

Key Learnings from GATT and the US Patent Office Today

Don't Become "The Man Most Hated by the US Patent Office"

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/EINPresswire.com/ -- In the 1990s, a man named Gilbert Hyatt filed hundreds of [patents](#). And the crazy part is that many of them are still pending in 2022. How can this be? Below are several important considerations based on Hyatt's own efforts to expedite his patent claims.



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Sean Lynch, Partner

When it comes to applications in general, only a few applications filed before the June 1995 patent term transformation (GATT) are still pending. Of those, 99 percent list Hyatt as an inventor. Gilbert Hyatt does not give up easily, and he is known for his tenacity, but those traits alone don't explain this kind of delay. In a recent petition for writ of certiorari (a petition for Supreme Court review of a case), Hyatt alleged the USPTO is largely to blame for the absurd delays.

In the cert petition, Hyatt attempted to paint a picture of a USPTO that was, quite literally, out to get him, and he brought some receipts. According to Civil Action No. 1:18-cv-546, Hyatt alleged a “no-patent-for-Hyatt” policy existed at the USPTO, and he provided testimony from former USPTO officials. The policy, he asserted, amounted to “a secret agency policy to block issuance of his applications as patents, regardless of the merits of his patent claims.” Accordingly, the USPTO created a “Hyatt Unit” of examiners who called Hyatt a “submariner” and tracked Hyatt

applications using software they called the "submarine detector."

Leading into the cert petition, Hyatt filed a lawsuit in 2018 under the Administrative Procedure Act (APA). In the lawsuit, he sought an order requiring “bona fide examination of his applications.” The lawsuit sought review under both Section 706(1) and 706(2):

The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; . . .

The district court based its decision on facts in the administrative record and it failed to follow an ordinary summary judgment approach of drawing every reasonable inference in favor of Respondents. In addition, the district court concluded that summary judgment was proper because Hyatt could not satisfy the extraordinary “mandamus standard” that the court concluded was required to prove a Section 706(1) or (2) case.

In the cert petition, Hyatt asks two questions:

- Whether the ordinary summary judgment standard of Rule 56 applies to review of agency action, as held by the First, Fifth, Ninth, and District of Columbia Circuits.
- Whether the mandamus standard of *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55 (2004), applies to claims seeking to set aside agency action under 5 U.S.C. § 706(2).

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