

**UNITED STATES DISTRICT COURT
for the Eastern District of Virginia**

Mitchell R. Swartz,
Plaintiff

v.

Michelle Lee, Acting Under Secretary of Commerce
for Intellectual Property and Director
of the United States Patent and Trademark Office; and
United States Patent and Trademark Office,
Defendants

Filed: April 19, 2017

**CIVIL COMPLAINT
& DEMAND FOR JURY TRIAL**

Dr. Mitchell Swartz, *pro se*
Weston, Massachusetts

I. GRAVAMEN OF THE CASE

1. The present, above-entitled, action is about the patentability of a series of inventions. During a series of US Patent applications for a series of developing high-technology inventions, the Defendants have systematically violated due process, including failing to properly log and to properly address submitted materials, including Evidence from the Defense Intelligence Agency (DIA), Defense Threat Reduction Agency (DTRA), NASA, and the American Nuclear Society. In this matter, therefore, the administrative record is complicated by the sequestration and spoliation of submitted, rebutting Evidence by some at the USPTO.

2. Most relevant to this Complaint, the Supreme Court clarified the scope of 35 U.S.C. §145 proceedings in its April 18, 2012, unanimous decision in *Kappos v. Hyatt*, affirming the Federal Circuit's en banc decision which held that Evidence not submitted to the Patent and Trademark Office (PTO) during prosecution is admissible in a civil action brought against the Director of the PTO under 35 U.S.C. §145 subject only to the limitations imposed by the Federal Rules of Evidence and the Federal Rules of Civil Procedure [***].

[***] The Supreme Court held that the district court hearing a §145 action must make a *de novo* finding “when the new evidence is presented on a disputed question of fact” [Justice Thomas, with Justices Sotomayor and Breyer concurring].

3. Therefore, Plaintiff asks this Honorable Court to examine the record in a *sui generis* statutory review regime that is distinct from review under other provisions of law because although the Federal Circuit's review in a §141 appeal is expressly limited to the record before the Board, however Section §145 includes no such express limitation.

II. JURISDICTION AND VENUE

4. Jurisdiction and venue are proper in this Court pursuant to 35 U.S.C. § 145 and Article III. Six patent applications are discussed here. In each, there have been two rejections and the Plaintiff has filed Appeals and has paid the fees. The Patent Trial and Appeal Board [PTAB] "Decision(s) on Request for Rehearing" were rendered on February 24, 28, and March 14, 2017. The PTAB decisions were final decisions, within the meaning of 37 C.F.R. § 41.2.

5. The Plaintiff is dissatisfied with the decisions of the Patent Trial and Appeal Board in said appeals under section 134(a) and has not taken this appeal to the United States Court of Appeals for the Federal Circuit. Therefore, pursuant 35 U.S.C. 145 [Civil action to obtain patent], Plaintiff has filed the above-entitled civil action against the Director in the United States District Court for the Eastern District of Virginia, in accordance with 35 U.S.C. §145, within 60 days of the Board's "Decision on Request for Rehearing."

6. By the systematic failure to enter and address timely-submitted Evidence, the Plaintiff has been denied his right to an impartial tribunal [28 U.S. Code Section 144, *Mayberry v. Penna.*; *Duncan v. Louisiana*]. Defendants have acted under color of Federal law [*Osborn v. Bank of United States*], and therefore as Judge Marshall has indicated, the mere possibility that a question of federal law might arise is sufficient to satisfy the "arising under" jurisdictional authorization of Article III.

III. THE PARTIES

7. The Plaintiff is Mitchell Swartz, a citizen of the United States and a resident of the Commonwealth of Massachusetts, a Board Certified physician trained at Harvard Medical School and the Massachusetts General Hospital, an electrical engineer trained at at the Massachusetts Institute of Technology (MIT), an inventor, and a former honorary Deputy Sheriff in Middlesex County, MA.

8. Defendant Michelle Lee is an Individual and works at the US Patent and Trademark Office, as Acting Director of the USPTO. The Director is the head of the USPTO and is responsible for superintending or performing all duties required by law with respect to the granting and issuing of patents, and is designated by statute as the official responsible for determining the period of patent adjustments under 35 U.S.C. § 154.

IV. FACTUAL BACKGROUND

9. The Plaintiff is a successful inventor who has been issued US and other Letters Patents in other fields. For example, Plaintiff was previously, issued several Letters Patent involving medicine, energy, and chemistry [United States Letters Patent Numbers 4,407,282, 4,402,318, 4,346,172, 4,305,390, 4,243,751, 4,181,128, and 4,139,348; also UK 1,564,520 Canada 1,085,723, and France 76-3576].

10. Pertaining to this Complaint, the Plaintiff submitted more than ten patent applications to the Defendants involving clean energy that has absolutely no carbon emissions and no radioactivity. To demonstrate this in detail, six representative patent applications will be used [called patent applications '258, '381, '058, '765, '691, and '643]. The series of inventions are used to make heat very quietly and efficiently; and can be used to generate electricity [shown schematically in Exhibit 1].

11. The actual function, operation, and output, of the inventions discussed herein are to make HEAT. Heat means ordinary thermal energy such as used to heat homes, used to heat water, and used to purify water, such as needed in industrial laboratories and hospitals, worldwide.

12. The heat made by the inventions can be on a circuit board, or made in a widely distributed system in homes and in neighborhoods with no need for a central controlled distribution. The products of the heat made by these inventions also have no carbon footprint, are non-toxic and are not radioactive.

13. Some of the Plaintiff's patent applications were made "SPECIAL" by the Board of Patent Appeal because of their importance.

14. After the Defendants first responded against the Plaintiff, there was [In re Brana, 51 F.3d at 1566, 34 USPQ2d at 1441] a

"burden shift ... to provide rebuttal evidence sufficient to convince such a person of the invention's asserted utility".

Therefore, over and over, the Plaintiff undertook the full burden of coming forward many times with his rebuttal Evidence [hereinafter "Evidence"] before the requisite time as required [In re Oetiker, 977 F.2d at 1445, 24 USPQ2d at 1444].

15. Plaintiff's multiply-submitted Evidence included unclassified relevant reports from DIA, DTRA, NASA, and the US Navy. Also included were sworn Declarations of individuals with high probative value, and several scientific technical papers and peer-reviewed publications written by the Plaintiff published in the American Nuclear Society's *Fusion Technology* and *Current Science*.

16. Plaintiff had a right to submit Evidence to rebut the Defendants. Patentability is determined on the totality of the record, by a preponderance of the Evidence with due consideration to persuasiveness of argument. As examples, said six patent applications will be discussed. It will be shown that in each case the original specification has been ignored, that submitted evidence (before final) was ignored, that declarations were ignored, and that notification of these issues were ignored.

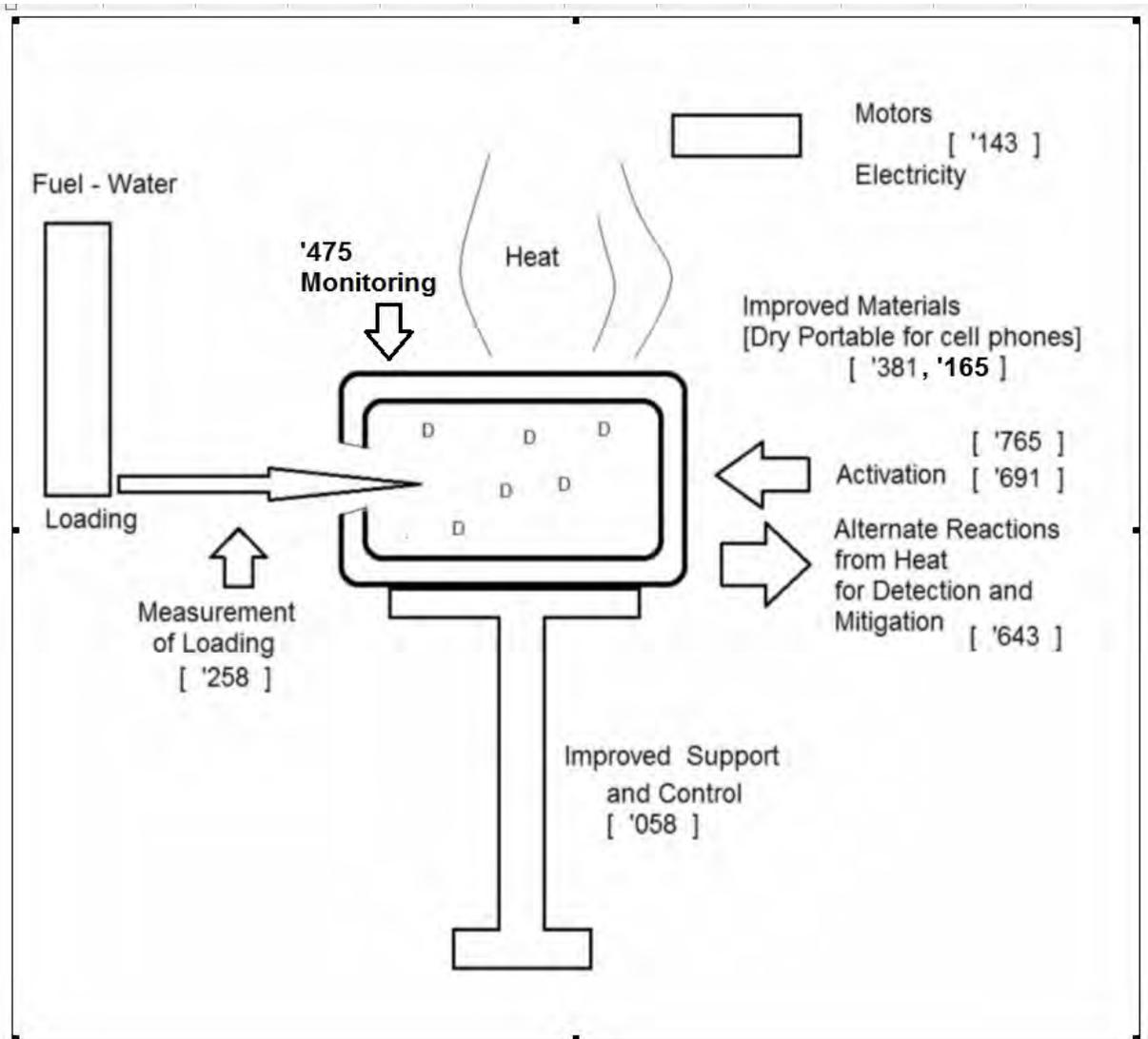


Exhibit 1 - This figure shows a schematic overview of several inventions, described herein, that make heat. These energy-production and energy-conversion patent applications make heat efficiently; and have also been used to generate electricity and drive small motors. Their roles of application are shown by position in the figure; one measures loading (entry of fuel)), another two control the reaction, while others monitor and detect the loading and output, and others convert the heat to electricity.

17. Instead of an appropriate response, in every one of the present patent applications discussed here, the Defendants have used tactics such as non-docketing, late-docketing, mislabeling, sequestration or ignoring of Evidence, and once even purporting the Evidence was suddenly "lost".

18. Six patent applications are given as examples. The Plaintiff hereby incorporates them in their entirety by reference, each as stated herein including all Appeal Briefs, Reply Briefs, and all timely-submitted Evidence, including that which is in the record, as cited below, as if it were explicitly included and set forth herein, too.

S.N. 12/589,258 [filed 10/20/2009; Appeal 2013-004667]

S.N. 13/544,381 [filed: 07/09/2012; Appeal 2017-006193]

S.N. 12/932,058 [filed: 7/05/2003; Appeal 2012-012622]

S.N. 09/750,765 [Filed: 12/28/00; Appeal 2012-011287]

S.N. 09/748,691 [filed: 12/26/2000;Appeal 2012-000333]

S.N. 12/316,643 [filed: 12/15/2008; Appeal 2013-002922]

FIRST PATENT APPLICATION TO BE DISCUSSED: '258

19. Plaintiff's patent application S.N. 12/589,258 [also called '258; for “Apparatus and Process for Monitoring Loading”; filed 10/20/2009; before The Patent Trial and Appeal Board as Appeal 2013-004667], generally speaking, is a method to measure the loading in a metal (ratio of hydrogen to palladium) based on its vibrational frequency (Exhibit 2). Some of the output is shown in Exhibit 3 and this data has also been published (Exhibit 3).

20. Even though some of the output has been published (Exhibit 3), the invention was systematically, wrongly described by the Office, and its output ignored. When the Defendants failed to discuss the invention correctly, and made inaccurate statements about it, the Applicant submitted Evidence correcting the Defendants' mistakes. The Official Stamp of the Defendants' Mail Room indicates that the Evidence rebutting the Defendants was received by them six times, as shown in Exhibits 4 and 5.

21. When the Defendants refused to address the Applicant's multiply submitted Evidence, he filed an Appeal Brief to the Patent Trial and Appeal Board on September 17, 2011. A second Appeal Brief, demanded by the Defendants [***], was filed November 6, 2011, to correct purported disputed issues. A third Appeal Brief, demanded by the Defendants [***], was filed December 5, 2011, to again correct purported disputed issues. Even with this, the Decision lists the Appellant as ‘ex parte’.

[***] - These changes are not required for a pro se litigant, but the Defendants ignored their own standards of procedure.

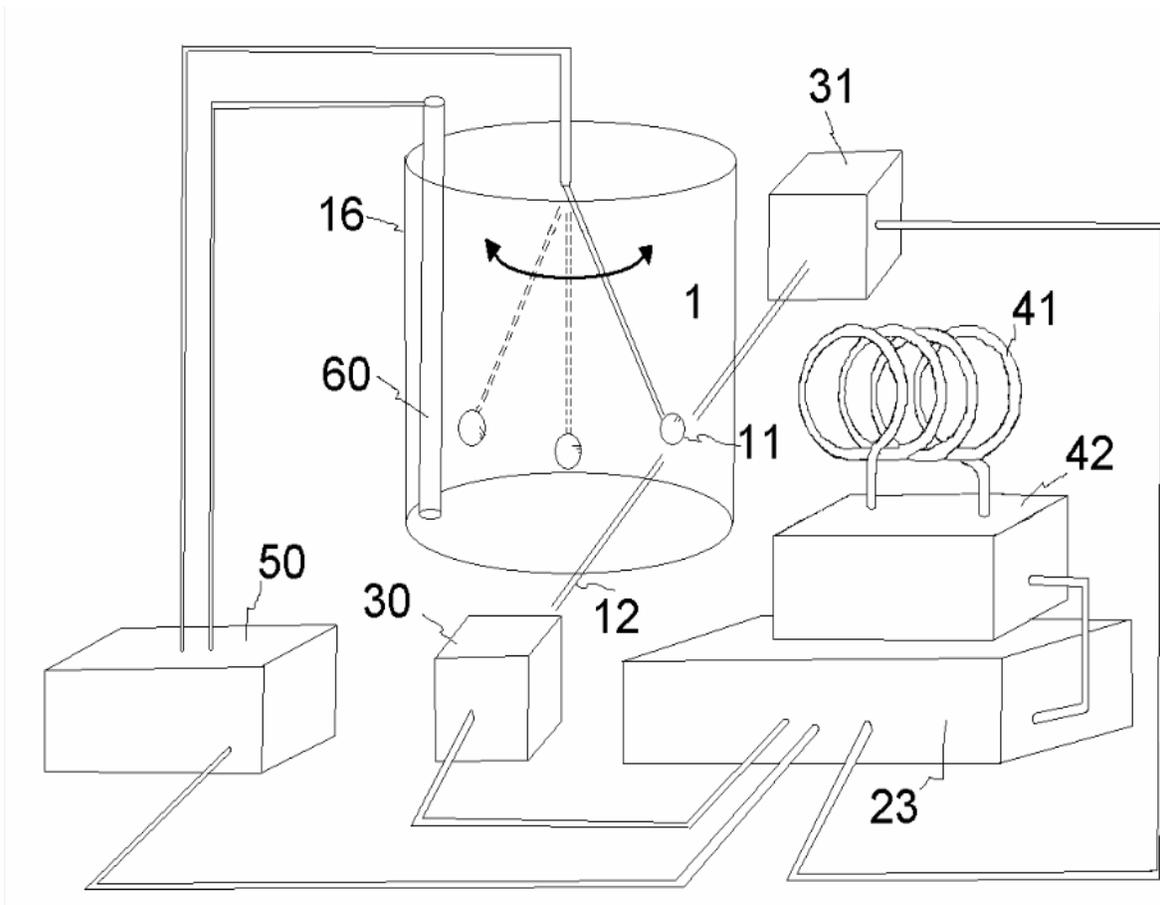
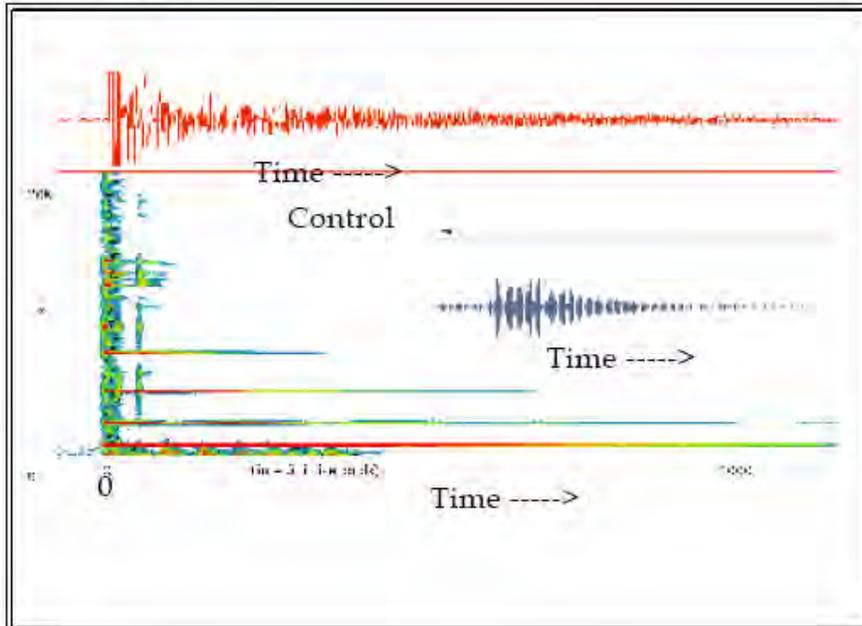


Exhibit 2 - This Figure schematically shows the '258 invention which measures the loading (ratio of D to Pd) of a metal by monitoring its vibration using its interruption of an optical beam. The metal (labeled 1) is loaded, meaning it gets heavier, too; and as a result the swinging frequency depends upon the loading. More loading means the vibration slows.

APPENDIX H



FAST FOURIER TRANSFORM OF VIBRATING ELECTRODE

After beginning the vibration with a single pulse at $t=0$, and picking up the signal with two audio transducers (top and mid-right hand side), the short-lived vibrational modes of the electrode are dramatically revealed by computed processing using a fast fourier transform (FFT; bottom and lower left; the frequencies are vertical and time is horizontal). A calibration signal ("control") was inserted at $17,390^{\pm 33}$ Hz. (the blue horizontal line approximately half-way up the image). The sampling rate was ~ 100 kilohertz, and the cathode was #92-505b/Ni-B2 immersed in ordinary water using the teachings of the present original specification and claims.

Exhibit 3 - This Figure shows the actual output of the '258 invention during a run where monitoring of vibration can be clearly seen. This figure is from the Petition for Certiorari to which the Defendants failed to respond, and is taken from the peer reviewed publication and the original specification of '258 [Swartz M., Deuterium Production and Light Water Excess Enthalpy Experiments using Nickel Cathodes, J. New Energy 1, No. 3, (1996), 219 www.iscmns.org/FIC/J/JNE1N3.pdf]

22. The Official Stamp of the Defendants' Mail Room indicates that they received all the Briefs that Plaintiff sent them [Exhibit 4]. One such response is shown in Exhibit 5 which shows three (3) copies [1 printed, 2 on CD-ROM] of the Evidence including the Defense Intelligence Agency report (confer logo in upper left of Exhibit 5).

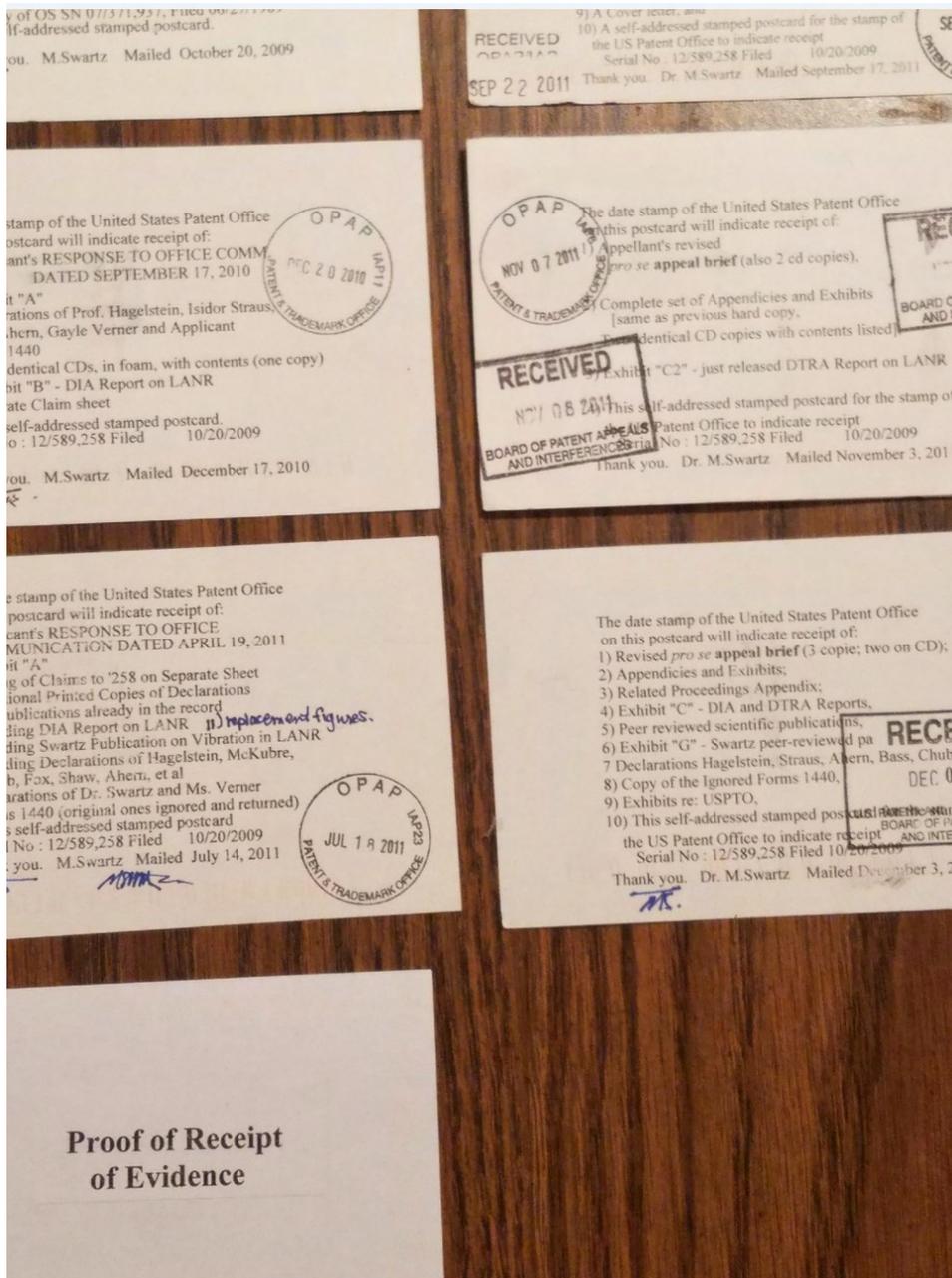


Exhibit 4 - This photograph shows the actual date stamps of the Defendants' mail room proving receipt of the Evidence in '258.

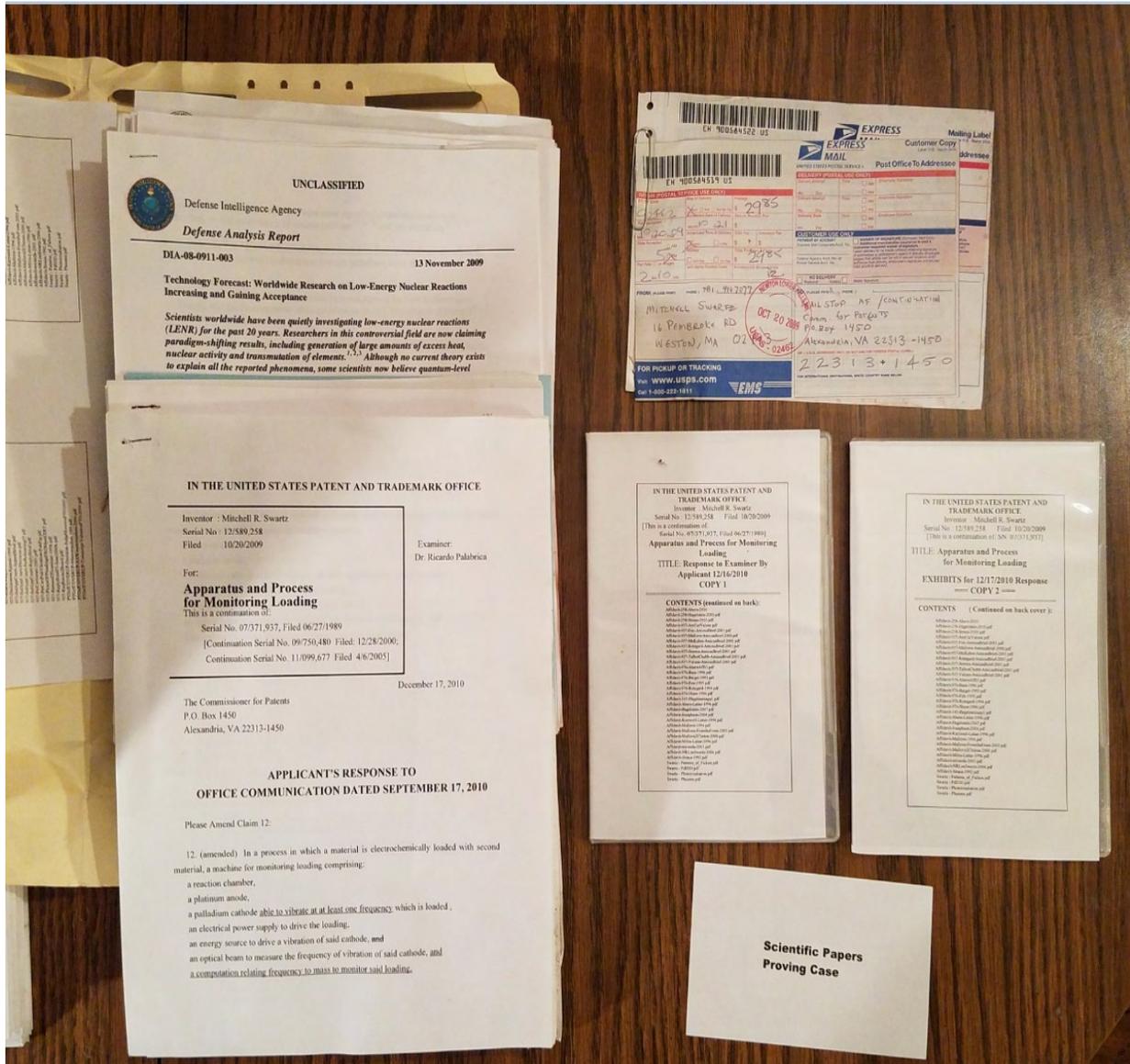


Exhibit 5 - This photograph shows the actual Evidence of '258 timely-submitted with the logo of the DIA (top left) and the 2 copies of additional CD-ROMs which supplemented the paper copies. All were simply ignored by the Defendants.

23. Despite the multiple Appeal Briefs and Evidence submitted [and received] showing the Defendants were in error, the Decision [hereinafter "258-Decision"] of the Patent Trial and Appeal Board made on September 28, 2016, sent through the US mail, lists the Plaintiff as "ex parte".

The PTO Ignored the Original Specification

24. The PTO did not correctly describe the submitted invention. None of the relevant figures in the invention's original specification are discussed. The actual function: monitoring loading remains ignored by the Office. The actual invention described in the original specification is only discussed in passing by presenting one claim, despite what the invention explicitly is: **a means to measure loading**. In fact, the PTO wrongly ignores that this measurement is useful to many things as discussed in the original specification but ignored in the Decision.

25. As proof of the PTAB Decision's failure to accurately reflect the original specification, consider the number of times words are used in the original specification, and in the Decision. The next Table is representative of the problem. Vibration is what the invention is about; and 'cold fusion' and 'excess heat' are the what the PTO wrongly purports it is.

**TABLE 1 - WORD/PHRASE PREVELANCE
IN THE ORIGINAL SPECIFICATION AND DECISION**

Word or phrase	# Times Appears in original specification	# Times Appears in Decision
"vibration"	16	3 , all in copy of claim 12, zero in the text of the Decision where it is not discussed
"Excess heat"	0	4
"cold fusion"	1	31

The PTO Ignored Submitted Evidence

26. The PTO and the 258-Decision by the Patent Trial and Appeal Board do not discuss the submitted, multiply received, Evidence in any substantive way.

The most important peer-reviewed publication which was submitted, and received more than five times, is mentioned once by title but not discussed as to its content.

The submitted and received Evidence from the DIA and DTRA, explicitly mentioning Applicant's working technologies in this field, is not discussed.

27. In fact, none of the Evidence which Defendants received in September 2011, November 2011, or December 2011, and at other times were substantively and appropriately itemized and discussed. The Decision is therefore untruthful by misquoting, misrepresenting, and substituting opinion for fact.

The PTO and Decision Corruptly Ignore That A Later-Submitted Patent Application was Issued on the the Same thing

28. The 258-Decision by the Patent Trial and Appeal Board fails to mention, address, or refute the fact that the Defendants issued a patent later for the vibration measurement ["Device and method for controlling fuel cell system with vibration amplitude detection"]. With no data, and with less clear claims, a patent for similar technology was issued later to a far more indefinite application [US 8247122 B2 was issued on Jul 8, 2004 to Masaru Okamoto of Nissan Motor Co., Ltd.].

DECISION of the BOARD

29. The Decision was written by Michael Holter, Mena Metlock and Matthew Myers [***]. The Decision on Rehearing was dated Feb. 24, 3017, and written by the same.

[***] The Decision by the Board of Patent Appeals and Interferences, was unsigned; and the Examiner is not named. The Decision clearly was not re-read as Dr. Ahern is referred to as Dr. Ahem(sic) twice on page 20, and at other sites therein.

Decision Uses a False "ex parte" Label for Corrupt Purpose

30. The 258-Decision by the Patent Trial and Appeal Board, mentions an Examiner's Brief allegedly dated November 13, 2012. The Examiner's purported Answer Brief was never sent to the Plaintiff, but instead the case was labeled 'ex parte', against his will. Plaintiff (there Appellant) has not been "ex parte" as the Decision falsely purports. The Appellant has always responded.

31. Despite the multiple Appeal Briefs and Evidence submitted [and received] showing the Defendants were in error, the Decision [hereinafter "258-Decision"] of the Patent Trial and Appeal Board made on September 28, 2016, sent through the US mail, lists the Plaintiff as "ex parte". Plaintiff has not been "ex parte" as the 258-Decision purports.

Decision Ignores Complete Content of All Declarations

32. The Decision by the Board of Patent Appeals and Interferences, does not discuss fully and completely, and with appropriate issue, the submitted Declarations in the relevance of which they were given. The Declarants are ridiculed, marginalized, and their actual factual content presented is never fully, accurately described. This is done wrongly and with impropriety, presented to lead away from the important issues. Two examples follow.

33. For example, consider the Declarations only of Dr. Ahern and Mr. Straus. First, Mr. Straus. The Decision briefly limits Mr. Straus' background, and then removes the actual important content of what he says. This is from the Decision:

"After considering the Straus Declaration, we find it fails to provide sufficient evidence to rebut the Examiner's prima facie case of inoperability. At the outset, we note that Mr. Straus's opinion regarding utility is based on information "from the media and literature" (see id.), rather than Mr. Straus's own personal knowledge."

Is it true? What is Mr. Straus' background? Is he really without probative value? And does he really say nothing about operability and function as the Decision purports? In fact, Mr. Straus compares the operability of the present invention to another which is why the Board Ordered a Remand [Exhibit 6].

"I have earned the degree of Bachelor of Science in Electrical Engineering from the Massachusetts Institute of Technology in 1968, am an inventor [U.S. Patents 4,370,570, 4,719,699, and 4,760,355], and a Registered Professional Engineer in the Commonwealth of Massachusetts [Reg. #31468]. I am familiar with the interactions of magnetic and electric fields, and electric charges and currents with materials. My fields of experience include circuit design, three-dimensional display technology, and electromagnetic compatibility including materials and testing. In the area of electromagnetic compatibility, I have been active since 1976, and I am a nationally recognized expert""The Swartz invention proposes measuring mass change in his pendulum to detect the actual state of the physical intracathodic system, namely the level of deuteron loading into the palladium metal cathode from the heavy water electrochemical cell. ... In Swartz' system, the measurement of the intracathodic system state is direct, and indeed, must be for the invention to have value. ... In my opinion, one novelty introduced by the Swartz invention is that its vibrating cathode and associated detectors provide a method of measurement that directly determine the intracathodic loading, a key important parameter. The Johnson coulometer does not anticipate this for two reasons. First, although Johnson's pendulum does have a response to mass change via a frequency of resonance (as do all pendula), the Johnson invention only measures the total charge transferred, a different parameter.

[November 27, 1992 Isidor Straus]

Even THIS small excerpt is VERY different from what is falsely alleged in the Decision. This invention's operability is not only discussed by Mr. Straus, but is compared to a different pendulum system. Both are operable, but only one measures loading.

34. An example of a wrongly dismissed Declarant is that of Dr. Ahern. The Decision briefly limits discussion of Dr. Ahern's background, and then removes the actual important content of what he says. This is from the Decision:

"After considering the declaration provided by Dr. Ahern, we agree with the Examiner that it "has no direct relation to the instant application because the declarant is essentially airing complaints for rejection of his own application (which is different from the instant application) by the examiner" . Because the Ahern declaration is unrelated to the now claimed invention and offers little or no specific opinion or facts directed to whether Appellant's presently claimed invention is operable and reproducible, we find it provides little, if any, probative value with regard to rebutting the Examiner's prima facie case.

Is this really true.

Does Dr. Ahern ONLY discuss his frustration about a single "application"? In fact, Dr. Ahern talks of how the Examiner, in his case, too, led him down a road which was intended to go nowhere except remove civil rights under color of Law. In fact, Dr. Ahern gives the reason for his "strong support" which the Decision selectively edited out.

"I am an expert in material science, quantum chemistry and nanotechnology. I received my PhD in Materials Science from the Massachusetts Institute of Technology (Cambridge, MA) in 1984. 3. I served at USAF Rome Laboratory evaluating new material systems with potential importance for military applications, as a senior scientist in the Electromagnetic Materials Division. From 1985 until 1995 I was the U.S. representative to NATO Panel III on Electromagnetic Materials where my duties were to establish collaborations among scientists in the seven member countries.

I sympathize with the Applicant, Dr. Mitchell Swartz. My technology, my scientific explanations, and my arguments were summarily essentially ignored and dismissed by Mr. Palabrica, as he appeared to have pre-judged my technology and invention as part of the 'cold fusion' phenomenon. It was not.

I did not even used those words. I did not even use the word "fusion" in my filing. I did use the metal palladium and heavy water, but the similarities ended there. In discussions, Mr. Palabrica implied that if I removed all references to palladium and heavy water that a successive patent application would be allowed. Mr. Palabrica said that a new filing without the words 'fusion', 'palladium' and 'heavy water' would have a much better chance of moving forward. This was an odd request by Mr. Palabrica because to compliance to his demand would have made a second filing useless by removing the very materials used. Because Mr. Palabrica apparently has the power to decide what an inventor's technology would be, I gave up in frustration even though I believed, and continue to believe, that the technology was sound.

I am the inventor of over 20 patents, and have never experienced such a response from any Examiner before, like I have from Mr. Palabrica. Mr. Palabrica's response was inappropriate for a Patent Examiner. The comments involve attempting to change an invention by overstepping his directives and acting as a 'protector' of scientific knowledge. The Applicant, Dr. Mitchell Swartz appears to be laboring under the same misuse of authority. I have known Mitchell Swartz since 1991. I would like to express my strong support for the work being conducted by Dr. Mitchell Swartz in the field of isotopic fuel loading of metal lattices and lattice assisted nuclear reactions. I believe his investigations are some of the most thorough and precise yet conducted in isotopic loading and lattice assisted nuclear reactions, and that the thermal effects he is observing are real and will ultimately be useful on a large scale. "

[December 16, 2010 Dr. Brian Ahern]

Even THIS small excerpt is very different from the what is falsely alleged in the Decision. There is the appearance of impropriety if not obstruction of justice.

The PTO and Decision Ignore the Previous Remands

35. The previous Remands from the Board [e.g. Exhibit 6], which the Examiner failed to address, were not discussed. The Orders have been swept under the proverbial rug revealing an obvious deep appearance of impropriety.

<p style="text-align: center;"><u>THIS OPINION WAS NOT WRITTEN FOR PUBLICATION</u></p> <p>The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.</p> <p style="text-align: center;">Paper No. 74</p> <p style="text-align: center;">UNITED STATES PATENT AND TRADEMARK OFFICE</p> <p style="text-align: center;">BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES</p> <p style="text-align: center;"><u>Ex parte MITCHELL R. SWARTZ, pro se</u></p> <p style="text-align: center;">Appeal No. 94-2921 Application 07/371,937¹</p> <p style="text-align: center;">ON BRIEF</p> <p>Before METZ, JOHN D. SMITH and WARREN, <u>Administrative Patent Judges.</u></p> <p>JOHN D. SMITH, <u>Administrative Patent Judge.</u></p> <p style="text-align: center;"><u>REMAND TO THE EXAMINER</u></p> <p>This is an appeal pursuant to 35 USC § 134 from the final rejection of claims 32 through 43 which involve "cold fusion" technology.</p> <p>Representative claims 32 and 42 are reproduced below:</p> <p>32. In a process for producing a product from an isotopic fuel using a material which is electrochemically loaded, a method for monitoring the isotopic fuel within said material that comprises:</p>	<p>Appeal No. 94-2921 Application 07/371,937</p> <p>First, it is observed that the Brief filed November 30, 1992 (referred to as a "Supplemental Brief") is not now physically present in the file wrapper. Secondly, appellant's Brief filed September 11, 1992 refers to numerous publications, for example at pages 20 and 21 of that Brief, which are not specifically referred to or addressed in the examiner's Answer. Particularly, appellant's Brief refers to various publications including Freedman (Science, 4/24/92), Chandler (Boston Globe, 4/17/92); Srinivasan, Current Science, 143 (1991); Storms, Fusion Technology, 17, 680 (1990); Gozzi, J. Fusion Energy, 9, 241 (1990); Menlove, J. Fusion Energy, 9, 495 (1990); Bush, J. Electro. Chem., 304, 271 (1991); Matsumoto, Fusion Technology, 20, 323 (1991); and Swartz (1992). Additionally, we observe that supporting declarations for the Brief filed September 11, 1992 and for the Supplemental Appeal Brief filed November 30, 1992 are also in this record. Additionally, attached to the papers filed on November 30, 1992 is a declaration from Strauss.</p> <p>None of the above materials are specifically referred to in the examiner's Answer. Thus it cannot be determined from the record which if any of these materials have been formally entered and considered by the examiner.</p>
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Exhibit 6 - In '937 ('258 is a Continuation), the Board Ordered a Remand to address issues, documents and Evidence STILL not discussed in an obvious Obstruction of Justice by the author(s) of the present Decision. In fact the documents were never docketed -- as only later found out by subpoena.

The PTO and Decision Ignore Previously Removed Evidence

36. The Decision by the Board of Patent Appeals and Interferences does not discuss the previous removal of Evidence, or the failure to docket that Evidence, even though it was discussed and detailed in the Appeal Brief and Reply Brief. This has the appearance of impropriety,

And yet, the Decision refers to previous Decisions which had falsehoods by the Office. At no place in the Decision is the fact that the previous Decision (cited and relied upon in the present Decision) falsely, cruelly, and wrongly described the invention and also previously failed to docket Evidence.

37. As such, the Decision fails to discuss the implication of the previously removed Evidence, and the previous flawed description of the invention. This is serious.

Application '258 : THE PATENT SHOULD BE ISSUED

38. Patent application '258 (like '677 and '937 and '480 before it - and from which it is a continuation) is used to measure hydrogen isotope loading into a metal; and it has operability and utility. Furthermore, Plaintiff (then Applicant) taught in the original specification and claims how his apparatus works and claimed the invention which solves a long-standing problem of monitoring loading in situ. Plaintiff delivered timely-submitted Evidence, including Declarations and peer-reviewed published papers, which refute the Office and prove validation, and therefore the legal judgment of enablement.

The Plaintiff submits that if the Office must rely upon reference to art cut of a cloth other than this specification and claims, and rely on not docketing and destroying Evidence, then their position must indeed be rather weak which should dictate allowance of the present invention.

39. The Plaintiff requests allowance of Claims 12-31 wrongly rejected under 35 U.S.C. 112, first paragraph, as purportedly failing to comply with the enablement requirement, and Claims 12-31 wrongly rejected under 35 U.S.C. 112, second paragraph, as purportedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, and Claims 12-31 wrongly rejected under 35 U.S.C. 102(b) as purportedly being anticipated by Swartz (U.S. 20020021777), and Claims 12-14, 16-18 and 20 wrongly rejected under 35 U.S.C. 103(a) as purportedly being unpatentable on JP 06-018683 in view of Stringham (U.S. 2002/0090047) and either one of Rudd (4,554,836) or Sugimoto (U.S. 4,768,381), and Claims 12-31 wrongly rejected under 35 U.S.C. 101 because the claimed invention as disclosed is purportedly inoperative and therefore lacks utility.

Simply put, all claims do not honestly suffer from any justified rejection at this time, and should be allowed to mature into a patent.

SECOND PATENT APPLICATION TO BE DISCUSSED: - '381

40. Plaintiff's patent application S.N. 13/544,381 [also called '381;For “A Machine and Process to Preload, Activate, Rejuvenate, and Evaluate Energy Production from a Nanostructured Material”; filed: 07/09/2012; Appeal 2017-006193] (Exhibit 7), generally speaking, is an apparatus and process to change and create a new material, and to create a new type of electronic component which can efficiently generate heat. The above-entitled invention is pre-loaded with fuel, is hermetically sealed, designed to avoid leakage, is arranged to be activated as a two-terminal electrical component, and is ready to be used at some subsequent time in an electrical circuit to generate large amounts of controllable, significant heat.

41. Most importantly, this invention makes extremely efficient heat, and is preloaded with hydrogen using the techniques only taught in the original specification. There is no carbon footprint. The component is smaller than 2 centimeters in length, but although small in size, this is actually not *de minimus* because the excess power density is more than 19,500 watts/kilogram of nanostructured material. These facts herald great utility.

42. The invention performs well [Exhibit 8], and some of the output was in the original specification. This was described in Verner, G., M. Swartz, P. Hagelstein, **Summary report: ‘Introduction to Cold Fusion’–IAP course at the Massachusetts Institute of Technology**, *Current Science*, 108, 4, 653 (2015); <http://www.currentscience.ac.in/Volumes/108/04/0653.pdf> which is a reference the Examiner REFUSES to log in or discuss.

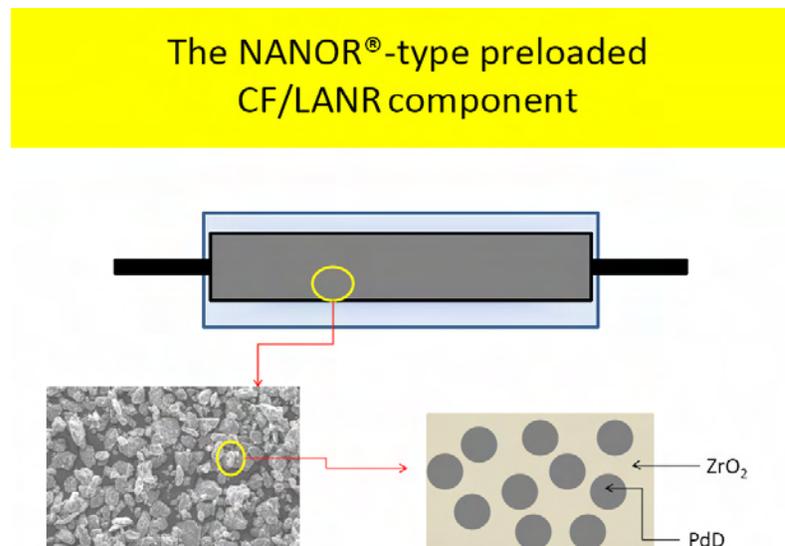


Exhibit 7 - This Figure shows schematically the '381 invention.

43. There have been many peer-reviewed published papers about this invention '381. They include the following:

Swartz, M. P. Hagelstein, G. Verner, **Impact of Electrical Avalanche Through a ZrO₂-NiD Nanostructured CF/LANR Component on its Incremental Excess Power Gain**", ICCF-19, Italy (2016)

Swartz, M. G. Verner, J. Tolleson, P. Hagelstein, **Dry, preloaded NANOR[®]-type CF/LANR components**, *Current Science*, 108, 4, 595 (2015); <http://www.currentscience.ac.in/Volumes/108/04/0595.pdf>

Swartz M., Verner, G., *et al.*, **Imaging of an Active NANOR[®]-type LANR Component using CR-39**, *J. Condensed Matter Nucl. Sci.* 15, (2015), 81; www.iscmns.org/CMNS/JCMNS-Vol15.pdf

Swartz M., **Incremental High Energy Emission from a ZrO₂-PdD Nanostructured Quantum Electronic Component CF/LANR**, *J. Condensed Matter Nucl. Sci.* 15, (2015), 92; www.iscmns.org/CMNS/JCMNS-Vol15.pdf

Swartz M., Verner, G., *et al.*, **Amplification and Restoration of Energy Gain Using Fractionated Magnetic Fields on ZrO₂-PdD Nanostructured Components**, *J. Condensed Matter Nucl. Sci.* 15, (2015), 66; www.iscmns.org/CMNS/JCMNS-Vol15.pdf

Swartz M. R., Hagelstein P.I., **Demonstration of Energy Gain from a Preloaded ZrO₂-PdD Nanostructured CF/LANR Quantum Electronic Device at MIT**, *J. Condensed Matter Nucl. Sci.* 13, (2014), 516
www.iscmns.org/CMNS/JCMNS-Vol13.pdf

Swartz M. R., Verner G., *et al.*, **Energy Gain From Preloaded ZrO₂-PdNi-D Nanostructured CF/LANR Quantum Electronic Components**, *J. Condensed Matter Nucl. Sci.* 13, (2014), 528
www.iscmns.org/CMNS/JCMNS-Vol13.pdf

44. When the Defendants failed to discuss the invention correctly, and made inaccurate statements, the Applicant, re-submitted Evidence correcting the Defendants. The Evidence was resubmitted over and over. The Official Stamps of the Defendants' Mail Room indicates that the Evidence rebutting the Defendants was received at least six times, as shown in Exhibit 9. The Defendants received them and with impropriety chose to repeatedly, systematically, ignore them.

45. One such submitted response is shown in Exhibit 10 which shows three (3) copies [1 printed, 2 on CD-ROM] of the Evidence including the Defense Intelligence Agency report.

46. When the Defendants refused to address Applicant's multiply-submitted copies of Evidence, he filed an Appeal Brief to the Patent Trial and Appeal Board and Interferences on September 11, 2016. These were on CD-ROMs and on printed copies.

47. The Defendants did not discuss the Evidence in any substantive way including in the Decision of October 26, 2016.

Excess heat Mode Using ZrO_2 - PdD NANOR[®]-type component

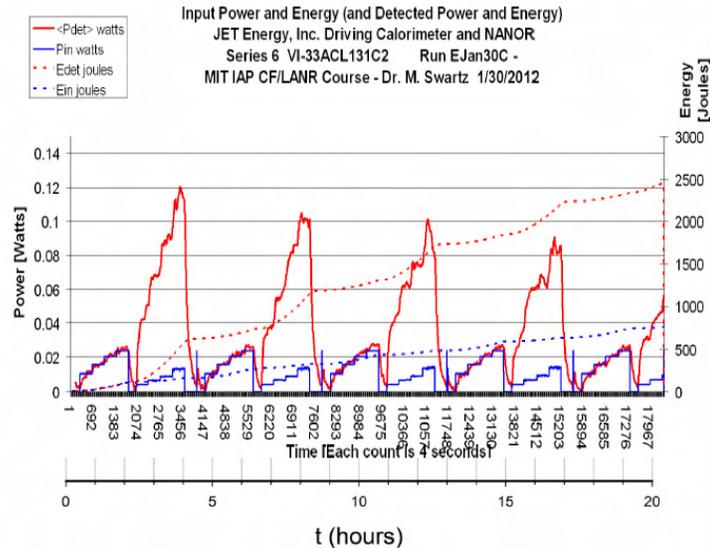


Exhibit 8 - This Figure shows the actual output of the '381 invention during a run at a class at MIT.

APPLICANT HAS FULLY AND COMPLETELY COMPLIED

48. For the record, attention is again directed to the fact that the Applicant has repeatedly undertaken the full burden of coming forward with his evidence as required [In re Oetiker, 977 F.2d at 1445, 24 USPQ2d at 1444].

49. Furthermore, said open demonstrations of the Applicant at MIT, and the Applicant's submitted peer-reviewed articles and Declarations are more than sufficient [In re Brana, 51 F.3d at 1566, 34 USPQ2d at 1441] to meet the

"burden shift ... to provide rebuttal evidence sufficient to convince such a person of the invention's asserted utility".

50. By ignoring Evidence, the Examiner and PTO continue the appearance of impropriety [***] as they ignore *In re Wands*, 858 F.2d 731, 737, 8 USPQ2d 1400, 1404 (Fed. Cir. 1988).

[***] Why is this important? Because it shows that the PTO deliberately ignores the actual present invention and the open demonstrations given at MIT in 2003, and for months in 2012. These were convincing to the observers and this is important because it shows that the above-entitled invention was, and is, operable. Said demonstration was attended by the members of the US Navy, and other agencies. DTRA disagrees with the USPTO. DARPA disagrees with the USPTO. The US Navy disagrees with the USPTO. NASA disagrees with the USPTO. Thousands of scientists disagree with the USPTO regarding the Examiner's unsubstantiated opinion. Therefore, this subject is historically similar to successfully treating baldness which was once considered by the Office to also to be an inherently unbelievable undertaking. See *In re Ferens*, 417 F.2d 1072, 1074, 163 USPQ 609, 611 (CCPA 1969); *In re Oberwener*, 115 F.2d 826, 829, 47 USPQ 455, 458 (CCPA 1940).

The PTO Ignored the Original Specification

51. Did the Examiner even consider the Figures in the original specification? Apparently she did not. The Appeal itself was filed because the Examiner refused to describe accurately the above-entitled invention, even after the many initial filing fees were paid and it was brought to her attention.

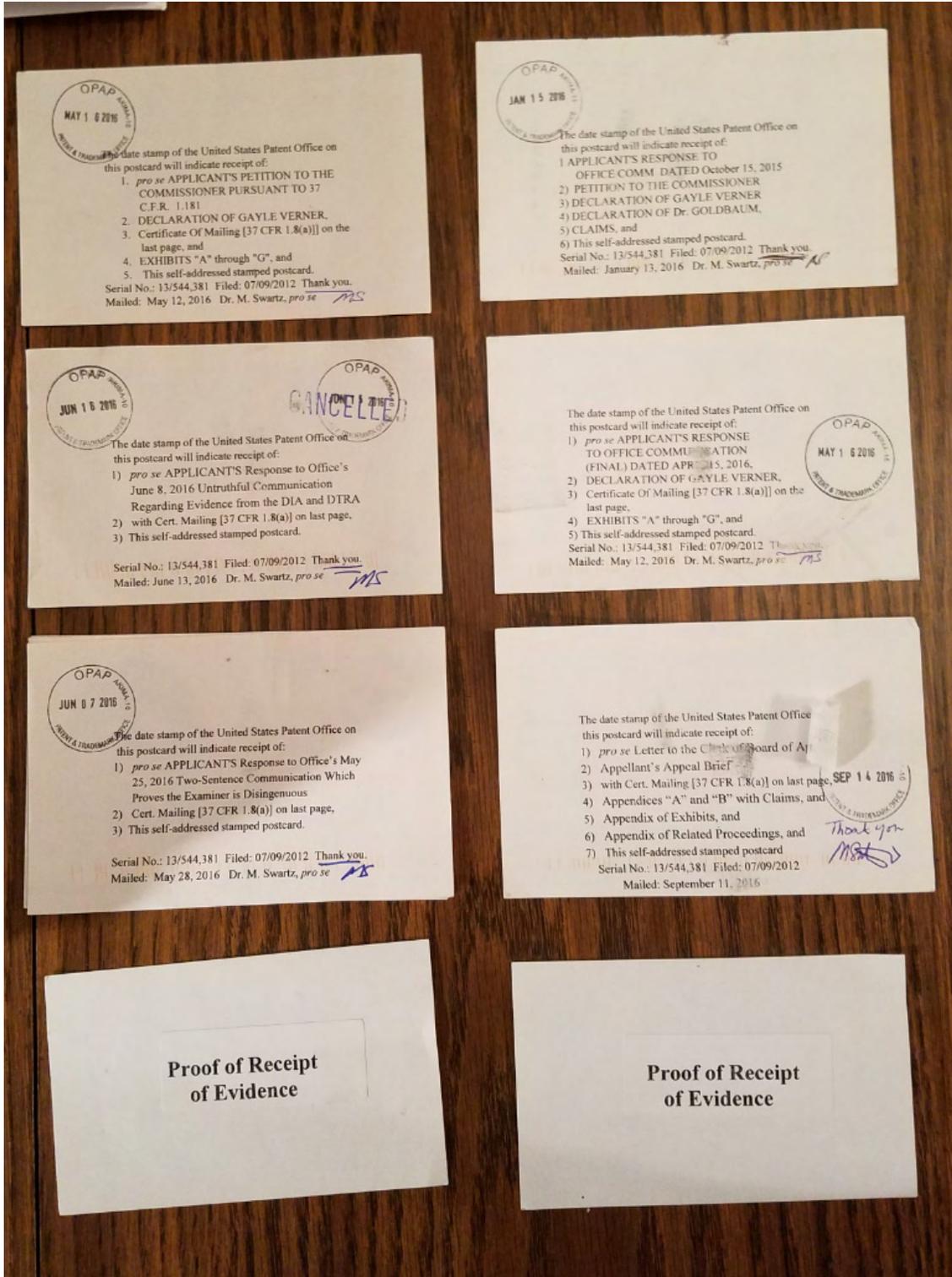


Exhibit 9 - This photograph shows the actual date stamps of the Defendants' mail room proving receipt of the '381 Evidence.

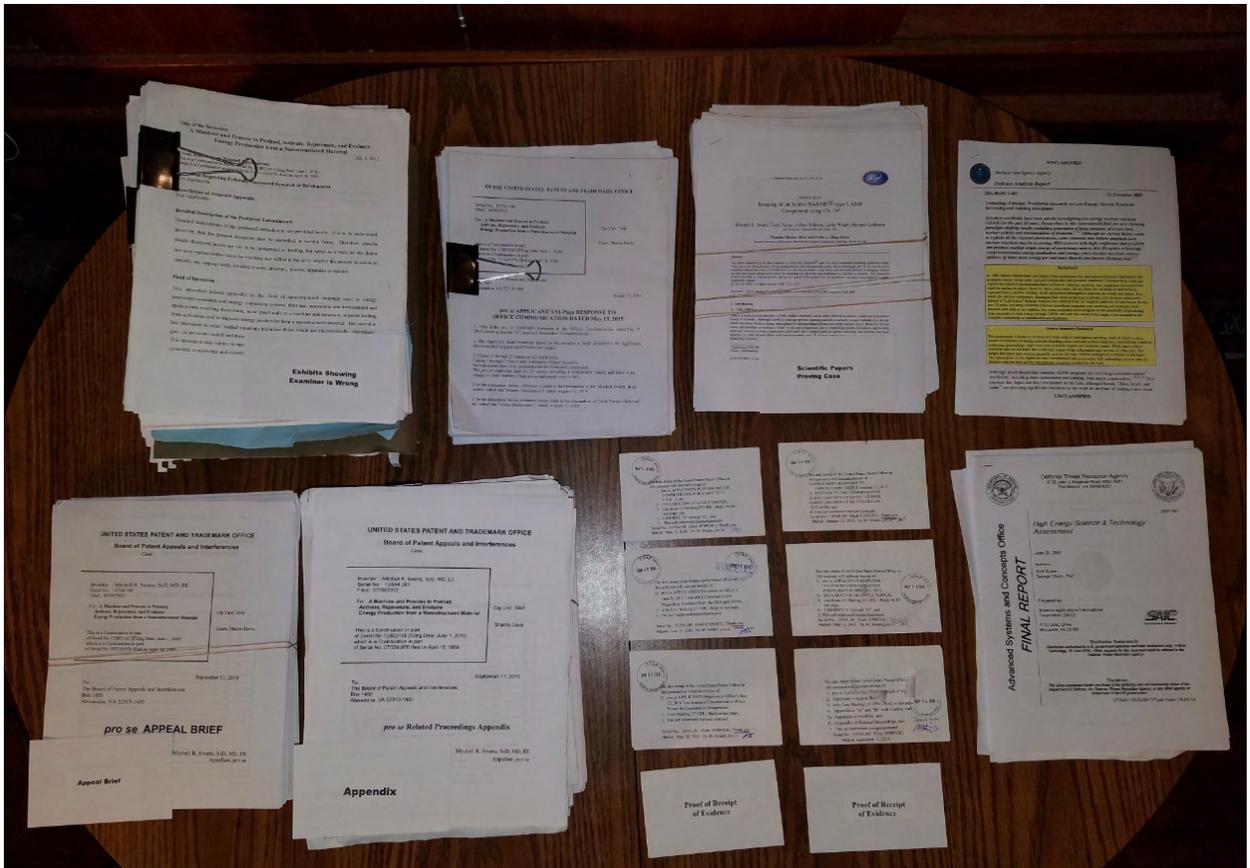


Exhibit 10 - This photograph shows the actual '381 Evidence with the logos of the DIA and DTRA on the right hand side. All were inexcusably, egregiously and ignored by the Defendants, over and over (multiple postal cards indicating receipt are shown in the mid lower row).

52. This failure to address THIS application is shown in Table 2. As Table 2 indelibly demonstrates, in the Examiner's Answer, there are no words describing in detail the original submitted specification using the words and concepts FROM original specification. Such would normally be reasonably expected if the response involved this invention.

53. It can be seen in Table 2 that each of the words used to teach novel and non-obvious matters in THIS patent application have not even been mentioned by the Examiner in the Answer. For example, the words "preloaded", "nanomaterial", "electric field", "loading", and "wick", which are key to THIS patent application are absolutely, positively ignored by the Examiner even though they are relevant

to this invention and are therefore discussed in the original specification 125, 49, 39, 53, and 69 times, respectively. Not once are they discussed in the "Answer". None of them.

Table 2 - Ignoring the Substance of Patent Application '381

This Table presents the prevalence of English words used in the Original Specification and Claims versus in the non-substantive Examiner's Answer. It can be seen that none of the novel and non-obvious matters taught in THIS patent application have even been mentioned by the Examiner.

Word Examined	Number of Times in Original Specification and claims	Number of Times in Examiner's "Answer"
preloaded	125	0
nanomaterial	49	0
electric field	39	0
loading	53	0
wick	69	0

54. The Examiner has ignored the above-entitled original specification and claims along with its unique figures, teachings and claims.

Where are the words used in the original specification?

Where are the words from the Examiner describing THIS invention, or the nature and function of THESE claims? They are not there. The features of the above-entitled invention are not discussed even once in the Examiner's Answer. Not one of them.

55. This is typical of how this has gone. It is an uncontested fact that ONLY the claimed invention should be the focus of the Office review. The present invention is nothing like the cited art. The Examiner's continual referral to other much less relevant art and NOT THIS INVENTION is not really a rebuttal of this invention, but it is a prejudicial attack against the Applicant's inventions using fabricated 'rabbit holes'.

The PTO Ignored TIMELY-Submitted Evidence

The Examiner Ignored Reputable Evidence Received Before FINAL

56. These rejections are only made by ignoring the Evidence and the original specification with the Exhibits. The Evidence includes the DIA and DTRA reports which discuss utility and operability. These references demonstrate that the Applicant's work has been respected by some of the foremost federal agencies, the US military, and corporations.

57. The Examiner apparently refused to docket and absolutely refused to cite documents that were repeatedly submitted **before FINAL** that are especially relevant because **THIS Evidence substantively and completely disputes all of the rejections by the Examiner.**

58. At least five (5) types of Evidence have been systematically ignored by the Examiner. These types of Evidence include

- 1) Information from DIA (Exhibit 11), DTRA (Exhibit 12), DARPA, the American Nuclear Society, and the U.S. Navy,
- 2) Sworn Declarations,
- 3) Original Specifications with the enclosed graphs,
- 4) Open demonstrations of the Plaintiff's inventions at MIT in 2003 and 2012, and
- 5) Peer-reviewed scientific literature which described the inventions of the Plaintiff.

59. The pro se Appellant (then Applicant) has introduced these Exhibits over and over to counter the false statements in the Examiner's missives. The Evidence in the record demonstrates that the Applicant was correct at the time of the above-entitled application as to operability. The existence of said Applicant's demonstrations saliently proves that the invention does operate as indicated and is capable of providing a useful output.

60. Attention is directed to the fact that these institutions, mentioned above, have had no trouble corroborating the Appellant's (then Applicant's) arguments on this subject. In fact, DTRA, DIA, and other agencies report utility and operability - which satisfies the double prong requisite for "validation".

The Examiner Ignored the DIA REPORT

61. Exhibit 11 is from the DIA Report which the Examiner ignores. The DIA Report (***; and Exhibit "A") cites the Appellant's technology which is explicitly mentioned. The Examiner would not log the document, and then refused to discuss what it said. Even the Examiner's Answer does not accurately discuss and address the DIA report --- which discusses the Appellant's technology. It is ignored in the so-called "Answer".

[(***) The DIA (Defense Intelligence Agency) Report is a Defense Analysis Report [DIA-08-09U-003, November, 13 2009] which notes "Technology Forecast: Worldwide Research on Low-Energy Nuclear Reactions Increasing and Gaining Acceptance".]

62. Why would the Examiner ignore the DIA Report, and never even mention the DTRA Report? Answer: Because these Reports positively discuss the Plaintiff 's technologies, and gives them credence which the Examiner and Office cannot rebut. Specifically, in addition to Chinese, Japanese. French. Israeli and Indian scientists, the DIA Report explicitly mentions the Navy SPAWAR group, SRI International, the Plaintiff [in Massachusetts], and the China Lake Naval Air Warfare Center in California.

63. The Declaration of Dr. Frank Gordon states,

“Three published U.S. Government reports both document and add credibility to the existence of this technology, called LENR (or LANR, or "cold fusion"). A report by the Defense Intelligence Agency (DIA) dated 13 November 2009 titled *“Technology Forecast: Worldwide Research on Low-Energy Nuclear Reactions Increasing and Gaining Acceptance”* documents experimental results from scientists throughout the world and states that “This body of research has produced evidence that nuclear reactions may be occurring under conditions not previously believed possible.” The report includes multiple uses for this technology and further states that “...LENR power sources could produce the greatest transformation of the battlefield for U.S. forces since the transition from horsepower to gasoline power.”

64. Evidence should never be overlooked. It should not be dismissed out of hand, or hidden by false statements, or otherwise sequestered or “lost”.

The Examiner Ignored the DTRA REPORT

65. A closeup of the DTRA report is shown in Exhibit 12. This has copies of pages from the DTRA Report (***) and Exhibit “B”) which the Examiner refused to address. The Examiner first will not allow the document to be logged, and then refused to discuss what it says.

Why? Because in it, Plaintiff’s technology is explicitly discussed.

Why is the DTRA Report ignored in its entirety? Including in the Examiner’s Memorandum? Answer: Because of the quality of the support that is in there.

66. On page 25 of said DTRA Report is the fact finders are listed.

"Feedback from Panel of Experts - The Honorable Dr. H Smith, Dr. Jack Davis, Dr. Fred Wikner, and Dr. Gerald Yonas".

On page 26 of said DTRA Report, it states:

"Low Energy Nuclear Reactions are showing some remarkable progress with respect to energy (excess heat) production and transmuted element detection".

Page 28 of the DTRA Report states in the (now Declassified) conclusion of the DTRA Group in response to Appellant's technology.

"There is good evidence of excess heat and transmutation "

67. In fact, DTRA, DIA, and other agencies report utility and operability - which satisfies the double prong requisite for "validation" and proves the Examiner has not been honest with respect to this matter.

[(***) The DTRA Report is from the Defense Threat Reduction Agency [8725 John J. Kingman Road, MSC 6201 Fort Belvoir, VA 22060-6201] and is the High Energy Science and Technology Assessment [FINAL REPORT, June 29, 2007]. It was prepared for the Defense Threat Reduction Agency Advanced Systems and Concepts Office under Contract No: DTRAOI-03-D-0017 Task Order 18 Technical Instruction 18-06-11, and was prepared by Richard Sutton and Dr. George Ullrich of Science Applications International Corporation (SAIC; 1710 SAIC Drive, MCLEAN, VA 22102).]

68. The Declaration of Dr. Frank Gordon states,

"In addition to the Defense Threat Reduction Agency (DTRA) Report from the 2006 meeting discussed by Dr. Swartz in the above-entitled Complaint, there was a subsequent report from (DTRA) titled *"Investigations of Nano-Nuclear Reactions in Condensed Matter"* that updates and compliments the information in the DIA report. The internal DTRA scientific and technical review process was completed and cleared for public release on June 7, 2016. Both the DIA and DTRA review/signoff process could be considered to be comparable to peer-review for a technical journal article.

In addition to the DIA and DTRA Reports, the U.S. Navy has issued reports documenting this technology, including TECHNICAL REPORT 1862, February 2002 [*Thermal and Nuclear Aspects of the Pd/D₂O System*, two volumes]."

69. This is important because the overlooked Evidence proves that the Examiner's notions are built on disingenuous statements at variance with the simple fact that the Applicant's theory and data and invention are accepted by scientists at the US Navy, at both SPAWAR and NRL, DTRA, the US Army, the DIA, the American Nuclear Society and several companies in America, Canada, Israel, England, Scotland, Chile and Japan, and scores of scientists are highly supportive of Applicant's high impedance NANOR®-type and aqueous PHUSOR®-type LANR (lattice assisted nuclear) systems.

The Examiner Made False Statements About Delivery of the Evidence

70. With the original filing of '381 [Serial No.: 13/544,381], and then twice thereafter, scientific, cited, relevant references and Evidence have been submitted. These references have been published, peer-reviewed, and discussed on the Internet worldwide, and in print, and cited in the original specification.

The Examiner never substantively discussed them in response. Not once.

Instead, there were attempts at exculpatory behavior.

First they were allegedly “not received”.

Then, they were allegedly “not legible”.

Then, they were allegedly “lost”.

Then, the wrong references were listed.

None of this wrongful behavior under color of Law is addressed in the Examiner' Memorandum [“so called “Answer”].

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Defense Intelligence Agency

Defense Analysis Report

DIA-08-0911-003

13 November 2009

Technology Forecast: Worldwide Research on Low-Energy Nuclear Reactions Increasing and Gaining Acceptance

Scientists worldwide have been quietly investigating low-energy nuclear reactions (LENR) for the past 20 years. Researchers in this controversial field are now claiming paradigm-shifting results, including generation of large amounts of excess heat, nuclear activity and transmutation of elements.^{1,2,3} Although no current theory exists to explain all the reported phenomena, some scientists now believe quantum-level nuclear reactions may be occurring. DIA assesses with high confidence that if LENR can produce nuclear-origin energy at room temperatures, this disruptive technology could revolutionize energy production and storage, since nuclear reactions release millions of times more energy per unit mass than do any known chemical fuel.^{4,5}

Background

In 1989, Martin Fleischmann and Stanley Pons announced that their electrochemical experiments had produced excess energy under standard temperature and pressure conditions.⁶ Because they could not explain this physical phenomenon based on known chemical reactions, they suggested the excess heat could be nuclear in origin. However, their experiments did not show the radiation or radioactivity expected from a nuclear reaction. Many researchers attempted to replicate the results and failed. As a result, the physics community disparaged their work as lacking credibility, and the press mistakenly dubbed it "cold fusion." Related research also suffered from the negative publicity of cold fusion for the past 20 years, but many scientists believed something important was occurring and continued their research with little or no visibility. For years, scientists were intrigued by the possibility of producing large amounts of clean energy through LENR, and now this research has begun to be accepted in the scientific community as reproducible and legitimate.

Source Summary Statement

This assessment is based on analysis of a wide body of intelligence reporting, most of which is open source information including scientific briefings, peer-reviewed technical journals, international scientific conference proceedings, interviews with scientific experts and technical media. While there is little classified data on this topic due to the S&T nature of the information and the lack of collection, DIA judges that these open sources generally provide the most reliable intelligence available on this topic. The information in this report has been corroborated and reviewed by U.S. technology experts who are familiar with the data and the international scientists involved in this work.

Although much skepticism remains, LENR programs are receiving increased support worldwide, including state sponsorship and funding from major corporations.^{7, 8, 9, 10} DIA

Exhibit 11 – Copy of the cover from the DIA Report - The DIA (Defense Intelligence Agency) Report; a Defense Analysis Report [DIA-08-09U-003, November, 13 2009] which notes "Technology Forecast: Worldwide Research on Low-Energy Nuclear Reactions Increasing and Gaining Acceptance".

- Chinese researchers described LENR experiments in 1991 that generated so much heat that they caused an explosion that was not believed to be chemical in origin.²⁵
- Japanese, French, and U.S. scientists also have reported rapid, high-energy LENR releases leading to laboratory explosions, according to scientific journal articles from 1992 to 2009.^{26, 27}
- Israeli scientists reported in 2008 that they have applied pulsating electrical currents to their LENR experiments to increase the excess energy production.²⁸
- As of January 2008, India was reportedly considering restarting its LENR program after 14 years of dormancy.²⁹

U.S. LENR researchers also have reported results that support the phenomena of anomalous heat, nuclear particle production, and transmutation.^{30, 31, 32}

- At the March 2009 American Chemical Society annual meeting, researchers at U.S. Navy SPAWAR Pacific reported excess energy,³³ nuclear particles,³⁴ and transmutation,^{35, 36} stating that these effects were probably the result of nuclear reactions.³⁷
- A research team at the U.S. company SRI International has been studying the electrochemistry and kinetics of LENR since the early 1990's, reporting excess heat and helium production.³⁸

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- In May 2002, researchers at JET Thermal in Massachusetts reported excess heat and optimal operating points for LENR manifolds.³⁹
- Researchers at the China Lake Naval Air Warfare Center in California first reported anomalous power correlated with Helium-4 production in 1996.⁴⁰

Although no one theory currently exists to explain all the observed LENR phenomena,

Exhibit 11 (part 2) - Copy of pages 2 and 3 of the DIA Report; DIA (Defense Intelligence Agency) Report is a Defense Analysis Report [DIA-08-09U-003, November, 13 2009]. Pages 2 and 3 notes efforts by the Chinese, Japanese, French, Israeli and Indian scientists, the US Navy SPAWAR group, SRI International, the Plaintiff in Massachusetts, and China Lake Naval Air Warfare Center in California.



Defense Threat Reduction Agency
8725 John J. Kingman Road, MSC 6201
Fort Belvoir, VA 22060-6201



2007 001

Advanced Systems and Concepts Office
FINAL REPORT

*High Energy Science & Technology
Assessment*

June 29, 2007

Authors:

Rich Sutton
George Ullrich, PhD

Prepared by:

Science Applications International
Corporation (SAIC)

1710 SAIC Drive
MCLEAN, VA 22102



Distribution Statement D:

Distribution authorized to U.S. government agencies and their contractors only, Critical Technology, 30 June 2004. Other requests for this document shall be referred to the Defense Threat Reduction Agency.

Disclaimer:

The views expressed herein are those of the author(s) and not necessarily those of the Department of Defense, the Defense Threat Reduction Agency, or any other agency or component of the US government.

DTRA01-03-D-0017/Task Order 18-05-14

Exhibit 12 (part 1) – Copy of the cover of the DTRA Report, page 1 [next two pages are copies of pages 18 and 28]. The DTRA Report is the High Energy Science and Technology Assessment [FINAL REPORT, June 29, 2007], prepared for the Defense Threat Reduction Agency Advanced Systems and Concepts Office.

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Dr. Mitchell Swartz, JET Energy, INC presented a brief summary of the results of excess heat experiments in electric-field loaded deuterated metals:

**EXCESS HEAT IN
ELECTRIC-FIELD LOADED DEUTERATED
METALS**

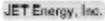
Research and Development

BRIEF SUMMARY OF RESULTS:

SIGNIFICANT EXCESS HEAT OBSERVED IN PALLADIUM HEAVY WATER (PdD) SYSTEM, PALLADIUM HEAVY WATER (PdD) CODEPOSITIONAL SYSTEM, SOME NICKEL LIGHT and HEAVY/LIGHT WATER SYSTEMS

EXCESS HEAT NOT OBSERVED IN IRON, ALUMINUM, OR DAMAGED PALLADIUM NICKEL SYSTEMS

6




DTRA ASCO Workshop
on High Energy Science and Technology Dec.
12, 2006

He explained his methods for controlling measurement error and system noise by using dual calorimeter measurements that allowed precise differential measurement and integration of power. He was thus able to compare measurements of several different instruments to allow judgment of consistency in his reported results.

The diffusion and electrophoresis equations show the advantages of low conductivity electrolytes and relatively high voltages for loading D into the electrodes with co-deposition of electrode material. Dr. Swartz obtained energy and power gains over the D charging (loading) input power and discussed the importance of determining optimized operating points. Impressively, he showed a video demonstrating enough power to spin the propeller of a model airplane.

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Exhibit 12 (part 2) - Copy of page 18 of The DTRA Report; the High Energy Science and Technology Assessment [FINAL REPORT, June 29, 2007], prepared for the Defense Threat Reduction Agency Advanced Systems and Concepts Office.

FOR OFFICIAL USE ONLY**9.0 Recommendations**

Novel Energy Strategy: The Expert Panel noted that there many potentially interested agencies and that DTRA, as a new 6.1 agency, will need to find its niche. It is recommended that DTRA form and/or participate in an Interagency Novel Energy Working Group. Partnering agencies would include DTRA, DOE/NSSA, the National Laboratories, DHS, DARPA, NSF, and the Service Labs. The charter would be to coordinate budgets for maximum return and chart a course that would accelerate development of advanced energy concepts.

Isomer Energy Storage: The extraordinary claims regarding the de-excitation of $\text{Hf}^{178\text{m}2}$ appear to have been thoroughly discredited. Nonetheless, it may be warranted to fund some basic research to continue screening candidate isomers, to develop an improved understanding of the physics of isomer de-excitation, and to explore de-excitation methods other than x-ray stimulation. There are no likely near-term military applications of nuclear isomers.

LENR: LENR still suffers from negative publicity associated with Cold Fusion and is viewed as being conducted outside the domain of legitimate, mainstream science. Nonetheless, the persistent and increasingly repeatable demonstrations of excess heat and transmutation suggest that there is something here worth pursuing. DTRA should not do so alone, but rather foster consortia that would help bring discipline and rigorous experimental protocol to this field. Additionally, efforts to better understand the physics of LENR as well as the development of first-principle predictive models are encouraged.

Anti-Matter: The challenge of stable storage of positrons in the form of positronium may be surmountable but progress to date has been modest. Near-term applications of this technology appear to be ill-advised. Additionally, the large parasitic mass associated with the storage of positronium and the small amount that can be stored, even under the most optimistic projections, effectively limits the system-level energy density. Nonetheless, some basic 6.1 research should be invested in keeping the effort alive. Perhaps an alliance between DTRA and NSF would be useful in this regard.

4th Generation Nuclear Weapons: DTRA, in cooperation with NNSA and with the approval of OSD, should consider supporting a few pilot studies to explore the potential applications of 4th generation nuclear weapons to meet projected future national security needs, explore the potential impact of such weapons if they were to be used against U.S. forces or infrastructure, and examine their overall policy implications.

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Exhibit 12 (part 3) - Copy of page 28 of The DTRA Report; the High Energy Science and Technology Assessment [FINAL REPORT, June 29, 2007], prepared for the Defense Threat Reduction Agency Advanced Systems and Concepts Office. On page 28, the (now Declassified) conclusion of the DTRA Group, partially in response to Plaintiff's technology, is that "(t)here is good evidence of excess heat ...".

71. The Examiner falsely claimed the submitted references were unreadable after claiming they were not received (before they were “lost”).

As the Declaration of Gayle Verner states,

“...in patent application ‘381, the Defendant Sharon Davis and her supervisor first claimed that timely submitted Evidence (scientific peer reviewed papers and other documents) was never received. This was simply untrue. I know this because I personally reviewed the materials, stapled them together, compiled them, and inserted them into the mailing envelope. I personally hand-delivered them to the post office clerk. In addition, to prove the Defendants mischaracterized facts, the stamp of the USPTO Postal Office on the card which was affixed to the top of the mailed group of the submitted documents indicated that they were all timely received. To say that they were not received is so far-fetched, that it defies imagination.”

“Then, when the Defendants were shown they were wrong with respect to the “receipt”, the Defendants claimed the documents were “unreadable”. When shown, citing line and verse, that they were wrong, in their assertions, and that the documents were both received and readable, the persuasive objective evidentiary exhibits were ignored. Then later she said that I had no probative value when I was the one directly involved. Despite the Defendants’ repeated false statements, Dr. Swartz’s documents were sent to the Office, and they were all readable, legible, and in proper form. I mailed them each time, and over and over the Defendants have falsely purported that they were not received.”

72 First, the Examiner refused to fully docket and absolutely refused to cite documents that were repeatedly submitted **before FINAL** that are especially relevant because **THIS Evidence substantively and completely disputes all of the rejections by the Examiner.**

73. Second, the Examiner has failed to respond fully and completely and truthfully to submitted Evidence and Affidavits which show the Examiner’ statements and Opinion are dead-bolt wrong.

EXAMINER IGNORES OPEN DEMONSTRATIONS AT MIT

Open Demonstrations at MIT over several Months Do Show Operability

74. The Examiner's Answer states:

"Additionally, Applicant described several "demonstrations" that purportedly validate the operability of the claimed device. Demonstrations are not adequate proof of operability because they do not submit to peer review."

The Examiner is wrong because demonstrations ARE adequate proof of operability; and that fact has extended from early Italy in the glass industry to the Wright brothers, even to this day. Is colored glass and are flying planes inoperable?

75. The Examiner is wrong because THESE open demonstrations were in the Department of Electrical Engineering at MIT. THESE demonstrations at MIT brought many scientists and those interested in the invention; and this operation of this invention is proof of utility, and consistent with operability, and therefore validation. The Examiner is wrong because THESE open demonstrations extended over several days, and in 2012 over several months. Several hundred witnesses, skilled in the art, attended.

The Examiner has Made False Statements About the Technology Which Was Openly Demonstrated at MIT in 2003 and 2012

76. The Examiner has not been truthful about the relevance and significance of these technologies shown in open demonstrations at MIT, including in 2003 and 2012, despite received Evidence. Witnesses have uploaded the information on-line. They have written Declarations, letters and affidavits. And all have been ignored by this Examiner --- because the Examiner cannot dispute their substantive probative arguments.

As the Declaration of Dr. Brian Ahern states,

“I have known Mitchell Swartz since 1991. I would like to express my strong support for the work being conducted by Dr. Mitchell Swartz in the field of isotopic fuel loading of metal lattices and lattice assisted nuclear reactions. I believe his investigations are some of the most thorough and precise yet conducted in isotopic loading and lattice assisted nuclear reactions, and that the thermal effects he is observing are real and will ultimately be useful on a large scale.”

77. As the Declaration of Lt. Colonel Robert Smith states,

“I personally observed two demonstrations of condensed matter nuclear science (CMNS) technology at MIT at the International Conference (ICCF-10) in 2003. One was operated and run by Dr. Mitchell Swartz from JET Energy/MIT; and in a separate demonstration in the same room, the second was conducted by Prof. John Dash from Portland State University, who was supported by several graduate students.”

“The discussion of the demonstrations presented by Dr. Swartz was particularly noteworthy from an engineering sciences point of view. He explained how operating point manifolds, the inclusion of well-known controls, electromagnetic forces, and material properties of the supporting lattices, created the conditions for excess heat to be produced by the electrolytic CMNS devices. He further presented clear evidence that the output of the devices produced more energy than they consumed in the input operation of the devices. It made me wonder why the US Department of Energy was not investing substantially in this technology.”

78. As the Verner declaration states,

"7. I saw working cold fusion systems in both aqueous and solid form, including two open demonstrations by the Applicant. One was five days in 2003, and the other was several months in Jan. 2012. It is simply incomprehensible that the USPTO ignores this evidence of operability. Many, many individuals saw both and reported their positive observations on the internet, in publications, and elsewhere.

79. Applicant's public demonstrations are important because they constitute additional significant and reputable evidence of record to support that the invention DOES operate as indicated.

The Truth is that the existence of Applicant's demonstrations saliently proves that the invention does operate as indicated and is capable of providing a useful output.

The NANOR-type Component was shown in Open Demonstration at MIT

80. The Examiner's Answer falsely purports:

"Here, the Appellant cites demonstrations at MIT the MIT demonstrations, for example, purportedly showing evidence of an operable cold fusion device would not be persuasive in demonstrating operability of the claimed device since the device of the demonstration differs from the claimed invention (as described at page 22 of the instant specification, the claimed invention differs from prior art cold fusion devices in several key ways)."

The Examiner is not honest by claiming what was shown in the month long demonstration was not the '381 invention. Despite what the Examiner falsely purports, several Declarations and other Evidence were submitted PROVING that the above-entitled application's invention WAS successfully demonstrated.

81. The Examiner had no basis on which to make this above false statement. It is another exculpatory falsehood, fabricated from nowhere, unsupported as usual, on a Federal document.

THE EXAMINER IGNORED PEER-REVIEWED EVIDENCE

82. The Examiner's Answer disingenuously states:

“One cannot objectively claim that a paper is “peer reviewed” when it is submitted, for example, to the “International Conference on Cold Fusion” (subsequently rebranded as the “International Conference on Condensed Matter Nuclear Science”). The very basis of the conference ignores the peer review process imposed by the mainstream scientific community.”

The Examiner and PTO are wrong about the conferences, their peer-reviewed publications, and their role in the reporting of demonstrations of inventions.

First, these conferences have been run by SRI, by EPRI, by the US Navy and other sterling organizations that the Examiner and the PTO have no basis impugning.

83. Second, the PTO has ignored timely submitted peer-reviewed documents and Evidence corroborating the Applicant; said Evidence including peer-reviewed publications in *Current Science* and *Fusion Technology* (of the American Nuclear Society). The Declaration of Dr. Jean-Paul Biberian states,

“The Proceedings of the International Conference on Cold Fusion have been published by the JCMNS since volume 16. Every paper which is printed in those Proceedings has been peer reviewed. These peer reviewed papers are available on the web site: <http://www.iscmns.org/CMNS/CMNS.htm> .

In addition, most papers is printed in The Proceedings of the International Conference on Cold Fusion have been peer reviewed.”

These ARE "peer reviewed", including in the "International Conference on Cold Fusion" (now, the "International Conference on Condensed Matter Nuclear Science"). They are peer-reviewed by the foremost authorities in the field. They are also accepted internationally.

84. Third, the gold standard in the scientific community is an open demonstration followed by a peer-reviewed publication. These demonstrations had “write-ups” which went to peer-review, including *Current Science*. Such peer-review is standard operating procedure.

Applicant's Peer-Reviewed Publications Prove Enablement

85. The publications submitted by the Applicant are sufficient to convince one of ordinary skill in the art of the invention's utility (Swartz, 232 F.3d at 864).

The articles in Current Science and Fusion Technology are sufficient to show the salient operability and definiteness of this invention.

86. In an unbiased venue, such peer-reviewed publications (like the timely submitted Declarations) establish facts. Such Evidence consisting of published peer-reviewed scientific articles which prove Applicant was correct on the filing date of the application, would have already met the bar of enablement [In re Hogan, 559 F.2d 595, 60S, 194 USPQ 527, 537 (CCPA 1977)].

87. Therefore, the PTO and Examiners have ignored In re Oetiker, 977 F.2d at 1445, 24 USPQ2d at 1444 which requires them to substantively respond with a prima facie case of unpatentability.

88. The Examiners and PTO have absolutely NO foundation to support their mistaken opinions about the above-entitled technologies.

89. The continuous removal by the Office of submitted Exhibits (peer-reviewed publications and Declarations) which demonstrate this Group Art has been wrong and inaccurately opinionated is both unfair and cruel.

THERE ARE DEVELOPING PRODUCTS

90. The Examiner's Answer disingenuously purports:

" and several defense agencies as proof of operability. However, in the approximately 25 years since the original application was filed, there have been no commercial devices produced from these "demonstrations":

The Examiner is inaccurate. First, there have been several commercial devices produced from these inventions, shown at conferences of scientific investigators who are skilled-in-the-art. [One does not make a device from a "demonstration" as the Examiner purports].

91. Second, the commercially available components have been tested independently at MIT. The 7th generation NANOR[®]-type components were even featured on the : industry calendar two months ago, February 2017 [Exhibit 13]. These are 8th and 9th generation components that the PTO purports do not exist.

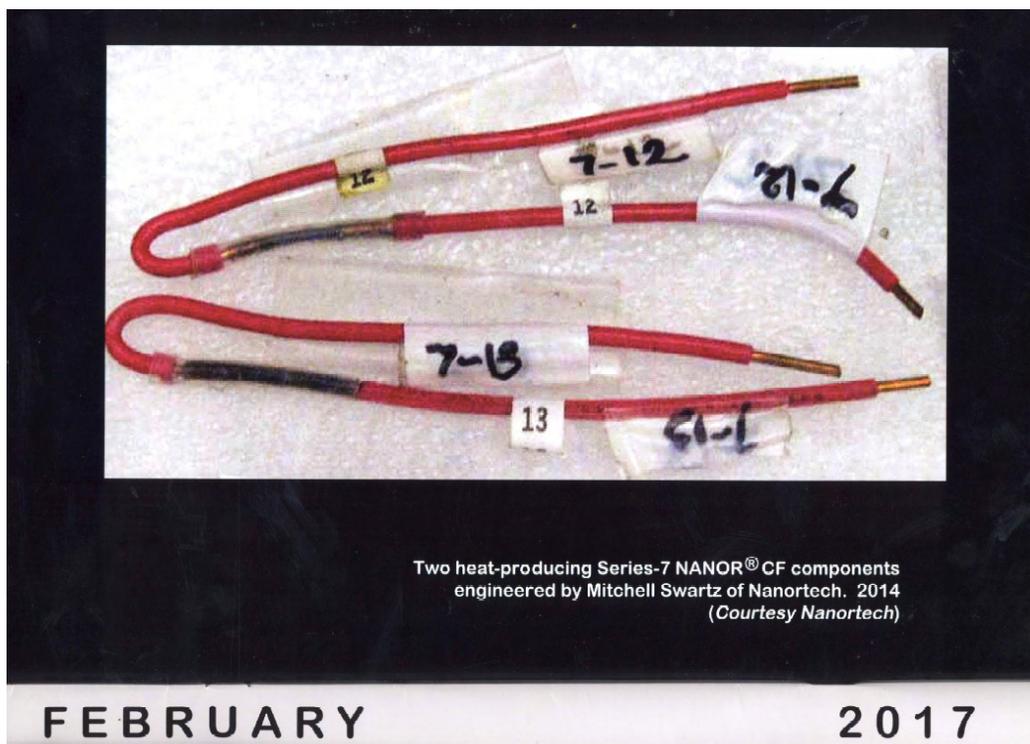


Exhibit 13- The 2016 LENRIA History of Cold Fusion Calendar.- The industrial association for LENR, LENRIA, has produced a 2016 calendar “focusing on leaders in today's emerging new energy field”. February 2017 features images of the Series 7 NANOR[®]-type components which are described in ‘381.

92. Third, market ability has nothing to do with operability. For example, the USPTO issued patents to improve astrological outcome which has no operability, and more than a few patents that have not had commercialization.

93. Attention is directed to the fact that the existence of ignored peer-reviewed publications, and the existence of hundreds of people who saw the open demonstrations, prove that the Examiner’s behavior is unfair, discriminatory and disingenuous, with the appearance of impropriety. It is a small number of

individuals at the USPTO who have utterly savaged the Applicant's inventions, the technologies, and the field. It is reprehensible that the Examiners now, in that light AND after removing papers/articles/Evidence, actually demand that a "market" should exist and be there AFTER the entire clean energy production field was proverbially crushed by the USPTO's false opinions and contrived, false, and disingenuous statements.

THIS INVENTION IS AN IMPROVEMENT

94. Attention is directed to the fact that the Examiner and PTO admit that the previous art 'did not work'. This is important because this is also not true for this invention. Therefore, this invention shows A USEFUL IMPROVEMENT. For THIS INVENTION, the original specification teaches why this invention has great utility. Therefore, the Applicant has fully conformed with, and satisfied, the requirements of §101 of the Patent Act and met at least one (1) stated objective [Standard Oil Co. (Indiana) v. Montedison, S.P.A., 664 F.2d 356, 375, 212 USPQ 327, 344 (3rd Cir. 1981), cert. denied, 456 U.S. 915, 102 S.Ct. 1769, 72 L.Ed.2d 174 (1982); E.I. du Pont de Nemours & Co. v. Berkley & Co., 620 F.2d 1247, 1258 n.10, 1260 n.17, 205 USPQ 1,8n10,10n.17 (8th Cir. 1980); Krantz and Croix v. Olin, 148 USPQ 659, 661-62 (CCPA 1966); Chisum on Patents, 4.04[4] [1983]; RAYTHEON COMPANY v. ROPER CORPORATION, U.S.C.A., Federal Circuit, 1983, 724 F.2d 951, 220 USPQ 592].

95. The Applicant has made a documented *prima facie* case saliently demonstrating the invention's operability and considerable utility. The fact is that the Applicant, in the above-entitled application, fully provided a description which will allow others to build an apparatus that works, and will deliver the useful result, and the Examiner has not given even one iota of proof otherwise. The Applicant taught how to make and use the invention, and the Examiner has not repudiated that with a single substantive reason. The Examiner does not even accurately describe the above-entitled invention.

96. The Applicant has also provided Evidence in the form of publications that rebut the Office. This includes open demonstrations of the technology that were held at the Massachusetts Institute of Technology, and Applicant 's oral reports to the US Navy and DTRA and other agencies, whose memoranda and documentation has previously been shared with the Office. They have odiously been ignored by the Examiner.

Application '381 : THE PATENT SHOULD BE ISSUED

97. '381 is an apparatus and process to change and create a new material, and to create a new type of electronic component which can efficiently generate heat. All claims stand wrongly rejected pursuant to 35 U.S.C. 112, first paragraph because the Examiner purports, without Evidence and without even describing the above-entitled invention accurately, that it is "not operative". This is done only by ignoring THIS invention and misdirecting to cloth woven of other art. The invention has operability and utility and proven validation.

98. Furthermore, Plaintiff (then Applicant) taught in the original specification and claims how his apparatus works and claimed the invention which solves a long-standing problem of monitoring loading in situ. Plaintiff delivered timely-submitted Evidence, including Declarations and peer-reviewed published papers, which refute the Office and prove validation, and therefore the legal judgment of enablement.

99. The Plaintiff submits that if the Office must rely upon reference to art cut of a cloth other than this specification and claims, and rely on not docketing and destroying Evidence, then their position must indeed be rather weak and should dictate allowance of the present invention.

100. The Plaintiff requests allowance of Claims 1-19 (all claims) under 35 U.S.C. 112(a) or 35 U.S.C. 112 (pre-AIA), first paragraph, because there is operability and utility (enablement); Claims 1-19 under 35 U.S.C. 112(a) or pre-AIA 35 U.S.C. 112, first paragraph because it has already been demonstrated that one skilled in the art knows how to use the claimed invention; Claim 13 (and claims 14-19, which are dependent on claim 13) under 35 U.S.C. 112(a) or 35 U.S.C. 112 (pre-AIA), first paragraph, because they do comply with the written description requirement; Claims 1-19 under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, because the claims are definite and distinctly claim the subject matter; all Claims under 35 U.S.C. 112(f) or pre-AIA 35 U.S.C. 112, sixth paragraph, because they do have corresponding structure described in the specification that achieves the claimed function, and equivalents thereof; Claims 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 18, and 19 under pre-AIA 35 U.S.C. 103(a) because no combination of Arrathoon and Frentrop makes this invention; Claims 2, 14 and 16 under pre-AIA 35 U.S.C. 103(a) because no combination of Arrathoon and Frentrop and McCorkle makes this invention, including claim 13; Claims 1-19 under 35 U.S.C. 101 because the disclosed invention is operative, reported worldwide, and therefore has obvious utility; and Claim 15 under 35 U.S.C. 101 because it does set forth a step involved in the process.

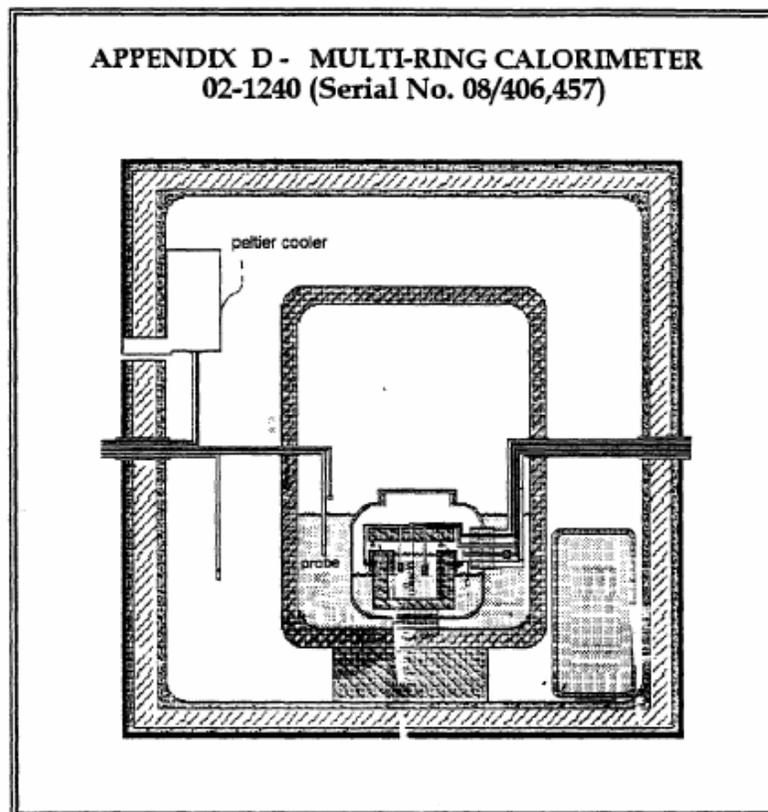
Simply put, all claims do not honestly suffer from any justified rejection at this time, and should be allowed to mature into a patent.

THIRD PATENT APPLICATION TO BE DISCUSSED '058

101. Plaintiff's patent application S.N. 12/932,058 also called '058; for: "MULTIRING APPARATUS AND METHOD TO MEASURE HEAT RELEASED BY A SAMPLE LOADED WITH HYDROGEN"; filed: 7/05/2003; Appeal 2012-012622], generally speaking, is a method to "examine the activity of a sample of a material involved in a reaction". Here, the "activity" of each metal sample is the ratio of the output heat given off by the metal sample compared to the electrical input energy delivered. Simply put, the invention accurately, with calibration, measures the heat output of a sample.

102. The invention, shown in Exhibit 14, works and its effect has been published by independent authorities. Many of these were in the peer-reviewed American Nuclear Society journal, then called Fusion Technology, and in Proceedings publication run by the US Navy. Some of the output is shown in Exhibit 15 which has also been published.

103. When the Defendants failed to discuss the invention correctly, and made inaccurate statements, the Applicant submitted Evidence correcting the Defendants' mistakes. The Official Stamp of the Defendants' Mail Room indicates that the Evidence rebutting the Defendants was received multiple times, as shown in Exhibits 16 and 17.

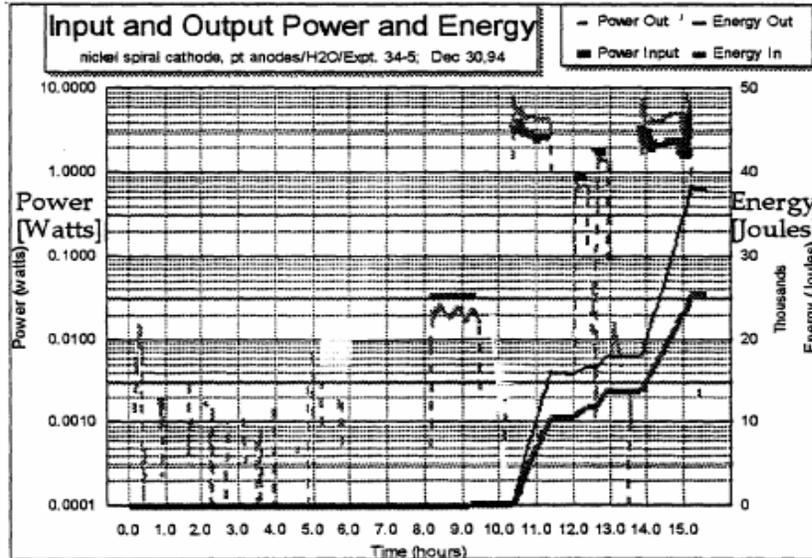


APPENDIX D - MULTI-RING CALORIMETER

This is a schematic diagram of the central portion of the five-ring calorimeter. The figure presents the rings and barriers as located from the source-ring (inner ring containing electrodes, ohmic control, thermistor) to the environment outside of the chamber. For simplicity, not shown are the pump motor, ohmic thermal sources, or gas outlet tube (closed for all of these experiments) in ring 2, the humidity detector in ring 3, or the Styrofoam or wooden thermal isolation supports in rings 4 and 5 (confer reference 8) and the control units discussed and shown in the original Specification (A183) and Swartz(97)(A72).

Exhibit 14 - This Figure shows schematically invention '058 which maximizes the output of a reaction and improves the measurement of heat.

**APPENDIX E - THERMAL SPECTROGRAM
 DEMONSTRATING OPERABILITY AND UTILITY
 02-1240 (Serial No. 08/406,457)**



**APPENDIX E - THERMAL SPECTROGRAM
 DEMONSTRATING OPERABILITY AND UTILITY**

The Input and Output Power, and Energies, of a platinum foil anode and spiral nickel cathode [H₂O] are shown. The step-like functions are the energy curves [read off the right y-axis]. The powers (thermal background, input, output) are the remainder of the curves and have a logarithmic scale (left y-axis). To the lower left is shown thermal noise (background for this experiment) ranging from 16 to a few milliwatts and extending until the first input (control) pulse at about 8 hours. This is shown in the original Specification (A184) and Swartz(97)(A76).

39

Exhibit 15 - This Figure shows the actual output of the '058 invention. This figure is from the Petition for Certiorari [02-1565 (SCOTUS)] to which the Defendants failed to respond, and itself is taken from the peer-reviewed publication [Swartz. M., "**Consistency of the Biphasic Nature of Excess Enthalpy in Solid State Anomalous Phenomena with the Quasi-1-Dimensional Model of Isotope Loading into a Material**", *Fusion Technology*, 31, 63-74 (1997)] and the original specification of '058.

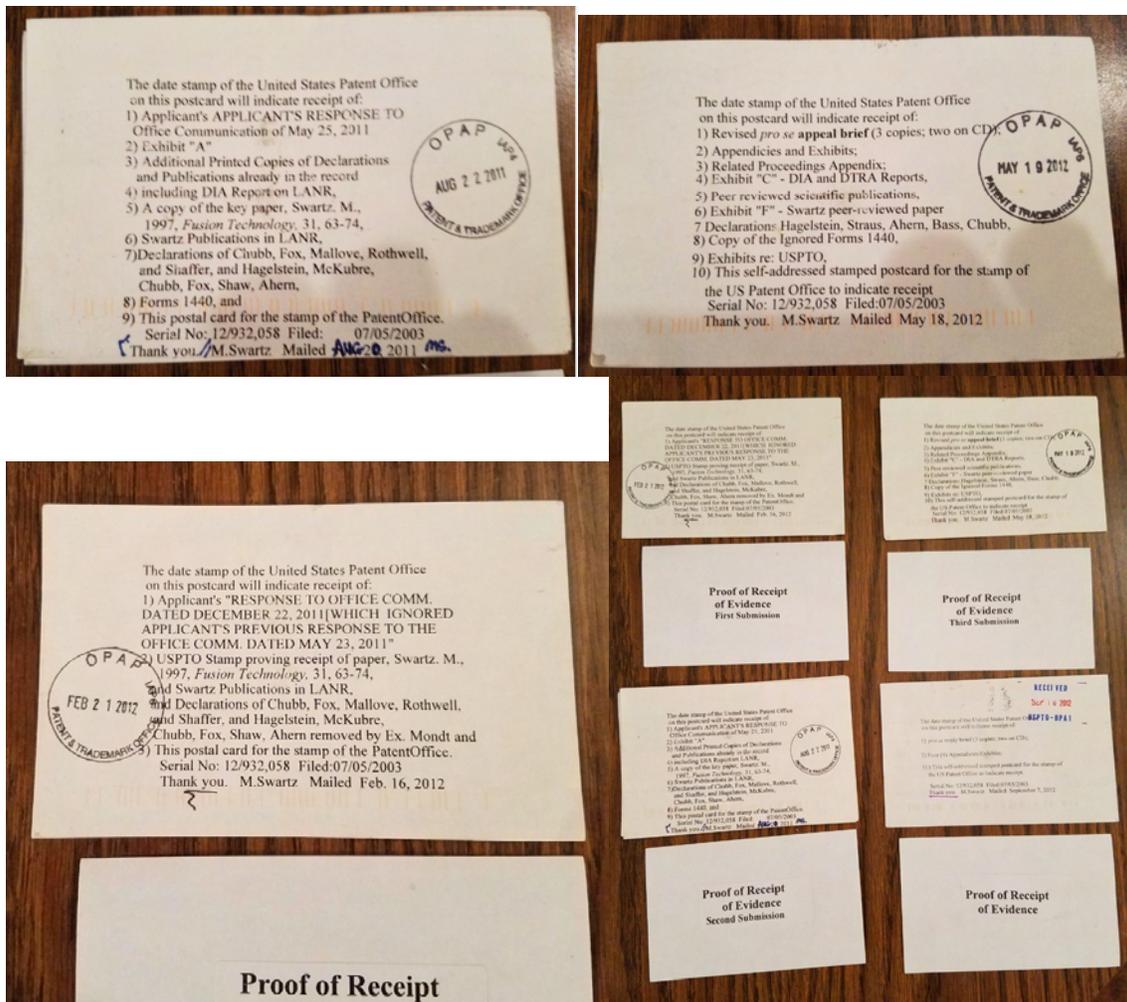


Exhibit 16 - This photograph shows the actual date stamps of the Defendants mail room proving receipt of the '058 Evidence which is explicitly, repeatedly, listed.

104. When the Defendants refused to address Applicant's multiply-submitted Evidence, he filed an Appeal Brief with the Patent Trial and Appeal Board on May 18, 2012. The Evidence was again sent to them, including DIA and DTRA reports supporting utility and need.

105. The Official Stamp of the Defendants' Mail Room indicates that the Defendants received all the Briefs that Plaintiff sent them [Exhibit 16].

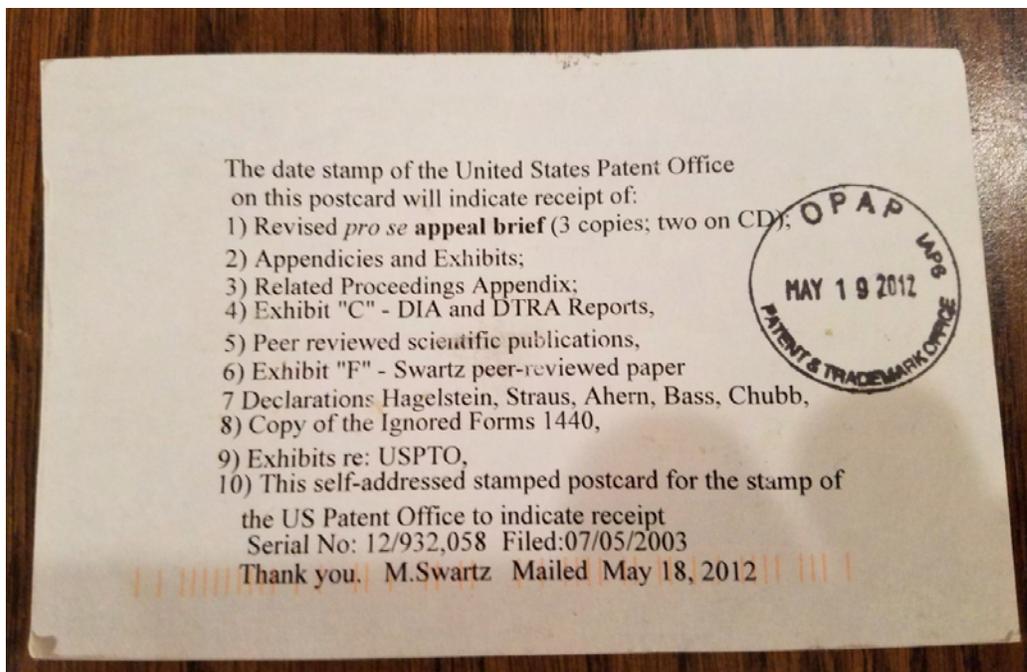


Exhibit 17 - This photograph shows the actual date stamps of the Defendants mail room proving receipt of the '058 Evidence, repeatedly.

106. A Reply Brief was filed September 7, 2012, to correct systematic errors stated by the Defendants. This and the submitted, ignored, Exhibits are shown in Exhibit 16. The copious, ignored, supporting references and Evidence were provided in both written form and on CD-ROM (2 copies).

Decision Ignores the Original Specification

107. The Decision by the Patent Trial and Appeal Board, does not correctly describe the submitted invention.

108. None of the relevant figures in the invention's original specification are discussed.

109. The actual invention described in the original specification is only discussed

in passing by presenting one claim, and in one Declaration (vide infra despite what the invention explicitly is:

a means to **"examine the activity of a sample of a material involved in a reaction with an isotopic fuel"**.

110. In the Decision, the authors of the Decision ignore the actual invention and instead launch an unsubstantiated biased attack on 'cold fusion' even though it says explicitly throughout the original specification that THIS invention is directed to measuring activity [heat output].

111. As proof of the Decision's bias failure to accurately reflect the Original Specification, merely consider the number of times words are used in the original specification, and in the Decision which is not about the original specification, but instead a smear on 'cold fusion'. Six times 'cold fusion' is mentioned in the Original Specification as a possible use for the invention which measures heat.activity. However, sixty nine (69) times it is mentioned in the Decision. In fact, it is all the Decision is about.

112. By contrast, the Decision mentions the measurement of activity a mere (only) three (3) times, and only in the direct quotes by Dr. Mallove. This is reprehensible because the measurement of activity is what the above-entitled invention is about.

113. None of the relevant substantive text from the Appeal Brief and Reply Brief demonstrating how the invention works, how the claims are obviously definite, and how the Examiner is wrong, is discussed.

114. This measurement of heat release ("activity") is useful to many things as discussed in the Original Specification but ignored in the Decision. The Appellant has even used it to measure calorimetry of green plants and avionics in the Commonwealth of Massachusetts.

115. In the Decision, the authors of the Decision ignore the invention's measure of heat and change the Applicant's invention to be: "COLD FUSION" as they begin a biased attack on 'cold fusion' using the Office's flawed proven-wrong opinion. This has the appearance of impropriety because it is made absent Evidence submitted and received BEFORE FINAL, and with the Appeal Brief, and with the Reply Brief.

116. The Decision mentions the 2004 DOE Report. As stated in the Briefs, but of course ignored in the Decision, the DOE Report from that meeting did not discuss ANY OF APPELLANT's work. Why is that not relevant? Why is the argument not relevant?

DECISION of the BOARD

117. The Decision was written by Edward A. Brown, Michael L. Holter, and Nina L. Medlock [***]. Despite the Appeal Brief and Reply Brief and Evidence submitted and received showing the Office was wrong, the Decision of the Patent Trial and Appeal Board made on September 28, 2016, with impropriety on a federal document, lists the Appellant as "ex parte".

The Decision on Rehearing was March 14, 2017. By the same authors, written by Medlock.

[***] - The Decision by the Patent Trial and Appeal Board, is unsigned. The Examiner is not named.

Decision Ignores Submitted Evidence

118. The Decision ignores the submitted Evidence and the graphs proving operability which were submitted with the original specification.

119. The submitted and received Evidence from the DIA and DTRA, explicitly mentioning Applicant's working technologies in this field, is not discussed.

120. The Decision is untruthful because the DIA and DTRA Evidence, among other things, are ignored.

121. The Decision by the Patent Trial and Appeal Board, does not discuss the Evidence in any substantive way. The most important peer-reviewed publications which was submitted, and received many times, is mentioned once by title but not discussed as to its content, even though they were discussed over and over BEFORE FINAL.

Swartz. M., "**Consistency of the Biphasic Nature of Excess Enthalpy in Solid State Anomalous Phenomena with the Quasi-1-Dimensional Model of Isotope Loading into a Material**", *Fusion Technology*, 31, 63-74 (1997).

Swartz, M., "**Quasi-One-Dimensional Model of Electrochemical Loading of Isotopic Fuel into a Metal**", *Fusion Technology*, 22, 2, 296-300 (1992).

122. None of the figures in the peer-reviewed publications constituting Evidence submitted is discussed in the Decision. The figures therein prove operability and by the existence of the peer-reviewed paper both utility and definiteness.

123. The Decision by the Patent Trial and Appeal Board, does not discuss the submitted, multiply received, Evidence in any substantive way.

124. The Decision is untruthful by misquoting, misrepresenting, and substituting opinion for fact.

125. Most egregious of the Office's omissions are those are that involve Evidentiary materials previously removed from the Docket.

126. The systematic removal of Evidence which was submitted before FINAL and not logged and discussed anywhere is not addressed in the flawed Decision.

In this matter, too, the Appellant's, then Applicant's, criticisms and complete rebuttals of the Examiner have all been ignored.

127. After ignoring the Evidence, the Decision cruelly and with blatant discrimination, the Decision falsely proclaims the Appellant has been "ex parte".

Decision Ignores Arguments

128. The Decision fails to list or discuss and with precise substantive detail all of Appellant's Arguments which were presented.

129. The Appellant's discussions and substantive arguments regarding the Exhibits and the undiscussed Evidence are not discussed.

130. For example, the Quasi-1-model used to analyze the heat transfer was discussed extensively in the Original Specification and Briefs but ignored, because on page 22 the Decision falsely states nothing was discussed.

131. The Decision by the Patent Trial and Appeal Board fails to mention, address, or refute the meticulous responses made by the Appellant, and as Applicant before that, including explicit criticism of process.

132. After ignoring the Arguments, the Decision cruelly and with blatant discrimination and falsely proclaims the Appellant has been "ex parte".

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Decision Uses a "ex parte" Label for Corrupt Purpose

133. Appellant has not been "ex parte" as the Decision falsely purports.

134. On information and belief, it is believed that Examiner had an ex parte communication with the Board which was withheld from the Appellant. Hence the 'ex parte' is a falsehood. The Plaintiff has always responded.

135. On information and belief, the Appellant again has had documents withheld from him in the above-entitled action, as in others actions. The Applicant (also Appellant) has always responded.

136. On information and belief, the Office has either withheld Evidence and Briefs from the Board of Patent Appeals or has conspired with the author of Decision.

Decision Ignores Complete Content of All Declarations

137. The Decision by the Patent Trial and Appeal Board, does not discuss fully and completely, and with appropriate issue, the submitted Declarations in the relevance of which they were given.

138. The Declarants are ridiculed, marginalized, and their content presented in the Declarations is never fully described. This is done wrongly and with impropriety presented to lead away from the important issues.

139. As one example, on page 29, the late scientist Hal Fox declares the utility of the present invention, but that is wrongly ignored in the Decision.

Decision Ignores Previously Removed Evidence

140. With impropriety, the Decision by the Patent Trial and Appeal Board, does not discuss the previous removal of Evidence, and failure to docket that Evidence, even though it was discussed and detailed in the Appeal Brief and Reply Brief.

141. At no place in the Decision is the fact that the previous Decision (cited and relied upon in the present Decision) falsely, cruelly, and wrongly, mis-described the invention and failed to docket Evidence.

142. The Decision refers to previous Decisions which had falsehoods by the Office as demonstrated in the federal appellate court. As such, the Decision with impropriety fails to discuss the implication of the previously removed Evidence, and the previous flawed description of the invention. This is serious.

Application '058 : THE PATENT SHOULD BE ISSUED

143. '058, is a method to "examine the activity of a sample of a material involved in a reaction" - the heat output of a sample. It has operability and utility and proven validation.

144. Furthermore, Plaintiff (then Applicant) taught in the original specification and claims how his apparatus works and claimed the invention which solves a long-standing problem of monitoring loading in situ. Plaintiff delivered timely-submitted Evidence, including Declarations and peer-reviewed published papers, which refute the Office and prove validation, and therefore the legal judgment of enablement.

145. The Plaintiff submits that if the Office must rely upon reference to art cut of a cloth other than this specification and claims, and rely on not docketing and destroying Evidence, then their position must indeed be rather weak and should dictate allowance of the present invention.

146. The Plaintiff requests allowance of Claims 1-20 under 35 U.S.C. 101 because there is credible, well established utility; Claims 1-20 under 35 U.S.C. 112, first paragraph, because the disclosure which is enabling; Claims 1-20 under 35 U.S.C. 112, second paragraph, because the specification is complete and does include all essential elements and does point out and distinctly claim the subject regarded as the invention.

Simply put, all claims do not honestly suffer from any justified rejection at this time, and should be allowed to mature into a patent.

FOURTH PATENT APPLICATION TO BE DISCUSSED: '765

147. Plaintiff's patent application S.N. 09/750,765, [also called '765; Filed: 12/28/00 [For: **METHOD AND APPARATUS TO CONTROL ISOTOPIC FUEL LOADED WITHIN A MATERIAL**] is presently before The Patent Trial and Appeal Board, Appeal 2012-011287], generally speaking, is a two-stage method to make heat; it involves a first stage of electrode loading, and then, a second stage of sudden rapid ("catastrophic") flow of hydrogen within the metal. The apparatus includes means to extract heat. The invention, shown in Exhibit 18, works and its effect has been published by independent authorities. Many of these were in the peer-reviewed American Nuclear Society journal, then called Fusion Technology, and in Proceedings run by the US Navy. Some of the output is shown in Exhibit 19 and has also been published.

148. When the Defendants failed to discuss the invention correctly, and made inaccurate statements, the Applicant submitted Evidence correcting the Defendants' mistakes. The Official Stamp of the Defendants' Mail Room indicates that the Evidence rebutting the Defendants was received multiple times, as shown in Exhibits 20 and 21.

149. When the Defendants refused to address Applicant's multiply-submitted Evidence, he filed an Appeal Brief with the Patent Trial and Appeal Board on May 18, 2012. The Evidence was again sent to them, including DIA and DTRA reports supporting utility and need. The Official Stamp of the Defendants' Mail Room indicates that the Defendants received the Brief [Exhibit 20].

150. A Reply Brief was filed September 7, 2012, to correct systematic errors stated by the Defendants. This and the submitted, ignored, Exhibits are shown in Exhibit 21. The copious, ignored, supporting references and Evidence were provided in both written form and on CD-ROM (2 copies).

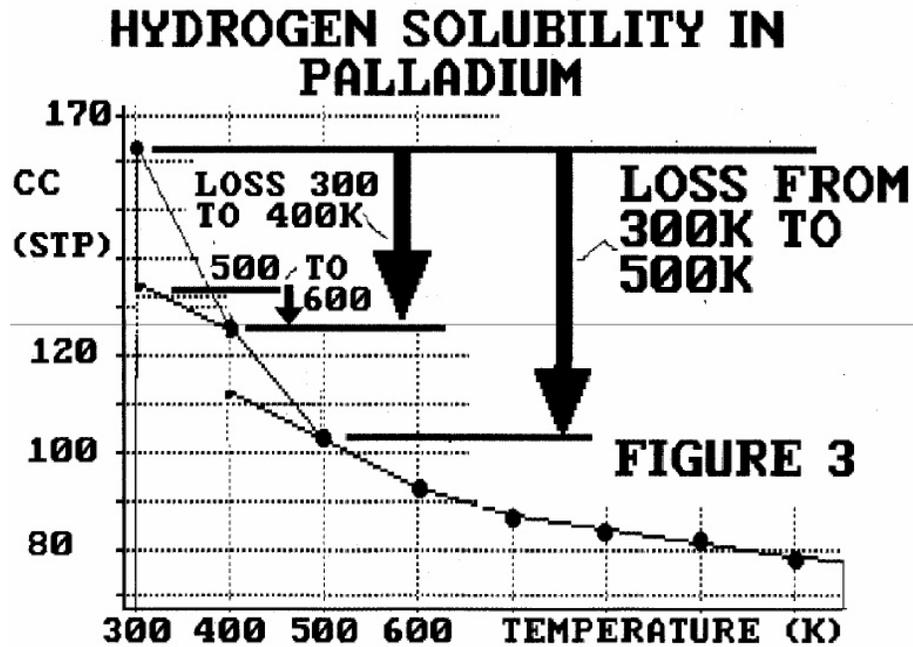


Exhibit 18 - This Figure shows schematically invention '765 which works in the first step by causing sudden loss of hydrogen.

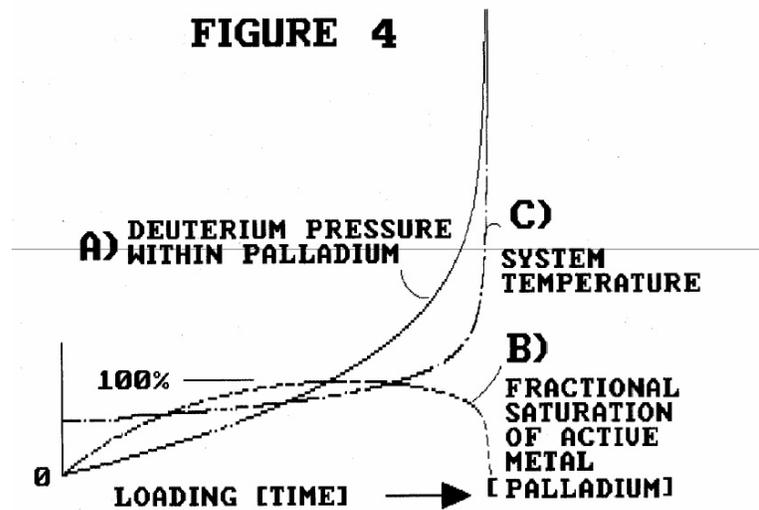


Exhibit 19 - This Figure shows the actual output of the invention '765, which in the second step causes a rise in system temperature, seen in the bottom graph, which drives and maximizes the output of a desired reaction of heat production.

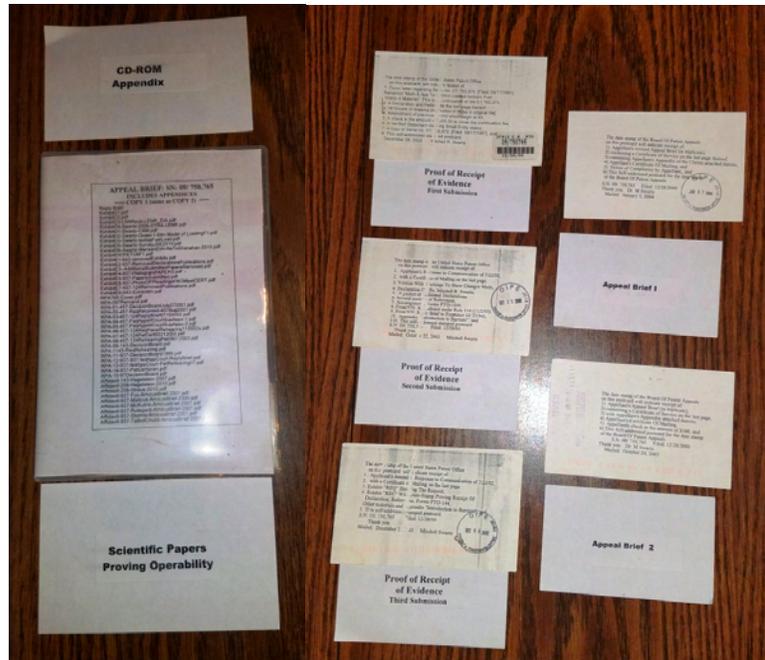


Exhibit 20 - This photograph shows the actual date stamps of the Defendants' Mail room proving receipt of the '765 Evidence which is explicitly, repeatedly, listed. Observe that the CD-ROM, on the left, has additional copies of all scientific peer-reviewed supporting Evidence proving the Defendants were in error.

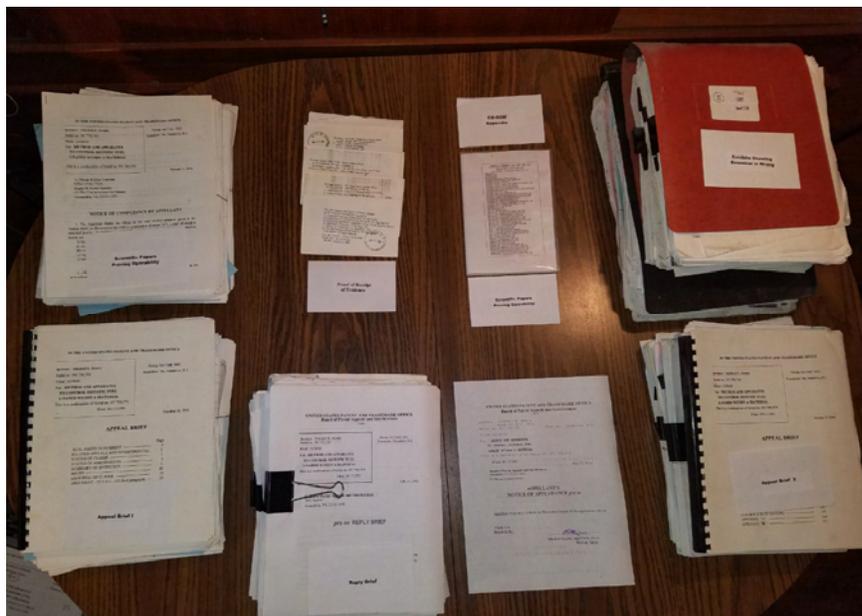


Exhibit 21 - This photograph shows the actual materials sent to the Defendants, including Evidence, repeatedly regarding '765.

151. As stated in the Reply Brief

“19. This generates significant efficient energy which is clean, and has been shown to generate electricity and clean water, and therefore is of incredible utility to everyone on Earth, except for the Examiner and his Supervisors, and, so far, the Board which has been held in the "dark" by removed documents and the Examiner's false statements on federal documents.

20. In the present case, the palladium is saturated, fully loaded, with isotopic fuel, and then the catastrophic condition is created. The office purports inadequate enablement of "catastrophic desaturation", and that it is indefinite. In fact, contradicting the Examiner, the applicant's peer-reviewed publications about catastrophic desaturation have been published by EPRI, the U.S. Navy, the American nuclear society. Applicant's publications have taught internal diffusion flux of isotopic fuel (hydrogen) as discussed in peer-reviewed journals [Hagelstein, Swartz, Optics and Quantum Electronics, MIT RLE Progress Report, 139: 1, 1-13 (1997); Swartz, 1997, "Phusons in Nuclear Reactions in Solids", Fusion Technology, 31, 228-236 (1997); Swartz, 1994, "Catastrophic Active Medium Hypothesis of Cold Fusion", 4, "Proceedings: "Fourth International Conference on Cold Fusion" sponsored by EPRI and the Office of Naval Research; Swartz, 1997, "Hydrogen Redistribution By Catastrophic Desorption In Select Transition Metals", Journal of New Energy, 1, 4, 26-33]. This is confirmation of Applicant's teachings of internal diffusion isotopic fuel and interstitial barriers. Importantly, these teachings confirm operability as taught years earlier in the original specification and claims.

The Applicant noted that these papers --involving catastrophic desaturation-- underwent peer-review and were published.”

152. The Official Stamp of the Office Mail Room indicates that the Office received all the Briefs that Appellant sent them.

Decision Ignores the Original Specification

153. The Decision by the Patent Trial and Appeal Board, does not correctly describe the submitted invention.

154. None of the relevant figures in the invention's original specification are discussed.

155. The actual invention described in the original specification is only discussed in passing by presenting one claim, rather than the first claim discussed in detail by the Appellant in the Reply Brief, and despite what the invention explicitly is:

a two-stage method to make heat; it involves a first stage of electrode loading, and then, a second stage of sudden rapid ("catastrophic") flow of hydrogen within the metal. The apparatus includes means to extract heat and other products.

156. The actual function, operation, and output, of the invention is to make HEAT. This means that the invention remains ignored by the Office .

157. In the Decision, the authors of the Decision ignore the actual invention, to mutate and alter the output from "heat" to "nuclear fusion".

158. In the Decision, the authors of the Decision ignore the invention, change the Applicant's invention, to begin a biased attack on 'cold fusion' using the Office's opinion absent Evidence submitted and received BEFORE FINAL, and with the Appeal Brief, and with the Reply Brief.

159. None of the relevant substantive text from the Appeal Brief and Reply Brief demonstrating how the invention works, how the claims are obviously definite, and how the Examiner is wrong, is discussed.

Decision Ignores Submitted Evidence

160. The Decision ignores the submitted Evidence and the graphs proving operability which were submitted with the original specification.

161. The submitted and received Evidence from the DIA and DTRA, explicitly mentioning Applicant's working technologies in this field, is not discussed.

162. The Decision is untruthful because the DIA and DTRA Evidence, among other things, are ignored.

163. The most important peer-reviewed publication which was submitted, and received many times, is mentioned once by title but not discussed as to its content.

Swartz M., Catastrophic Active Medium (CAM) Theory of Cold Fusion, Proc. ICCF4 4, (1993), p 255; sponsored by EPRI and the Office of Naval Research; www.lenr-canr.org/acrobat/EPRIproceedingc.pdf

Swartz M., Hydrogen Redistribution by Catastrophic Desorption in Select Transition Metals, J. New Energy 1, No. 4, (1996), p 26-33; www.iscmns.org/FIC/J/JNE1N4.pdf

164. None of the figures in the peer-reviewed publications constituting Evidence submitted is discussed in the Decision.

‘765- DECISION of the BOARD

165. The Decision was written by Edward A. Brown, Michael L, Hoelter , and Nina L. Medlock [***]. Despite the Appeal Brief and Reply Brief and Evidence submitted and received showing the Office was wrong, the Decision of the Patent Trial and Appeal Board made on September 28, 2016, with impropriety and falsity on a federal document, odiously lists the Appellant as "ex parte".

The Decision on Rehearing was Feb. 28, 2017. By the same authors, written by Hoelter.

[***] - The Decision by the Patent Trial and Appeal Board, is unsigned. The Examiner is not named.

166. The Decision by the Patent Trial and Appeal Board, does not discuss the submitted, multiply received, Evidence in any substantive way.

167. The Decision is untruthful by misquoting, misrepresenting, and substituting opinion for fact.

168. Most egregious of the Office's omissions are those are that involve Evidentiary materials previously removed from the Docket.

169. The systematic removal of Evidence which was submitted before FINAL and not logged and discussed anywhere is not addressed in the flawed Decision. In this matter, too, the Appellant's, then Applicant's, criticisms have all been ignored.

170. After ignoring the Evidence, the Decision cruelly and with blatant discrimination, the Decision falsely proclaims the Appellant has been "ex parte".

Decision Ignores Arguments

171. The Decision fails to list or discuss and with precise substantive detail all of Appellant's Arguments which were presented.

172. So egregious is this absence that on Page 15, the Decision falsely claims Appellant's briefs did not address the Examiner. This is false. The Appellant's discussions and substantive arguments regarding the Exhibits and the undiscussed Evidence are not discussed.

173. The Decision by the Patent Trial and Appeal Board fails to mention, address, or refute the meticulous responses made by the Appellant, and as Applicant before that, including explicit criticism of process. Only in the light of systematic

ignoring the Arguments, the Decision cruelly and with blatant discrimination and by patent fraud, falsely proclaims the Appellant has been "ex parte".

The PTO Uses a False "ex parte" Label for Corrupt Purpose

174. Appellant has not been "ex parte" as the Decision falsely purports. This is great impropriety in the light of the serial removal of Evidence from DTRA, DIA, NASA, DARPA, the US Navy, and the American Nuclear Society.

175. On information and belief, it is believed that Examiner had an ex parte communication with the Board which was withheld from the Appellant. Hence the 'ex parte' label, which is false. The Plaintiff has always responded.

176. On information and belief, the Appellant again has had documents withheld from him in the above-entitled action, as in others actions. The Applicant (also Appellant) has always responded.

177. On information and belief, the Office has either withheld Evidence and Briefs from the Patent Trial and Appeal Board or has conspired with the author of Decision.

Decision Ignores Complete Content of All Declarations

178. The Decision by the Patent Trial and Appeal Board, does not discuss fully and completely, and with appropriate issue, the submitted Declarations in the relevance of which they were given.

179. The Declarants are ridiculed, marginalized, and their content presented in the Declarations is never fully described. This is done wrongly and with impropriety presented to lead away from the important issues.

180. The previous Remands from the Board [Exhibit 22], which the Examiner failed to address, were still not discussed. The Orders have been swept under the proverbial rug revealing an obvious deep appearance of impropriety.

Decision Ignores Previously Removed Evidence

181. With impropriety, the Decision by the Patent Trial and Appeal Board, does not discuss the previous removal of Evidence, and failure to docket that Evidence, even though it was discussed and detailed in the Appeal Brief and Reply Brief.

182. At no place in the Decision is the fact that the previous Decision (cited and relied upon in the present Decision) falsely, cruelly, and wrongly, misdescribed the invention and failed to docket Evidence.

183. The Decision refers to previous Decisions which had falsehoods by the Office as demonstrated in the federal appellate court. As such, the Decision with impropriety fails to discuss the implication of the previously removed Evidence, and the previous flawed description of the invention. This is serious.

Paper No. 36

UNITED STATES PATENT AND TRADEMARK OFFICE

 BEFORE THE BOARD OF PATENT APPEALS
 AND INTERFERENCES

MAILED

OCT 18 1995

 PAT & T.M. OFFICE
 BOARD OF PATENT APPEALS
 AND INTERFERENCES
Ex parte MITCHELL R. SWARTZ

 Appeal No. 94-2920
 Application 07/760,970¹

ORDER REMANDING TO EXAMINER

An Information Disclosure Statement was filed April 28, 1994 (Paper No. 34). A review of the file reveals that such Information Disclosure Statement was not considered by the Primary Examiner. It is not apparent from the record that the examiner notified applicant of whether this paper was considered and of whether their submission did not meet the criteria set forth in 37 C.F.R. §§ 1.97 and 1.98.

Also on April 28, 1994, the following papers were filed by applicant: (1) Declaration of Isidor Straus (Paper No. 33), (2) Reply Brief to Examiner's Answer [pursuant to 1.193] (Paper No. 32), and (3) Reply Brief Declaration of Dr. Mitchell Swartz

¹ Application for patent filed September 17, 1991.

Exhibit 22 - (part 1) In '970, the Board Ordered a Remand to address issues, documents and Evidence STILL not discussed in an obvious Obstruction of Justice by the author(s) of the present Decision. In fact the documents were never docketed as found out in federal appellate court.

Appeal No. 94-2920
Application 07/760,970

(also numbered Paper No. 32). In response to the Reply Brief, the examiner entered a letter (Paper No. 35) dated May 13, 1994 indicating that the reply brief had been entered and considered. However, there is nothing in the record indicating that the examiner considered the appropriateness of items (1) and (3) above under 37 C.F.R. 1.195. Likewise, a Petition to the Commissioner Pursuant to 37 C.F.R. 1.181 (Paper No. 27) was filed January 7, 1994 and remains unanswered.

Accordingly, it is

ORDERED that the application is remanded to the examiner for consideration of the appropriateness of the Information Disclosure Statement, and it is

FURTHER ORDERED that the application is remanded to the examiner for consideration of the appropriateness of the Declaration of Isidor Straus (Paper No. 33) and the Reply Brief Declaration of Dr. Mitchell Swartz (Paper No. 32), and it is

FURTHER ORDERED that the application is remanded to the examiner for consideration of the Petition to the Commissioner Pursuant to 37 C.F.R. 1.181 (Paper No. 27).

A communication must be sent to applicant indicating the

-2-

Exhibit 22 - (part 2) In '970, the Board Ordered a Remand to address issues, documents and Evidence STILL not discussed in an obvious Obstruction of Justice by the author(s) of the present Decision.

Appeal No. 94-2920
 Application 07/760,970

Examiner's position with respect to all issues set forth above.

The application, by virtue of its "special" status, requires immediate action. See Manual of Patent Examining Procedure, § 708.01(d). It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal.

BOARD OF PATENT APPEALS
 AND INTERFERENCES

By: 

AMALIA L. SANTIAGO
 Program and Resources Administrator
 (703) 308-9797

Exhibit 22 - (part 3) In '970, the Board Ordered a Remand to address issues, documents and Evidence STILL not discussed in an obvious Obstruction of Justice by the author(s) of the present Decision. In fact the documents were never docketed as found out in federal appellate court. Note that the Remand notes the inventions are SPECIAL.

Decision Has the Appearance of Impropriety

184. On information and belief, the Office has either withheld Evidence and Briefs from the Patent Trial and Appeal Board or has conspired with the author(s) of the Decision to have it removed from the federal record.

185. This is an attempt by false statements in a Decision to lead away future investigators from the initial cover-up including misdescribing the invention, and ignoring removal of Evidence.

Application '765: THE PATENT SHOULD BE ISSUED

186. '765 is a two-stage method to make heat; it involves a first stage of electrode loading, and then, a second stage of sudden rapid ("catastrophic") flow of hydrogen within the metal.

187. Furthermore, Plaintiff (then Applicant) taught in the original specification and claims how his apparatus works and claimed the invention which solves a long-standing problem of monitoring loading in situ. Plaintiff delivered timely-submitted Evidence, including Declarations and peer-reviewed published papers, which refute the Office and prove validation, and therefore the legal judgment of enablement.

188. The Plaintiff submits that if the Office must rely upon reference to art cut of a cloth other than this specification and claims, and rely on not docketing and destroying Evidence, then their position must indeed be rather weak and should dictate allowance of the present invention.

189. The Plaintiff requests allowance of Claims 1-10, 12-19, 21 and 22 under 35 U.S.C. 112, first paragraph, as they comply with the enablement requirement; Claims 1-10, 12-19, 21 and 22 under 35 U. S. C. 102(b) which are not anticipated by Westfall (US 5,215,631), Claims 1, 2, 4, 5, 7, 10, 13, 15, 16 and 21 under 35 U.S.C. 102(b) which are not anticipated by Kinsella et al.(US 3,682,806), and Claims 1-8 and 13-16 under 35 U.S.C.102(b) which are not anticipated by Patterson (US 5,318,675) or Patterson (US 5,372,688); and all claims wrongly rejected under 35 U.S.C. 101 because the claimed invention is operative and has utility.

Simply put, all claims do not honestly suffer from any justified rejection at this time, and should be allowed to mature into a patent.

FIFTH PATENT APPLICATION TO BE DISCUSSED '691

190. Plaintiff's patent application S.N. 09/748,691, [for: METHOD TO CONTROL REACTIONS INVOLVING ISOTOPIC FUEL WITHIN A MATERIAL USING ORTHOGONAL ELECTRIC-FIELDS;filed: 12/26/2000;Appeal 2012-000333], generally speaking, is a method to control the production of the desired products (such as heat) which includes in combination loading the hydrogen using a first applied electric field, and then at a later point in time applying a second electric field to redistribute said isotopic fuel within said material, with means to obstruct the flow of the loaded hydrogen. The invention, shown in Exhibit 23, works and its effect has been published.

191. When the Defendants failed to discuss the invention correctly, and made inaccurate statements, the Applicant submitted Evidence correcting the Defendants' mistakes. The Official Stamp of the Defendants' Mail Room indicates that the Evidence rebutting the Defendants was received multiple times, as shown in Exhibit 24.

192. When the Defendants refused to address Applicant's multiply-submitted Evidence, he filed an Appeal Brief with the Patent Trial and Appeal Board. The Evidence was sent to them, including DIA and DTRA reports supporting utility and need.

193. When the Defendants refused to address Plaintiff's (then Applicant's) multiply-submitted Evidence, he filed an Appeal Brief to the Patent Trial and Appeal Board on June 9, 2003 [Exhibit 25].

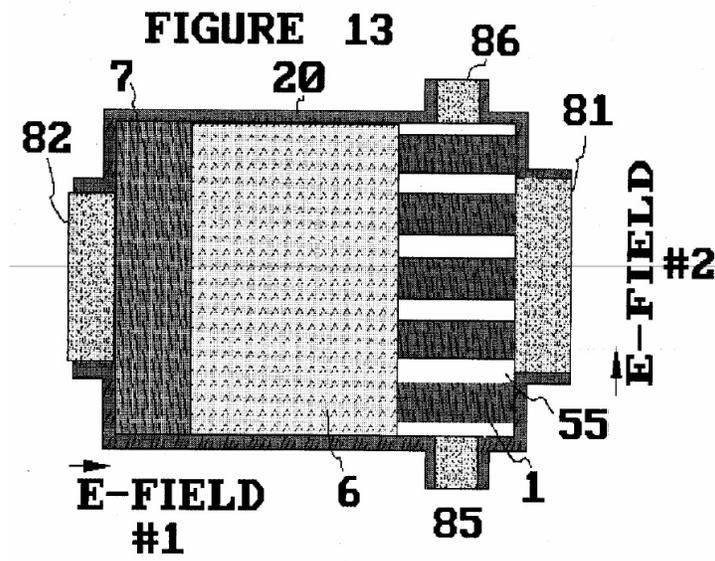


Exhibit 23 - This Figure 1 shows schematically the '691 invention.

194. A second Appeal Brief, demanded by the Office, was filed September 7, 2003, to correct purported disputed issues [Exhibit 26].

195. A third Appeal Brief, demanded by the Defendants, was filed January 28, 2004, to again correct purported disputed issues. These changes were not required for a pro se litigant, but the Examiner cruelly and unfairly demanded it, anyway [Exhibit 27].

196. A Reply Brief was filed August 26, 2011, to correct systematic errors stated by the Defendants. This and the submitted Exhibits are shown in Exhibit 28. The copious, ignored, supporting references and Evidence were provided in both written form and on CD-ROM (2 copies).

197 The Official Stamp of the Defendants' Mail Room indicates that the Defendants received all the Briefs that Plaintiff sent them [Exhibit 28].

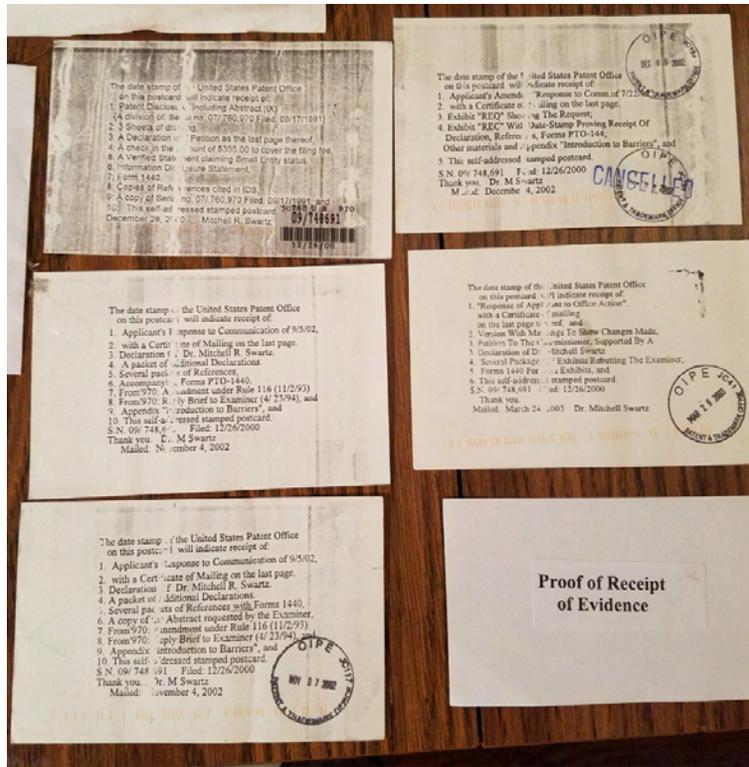


Exhibit 24 - This photograph shows the actual date stamps of the Defendants mail room proving receipt of the '691 Evidence with the content repeatedly, listed.

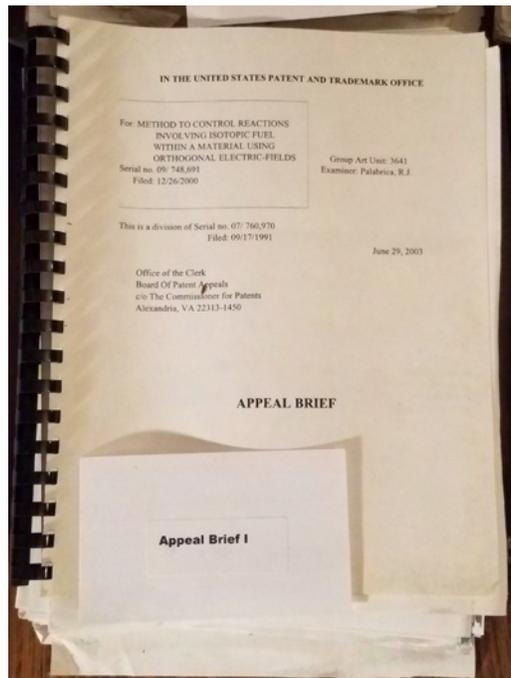


Exhibit 25 - Photograph of the actual '691 Appeal Brief.

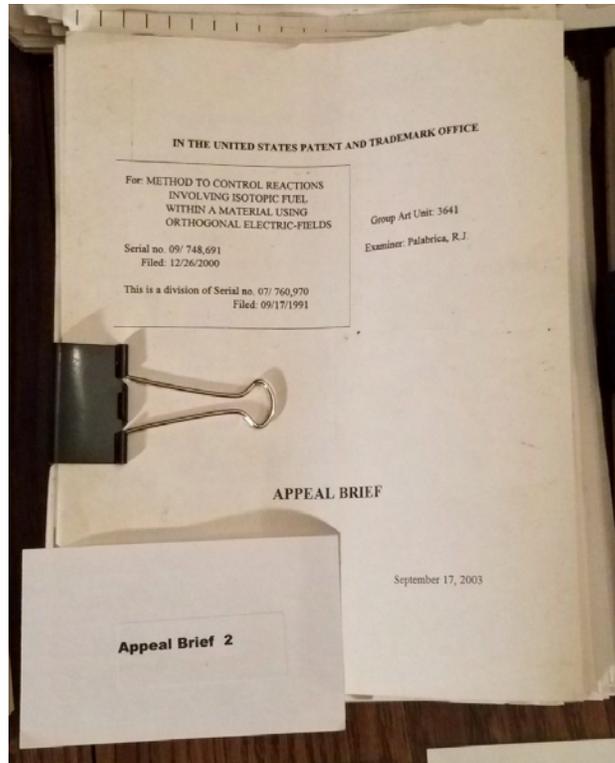


Exhibit 26 - Photograph of the actual second revised '691 Appeal Brief demanded by the Examiner but not required for pro se litigants.

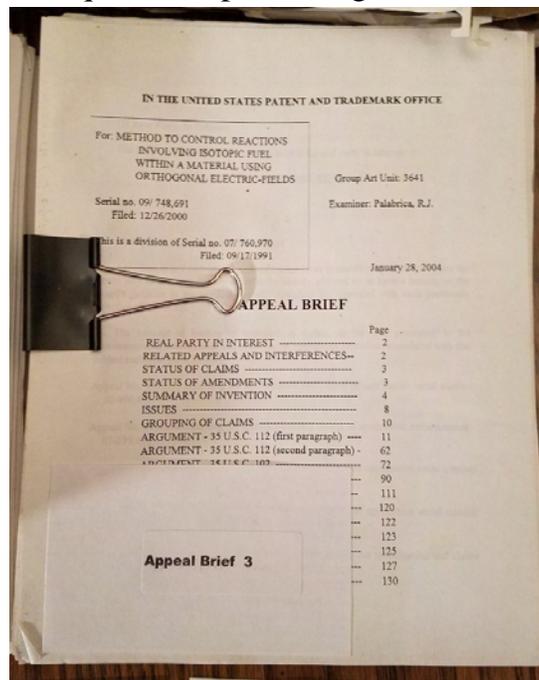


Exhibit 27 - Photograph of the actual third revised '691 Appeal Brief was demanded by the Examiner even though it was not required for pro se litigants. In the end, the Defendants claimed the Plaintiff was "ex parte".

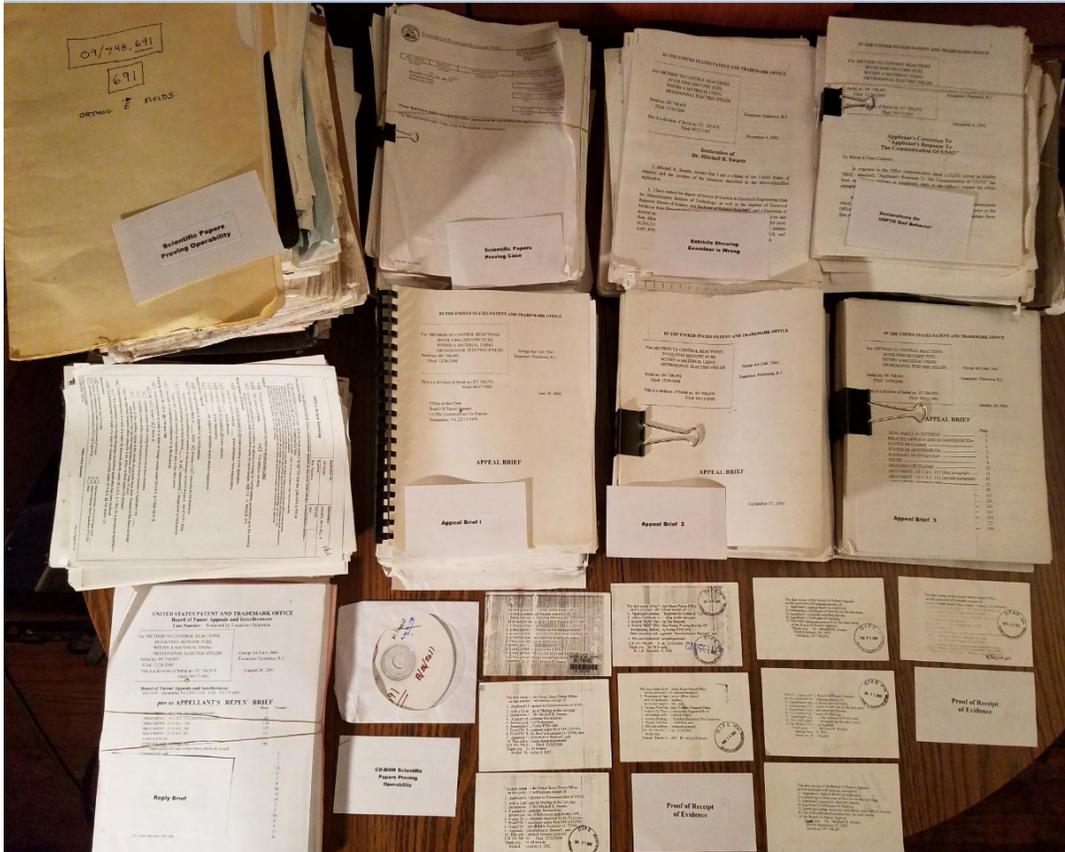


Exhibit 28 - This photograph shows the actual materials sent to, and received by the Defendants in Application '691.

DECISION of the BOARD

198. The Decision was written by Edward A. Brown, Michael L. Hoelter, and Nina L. Medlock [***]. Despite the Appeal Brief and Reply Brief and Evidence submitted and received showing the Office was wrong, the Decision of the Patent Trial and Appeal Board made on September 28, 2016, with impropriety lists the Appellant as "ex parte".

The Decision on Rehearing was March 16, 2017. By the same authors, written by Medlock.

[***] - The Decision by the Patent Trial and Appeal Board, is unsigned. The Examiner is not named.

199. The Decision by the Patent Trial and Appeal Board, does not discuss the submitted, multiply received, Evidence in any substantive way.

Decision Ignores the Original Specification

200. The Decision by the Patent Trial and Appeal Board, does not correctly describe the submitted invention. The presence of Claim 1 on page 3 which is nothing like what is discussed in the Decision proves this dichotomy.

201 None of the relevant figures in the invention's original specification are discussed in the Decision.

202. The actual function, operation, and output, of the invention is to make HEAT. This means that the invention remains ignored by the Office.

203. In the Decision, the authors of the Decision ignore the actual invention, to mutate and alter the output from "heat" to "nuclear fusion".

204. In the Decision, the authors of the Decision ignore the invention, change the Applicant's invention, to begin a biased attack on 'cold fusion' using the Office's opinion absent Evidence submitted and received BEFORE FINAL, and with the Appeal Brief, and with the Reply Brief.

205. None of the relevant substantive text from the Appeal Brief and Reply Brief demonstrating how the invention works, how the claims are obviously definite, and how the Examiner is wrong, is discussed.

Decision Ignores Submitted Evidence

206. The Decision ignores the submitted Evidence and the graphs proving operability which were submitted with the original specification.

207. The Decision is untruthful because on page 20 it falsely purports the Evidence was only sent in March 2003. The relevant articles were sent in with the Original Specification.

208 The most recent submitted and received Evidence from the DIA and DTRA, explicitly mentioning Applicant's working technologies in this field, is not discussed. They were sent to the Board once they were declassified and available.

209. The Decision is untruthful because the DIA and DTRA Evidence, among other things, are ignored.

210. The peer-reviewed publications by the American Nuclear Society and the like constituting Evidence are dismissed on page 20, claimed to be "self-serving". This is brazenly egregious. The Appellant demands to know the basis of this discrimination against Appellant and the American Nuclear Society and the US Navy.

211 None of the figures in the peer-reviewed publications constituting Evidence submitted is discussed in the Decision.

212. The Decision by the Patent Trial and Appeal Board, does not discuss the submitted, multiply received, Evidence in any substantive way.

213. The Decision is untruthful by misquoting, misrepresenting, and substituting opinion for fact.

214. Most egregious of the Office's omissions are those are that involve Evidentiary materials previously removed from the Docket.

215. The systematic removal of Evidence which was submitted before FINAL and not logged and discussed anywhere is not addressed in the flawed Decision. In this matter, too, the Appellant's, then Applicant's, criticisms have all been ignored.

Decision Ignores Arguments

216. The Decision fails to list or discuss and with precise substantive detail all of Appellant's Arguments which were presented.

217. The Appellant's discussions and substantive arguments regarding the Exhibits and the undiscussed Evidence are not discussed. Not at all.

218. The Decision by the Patent Trial and Appeal Board fails to mention, address, or refute the meticulous responses made by the Appellant, and as Applicant before that, including explicit criticism of process.

219. After ignoring the Arguments, the Decision cruelly and with blatant discrimination and by patent fraud, falsely proclaims the Appellant has been "ex parte".

Decision Uses a False "ex parte" Label for Corrupt Purpose

220. Appellant has not been "ex parte" as the Decision falsely purports.

221. On information and belief, it is believed that Examiner had an ex parte communication with the Board which was withheld from the Appellant. Hence the 'ex parte' falsehood. The Applicant (also Appellant) has always responded.

222. On information and belief, the Appellant again has had documents withheld from him in the above-entitled action, as in others actions. The Applicant (also Appellant) has always responded.

223. On information and belief, the Office has either withheld Evidence and Briefs from the Board of Patent Appeals or has conspired with the author of Decision.

Decision Ignores Complete Content of All Declarations

224. The Decision by the Patent Trial and Appeal Board, does not discuss fully and completely, and with appropriate issue, the submitted Declarations in the relevance of which they were given.

225. The Declarants are ridiculed, marginalized, and the presented content in the Declarations is never fully described. This is done wrongly and with impropriety presented to lead away from the important issues.

Decision Ignores Previously Removed Evidence

226. On page 12, with impropriety, the Decision by the Patent Trial and Appeal Board, does not discuss the previous removal of Evidence, and failure to docket that Evidence, even though it was discussed and detailed in the Appeal Brief and Reply Brief.

227. At no place in the Decision is the fact that the previous Decision (cited and relied upon in the present Decision) falsely, cruelly, and wrongly, misdescribed the invention and failed to docket Evidence.

228. The Decision refers to previous Decisions which had falsehoods by the Office as demonstrated in the federal appellate court. However, the Decision with impropriety fails to discuss the implication of the previously removed Evidence, and the previous flawed description of the invention.

Application '691 : THE PATENT SHOULD BE ISSUED

229. '691 is a method to control the production of the desired products (such as heat) which includes in combination loading the hydrogen using a first applied electric field, and then at a later point in time applying a second electric field.

230. Plaintiff (then Applicant) taught in the original specification and claims how his apparatus works and claimed the invention which solves a long-standing problem of monitoring loading in situ. Plaintiff delivered timely-submitted Evidence, including Declarations and peer-reviewed published papers, which refute the Office and prove validation, and therefore the legal judgment of enablement.

231. The Plaintiff submits that if the Office must rely upon reference to art cut of a cloth other than this specification and claims, and rely on not docketing and destroying Evidence, then their position must indeed be rather weak and should dictate allowance of the present invention.

232. The Plaintiff requests allowance of Claims 1, 5-8, 10-14, 21-30 under U.S.C. §112 (first paragraph) because the invention is operative pursuant to the Standards of Review involving peer-reviewed publications and/or Declarants who are truly skilled-in-the-art; Claims 1, 5-8, 10-14, 21-30 under U.S.C. §102 because the subject matter sought to be patented as defined by claims 1, 5-8, 10-14, 21-30 is novel; Claims 1, 5-8, 10-14, 21-30 under U.S.C. §103 because the subject matter sought to be patented as defined by claims 1, 5-8, 10-14, 21-30 is non-obvious; Claims 1, 5-8, 10-14, 21-30 under U.S.C. §101 because the claimed invention is operative and therefore has utility; Claims 1, 5-8, 10-14, 21-30 under U.S.C. §101 pursuant to the Standards of Review involving testimony of Declarants skilled-in-the-art; Claims 1, 5-8, 10-14, 21-30 under U.S.C. §101 pursuant to the Standards of Review involving peer-reviewed publications; and Claims 1, 5-8, 10-14, 21-30 under U.S.C. §101 pursuant to the Standards of Review involving reading of the claims.

Simply put, all claims do not honestly suffer from any justified rejection at this time, and should be allowed to mature into a patent.

SIXTH PATENT APPLICATION TO BE DISCUSSED '643

233. Plaintiff's patent application S.N. 12/316,643 [also called '643; for: **“A PROCESS FOR CHANGING THE OUTPUT OF A HYDROGEN LOADED MATERIAL”**]; filed: 12/15/2008; Appeal 2013-002922], generally speaking, is a process for maximizing the result of a reaction, or reaction rate, or product output, as derived from a material, such as a hydrogen loaded system, achieved by driving that material by an electric power supply which is modulated to deliver an optimal time function waveform, selected by analysis of its input power, resolving that waveform into incremental time domain signals, determining the distribution of equivalent electrical input power, and then comparing that to the characteristic response of the material to different electrical input powers, including driving.

234. The invention, shown in Exhibit 29, works and its effect has been published by independent authorities, including international Proceedings run in part by the US Navy. Some of the output is shown in Exhibit 30 and has also been in a peer-reviewed science publication.

235. When the Defendants failed to discuss the invention correctly, and made inaccurate statements, the Applicant submitted Evidence correcting the Defendants' mistakes. The Official Stamp of the Defendants' Mail Room indicates that the Evidence rebutting the Defendants was received multiple times, as shown in Exhibit 31.

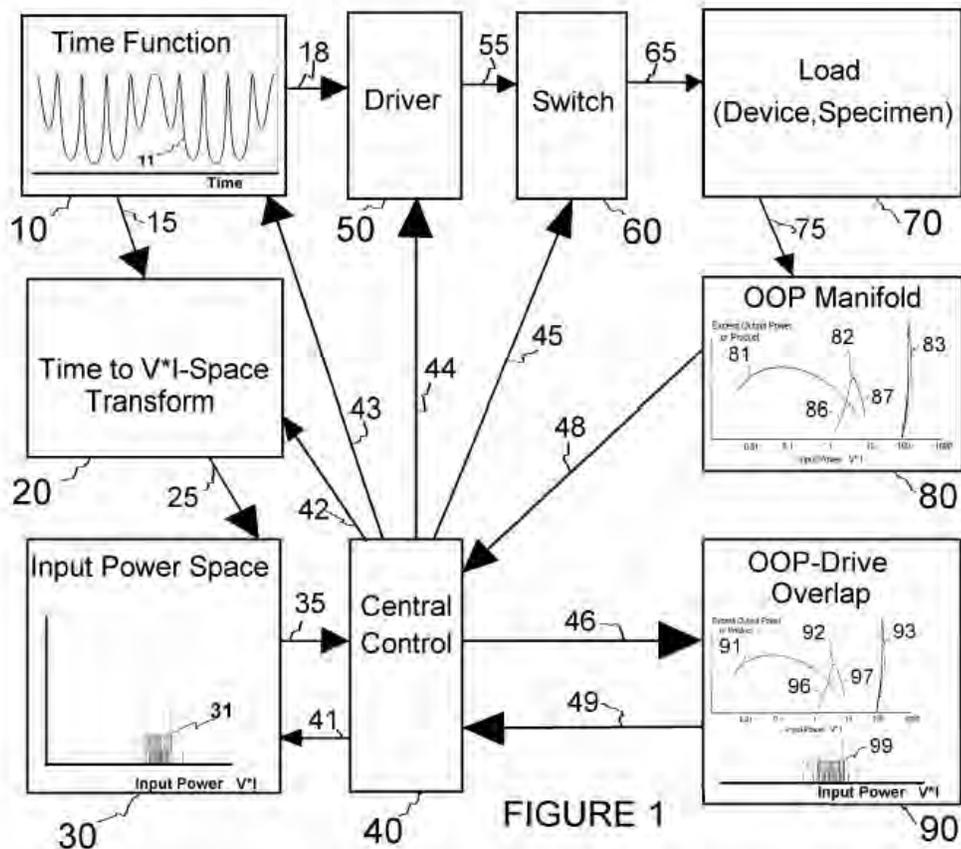


Exhibit 29 - This figure shows schematically the operation of invention '643

236. When the Examiner refused to address Applicant's submitted Evidence, he filed an Appeal Brief with the Board of Patent Appeals and Interferences with further copies of the Evidence, already submitted, on July 19, 2012 [Exhibit 32].

237. A Reply Brief was filed December 12, 2012. The Evidence was again sent to them, including DIA, DTRA, DARPA and NASA reports supporting utility and need. The copious, ignored, supporting references and Evidence were provided in both written form and on CD-ROM (2 copies).

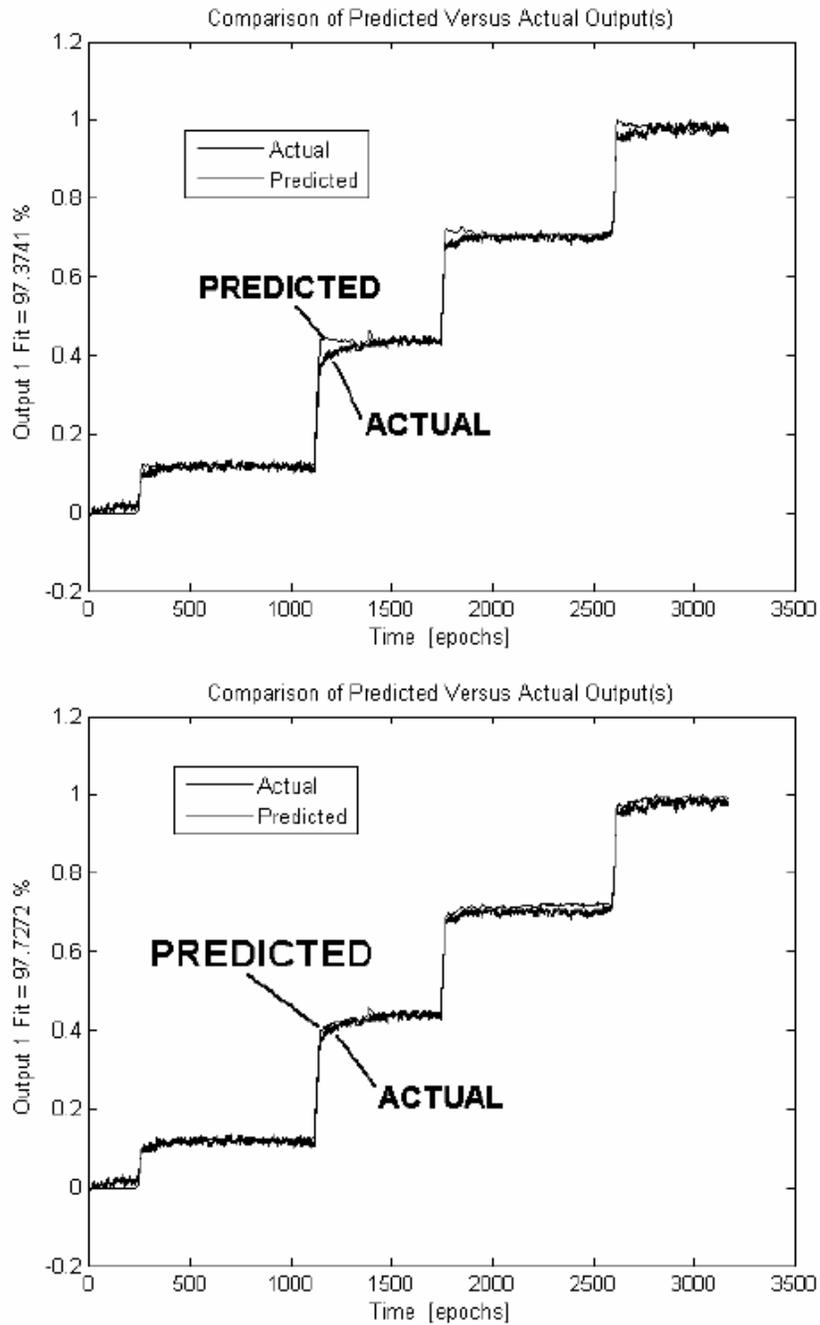


Figure 3. Optimal State Vector Dimension ($n=5$ and 30)

Exhibit 30 - This Figure shows the actual output of one invention '643 during a run.



Exhibit 31 - This photograph shows the actual date stamps of the Defendants mail room proving receipt of the Evidence which is explicitly, repeatedly, listed. The Evidence, ignored each time demonstrating systematic impropriety, was submitted and received in December 2008, July 20, 2012, December 15, 2012 and other times.

239. The Decision by the Patent Trial and Appeal Board, does not discuss the submitted, multiply received, Evidence in any substantive way.

Decision Ignores the Original Specification

240. The Decision by the Patent Trial and Appeal Board, does not correctly describe the submitted invention.

241. None of the relevant figures in the invention's original specification are discussed.

242. The actual invention described in the original specification is not discussed, which is a means "for maximizing the result of a reaction, or reaction rate, or product output".

243. In the Decision, the authors of the Decision ignore the actual invention and instead launch an unsubstantiated biased attack on 'cold fusion' even though it says explicitly throughout the original specification that THIS invention is directed to maximizing the result of a reaction, or reaction rate, or product output, as derived from a material, such as a hydrogen loaded system, achieved by driving that material by an electric power supply which is modulated to deliver an optimal time function waveform, selected by analysis of its input power, resolving that waveform into incremental time domain signals, determining the distribution of equivalent electrical input power, and then comparing that to the characteristic response of the material to different electrical input powers, including driving.

244. As proof of the Decision's bias is its utter failure to accurately reflect the invention described in the original specification. Even claim 1 which is listed on Page 4 of the Decision does not mention the words the Decision uses to attack the Appellant and his work.

245. None of the relevant substantive text from the Appeal Brief and Reply Brief demonstrating how the invention works, how the claims are obviously definite, and how the Examiner is wrong, is discussed.

246. This invention is discussed in the original specification but ignored in the Decision.

247. Controlling the making of tritium is of 'no utility' claims the Decision as it falsely describes the invention.

248. Mitigation of radioactive materials is of 'no utility' claims the Decision as it falsely describes the invention.

249. In the Decision, the authors of the Decision ignore the invention and change the Applicant's invention to be: "COLD FUSION from 1989" as they begin a biased attack on 'cold fusion' using the Office's flawed proven-wrong opinion. **This has the appearance of impropriety because it has ONLY been made absent Evidence submitted and received BEFORE FINAL, and with the Appeal Brief, and with the Reply Brief.** [Bold and underlining for emphasis]

Decision Ignores Submitted Evidence

250. The Decision ignores the submitted Evidence and the graphs proving operability which were submitted with the original specification. Multiple copies of Evidence were submitted as shown in the Exhibits which demonstrate at least four (4) copies of the Evidence were sent on December 15, 2008, and December 5, 2008, and July 20, 2012, and December 15, 2012, as well as with the Appeal Brief and Reply Brief.

251. The submitted and received Evidence rebutting the Office including from the DIA, and DTRA, explicitly mentioning Applicant's working technologies in this field, is not discussed.

252. The Decision is not fully truthful because the DIA and DTRA Evidence, among other things, are ignored.

253. The Decision by the Patent Trial and Appeal Board, does not discuss the Evidence in any substantive way. The most important peer-reviewed publications which was submitted (and received many times) is mentioned once by title but not discussed as to its content, even though they were discussed over and over BEFORE FINAL.

254 Where are they and their figures discussed in the Decision? They are not discussed in detail because they prove this invention works and has utility.

Swartz M., Forsley L., **Analysis and Confirmation of the 'Superwave-as-Transitory–OOP-Peak' Hypothesis**, *Proc. ICCF14 2*, (2008), p 653; Ed D.J. Nagel and M.E.Melich, ISBN: 978-0-578-06694-3, 653, (2010); www.iscmns.org/iccf14/ProcICCF14b.pdf

Swartz M., **Optimal Operating Point Manifolds in Active, Loaded Palladium Linked to Three Distinct Physical Regions**, *Proc. ICCF14 2*, (2008), p 639; Ed D.J. Nagel and M.E.Melich, ISBN: 978-0-578-06694-3, 639, (2010); www.iscmns.org/iccf14/ProcICCF14b.pdf

Swartz, M., Bass, R.W., "**Empirical System Identification (ESID) and Optimal Control of Lattice-Assisted Nuclear Reactors**," *Proceedings of the 14th International Conference on Condensed Matter Nuclear Science and the 14th International Conference on Cold Fusion (ICCF-14)*, Ed D.J. Nagel and M.E.Melich, ISBN: 978-0-578-06694-3, 497, (2010).

255. None of the figures in the peer-reviewed publications constituting Evidence submitted is discussed in the Decision. The figures therein prove operability and by the existence of the peer-reviewed paper both utility and definiteness.

256. The Decision by the Patent Trial and Appeal Board, does not discuss the submitted, multiply received, Evidence in any substantive way.

257. The Decision is untruthful by misquoting, misrepresenting, and substituting opinion for fact. The Decision mentions the DOE Report. As stated in the Briefs, but of course ignored in the Decision, the DOE Report from that meeting did not discuss ANY OF APPELLANT's work.

258. Most egregious of the Office's omissions are those are that involve Evidentiary materials previously removed from the Docket.

259. The systematic removal of Evidence which was submitted before FINAL, and not logged and discussed anywhere, is not addressed in the flawed Decision.

260. Egregiously, if not illegally, after ignoring the Evidence, the Decision cruelly and with blatant discrimination, falsely proclaims the Appellant has been "ex parte".

Decision Ignores Arguments

261. The Decision fails to list or discuss with any kind of precise substantive detail all of Appellant's Arguments which were presented. Instead, the fabricated-'ex parte'-labeled Decision substantively ignores the Arguments.

262. The Appellant's discussions and substantive arguments regarding the Exhibits and the undiscussed Evidence are not discussed.

263. After ignoring the Arguments, the Decision cruelly and with blatant discrimination and fraud, falsely proclaims the Appellant has been "ex parte".

Decision Uses a Patent False "ex parte" Label for Corrupt Purpose

264. Appellant has not been "ex parte" as the Decision falsely purports.

265. On information and belief, it is believed that Examiner had an ex parte communication with the Board which was withheld from the Appellant. Hence the 'ex parte' falsehood. The Applicant (also Appellant) has always responded.

266. On information and belief, the Appellant again has had documents withheld from him in the above-entitled action, as in others actions. The Applicant (also Appellant) has always responded.

267. On information and belief, the Office has either withheld Evidence and Briefs from the Board or has done this with the knowledge of the author of the Decision.

Decision Ignores Complete Content of All Declarations

268. The Decision by the Patent Trial and Appeal Board, does not discuss fully and completely, and with appropriate issue, the submitted Declarations in the relevance of which they were given.

269. The Declarants are ridiculed, marginalized, and their content presented in the Declarations is never fully described. This is done wrongly and presented to lead away from the important issues.

Decision Ignores Previously Removed Evidence

270. On page 12, with impropriety, the Decision by the Patent Trial and Appeal Board, does not discuss the previous removal of Evidence, and failure to docket that Evidence, even though it was discussed and detailed in the Appeal Brief and Reply Brief.

271. On such attempt to have the Office address this was sent March 17, 2012 and explicitly addresses the removal of Exhibits including the Defense Intelligence Agency report.

272. At no place in the Decision is the fact that the previous Decision (cited and relied upon in the present Decision) falsely, cruelly, and wrongly, misdescribed the invention and failed to docket Evidence.

273. The Decision refers to previous Decisions which had falsehoods by the Office as demonstrated in the federal appellate court. As such, the Decision with impropriety fails to discuss the implication of the previously removed Evidence, and the previous flawed description of the invention.

Application '64 : THE PATENT SHOULD BE ISSUED

274. '643 is a process for maximizing the result of a reaction, or reaction rate, or product output, as derived from a material, such as a hydrogen loaded system.

It has operability and utility and proven validation.

275. Furthermore, Plaintiff (then Applicant) taught in the original specification and claims how his apparatus works and claimed the invention which solves a long-standing problem of monitoring loading in situ. Plaintiff delivered timely-submitted Evidence, including Declarations and peer-reviewed published papers, which refute the Office and prove validation, and therefore the legal judgment of enablement. The disclosure is enabling.

276. The Plaintiff submits that if the Office must rely upon reference to art cut of a cloth other than this specification and claims, and rely on not docketing and destroying Evidence, then their position must indeed be rather weak and should dictate allowance of the present invention.

277. The Plaintiff requests allowance of Claims 1-16 and 21-24 (all pending claims) under 35 U.S.C. 101 because there is credible, well established utility, and of Claims 1-16 and 21-24 under 35 U.S.C. 112, first paragraph because there is operability.

Simply put, all claims do not honestly suffer from any justified rejection at this time, and should be allowed to mature into a patent.

V. The Defendants Have Made Systematic False Statements About the Utility of this Technology

278. It is wrongful that the Defendants have made wrongful behavior and false statements on federal documents sent through the US mail in yet another egregious violation of 18 U.S.C.§1001. The Defendants have not been truthful about the utility of this technology, despite Evidence to the contrary. As the Declaration of Dr. Frank Gordon states,

“Access to sources of energy by the U.S. military at the location where it is needed is both a costly and tactical necessity. It has been widely reported that the U.S. Marines carry more weight in batteries for their equipment than ammunition.”

279. As the Declaration of Lt. Colonel Robert Smith states,

“These condensed matter nuclear reactions have utility because they are radiation-less and do not have radioactive waste products. They produce clean products like helium, an inert gas. No smog, no increased carbon. The reactions are scalable, such that reactors of small up to very large can be designed. Therefore the practical applications of this technology are unlimited.”

“Make no mistake that condensed matter nuclear science has numerous applications as has been determined by a detailed review of the US Air Force Energy Horizons requirements document. The number one application is nuclear propulsion of Aircraft reducing the requirements for fossil fuels.”

280. The Declaration of Lt. Colonel Robert Smith states,

“It is my professional as well as personal opinion that this field is real in spite of opinion of the Patent Office (USPTO). The real purpose here is for the USPTO to review carefully the conditions that are needed for proposed reactors and the written reviews and comments of the using organizations, such as DTRA, DARPA, DIA, USDOE, DOD, and NASA, which have the requirements and funding to further develop the technology. USPTO reviewers have an excellent source of relevant information for required understanding of this new science.”

VI. ADDITIONAL RELEVANT BACKGROUND ABOUT DEFENDANTS' BEHAVIOR

PROBABLE REASON DEFENDANTS DID NOT LOG IN AND ADDRESS EVIDENCE

281. The Defendants ignored the submitted Evidence because the submitted peer-reviewed publications, Exhibits and Declarations are a matter of "Utility", and in a fact question [RAYTHEON COMPANY v.ROPER CORPORATION] which the Court must review for clear error [Cross v.Iizuka; In re Zurko]. The Defendants ignored the submitted Evidence because it demonstrates that Plaintiff previously Applicant, has fully conformed with the requirements of §101 of the Patent Act [Standard Oil Co. (Indiana) v.Montedison; E.I. du Pont de Nemours & Co. v.Berkley & Co.; Krantz and Croix v.Olin; Chisum on Patents, 4.04[4] [1983].

282. Most importantly, given that in this case there has been no response to, or dispute of,their Declarations, the Defendants are Obligated by law to assume that all Declarants assertions are true [Lewis v. Bours, 119 Wn.2d 667, 670, 1992].

ATTEMPTED EXCULPATORY ACTIONS BY DEFENDANTS

283. The Defendants have been involved in covering up their previous sequestration/removal/destruction of submitted Evidence. The following few examples are a small subset of the Defendants willful and wrongful systematic attempts at exculpatory actions and statements [**].

[**] This lawyer-speak is a euphemism to ordinary citizens as "dirty tricks" and other strong-arm tactics. Plaintiff paid all required fees, both filing fees, Appeal fees, transfer fees, extra page fees, and so forth.

A. Attempted Exculpatory Statements By Defendants about "receipt"

284. On multiple occasions, the Defendants deliberately made false statements alleging that the Evidence was “not received”. This was disproven more than once by the Official stamp of the USPTO mail room.

B. Attempted Exculpatory Statements By Defendants about "legibility"

285. The Defendants deliberately made false statements that Evidence in '381, which submitted more than once and received, was allegedly “not legible”. However, it was saliently demonstrated that the Defendants were less than truthful, as shown in Exhibit 30. The submitted Exhibits were quite legible. In fact, the documents were identified with urls on the Internet, and copies had been previously submitted as pdf files on two (2) CD-ROM.

C DEFENDANTS CRAFTED EXCULPATORY FALSE RECORDS

286. The Defendants have issued rulings, such as "In re Swartz", which are used in Law but are non factual. In 'In re Swartz (*vide supra, vide infra*), the Defendants have used the inaccurate description of the '258 invention in their reprehensible attempted exculpatory behavior. Then they have relied widely on the fruit of their own self-fabricated poisonous tree.

287. The Defendants have fabricated rulings, such as "In re Swartz", based on their exculpatory false descriptions of Plaintiff's '258 invention and their exculpatory sequestration of submitted Evidence. The Defendants' false statements on federal documents are now misused in Law to obstruct justice, hurt an entire field of energy production and conversion, and delay the widespread use of clean energy and water, for reasons unclear.

D. Attempted Exculpatory Actions
By Removal of Reports of Previous Removal

288. Previously, the application '937 passed through the Board of Patent Appeals and then up to the federal appellate court. In that court, and ONLY as a result of a subpoena, was it uncovered that the Evidence was systematically missing, and not docketed.

289. It was found at that time, in '937 [now '258] that the Defendants withheld Evidence then too, but it was not known at that time. Via subpoena *duces tecums*, it was revealed that Evidence submitted, more than once WAS received and not docketed properly. Instead, the docket was written in after-the-fact, so numbers like "33 1/2" appear, and it obvious that was not written in the proper, normal timely way [Exhibit 34] This is important because the Defendants' systematic failure to remove Evidence to avoid addressing it is unfair and clearly unlawful.

290. Following Plaintiff's repeated attempts to notify the Board, the Defendants have used continued fraudulent exculpatory behavior to obstruct due process, and as documented in the above averments, continued to withhold further documents.

DEFENDANTS IGNORE THEY HAVE ISSUED PATENTS IN THIS FIELD

291. The Defendants ignore that they have issued other patents in this field to other inventors (who did not do open demonstrations), even while falsely purporting to the Plaintiff that the entire field does not exist. As examples, these are just a few are in the group: Czirr (5,231,290), Westphal (5,215,631), Patterson (5,036,031), Ahern (5,411,654), and even a recent issued patent to the US Navy which actually cites the Plaintiff's technology. No such demand was made of these other patent applications. This demonstrates a two-tiered system and discrimination.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 13/544,381
 Filed: 07/09/2012

For: **A Machine and Process to Preload,
 Activate, Rejuvenate, and Evaluate
 Energy Production from a Nanostructured Material**

Commissioner of Patents and Trademarks
 Box 1450
 Alexandria, VA 22313-1450

Group Unit: 3646

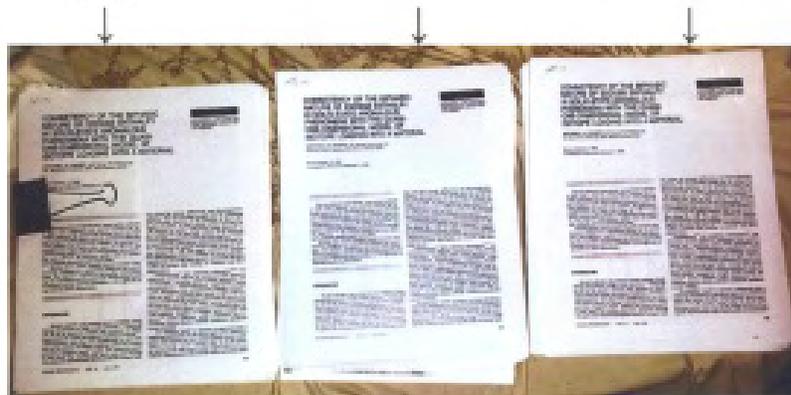
Exam. Sharon Davis

August 11, 2015

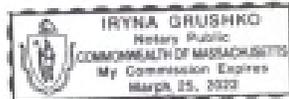
EXHIBIT "B" - pro se Applicant's Submitted Exhibits

Three (3) Identical Stacks of Submitted Evidence are Shown. The first (left) is a copy of what was sent to the USPTO previously. The other two are copies of that, one of which will also be sent to the USPTO on the above date.

Copies of Previously Sent, Allegedly "illegible" Sent August 11, 2015 and the identical 2nd copy



Dr. Mitchell Swartz, Weston, MA



Iryna Grushko

Exhibit 33 - This is an actual copy saliently demonstrating that the Defendants were disingenuous and that the submitted publications and Evidence were legible, readable, and identical to the two other copies also sent. Re-sent and ignored.

DEFENDANTS IGNORE THEIR OWN WITNESSES

292. One of the columns of patentability is "utility". This is a fact issue and is sufficient if it is convincing to one person of ordinary skill in the art [In re Irons, 52 CCPA 938, 340 F.2d 974, 144 USPQ 351 (1965)]. Perhaps none have so probative value as Defendants' own two witnesses, Dr. Rehn (USN) and Dr. F. Will. Dr. Rehn of the United States Navy said.

"Perhaps the clearest scientific fact, at this time, is the hardest for physicists to accept: nuclear reactions apparently do occur in deuterium-loaded Pd, Ti, and probably in other solids."

[Rehn, V., Ahmad, I., "ICCF-3", Scientific Information Bulletin, Defendants of US Naval Research Asian Defendants, NAVSO P-3580, Vol. 18, Jan. 1993]

293. Dr. Will said in his "Final Report NCFI":

"Several government laboratories are continuing (the work) ... most notably are Los Alamos National Laboratories, The Naval Research Laboratory, The Naval Underwater Systems Command and The Naval Weapons Center. Significant positive results have been obtained in each of these laboratories. ... Over 100 groups from more than 12 countries have now reported on various types of evidence for the occurrence of nuclear reactions in deuterium-loaded metals or compounds. This includes evidence for excess heat, tritium, neutrons, x-rays or gamma rays, helium or charged particles." [F. Will; Final Report National Cold Fusion Inst.(1991)].

Dr. Will, himself, also demonstrated tritium production ["Reproducible tritium generation in electrochemical cells employing palladium cathodes with high deuterium loading, *J. Electroanal. Chem* 360 (1993) 161-176; confer also Will 1994]. This proves the Defendants are beyond hypocritical, for reasons unclear.

DEFENDANTS IGNORE THEIR PATENT AGENTS

294. The Defendants' obstruction is egregiously long standing and there has been no accountability. Perhaps no better ethical discussion of this matter exists than those comments made by the late Dr. Robert Bass, US Patent Agent [29,130], and

the late Mr. Robert Shaw, US Patent Agent [20,1440], in their supporting Declarations of these inventions (discussing the same obstruction twenty years ago), when they stated:

"I am an Inventor ... (and) have also served ... 18 years of experience in the practice of patent law before the PTO. ...

In my opinion, this is wrong, and is both inconsistent with, and a dereliction of duty from, the PTO's Canons of Professional Responsibility. The Defendants should never encourage, even implicitly, any lapse of the applicants' obligation of complete "candor"."

[Declaration of Dr. Robert Bass, MA, Oxon, PhD, April 17, 1996]

"I have ... 36 years of experience in the practice of patent law before the PTO, including seven year (1959-1966) with Rines and Rines and 13 years at the Massachusetts Institute of Technology where I prepared and prosecuted one hundred twenty (120) patent applications. ... Given the seven years delay of the Office, with respect to these series of applications, there does not seem to be a genuine attempt to follow the directives of the Appeal Board to provide Dr. Swartz with a substantive response to the Briefs and Declarations already submitted. In my opinion there is deliberate obstruction for the mere sake of obstruction itself.

"This is a dereliction of duty, and possibly a deviation from the PTO's Canons of Professional Responsibility."

[Declaration of Robert Shaw, LLB, BS, '976, April 13, 1996]

DEFENDANTS IGNORE PREVIOUS JUDICIAL RULING AGAINST THEM

295. The Defendants were chided previously by the Judiciary, and for less than the present (above-described) amount of corruption. Attention is directed to the US Patent Office's own records, uncovered by Honorable Judge Moore, confer "IN THE MATTER OF ARBITRATION Between Patent Office Professional Association FMCS Case No. 00-01666, US Department of Commerce, Patent and Trademark Office (2005). Robert T. Moore, Arbitrator, US Department of Commerce, Patent and Trademark Office, stated,

"Seemingly lost on those with control over slicing the government pie who are persuaded by the relentless drumbeat of the Parks and Zimmermans, is that those questing for "free energy," whether through cold fusion or by way of some other "emerging technology," may be similar to the alchemists of centuries back who never turned base metals into gold, but were the forerunners of modern chemistry, got the Periodic Table of Elements off to a start, and among all things, discovered how to duplicate Asian porcelain which at the time was worth more than its weight in gold. So too, those in pursuit of "free energy" could well spinoff useful advances in knowledge while failing to achieve their "holy grail. I was struck by the discomfort of Mr. Godici as he struggled to explain why the blanket exclusion of cold fusion remains in effect when during the intervening 16 years since its adoption, certainly some better understandings and approaches to cold fusion and its related technologies must have occurred which, ordinarily and but for the ban, would meet the new and useful criteria for a patent, or constitute what I'll call, a "non-obvious improvement of existing technology." ... "None of Mr. Godici's answers was totally satisfactory, and the urge, not well restrained, to say, if not scream: Hold it a minute! Isn't time to go back to the earlier days of the PTO when inventors had to produce working models of their devices?"

"(There is a) prevailing policy of the PTO. Currently, patent applications for alternative or non-conventional sources of nuclear fusion energy, including cold fusion, are routed to (Examiner's Group Art). This routing has been going on for more than 16 years pursuant to a June 5, 1989 memo to all Group Directors with the subject; Cold Fusion Applications. It reads:'Although the media attention relating to cold fusion has diminished, we are just now beginning to see a large number of applications relating to this subject. Although we are attempting to identify all of these applications in the pre-examination screening process, there is the possibility that a few applications may slip through without being identified. Please have your examiners be on the look out for any application that may relate to cold fusion.

.... If one of your examiners should receive an application related to cold fusion, he or she should check to make sure the words "COLD FUSION" are stamped on the file wrapper. If not, the application should be referred to Licensing and Review [] for marking. Also, any

action on one of these applications should be routed through the Group 220 Director's Office and the Office of the Assistant Commissioner for Patents prior to mailing."

"The Agency's witnesses avoided directly answering the question of what explicit instructions were given Mr. Behrend and other examiners in the "fusion" group on how to handle applications for cold fusion patents. However, their testimony and demeanor when questioned were clear enough. Figuratively speaking, (they have) a "rejected" stamp he wields on patent applications which claim to achieve cold fusion. That is, whether well founded or not, the PTO has a bias against the concept and theories of cold fusion. the PTO considers cold fusion to be "inoperable technology."

[IN THE MATTER OF ARBITRATION Between Patent Office Professional Association FMCS Case No. 00-01666, 2005, Robert T. Moore, Arbitrator, US Department of Commerce, Patent and Trademark Office, Decision AND AWARD ON THE MERITS]

DEFENDANTS HAVE OBSTRUCTED INVESTIGATIONS

296. On information and belief, others have investigated what appears to be a systematic cover-up of this subject by the Defendants.

297. The Defendants have never replied substantively and truthfully to the Remands which they received in this series of patent applications from the authority above them.

DEFENDANTS HAVE OBSTRUCTED FOIA REQUESTS

298. On information and belief, at least one FOIA Request was made about these matters relevant to this Complaint on or about 2002 and other times, regarding communications relevant, including those from Special Agent Richard Citti to the Department of Commerce, including Special Agent Kimberlee Taylor regarding conduct at least to the year 1995 regarding communications involving research work conducted at, and reports issued by, the MIT Plasma Fusion Center, including the Phase II Experiment of 1989. Defendants have not been compliant with a response consistent with the considerable in the public interest.

**DEFENDANTS OBSTRUCTED CLEAN ENERGY BUT ISSUED
PATENTS FOR OTHER APPLICATIONS WITH NO OPERABILITY**

299. The Defendants have been very strict with the present patent applications, demanding proof of utility and operability. Ignoring for the moment that the submitted Evidence was ignored or destroyed, attention of this Court is directed to the fact that the Defendants did quickly issue a US Patent for "Astrological comparison apparatus and daily astrology wheel", US 3992787. It was issued Nov. 23, 1976 after being filed Dec 15, 1975 heralding great importance and priority by the Defendants.

300. As another example showing discrimination, the Defendants did rapidly, and without problem, issue a US Patent for a "Wall mountable astrology set", US 4219944. It was issued Sept. 2, 1980 after being filed June 8, 1979. It must have had great priority, utility, and importance to the Defendants.

301. As another, of many, example showing discrimination, during the very same time period, the Defendants did quickly issue a US Patent for a " System and method for socially connecting individuals based on psychometrics, zodiac, and astrology", US 9,002,961. It was issued April 7, 2015 after being filed December 12, 2012. It too, must have had great priority and importance to the Defendants.

**ADDITIONAL EXCULPATORY ATTEMPTS
BY THE DEFENDANTS**

302. The matters of the Defendants dealing with usurpations of civil rights and issues outside of patentability, and secondary exculpatory actions of the Defendants, are discussed in the action in the Commonwealth of Massachusetts: 2016-CV-12144-LTS.

303. One example follows. Last month, the Defendants failed to docket receipt of an Appeal Brief for '381 to the Board and the transfer fee paid (although the check was cashed and the Appeal Brief was received).

ATTEMPTED EXCULPATORY BEHAVIOR IN APPLICATION '381

304. A Communication from the Defendants or their agents dated March 10, 2017 falsely purported Plaintiff had not “*timely submit(ted) the (Appeal) brief and requisite fee*” even after the check had been cashed. In fact, on September 11, 2016, the US Patent Office was sent the following: Appellant’s Appeal Brief, with Cert. Mailing [37 CFR 1.8(a)] on last page, Appendices “A” and “B” with Claims, and the Appendix of Exhibits, and the Appendix of Related Proceedings, and a self-addressed stamped postcard. The stamp of the US Patent Office Post Office on that postal card saliently demonstrates that the materials were received on September 14, 2016.

305. In addition, on February 15, 2017, the US Patent Office was sent the following: Appellant’s Reply Brief with a Certificate of Mailing on the last page. Also sent were a Check for \$1000 for the Transfer Fee, Decl. Smith, Gordon, Verner, Biberian, Ahern, Exhibit "A" - DIA Report, Exhibit "B" - DTRA Report, Petition to the Commissioner of Patents, Declaration Supporting Petition, and self-addressed stamped white postcard that, curiously, had not been stamped by the mailroom and returned, as is the custom. The US Postal return green card demonstrates that the materials were received on February 21, 2017. The bank statement showed that the USPTO actually did receive, and even cashed the check for the Appeal Brief Transfer fee from the Plaintiff despite having wrongly purported otherwise.

VII. The Defendants Have Unclean Hands

306. Defendants have unclean hands-- and their systematic behavior demonstrates that they believe that they are above the Law. It is with impropriety that Exhibits can be "lost" and purported as unreadable, after being received as the USPTO's mail room's stamp indicates. The Defendants did not honor cashed checks, received Briefs, received Evidence, and Priority dates.

307. There serious implications. As the Verner Declaration states,

"5. The only conceivable reason for the Examiner to fabricate these false allegations was to avoid examining and responding to the submitted Evidence. Instead, there was a failure of the USPTO to act responsibly by properly including the received documents."

308. The Declaration of Dr. Brian Ahern states,

"I can understand his frustration with USPTO Examiner Ricardo Palabrica, who was an examiner for my filing of a patent application on an invention involving high energy density discharges ... My technology, my scientific explanations, and my arguments were summarily essentially ignored and dismissed by him, as he appeared to have pre-judged my technology

"I have never experienced such a response from any Examiner before, like I have from Ricardo Palabrica. His response was inappropriate for a Patent Examiner. The comments involve attempting to change an invention by overstepping his directives and acting as a 'protector' of scientific knowledge. ... Dr. Mitchell Swartz appears to be laboring under the same misuse of authority."

309. As the Goldbaum Declaration in '381 [Serial No.: 13/544,381] stated,

" the Examiner has continued to exhibit behavior which can be adjudged as knowingly false. The Examiner cannot be unaware of her own repeated legally adjudged wrongful behavior as she has been informed repeatedly regarding them. Therefore, the Examiner is either knowingly engaged in illegal and/or improper behavior, which is a legal matter, or the Examiner is exhibiting criteria for a character disorder which prevents her from recognizing and correcting the wrongfulness of her actions or compels her to engage in these actions despite knowing the wrongfulness of her actions. If the issue is somehow deemed not due to willful malfeasance, a full psychological assessment would be indicated."

310. The Declaration of Lt. Colonel Robert Smith states,

“Patent protection for the intellectual property rights of developers is essential to investment in this technology by competent people and should not be questioned by uninformed US Patent Office reviewers.”

311. The Declaration of Gayle Verner states,

“The behavior of some of these defendants, such as Sharon Davis at the USPTO, cries out for correction by the federal court, especially since the USPTO’s own judicial/administrative system has failed to do its job with respect to this matter.”

“One conceivable reason for the Defendants to fabricate and switch the exact documents involved is to avoid any real examination and response to the submitted Evidence. A second possible reason is that to do so would also add credence to Dr. Swartz’s position. It is, therefore, probable that this mischievous behavior by some at the USPTO was created for the sole purpose of harassing him, and thereby, discouraging the continuation of his patent application process.”

VIII. OTHER ISSUES

312. Although the Defendants routinely and systematically maintain, despite received Evidence to the contrary, that each of the inventions has "no utility".

This is important because in the matter of "Utility", utility is a fact question [RAYTHEON COMPANY v. ROPER CORPORATION] which only requires one person.

313. Since this first application was filed with Defendants in April 1989, many people have suffered or died from lack of adequate energy and from lack of clean water.

314. Defendants have needlessly delayed the maturation of a series of Plaintiff’s patent applications. They have done that by willful, deliberate, intentional and purposeful spoliation of properly submitted, and received repeatedly, Evidence and attempted exculpatory actions.

COUNT 1: Denial of Just Patent Determination

Based upon Timely-Submitted Evidence

315. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth. The USPTO deprived Plaintiff of rights explicitly given under the US Constitution, including by failing to properly log and to properly address submitted materials, including Evidence from the Defense Intelligence Agency (DIA), Defense Threat Reduction Agency (DTRA), NASA, and the American Nuclear Society.

The Supreme Court clarified the scope of 35 U.S.C. §145 proceedings in its April 18, 2012, unanimous decision in *Kappos v. Hyatt*, affirming the Federal Circuit's *en banc* decision which held that Evidence not submitted to the Patent and Trademark Office (PTO) during prosecution is admissible in a civil action brought against the Director of the PTO under 35 U.S.C. §145 subject only to the limitations imposed by the Federal Rules of Evidence and the Federal Rules of Civil Procedure [***].

[***] The Supreme Court held that the district court hearing a §145 action must make a *de novo* finding “when the new evidence is presented on a disputed question of fact”.

Article I

316. The Defendants have ignored and reject controlling Authorities including Article I, Section 2 of the Constitution of the United States [Constitutional Convention in August of 1787, adopted in September of 1787] by ignoring that Plaintiff, then Applicant, is entitled to the privileges and immunities of citizens in the other states. Briefly, the Defendants were discriminatory in reaching a Decision without considering submitted Evidence and in the light of allowing similar patent applications to proceed.

317. The Defendants have ignored and rejected the controlling Authorities including Article I, Section 8, by ignoring that Plaintiff, then Applicant, is entitled to the citizen's right to secure for a limited time the exclusive right to his or her writings and discoveries.

Article III

318. The Defendants have acted under color of Federal law [Osborn v. Bank of United States], and so the mere possibility that a question of federal law might arise is sufficient to satisfy the "arising under" jurisdictional authorization of Article III. The relevant statute is found at 28 U.S.C. §1331:

"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

Article VI

319. The Defendants have ignored and reject controlling Authorities including Article VI of the Constitution of the United States [Constitutional Convention in August of 1787, adopted in September of 1787] by interfering laws passed by Congress [DIAMOND v. CHAKRABARTY; 447 U.S. 303, 309] including legislation that patentable statutory subject matter spans "**anything under the sun that is made by man**" [S. Rep. No. 1979, 82d Cong., 2d Sess., 5 (1952); H. R. Rep. No. 1923, 82d Cong., 2d Sess., 6 (1952)].

COUNT 2: Denial of Due Process

320. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth.

321. The Plaintiff absolutely did exhaust all remedies, including multiple Petitions to the Commissioner, supported as required by multiple declarations, and also supported by timely-submitted Evidence from the DIA, DTRA, DARPA, and NASA. It was all ignored by the Defendants.

322. The Defendants have ignored and rejected controlling Authorities including the 14th Amendment of the Constitution of the United States, requiring an impartial tribunal [28 U.S. Code Section 144, *Maybeny v. Penna.*, 91 S.8.; *Bloom v. Illinois*, 88 Ct. 499 S.Ct. 1477; *Duncan v. Louisiana*, 88 S.Ct.1444]. The Plaintiff had a right to an opportunity to be heard before losing any liberty or property rights under color of law [*Snaidach v. Family Finance*, 89 S.Ct. 1820; *Lynch v. Household Finance*, 92 S.Ct. 1113; *Tucker v. Maher*, 92 S.Ct. 1498. Confer also *Howard v. Kunen*, USDC, Mass. CA 73-3813-G, Dec. 3, 1973]. Defendants have systematically denied due process of law, and therefore even if ignorant of constitutional rights, are hereby sued for monetary damages [*Gass v. Lopez*, 95 S. Ct 729; *Wood v. Strickland*, 95 S Ct 9S2; *U.S. v. Price*, 86 S Ct 1152, 1157, Footnote 7; *Griffin v. Breckenridge*, 91 S Ct 179D; *Denman v. Shubow*, 413 F. 2d 258].

COUNT 3: NEGLIGENCE, SUBSTANDARD CONDUCT

323. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth.

324. It was the legal responsibility of the Defendants to maintain the Evidentiary record after transfer from the mail room, and from the Plaintiff to the federal court. Instead, the Defendants have demonstrated breach of duty, contract, faith, dealing [*Rannard Rannard v. Lockheed Aircraft Corp.*, 26 Cal. 2d 149 (1945)] and negligence [*Newing v. Cheatham*, 15 Cal. 3d 351 (1975)], which suggests strong-arm tactics, obstruction of justice, and violations of 18 U.S.C. §1503.

325. Defendants remained negligent even though Plaintiff notified and warned Defendants to stop. *Res ipsa loquitur*.

COUNT 4: Denial of Records

326. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth.

Violation 41.109 Access to and copies of Office records.

- (a) *Request for access or copies.* Any request from a party for access to or copies of Office records directly related to a contested case must be filed with the Board. The request must precisely identify the records and in the case of copies include the appropriate fee set under § 1.19(b) of this title.
- (b) *Authorization of access and copies.* Access and copies will ordinarily only be authorized for the following records:
 - (1) The application file for an involved patent;
 - (2) An involved application; and
 - (3) An application for which a party has been accorded benefit under subpart E of this part.
- (c) *Missing or incomplete copies.* If a party does not receive a complete copy of a record within 21 days of the authorization, the party must promptly notify the Board.

The PTO, and the Board, have ignored specific requests which would have clarified this for the Honorable court.

COUNT 5: 18 U.S.C. § 1519 - OBSTRUCTION OF JUSTICE

327. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth. 18 United States Code § 1503 provides:

“Whoever corruptly ... influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.”

18 United States Code § 1519 provides:

“Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under Title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.”

328. There is probable cause to charge Defendants with willfully and knowingly concealing, covering up and making false entries in documents with the intent to impede, influence and obstruct the proper administration of matters within the jurisdiction of the Justice Department in violation of 18 U.S.C. § 1503 and § 1519.

COUNT 6: False Statements 18 U.S.C. § 1001

MAKING FALSE STATEMENTS, CONCEALING & COVER UP

329. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth.

18 United States Code § 1001 provides in the relevant part:

“(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.”

330. There is probable cause to charge Defendants with willfully and knowingly making factually false statements, concealing and cover up in violation of 18 U.S.C. § 1001.

COUNT 7: Violations of 18 U.S.C. Sec. 371 (conspiracy to defraud)

331. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth.

332. When confronted, the Defendants have used exculpatory false statements to

conceal what they did, including making willful false statements on federal documents sent through the US mail and on records used in federal court [violation of 18 U.S.C.§1001].

333. When Plaintiff attempted to inform the controlling federal court of Defendants mislabeling Evidentiary materials, the Defendants have used exculpatory malicious behavior including sequestration of Briefs, further sequestration and spoliation of Evidence, and misprision of felony.

334. The Defendants are Obligated to maintain, and write, truthful documents, but have not done so.

335. The Defendants are Obligated to have communications consistent with the pleadings including past un rebutted Declarations [*In re Gazave*, 379 F.2d 973, 978, 154 USPQ 92, 96 (CCPA 1967); *In re Chilowsky*, 229 F.2d 457, 462, 108 USPQ 321, 325 (CCPA 1956); *In re JOLLES*, 628 F.2d 1322, 206 USPQ 885 (CCPA 1980)] , but have not done so.

336. The Defendants are obligated by Law to assume that all Declarants assertions are true [*Lewis v. Bours*, 119 Wn.2d 667, 670, 1992], but have not.

337 The Defendants have presented no sworn witnesses. Instead, the Defendants have elected to incorporate false information and misrepresentation in a proceeding wherein the law authorizes others to take administration of an Oath [*People v. Pierce*, 66 Cal. 2d 53 (1967)].

Therefore, the Defendants rejects the reasoning of the Supreme Court [*U.S.v. Price*, 86 S. Ct. 1152, 1157, footnote 7], and several Appeals Courts [*Sawtelle v. Farrell*, 70 F.3d 1381, 1387 (1st Cir. 1995); *Leasco Data Processing Equip. Corp. v. Maxwell*, 468 F.2d 1326 (2d Cir. 1972); *Pizarro v. Hotels Concorde Int'l, C.A.*, 907 F.2d 1256 (1st Cir. 1990); *Peckham v. Continental Casualty Ins. Co.*, 895 F.2d 830, 836 (1st Cir. 1990); *Donatelli v. National Hockey League*, 893 F.2 459, 465 (1st Cir. 1990)).

338. Defendants have misrepresented facts and made false statements upon Federal documents or within Federal records.

339. The Defendants knew their statements were false but elected to publish them anyway [Niehot'f v. Sahagian, 103 A.2d 211 (Me. 1954)].

340. The Defendants therefore violated 18 U.S.C. Sec. 371 (conspiracy to defraud).

COUNT 8: Discrimination

341. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth. The Defendants have ignored and reject controlling Authorities including the 14th Amendment's "equal protection" clause [US. Code Annotated, *Frontiero v. Richardson*, 93 S.Ct. 1736, 411 U.S. 677; *Weiss v. Weiss*, 436 N.Y.S. 2d. 862, 52 N.Y. 2d. 170 (1981)] having serious implications [*Gass v. Lopez*, 95 S. Ct 729; *Wood v. Strickland*, 95 S Ct 9S2: U.S. v. Price, 86 S Ct 1152, 1157, Footnote 7; *Griffin v. Breckenridge*, 91 S Ct 179D; *Gamez v. Toledo*, 42 U.S.C.§1983, and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*].

342. Defendants' unlawful dual-tiered system, rather than a single uniform approach, rejecting the reasoning of the Supreme Court's decision in *United States v. Nixon* (1974) that all are "equal under the law".

343. The equal protection clause has been broken by the fact that individual applicants in other states have their evidence docketed, addressed, and properly delivered to supervising authorities.

COUNT 9: Violations of 18 U.S.C. §1341, Mail Fraud

344. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth.

345. Defendants did commit fraud by mail, computer, or computer-related means including electronically processed or stored data, either tangible or intangible or said data while in transit [Mass. Gen. Laws Ann. Ch. 266, 330(2)].

346. Defendants did commit fraud by mail, computer, or computer-related means

including electronically processed or stored data, either tangible or intangible or said data while in transit and continued even after being notified, including of violations of M.G.L. 93A and 18 U.S.C. Sec. 1001.

COUNT 10: 18 USC § 1512 Violations of Crimes Act of 1958.

347. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth.

348. Falsifying official documents is the criminal *modus operandi* used to hide larger crimes. A person falsifying documents can be held criminally liable if they are deliberately acting with the intention of deceiving or defrauding another party.

349. When official government documents or government authorities are involved, the legal penalties may be more severe.

350. The penalty for falsifying government documents is outlined in the Crimes Act of 1958.

351. There is probable cause to charge Defendants with willfully and knowingly making factually false statements, concealing and cover up in violation of the Crimes Act of 1958.

COUNT 11: 18 USC § 1512 – Violations of the U.S.

Administrative Procedures Act

352. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth.

353. This venue and jurisdiction regarding the above-entitled Complaint is also supported by the U.S. Administrative Procedures Act which invites Judicial review for abuse of discretion. The APA's provisions apply to many federal

governmental institutions. The APA in 5 U.S.C. 551(1) defines an "agency" as "each authority of the Government of the United States, whether or not it is within or subject to review by another agency", with the exception of several enumerated authorities, including Congress, federal courts, and governments of territories or possessions of the United States. Attention is directed to the fact that the court has held that even the US President is not an agency under the APA [Franklin v. Mass., 505 U.S. 788 (1992)] [underlined for emphasis].

354. In this case, the failure to abide by docketing evidence, the failure to provide true statements on Federal forms, the failure to render statements consistent with the Evidence submitted, the failure to obey Remands and Orders brought to the attention of the Defendants, the failure to pass on Evidence to higher administrative Authority during Appeals, and wrongful actions and inactions, are nothing but obstruction of justice and Constitutional violations under color of law.

COUNT 12: Violations of 18 U.S.C. § 4 - Misprision of Felony

355. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth.

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 684; Pub. L. 103-322, title XXXIII, §?330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

On information and belief, someone at the USPTO completed a felony, and it was exposed in the federal appellate court. The Defendants were notified, and renotified, by Plaintiff and therefore knew about the felony's commission; and thereafter the Defendants failed to notify the proper authority, and thereafter the Defendants took an affirmative step to conceal the felony.

356. There is probable cause to charge Defendants with willfully and knowingly making factually false statements, concealing and cover up in violation of 18 U.S.C. § 4.

COUNT 13: Violations of 18 U.S.C. §1962(c) RICO

357. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth.

358. On information and belief, the Defendants are involved in a RICO [Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961)] conspiracy because (1) the persons (2) were employed by or associated with an enterprise (3) that engaged in or affected interstate commerce and that (4) the persons operated or managed the enterprise (5) through a "pattern" (6) of racketeering activity, and (7) the taxpayers were injured by reason of the "pattern" of racketeering activity.

COUNT 14: 18 U.S.C. § 371 - Conspiracy to Commit an Offense Against the United States

359. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth. 18 U.S.C. §371- Conspiracy to Commit an Offense Against the United States states

“If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.”

360. On information and belief, the Defendants actions may have been of benefit to foreign governments.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks equitable relief and prays for a Judgment against the Defendants with damages and other grants of relief as itemized below and as this honorable Court deems just, proper, fair and equitable including punitive damages. The Plaintiff requests the Honorable Court to

A. Order issuance of the following patent applications or in the alternative direct their maturation based upon the actual timely-submitted Evidence:

Application '258 - Claims 12-31;
Application '381 - Claims 1-19;
Application '058 - Claims 1-20;
Application '765 - Claims 1-10, 12-19, 21 and 22;
Application '691 - Claims 1, 5-8, 10-14, 21-30;
Application '643 - Claims 1-16 and 21-24;

B. Find Facts that Defendants did not docket exculpatory Evidence, including from the group consisting of DTRA, DIA, and the American Nuclear Society;

C. Order that the Defendants be compelled to provide a clear, substantive explanation for the systematic inappropriate response to, and lack of discussion of, timely-received and multiply-submitted Evidence;

D. Order that the Defendants be forced to provide a clear itemized docket of entry submissions received, past and present, for each case, for both the Defendants and Board;

E. Find Facts that Defendants did not docket, and then did not address, exculpatory Evidence from the American Nuclear Society creating false statements in *in re Swartz*;

F. Order a public correction from the Defendants of the misstatements in *in re Swartz*;

G. Order Defendants to respect the FOIA Request previously delivered;

H. Appoint a Master to examine how many other clean energy production and

conversion Applicants have been similarly hurt by the wrongful behavior of the Defendants including both failure to docket, failure to discuss, and attempt to wrongly obtain technology by the Defendants, and whatever other "dirty tricks" they are using, and to determine resulting losses and impacts;

I. Award additional amounts because of the False Claims Act (31 U.S.C. §3729–3733), also called the "Lincoln Law" for all evidence of defrauding the government which will be exposed during investigations, resulting from and including those arising from the present above-entitled action;

J. Issue a Judgment against Defendants and Order an accounting for all damages sustained by Plaintiff, that damages herewith be awarded to include

-interest and costs assessed against Defendants, giving Plaintiff actual damages, plus additional damages, reasonable attorney's fees and costs, as well as the costs of the action, and for a pattern by Defendants of repetitive [high frequency] bad faith including both noncompliance and a purpose of harassment awarding punitive damages;

-punitive damages for the unethical pain and suffering wrought needlessly by the Defendants

K. Augment this with further relief as this Court deems just, proper, fair and equitable.

Plaintiff regrets probable inadequacies that reflect a lack of legal education in this Complaint, and notes that the U.S. Supreme Court has said that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (1972)].

JURY DEMAND:

The Plaintiff respectfully requests a Trial by jury on all issues so triable.

Respectfully submitted,



Mitchell Swartz, ScD, MD
Plaintiff, *pro se*
Weston, MA

**UNITED STATES DISTRICT COURT
for the Eastern District of Virginia**

Mitchell R. Swartz,
Plaintiff

v.

Michelle Lee, Acting Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office;
The United States Patent and Trademark Office,
Defendants

Filed: April 19, 2017

**PLAINTIFF'S
NOTICE OF APPEARANCE *pro se***

1. Plaintiff requests to inform the Honorable Court of his appearance *pro se*.

Respectfully submitted,



Dr. Mitchell Swartz, Plaintiff, *pro se*
Weston, MA

**UNITED STATES DISTRICT COURT
for the Eastern District of Virginia**

Mitchell R. Swartz,
Plaintiff

v.

Michelle Lee, Acting Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office;
The United States Patent and Trademark Office,
Defendants

Filed: April 19, 2017

LOCAL RULE 83.1(M) CERTIFICATION

The Plaintiff declares under penalty of perjury that: No attorney has prepared, or assisted in the preparation of the above-entitled Complaint.

Plaintiff regrets probable inadequacies that reflect a lack of legal education in this Complaint, and notes that the U.S. Supreme Court has said that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (1972)].

Respectfully submitted,



April 19, 2017

Dr. Mitchell Swartz, Plaintiff, *pro se*
Weston, MA