

Lawless Federal Court Judges

The purpose of this disclosure is to inform the public of the injustice rendered by unethical lawless federal court judges. My patent infringement case was assigned to Judge Lawrence E. Kahn in the United States District Court for the Northern District of New York, under Civil Action No. 96-CV-0544. After discovery, the judge granted infringing companies an erroneous summary judgment. Discovery indicated that there were many genuine issues of material facts in dispute. According to Fed.R.Civ.P.56(c), summary judgment is appropriate only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material facts in dispute.

The record shows that Judge Kahn never considered the claimed invention taken as a whole as required by the precedential case law of Graham v. John Deere Co., 383 U.S. 1,17. Precedential case law of McKay v. United States requires that when both parties move for summary judgment, the Court must evaluate each motion on its own merits. This, Judge Kahn failed to do, because he completely ignored my cross-motion for summary judgment. In my cross-motion, I also presented “Statements of Uncontested Facts”. Infringing company Brunswick responded by stating that the matter set forth in the statements are expression of opinion, not facts, and consequently it is not obligated to respond. It should be noted that said statements of contested facts disclose features presented in the patent claims that are not disclosed or suggested by the cited prior art. Since Brunswick filed a motion for summary judgment of patent invalidity based on obviousness, Brunswick is obligated to factually show how it’s cited prior art teaches the claim limitations. How can Brunswick allege that my patent is obvious, when it cannot or will not, factually reveal how it’s cited prior art teaches every limitation recited within the claims? Based on the case law of Aircraft Gear Corp. v. Kaman Aerospace Corp., 856F. Supp. 446, totally unsupported denials by Brunswick have no legal effect in a summary judgment proceeding, so that it is deemed to have admitted the correctness of said statements of uncontested facts. Yet, in spite of said facts, Judge Kahn granted Brunswick summary judgment.

Being unjustly treated, in District Court, Appeal No. 01-1364 was filed, pro-se, in the United States Court of Appeals for the Federal Circuit. This turned out to be a fiasco. Instead of rendering an impartial review of the case, the Appeals Court judges merely conspired to cover up the wrong doings of the District Court Judge. Appeals Court judges Lourie, Plager and Dyk took it upon themselves to impermissibly make unsubstantiated erroneous factual findings regarding issues that were never determined or resolved in District Court. This is highly improper, because the appellate courts of the federal system, either inherently or by grant, expressed or implied, have the power to make factual findings. Randal Foundation Inc. v. Riddell, 244F.2d803. Where the trial court made no findings on certain issues, the Court of Appeals cannot make such findings, even if it were possible upon the record. Deering-Milliken & Co. v. Moder-Aire of Hollywood, Inc., 231F.2d623.

In its decision, Judges Lourie, Plager and Dyk stated that “When both parties move for summary judgment, the Court must evaluate each motion on its own merits. Citing McKay v. United States, 199F.3d 1376. It should be noted that said judges rendered just lip-service regarding the case law of McKay v. United States, because

they never considered my cross-motion for summary judgment. How can the Appeals Court state it reviews a District Court's grant of summary judgment de novo, when it failed to consider my cross-motion for summary judgment?

After the Appeals Court affirmed the District Court's erroneous grant of summary judgment, I filed a Writ of Certiorari in the U.S. Supreme Court (Case No. 02-487). Argument was provided on how cited Federal Court judges violated precedential case laws. The petition for Writ of Certiorari was denied. This begs the question, who is to provide supervisory authority over unethical federal circuit judges who violate both Federal Circuit and U.S. Supreme Court precedential laws, when the Supreme Court exhibits no interest in doing so?

After the Supreme Court denied my Writ of Certiorari, and having exhausted all known means to be heard, I filed, in the Appeals Court, a petition for Writ of Mandamus (Misc. No. 731) to compel the District Court to perform clear legal duties to which I was legally entitled to, that were not performed or decided. The neglected duties which should have been performed entailed my cross-motion for summary judgment and my claimed invention taken as a whole. In its decision, Appeals Court Judges Newman, Bryson and Dyk stated that a mandamus petition may not be used to secure review of a case when that case may be reviewed by ordinary appeal. Citing Moses H. Cone Memorial Hospital v. Mercury Construction Co., 460 U.S.1. (A court of appeals has no occasion to engage in extraordinary review by mandamus, in aid of its jurisdiction, when it can exercise the same review by a contemporaneous ordinary appeal). Gentiluomo has already been provided with a review of the District Court judgment on ordinary appeal. He exhausted the avenues of further review when the Supreme Court denied his petition for Writ of Certiorari.

In a request for reconsideration of my mandamus petition, I stated the following:

Based on the fact that the legal precedent set forth in Moses H. Cone Memorial Hospital v. Mercury Construction Co., 460 U.S. at 8n.6, which was relied upon by the Court of Appeals in denial of the instant petition does not apply to the prevailing circumstances associated with Gentiluomo's petition, it is respectfully requested that this response be seriously considered, because a drastic extraordinary mistake has been made by the Court.

In the cited case, Mercury sought appellate review through two alternative routes, a notice of appeal, and a petition for mandamus. In my case, I'm not simultaneously seeking review through the two cited alternative routes. My mandamus petition is based on the Appeal Court's failure to consider my arguments regarding the District Court's failure to consider my cross-motion for summary judgment and my claimed invention taken as a whole. Since, both the District Court and the Appeals Court failed to adjudicate both of the cited critical issues that are required by law to be resolved in a patent validity case before a proper determination can be made, a petition for writ of mandamus was proper and should not have been denied.

Since Judges Newman, Bryson and Dyk fraudulently used the case law of Hospital v. Mercury, such as to apply also to situations wherein an appeal and a writ of mandamus were not contemporaneously filed for the same previously considered

issues, said judges obviously did not consider what implications their fraudulent use of Hospital v. Mercury would have on those the law was intended to serve. Namely, what implications such fraudulent interpretation of law would have on a petitioner who previously filed an appeal regarding the District Court's erroneous reasons for granting summary judgment, and after the appeal was denied without consideration, filed a petition for writ of mandamus based on said District Court's failure to preform duties that are required by laws to be performed in the process of evaluating patent validity? Based on the history of this case before said judges, said judges knew with absolute certainty, that the Petitioner presented factual evidence in both his appeal brief and his petition for writ of mandamus regarding the District Court's and Appeal Court's failure or refusal to consider the Petitioner's claimed invention taken as a whole, and his cross-motion for summary judgment. Therefore, it must be concluded that the Appeal Court judges cited the inapplicable case law of Hospital v. Mercury with the intent of deceiving the Petitioner into believing that his mandamus petition was inappropriate.

After my petition for writ of mandamus was denied in the Appeals Court, I filed a petition for writ of mandamus in the U.S. Supreme Court. As expected, the petition was denied, as was the petition for rehearing. This begs the question, who is supposed to provide supervisory power over unethical federal court judges, when the U.S. Supreme Court shows no interest in doing so?