

APPEAL,CLOSED,JURY,PATENT

U.S. District Court
Eastern District of Virginia – (Alexandria)
CIVIL DOCKET FOR CASE #: 1:17-cv-00482-LMB-TCB

Swartz v. Lee et al

Assigned to: District Judge Leonie M. Brinkema

Referred to: Magistrate Judge Theresa Carroll Buchanan

Case in other court: US Federal Circuit, 18-01122

Cause: 35:145 Patent Non-Infringement- Patent Applicant is Dissatisfied with PTO Decision

Date Filed: 04/21/2017

Date Terminated: 08/22/2017

Jury Demand: Plaintiff

Nature of Suit: 830 Patent

Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
04/21/2017	<u>1</u>	COMPLAINT against Michelle Lee, United States Patent and Trademark Office (Filing fee \$ 400, receipt number XXXXX.), filed by Mitchell R. Swartz. (Attachments: # <u>1</u> Letter, # <u>2</u> Civil Cover Sheet)(dest,) (Entered: 04/24/2017)
04/21/2017	<u>2</u>	NOTICE of Appearance <i>pro se</i> by Mitchell R. Swartz (dest,) (Entered: 04/24/2017)
04/21/2017	<u>3</u>	Declaration of Robert Smith by Mitchell R. Swartz. (dest,) (Entered: 04/24/2017)
04/21/2017	<u>4</u>	Declaration of Dr. Frank Gordon by Mitchell R. Swartz. (dest,) (Entered: 04/24/2017)
04/21/2017	<u>5</u>	Declaration of Dr. Brian Ahern by Mitchell R. Swartz. (dest,) (Entered: 04/24/2017)
04/21/2017	<u>6</u>	Declaration of Dr. Jean-Paul Biberian by Mitchell R. Swartz. (dest,) (Entered: 04/24/2017)
04/21/2017	<u>7</u>	Declaration of Gayle Verner by Mitchell R. Swartz. (dest,) (Entered: 04/24/2017)
04/21/2017	<u>8</u>	Filing fee: \$400, receipt number 14683065584 (dest,) (Entered: 04/24/2017)
05/02/2017	<u>9</u>	Letter to the Court providing service addresses for defendants by Mitchell R. Swartz. (dest,) (Entered: 05/03/2017)
05/03/2017	<u>10</u>	Summons Issued to be served via SPS mailed to Plaintiff as to Michelle Lee, United States Patent and Trademark Office, U.S. Attorney and U.S. Attorney General (dest,) (Entered: 05/03/2017)
05/17/2017	<u>11</u>	SUMMONS Returned Executed as to U.S. Attorney; served on 5/17/2017, answer due 7/17/2017. (dest,) (Entered: 05/17/2017)
05/17/2017	<u>12</u>	SUMMONS Returned Executed as to U.S. Attorney General; served on 5/17/2017. (dest,) (Entered: 05/17/2017)
05/17/2017	<u>13</u>	SUMMONS Returned Executed as to Michelle Lee; served on 5/17/2017 (dest,) (Entered: 05/17/2017)
05/17/2017	<u>14</u>	SUMMONS Returned Executed as to U.S. Patent and Trademark Office; served on 5/17/2017. (dest,) (Entered: 05/17/2017)
07/17/2017	<u>15</u>	MOTION to Dismiss for Failure to State a Claim with Roseboro,. by Michelle Lee, United States Patent and Trademark Office. (Kimball, Kimere) (Entered: 07/17/2017)
07/17/2017	<u>16</u>	MOTION to Dismiss for Lack of Jurisdiction with Roseboro,. by Michelle Lee, United States Patent and Trademark Office. (Kimball, Kimere) (Entered: 07/17/2017)
07/17/2017	<u>17</u>	Roseboro Notice <i>as to Motion to Dismiss (Dkt Nos. 15, 16)</i> by Michelle Lee, United States Patent and Trademark Office (Kimball, Kimere) (Entered: 07/17/2017)
07/17/2017	<u>18</u>	Memorandum in Support re <u>16</u> MOTION to Dismiss for Lack of Jurisdiction with Roseboro,., <u>15</u> MOTION to Dismiss for Failure to State a Claim with Roseboro,. filed by Michelle Lee, United States Patent and Trademark Office. (Attachments: # <u>1</u> Exhibit Ex. 1 ('691 Board Decision), # <u>2</u> Exhibit Ex. 2 ('258 Board Decision), # <u>3</u> Exhibit Ex. 3 ('058 Board Decision), # <u>4</u> Exhibit Ex. 4 ('765 Board Decision), # <u>5</u> Exhibit Ex. 5 ('643 Board Decision, # <u>6</u> Exhibit Ex. 6 (DIA Report), # <u>7</u> Exhibit Ex. 7

		(DTRA Report), # <u>8</u> Exhibit Ex. 8 ('457 Specification), # <u>9</u> Exhibit Ex. 9 ('970 Specification), # <u>10</u> Exhibit Ex. 10 ('058 Specification), # <u>11</u> Exhibit Ex. 11 ('765 Specification), # <u>12</u> Exhibit Ex. 12 (Damelin Decl.), # <u>13</u> Exhibit Ex. 13 (Bartlett Decl.), # <u>14</u> Exhibit Ex. 14 (Unpublished Cases))(Kimball, Kimere) (Entered: 07/17/2017)
07/17/2017	<u>19</u>	Notice of Hearing Date set for 9/15/17 re <u>16</u> MOTION to Dismiss for Lack of Jurisdiction with Roseboro.,, <u>15</u> MOTION to Dismiss for Failure to State a Claim with Roseboro.,. (Kimball, Kimere) (Entered: 07/17/2017)
07/18/2017		Set Deadlines as to <u>16</u> MOTION to Dismiss for Lack of Jurisdiction with Roseboro.,, <u>15</u> MOTION to Dismiss for Failure to State a Claim with Roseboro.,, Motion Hearing set for 9/15/2017 at 10:00 AM in Alexandria Courtroom 600 before District Judge Leonie M. Brinkema. (clar,) (Entered: 07/18/2017)
08/08/2017	<u>20</u>	MOTION for Leave to File Plaintiff's Opposition to Defendant's Motion to Dismiss by Mitchell R. Swartz. (Attachments: # <u>1</u> Letter)(dest,) (Entered: 08/08/2017)
08/08/2017	<u>21</u>	MOTION to Strike Defendant's Motion by Mitchell R. Swartz. (Attachments: # <u>1</u> Letter)(dest,) (Entered: 08/08/2017)
08/08/2017	<u>22</u>	MOTION for Reciprocity Re: Roseboro by Mitchell R. Swartz. (dest,) (Attachment(s): # <u>1</u> Letter) (dest,). (Entered: 08/08/2017)
08/08/2017	<u>23</u>	Declaration of Dr. Mitchell Swartz by Mitchell R. Swartz. (Attachments: # <u>1</u> Letter)(dest,) (Entered: 08/08/2017)
08/08/2017	<u>24</u>	MOTION to Appoint Counsel by Mitchell R. Swartz. (Attachments: # <u>1</u> Letter)(dest,) (Entered: 08/08/2017)
08/08/2017	<u>25</u>	Memorandum in Opposition to Defendant's Motion to Dismiss filed by Mitchell R. Swartz. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14, # <u>15</u> Exhibit 15, # <u>16</u> Exhibit 16, # <u>17</u> Exhibit 17, # <u>18</u> Exhibit 18, # <u>19</u> Exhibit 19, # <u>20</u> Exhibit 20, # <u>21</u> Exhibit 21, # <u>22</u> Exhibit 22, # <u>23</u> Exhibit 23, # <u>24</u> Exhibit 24, # <u>25</u> Exhibit 25, # <u>26</u> Exhibit 26, # <u>27</u> Exhibit 27, # <u>28</u> Exhibit 28, # <u>29</u> Exhibit 29, # <u>30</u> Exhibit 30, # <u>31</u> Exhibit 31, # <u>32</u> Exhibit 32, # <u>33</u> Exhibit 33, # <u>34</u> Exhibit 34, # <u>35</u> Exhibit 35, # <u>36</u> Exhibit 36, # <u>37</u> Exhibit 37, # <u>38</u> Exhibit 38, # <u>39</u> Exhibit 39, # <u>40</u> Exhibit 40, # <u>41</u> Exhibit 41, # <u>42</u> Exhibit 42, # <u>43</u> Exhibit 43, # <u>44</u> Exhibit 44, # <u>45</u> Exhibit 45, # <u>46</u> Exhibit 46, # <u>47</u> Exhibit 47, # <u>48</u> Exhibit 48, # <u>49</u> Exhibit 49, # <u>50</u> Exhibit 50, # <u>51</u> Exhibit 51, # <u>52</u> Exhibit 52, # <u>53</u> Exhibit 53, # <u>54</u> Exhibit 54, # <u>55</u> Exhibit 55 part 1, # <u>56</u> Exhibit 55 part 2, # <u>57</u> Exhibit 56, # <u>58</u> Exhibit 57, # <u>59</u> Exhibit 58, # <u>60</u> Attachment– Supreme Court of the United States case booklet)(dest,) Modified on 8/8/2017 (dest,). (Entered: 08/08/2017)
08/14/2017	<u>26</u>	MOTION for Extension of Time to File Response/Reply as to <u>16</u> MOTION to Dismiss for Lack of Jurisdiction with Roseboro.,, <u>15</u> MOTION to Dismiss for Failure to State a Claim with Roseboro., by Michelle Lee, United States Patent and Trademark Office. (Attachments: # <u>1</u> Proposed Order)(Kimball, Kimere) (Entered: 08/14/2017)
08/14/2017	<u>27</u>	ORDER– it is hereby ORDERED that Defendant's motion for an extension of time is GRANTED; and it is hereby ORDERED that Defendant shall file its reply memorandum on or before August 17, 2017. Signed by District Judge Leonie M. Brinkema on 8/14/2017. (dest,) (copy mailed to pro se) (Entered: 08/14/2017)
08/17/2017	<u>28</u>	NOTICE by Michelle Lee, United States Patent and Trademark Office of <i>Substitution of Defendant</i> (Kimball, Kimere) (Entered: 08/17/2017)
08/17/2017	<u>29</u>	REPLY to Response to Motion re <u>16</u> MOTION to Dismiss for Lack of Jurisdiction with Roseboro.,, <u>15</u> MOTION to Dismiss for Failure to State a Claim with Roseboro., filed by Michelle Lee, United States Patent and Trademark Office. (Attachments: # <u>1</u> Exhibit Def. Ex. 15 ('058 Final Rejection), # <u>2</u> Exhibit Def. Ex. 16 ('643 Final Rejection))(Kimball, Kimere) (Entered: 08/17/2017)
08/17/2017	<u>30</u>	ORDER granting [Dkt. No. 20] Motion for Leave to File, and it is hereby ORDERED that plaintiff's opposition brief is accepted for filing; and it is hereby ORDERED that plaintiff's Motion to Strike [Dkt. No. 21] be and is DENIED; and it is hereby

		ORDERED that plaintiff's Motion for Reciprocity [Dkt. No. 22] be and is DENIED. Signed by District Judge Leonie M. Brinkema on 8/17/2017. (see Order for further details) (dest,) (copy sent as directed in the Order) (Entered: 08/17/2017)
08/22/2017	<u>31</u>	MEMORANDUM OPINION. Signed by District Judge Leonie M. Brinkema on 8/22/2017. (dest,)(copy mailed to plaintiff by chambers) (Entered: 08/22/2017)
08/22/2017	<u>32</u>	ORDER– For the reasons stated in the accompanying Memorandum Opinion, defendant's Motion to Dismiss [Dkt. Nos. 15 and 16] is GRANTED, and it is hereby ORDERED that the Complaint be and is DISMISSED WITH PREJUDICE, except for Count 3, which is DISMISSED WITHOUT PREJUDICE. Signed by District Judge Leonie M. Brinkema on 8/22/2017. (see Order for further details) (dest,) (copy mailed to plaintiff by chambers) (Entered: 08/22/2017)
08/22/2017	<u>33</u>	JUDGMENT– Pursuant to the order of this Court entered on August 22, 2017 and in accordance with Federal Rules of Civil Procedure 58, JUDGMENT is hereby entered in favor of Joseph Matal and United States Patent and Trademark Office and against Michael R. Swartz. Signed by Clerk on 8/22/2017. (dest,) (Entered: 08/22/2017)
09/01/2017	<u>34</u>	MOTION for Reconsideration re <u>33</u> Judgment, <u>32</u> Order on Motion to Dismiss for Failure to State a Claim, Order on Motion to Dismiss/Lack of Jurisdiction, by Mitchell R. Swartz. (Attachments: # <u>1</u> Letter)(dest,) (Entered: 09/07/2017)
09/01/2017	<u>35</u>	MOTION for Leave to File Memorandum in Support by Mitchell R. Swartz. (Attachments: # <u>1</u> Proposed Memorandum in Support, # <u>2</u> Exhibit 59, # <u>3</u> Exhibit 60, # <u>4</u> Exhibit 61, # <u>5</u> Exhibit 62, # <u>6</u> Exhibit 63 Part 1, # <u>7</u> Exhibit 63 Part 2, # <u>8</u> Exhibit 63 Part 3, # <u>9</u> Exhibit 64 Part 1, # <u>10</u> Exhibit Part 2, # <u>11</u> Exhibit Part 3, # <u>12</u> Exhibit 65)(dest,) (Entered: 09/07/2017)
09/07/2017	<u>36</u>	ORDER– it is hereby ORDERED that plaintiff's Motion for Leave to File a Memorandum in Support [Dkt. No. 35] be and is DENIED AS MOOT, and it is further ORDERED that plaintiffs Motion for Reconsideration [Dkt. No. 34] be and is DENIED. Signed by District Judge Leonie M. Brinkema on 9/7/2017. (see Order for further details) (dest,) (copy mailed to Pro Se by chambers) (Entered: 09/07/2017)
10/24/2017	<u>37</u>	NOTICE OF APPEAL as to <u>33</u> Judgment, <u>31</u> Memorandum Opinion, <u>36</u> Order on Motion for Reconsideration, Order on Motion for Leave to File., <u>30</u> Order on Motion for Leave to File, Order on Motion to Strike, Order on Motion for Miscellaneous Relief, <u>32</u> Order on Motion to Dismiss for Failure to State a Claim, Order on Motion to Dismiss/Lack of Jurisdiction, by Mitchell R. Swartz. Filing fee \$ 505. (Attachments: # <u>1</u> Letter, # <u>2</u> Receipt)(dest,) (Entered: 10/26/2017)
10/26/2017		Transmission of Notice of Appeal to US Federal Circuit re <u>37</u> Notice of Appeal, (dest,) (Entered: 10/26/2017)
11/01/2017	<u>38</u>	USCA Case Number 18–1122 U.S. Federal Circuit for <u>37</u> Notice of Appeal, filed by Mitchell R. Swartz. (dest,) (Entered: 11/01/2017)
07/17/2018	<u>39</u>	Opinion of USCA for the Federal Circuit decided 7/17/2018 re <u>37</u> Notice of Appeal–AFFIRMED(dest,) (Entered: 07/17/2018)
07/17/2018	<u>40</u>	USCA for Federal Circuit JUDGMENT as to <u>37</u> Notice of Appeal, filed by Mitchell R. Swartz. (dest,) Modified on 7/17/2018 to add document (dest,). (Entered: 07/17/2018)