 2008 that I had agreed to withdraw claims against Cowan (I never did). They swore under oath in 2006 that what they appended in support of their first discovery stay motion was my complete contract with Cowan (when they omitted a material rider and in further breach of attorney client privilege sent the forgery with a self-serving extended date stamp, to Legend's attorneys in San Diego). Cowan initialed the forgery and I never did.

Moreover, Supple has filed some 12 frivolous motion sequences including seeking unjustified sanctions whose aim is only to injure and harass. My 6AC stating the conspiracy and patent theft claims in connection with Legend's officers is still not answered in violation of SDNY's recent order and Supple has just filed another sanction motion.

In summary, because Supple, an alleged ethics expert, expressly advocates to NYS Judges that publication of even attorney admonitions and reprimands is mandatory and in the public interest, there is no basis for USPTO to worry about embarrassing the Cowan defendants by FOIA production my non-public files. According to Supple's own list, his Cowan clients should be disbarred or suspended . In addition, Supple himself must be sanctioned, suspended or disbarred by the OED.

Based on the above, I respectfully request that your office reconsider your denial of my FOIA requests, and produce of all *unpublished (non-public)* documents related to my patent portfolio. I seek the following: all relevant documents from USPTO Archives on Cowan's incomplete withdrawal, Cowan's communications at intake, docket entries, and documents at the offices of former Commissioner Wynn Coggins and Examiner Andrew Fisher who told me in 2005 that my applications were taken out of the queue for prosecution in due course based on Cowan's attempt at incomplete and unnoticed withdrawal in 2003 for an undisclosed "conflict of interest". [2]

I also seek USPTO's unpublished notes on Commissioner's denial of my right to continue patent prosecution pro se until the issues of Cowan's incomplete withdrawal were resolved to USPTO's satisfaction. These documents would demonstrate that there was unprecedented and undue delay of my prosecution and enforcement rights emanating fromCowan's misconduct. Contrary to your letter, none of these documents are on the file wrappers or on PAIR.

Most significantly, I seek Cowan's submission(s) in response to my OED grievances since 2004. I have a bona fide belief that Cowan's proffers may contain doctored or forged versions of documents previously and unlawfully purged from my e-directories in 2002-3, similar to what was submitted to defraud the SDNY; and that Supple may have participated in those proffers.

I am also legitimately concerned that Cowan's submissions to OED may be untruthful, defamatory to me, and may have unjustly prejudiced examiners assigned to my pending patents.

I claim therefore that I am being denied due process and the right to confront all witnesses against me. This is why I also requested that OED investigate the two subsequent lawyers I retained since getting first office actions in 2008 - Allan Chan, Esq. and Charles Ruggiero, Esq.. I have paid

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[2] NY law is clear that Cowan's attempt at unnoticed withdrawal at the USPTO was ineffective to relieve Cowan of continuing patent obligations to me in compliance with the standard of care. *Protostorm v. Antonelli, Terry, Stout, et al.*, 834 F. Supp. 2d 131 (EDNY 2012).

about $45,000 to these lawyers, had signed retainers, and they both suspiciously accepted retainer monies but did not answer office actions or return my non-public files.

Your office has not responded to my requests to force return of my non-public files from these lawyers or my unearned retainer monies. Perhaps their files will help the OED investigation by providing notes from non-public communications with Supple.

Please be advised that in 2009, Examiner Jalatee Worjloh conceded to Allan Chan, Esq. that the disclosures in my original US application, No. 468 were patentable, useful and there was no prior art. The original 468 application has still not issued. Cowan never perfected the text-only provisionals it filed naming me as sole inventor (60/382, 710; 382,949). However, Ruggiero accepted a $10,000 retainer to complete prosecution of 468 but also, never answered the office action; and has continued to refuse to return my non-public files to my new prosecution attorney, Alozie Etufugh, Esq. of NYC.

I believe Ruggiero was contacted by Supple and is hiding his notes. Similarly, I believe that Supple influenced my previous SDNY attorney, Lee Squitieri, Esq., to transfer the Legend lawsuit from SDNY (08-cv-9256) to SDCA without justification so that my discovery of the Legend-Cowan misconduct would be delayed.

The damages I suffered to date are astronomical, not only to my business and patents, but to my personal health. That Cowan never even advised me of my rights to expedited prosecution within 18-24 months, means they waived my right to get more comprehensive and enforceable claims issued in the US by 2004-5 instead of October, 2009. In addition, Cowan did not perfect the provisional texts into a PCT in advance of a US application, allowing publication of my disclosures and ideas, further prejudicing my interests.

As a result, in 2008, Apple was able to plagiarize my published applications in languished prosecution. Apple and its lawyers then improperly failed to list my pending applications as prior art. [See Appl No. 2008-082491] My understanding is that Apple did not get a patent on premium ticketing

operations; it appealed the rejection, but its separate and improper failure to list my inventions continued in the face of notices sent by Allan Chan to Apple's Examiner. This is what I mean by unexplainable prejudice to my applications from non-public documents.

In 2013, I submitted to OED's Asli Carome, upon request, hard email evidence from Cowan's first and only December 2012 document production in SDNY that Cowan purged my electronic patent files "at the client's instructions". Cowan's purging constitutes spoliation in the patent context. *Micron Technology v. Rambus*, 645 F. 3d 1311 (D. Del. 2013). It denied me timely notice that Cowan had integrated my inventions and ideas into Legend's PCT on May 6, 2002 before filing any of my long-form drafts when I was the true inventor of the digital conversion systems. Cowan was obligated to list me as co-inventor on Legend's PCT and in violation of 37 CFR 1.48 (a) failed to do so.[3] That Legend's PCT cites to use for animation, a field in which I worked and had files, that is not Legend's business, demonstrates theft of my proprietary material that Cowan got from me only through the attorney client privilege.

I currently have a related appeal pending at the Ninth Circuit against Legend Films and its officers (12-57268). In 2013, SD California denied my application to amend my complaint to plead the intentional tort, wrongful inducement and conspiracy claims that I discovered from Cowan's first document production in SDNY in December, 2012; documents from which were sent to OED in March, 2013.

In order for me to have maximum success in supplementing the record on appeal before the 9th Circuit and possibly remanding the Legend suit back to SDNY to consolidate with the Cowan litigation, I need my non-public files from your office.

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[3] Ergo, that Cowan allowed Legend's officers to breach fiduciary duty to me (the earlier patent client) is a given. All Legend's previous applications were analog only and works for hire for predecessor in interest American Film Technologies, and filed by Pennsylvania attorney, Lawrence Husick, Esq.

I therefore respectfully reconsideration of denial of my FOIA requests and am grateful for a response at your earliest opportunity. My email address may be used. amygurvey@verizon.net.

Thank you very much.

Respectfully submitted,

AMY R. GURVEY, Inventor

cc: Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park MD 20740-6001
ogis@nara.com

Amy Gurvey

From: Amy Gurvey <amygurvey@verizon.net>
Sent: Thursday, May 22, 2014 5:54 PM
To: 'FOIA Requests'
Subject: RE: USPTO Request No. FP-14-00014

I do wish to appeal because I am seeking non official filings, at OED not just official filings that are public and on the file wrappers.
Contrary to your cited case, I am not asking you to criminally prosecute my lawyers; however, I want to see how they attempted to defend themselves before the OED. I believe they may have submitted doctored evidence that itself constitutes spoliation in the patent context. See Micron Technology v. Rambus, 645 F. 3d 1311 (D. Del 2013) on remand from Fed. Cir. If I lose your appeal, I will have to move to compel production of the USPTO OED files in my lawsuit; because Cowan is withholding discovery in my lawsuit.

As I wrote, I disagree that the OED proceedings against my own lawyers are not discoverable by FOIA based on the Jefferson and Cold Spring Harbor Laboratories cases I cited. The case you cited against an adverse US Attorney prosecutor does not apply.

Moreover, I believe that the def lawyers for the Cowan firm in SDNY (06-cv-1202), Hinshaw & Culbertson, LLP, improperly contacted my subsequently retained USPTO attys, Allan Chan and Charles Ruggiero and told them not to do my patent work or prejudice my pending appls after these attys accepted retainers to continue prosecution. The Hinshaw firm did this to give the Cowan lawyers a false defense. As it is they did not even advise me I had rights of expedited prosecution and waived those rights.
Ruggiero admitted he heard something from these lawyers. Ruggiero he also took a $10K retainer from me in 2012, sent me 3 powers of atty to revive and continue three applications including the flagship 468 application and then never filed them.

Chan, the previous lawyer, let certain appls go abandoned and did not notify me, and charged my credit card to revive them (also without telling me).
All my grievances stem from the same core of patent applications; and the defense firm representing the original lawyers, not patent lawyers.
Members of the Hinshaw firm were sued in 2007 by a USPTO inventor Eliot Bernstein before SDNY for whitewashing his grievances at the First Dept. Disciplinary Committee. The Hinshaw firm has attys on the First Dept. Disciplinary Committee in NY, and is double dealing as fiduciaries to the public and then using the confidential information when they take up a law firm's defense. Also under Gunn v. Minton, 133 S. Ct. 1059 (USSC Tex. 2013) (Roberts J.), the US Supreme Court has held that the states must have a compelling interest in protecting the assets of inventors; and that not all matters are in the exclusive jx of the federal courts. Therefore, I need the documents that the Cowan firm submitted in defense. There are two patent attorneys involved – R. Lewis Gable, Esq. who I think Cowan fired and Mark Montague, Esq., each of whom filed one of my provisionals in text format only and then did nothing else for 11 months to perfect them. For six months subsequent to taking my retainer and formal applications in December, 2001 they did nothing to protect my inventions.
Thank you for getting back. Amy R. Gurvey 917-733-9981

From: FOIA Requests [mailto:FOIARequests@USPTO.GOV]
Sent: Thursday, May 22, 2014 3:47 PM
To: Amy Gurvey
Subject: USPTO Request No. FP-14-00014

Ms. Gurvey,

The USPTO has received your letter dated May 15, 2014 in which you indicated that the response you received for USPTO request no. FP-14-00014 was wet and partly illegible. For you convenience, we have attached a PDF copy of the final response with attachments.

Again, and as noted in your response letter, any official filings submitted to the Agency related to your patent applications are available in the patent application files and not subject to a FOIA request.

If, after review of the attached, you decide that you wish to appeal the Agency's response to FP-14-00014, please let us know and we will treat your May 15 letter as an appeal.

Regards,
USPTO FOIA Office

UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF THE GENERAL COUNSEL

April 07, 2014

VIA U.S. MAIL

Ms. Amy Gurvey
315 Highland Avenue
Upper Montclair, NJ 07043

RE: ***Freedom of Information Act (FOIA) Request No. FP-14-00014***

Dear Ms. Gurvey:

The United States Patent and Trademark Office (USPTO or Agency) FOIA Office has received your e-mail dated February 14, 2014 requesting, under the provisions of the Freedom of Information Act, 5 U.S.C. § 552, a copy of:

> [1] All documents pertaining to my patent applications and portfolio in premium ticket operations and [2] an OED investigation against the first patent firm retained, Cowan Liebowitz & Latman PC.

OED Investigation Files

The USPTO has identified records that are responsive to the latter part of your request for records related to an Office of Enrollment and Discipline (OED) investigation against Cowan Liebowitz & Latman. _151_ pages of this material are releasable in full and are enclosed. Portions of the responsive material, however, were withheld in full pursuant to Exemption (7)(A) and (7)(C) of the FOIA.

The Agency has withheld in full all records contained in open Office of Enrollment and Discipline (OED) investigation files under Exemptions 7(A) and 7(C). 5 U.S.C. § 552(b)(7)(A), (C). Under Exemption 7(A), an agency may withhold "records or information compiled for law enforcement purposes ... to the extent that the production of such ... records or information could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). Importantly, Exemption 7(A) is not limited to criminal law enforcement records. Rather, the exemption applies to statutory administrative and regulatory enforcement proceedings as well, and thus encompasses USPTO's OED investigation and adjudication processes. See, e.g., Jefferson v. Dep't of Justice, 284 F.3d 172, 178 (D.C. Cir. 2002) (holding that Exemption 7 "covers investigatory files related to enforcement of all kinds of laws, including those involving adjudicative proceedings" (internal quotations omitted)). Here, OED file records pertain to pending or prospective law enforcement proceedings and could reasonably

be expected, upon release, to cause some articulable harm. As a result, USPTO is permitted to withhold these records under Exemption 7(A).

Exemption 7(C) permits withholding of law enforcement records where disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). A "categorical withholding" of information that identifies third parties in law enforcement records is ordinarily appropriate under Exemption 7(C). SafeCard Servs. v. SEC, 926 F.2d 1197, 1206 (D.C. Cir. 1991); see, e.g., Neely v. FBI, 208 F.3d 461, 646 (4th Cir. 2000) (apply Exemption 7(C) to withhold records referencing targets of investigatory interest). Here, release of open OED files would warrant a significant invasion of personal privacy for the individuals involved in the investigation, as long as the investigation remains open and/or non-public. As such, the investigatory files may also be withheld pursuant to Exemption 7(C).

Patent Application Records

With respect to the first part of your request for documents pertaining to your patent applications and portfolio in premium ticket operations, the USPTO indexes and makes available for public inspection and copying all files concerning issued patents and published applications, as well as re-examination files. 5 U.S.C. § 552(a)(2); 37 CFR § 1.11, 1.12 and 1.13. The USPTO's indices include: (1) an index of patents by application number, patent number, or control number; (2) an inventor's index; and (3) an index of assignors/assignees of patents.

Online: Many patents and published patent application files are available electronically on the USPTO website at http://portal.uspto.gov/pair/PublicPair.

In person: Complete patent files may be inspected and copied by any individual at the Public Search Facility of the USPTO, at 600 Dulany Street, Madison Building East, Alexandria, VA 22313. If you are unable to conduct a search personally, there are private searchers who conduct these kinds of searches. They are frequently listed in legal publications and electronic and paper telephone directories.

Ordering copies: Alternatively, copies of issued patent file contents or patent application file contents or a particular paper within the file may be requested electronically at http://ebiz1.uspto.gov/oems25p/index.html with authorization to charge the appropriate fee to a deposit account or credit card. You may also make a request for file contents by mail to the following address:

Mail Stop Document Services
Director of United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

The request must include the patent registration number or patent application publication number and payment of the appropriate fee.