1456 Belmont Avenue
Schenectady, New York 12308
February 14, 2003

The Honorable Chief Judge Haldane R. Mayer
U.S. Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Dear Chief Judge Mayer:

I'm writing to you in the hope that you will for the sake of justice, personally consider the contents of this letter, along with my previously submitted "Complaint of Judicial Misconduct."

As I stated in my complaint of judicial misconduct, judges Lourie, Plager and Dyk neglected to abide to established legal precedent and made arbitrary judgments regarding the case of Gentiluomo v. Brunswick (01-1364). The judges presented in their decision new factual arguments not supported by the record, and never properly utilized the legal precedent set forth in Graham v. John Deere. How can the Appeals Court make a legal determination of obviousness, when the level of skill in the art, the scope and content of the prior art taken as a whole, and the scope and content of the claims at issue taken as a whole, were never factually established in the record.

The Appeals Court introduced new matter regarding claim construction, and made impermissible factual determinations regarding complex subject matter. The Court also introduced new case laws of In re Aller, In re Hill, and Titanium Metals Corp. of Amer. v. Banner, and erroneously relied on the misinterpreted facts of said cited cases, in rendering their decision. Since they rendered their decision based on disputable factual disclosure regarding said case laws, the case should have been remanded to District Court to obtain the aid of expert testimony to properly interpret the factual content of said case laws, and their applicability, if any, to Gentiluomo's claimed invention.

Also, the Court disputed without any substantiating factual evidence of record, Gentiluomo's assertion that MacDonald (4,268,034 and 4,353,850) and Miller (4,522,397) teach away from claimed invention. Therefore, this presents a genuine issue of material fact in dispute, such that the case should have been remanded to District Court for trial in order to properly resolve the disputed issue through expert testimony. The Court in ruling on summary judgment is not to resolve factual issues, but may only determine whether factual issues exist. Bashir v. National R. R. Passenger Corp., affirmed 119F. 3d 929.

To contest the Court's decision and the rehearing petition denial, I filed a petition for writ of mandamus which was denied on February 4, 2003. In denying the cited petition, the Court stated that the relief I'm requesting is not available under a writ of mandamus, and is only appropriate under a petition for rehearing. It should be noted that I filed a petition for rehearing which was denied without consideration. So how can I be heard when the Court states that my only relief is under a petition for rehearing and in turn denies my filed petition without consideration. (This puts me in a position similar to a dog trying to catch its tail). The court of Appeals under FCR 51 has a procedure for filing a complaint of judicial misconduct when judges have engaged in conduct that does not meet the standards expected of federal judges. The rule specifically states that this procedure is not intended to provide a means for obtaining a review of a judges decision in a case. Based on the circumstances prevailing in this case, I felt that the writ of mandamus would serve as a just means for the Court to remand the case to District Court, so that a proper factual foundation can be established at trial for the legal determination of obviousness/nonobviousness.

Supreme Court Rule 10 states that a review of a writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. I filed a writ of certiorari, and it was denied. Therefore, it appears that judicial misconduct does not represent a compelling reason for the Supreme Court to take notice of. If this is the case, what is a person to do when judges do not abide to established precedential laws to base their judgments on, and the person is denied all means to defend himself, even though the judges' judgments are improper and obviously flawed. Should said person take the law into his own hands in order to get justice?

The Court of Appeals' former Chief Justice Howard J. Markey stated that for nearly 60 years judges neglected patent laws and made arbitrary judgments, and that some judges had the funny notion that patents were a monopolies. He also stated that intellectual property is safer from infringements and thefts because federal judges have become more uniform in protecting these assets. (See enclosure entitled "Judges Protect Patent Owners From Rip-offs"). Based on the decision rendered in my case, it appears that federal judges still lack uniformity toward patent protection, because of a neglect to abide to the use of established legal precedents to prevent the theft of patents.

Encouraged by established patent laws and Judge Markey's speech, I devoted much of my life to inventing, in the hope of achieving the American dream of either selling or licensing my patents. Instead of achieving the American dream and being rewarded for my intellectual effort, I seemed to have fruitlessly expended enormous time, effort and my life savings.

The credibility of my allegations are supported by my engineering and legal background. I have a Bachelors of Science Degree in Mechanical Engineering from Rensselaer Polytechnic Institute (Troy, N.Y.), an equivalent of a Masters of Science Degree through engineering courses completed while employed as a Development Engineer at the General Electric Co., have about 50 years of engineering experience, have about 42 years experience in patent law, have 25 patents of which I personally prepared and prosecuted 22, prosecuted cases before the former Court of Customs and Patent Appeals and the present Court of Appeals for the Federal Circuit. Based on my background, I consider myself amply qualified to pass judgment on decisions regarding patent cases.

If judges Lourie, Plager and Dyk were 80 years old, devoted about 23 years of their lives on an invention, spent their life savings to develop and protect the invention, I'm sure they would not appreciate receiving a decision like the one they rendered to me. Especially, when the decision was based solely on arbitrary judgments, and not on established precedential laws.

The decision rendered in my case is unbearable to deal with, especially when I'm positive that the decision is erroneous, and the Courts are depriving me the constitutional right of defending the validity of my patent at trial.

Since there are a multitude of genuine issues of material facts in dispute, the case should have been remanded to District Court for jury trial, and summary judgment not affirmed. Summary judgment is a drastic remedy and must be exercised with extreme care to prevent taking genuine issues of material fact away from juries. Thomas v. St. Luke's Health Systems, Inc., affirmed 61 F. 3d 908.

For the sake of justice, it is requested that my submitted petition for rehearing be properly and fairly considered, or that a petition for writ of mandamus be accepted, to support my position that summary judgment is inappropriate in the instant case and the case should be remanded to District Court to establish a proper factual foundation for the legal determination of obviousness/nonobviousness.

Respectfully submitted,

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