



1 Argument

2 A. Early in this case, Margolin had impressed upon him the need to be very precise and very  
3 literal in naming the parties. Margolin had named “Charles F. Bolden, Administrator, National  
4 Aeronautics and Space Administration” as the defendant (See Margolin’s Complaint - Document  
5 1). Defendant’s Counsel, the Department of Justice (more specifically the U.S. Attorney for the  
6 District of Nevada and the Assistant U.S. Attorney for the District of Nevada) said that wasn’t  
7 right. Defendant’s Counsel quoted 5 U.S.C. § 552(a)(4)(B) and cited *Hardy v. Daniels*, 2006 WL  
8 176531 (D. Or. 2006) to emphasize that only an agency can be sued under the Freedom of  
9 Information Act. (See Document 9 - Motion to Dismiss, page 2, line 2.) Thus, defendants must  
10 be named with absolute precision, with no wiggle room. As a result, Margolin added the  
11 “National Aeronautics and Space Administration” (“NASA”) as a defendant and removed  
12 “Charles F. Bolden, Administrator, National Aeronautics and Space Administration” as a  
13 defendant (See Document 26.)

14  
15 NASA is not the “Government.” The U.S. Attorney for the District of Nevada is not the  
16 “Government.”

17  
18 Under the United States Constitution the United States Government consists of three branches:  
19 the Executive Branch, the Legislative Branch, and the Judicial Branch.

20  
21 Both NASA and the Department of Justice are part of the Executive Branch but are not literally  
22 the Executive Branch. They are certainly not the Legislative Branch (Congress) or the Judiciary.

1 Therefore, neither NASA nor DOJ has filed the Reply (Document 52) and since the  
2 “Government” has not filed a Notice of Appearance, the “Government” has no standing to  
3 appear in this case. And, for that matter, Margolin does not see in the Court record where either  
4 the U.S. Attorney or the Assistant U.S. Attorney has filed a Notice of Appearance in this case.

5  
6 The use of the word “Government” in GOVERNMENT’S REPLY is prejudicial because it  
7 suggests that the entire force and majesty of the United States Government has come to bear on  
8 Margolin. And it all started with a simple Freedom of Information Act request. This reflects  
9 poorly on President Obama’s “Open Government” memo of January 21, 2009 as well as the  
10 Attorney General’s Memorandum For Heads of Executive Departments and Agencies. The  
11 President’s memo was reproduced as Exhibit 7 in Document 11-2 at A24 (the Appendix to  
12 Margolin’s Opposition to Motion to Dismiss, Document 11). It is reproduced here as Exhibit 1 at  
13 20. The Attorney General’s memorandum was reproduced as Exhibit 8 in Document 11-2 at  
14 A27. It is reproduced here as Exhibit 2 at 23.

15  
16 Therefore, GOVERNMENT’S REPLY (Document 52) should be stricken in its entirety because:

- 17 1. The title of the filing suggests that the “Government” is a defendant in this case, which it  
18 is not.
- 19 2. The title of the filing is prejudicial because it suggests that the entire force and majesty of  
20 the United States Government has come to bear on Margolin.

21  
22 In the event the Court decides not to strike the GOVERNMENT’S REPLY in its entirety, the  
23 title of Document 52 is misleading and prejudicial and should be stricken.

1 **B.** In the event the Court decides not to strike the GOVERNMENT’S REPLY in its entirety,  
2 then pursuant to Federal Rule of Civil Procedure 12(f), Margolin moves to strike immaterial,  
3 impertinent, and scandalous allegations from GOVERNMENT’S REPLY.

4  
5 **Optima Technology Corporation**

6 NASA’s continuing defense of its actions in confusing Optima Technology Corporation and  
7 Optima Technology Group is scandalous, dishonest, and contemptible.

8 In Government’ Reply (“GR”), Footnote 1, page 2, lines 26 - 28, NASA states:

9  
10 For example, the issue of who currently owns the patents (#49 at pp. 4, 18-19) is not  
11 relevant to the resolution of this FOIA action, as Plaintiff readily concedes: "This issue  
12 [of who owns the patents] is irrelevant to the present case except to promote NASA's agenda  
13 for adding more poison to the well." (#49 at p. 20; #32 at 28).

14  
15  
16 While the issue of who owns the patents is irrelevant to this FOIA case, the issue of who owns  
17 the patents is not irrelevant. In Document 32 (Margolin’s Motion For Summary Judgment and  
18 Memorandum of Points and Authorities) Margolin discussed the issue (Document 32, page 28,  
19 line 3 - page 29, line 20). In short, the Patents were litigated in U.S. District Court for the  
20 District of Arizona. Shortly before litigation started an individual named Reza Zandian filed  
21 documents with the Patent Office assigning the Patents to his company, Optima Technology  
22 Corporation. During the trial the Arizona Court ruled that his assignments were fraudulent and  
23 ordered the Patent Office to strike those assignments from its records. The Patent Office  
24 complied with the Arizona Court’s order.

25  
26 NASA quotes only Margolin’s statement in the above section from Document 32:

27 "This issue [of who owns the patents] is irrelevant to the present case except to promote  
28 NASA's agenda for adding more poison to the well." (#49 at p. 20; #32 at 28).

29

1 and leaves out the part where NASA knew that the Arizona Court had ruled that Optima  
2 Technology Corporation/Reza Zandian's assignments were fraudulent.

3 From Document 32, page 29, lines 11 - 20:  
4

5 NASA knew about this situation. The Arizona Court's Order is among the 4,000 or so  
6 pages of documents NASA gave Margolin in November 2009. See Exhibit 5, Appendix  
7 Volume 1 at A48. The Patent Office obeyed the Court's Order but, apparently, the Order is  
8 not good enough for NASA. NASA's actions in questioning the current ownership of the  
9 patents are beneath contempt. NASA's attempt to poison the well by having their agent  
10 Abernathy publish a spurious history of synthetic vision largely failed, so now they are  
11 questioning the current ownership of the patents. This issue is irrelevant to the present case  
12 except to promote NASA's agenda for adding more poison to the well. In the interest of  
13 fairness, the Court is requested to order NASA produce all documents and records of  
14 communications where they questioned the proper ownership of the Patents.  
15

16 NASA could not have picked out the single sentence that it quoted from the paragraph without  
17 reading the paragraph and knowing that the Arizona Court had ruled that Optima Technology  
18 Corporation/Reza Zandian does not own the Patents. Further, NASA would have known of the  
19 Arizona Court's Order because the Order was in the approximately 4,000 pages of documents  
20 that NASA sent Margolin in November 2009. The Arizona Court's Order is NASA's Bates Nos.  
21 02947-02948 and is reproduced here as Exhibit 3 at 27. It will be noted that the copy that NASA  
22 provided to Margolin did not contain the Arizona's Court's Footer ("**Case 4:07-cv-00588-RCC**  
23 **Document 131 Filed 08/18/2008**"). Whether this was intentional or due to carelessness is  
24 unknown. The Arizona Court's Order, obtained from PACER, is reproduced in Exhibit 4 at 30.  
25  
26 Despite NASA's knowledge of the Arizona Court's Order they continue to deliberately poison  
27 the well regarding ownership of the Patents.

28  
29 NASA makes the extraordinary statement (GR, page 4, line 15-16) that:

1 ...; the patents in question were subsequently acquired by Optima Technology  
2 Corporation<sup>[2]</sup> (#50 at p. 56)

3  
4 In Margolin's Document 50 (Opposition to NASA's Cross-Motion for Summary Judgment),  
5 page 56, lines 17 -19, Margolin actually says:

6  
7 Margolin objects to Graham's statement that "the patents were subsequently acquired by  
8 Optima Technology Corporation." This is discussed in Margolin's Reply to NASA's  
9 Opposition to Margolin's MSJ (page 18 line 15 - page 21, line 12).

10  
11 NASA attempts to justify this in Footnote 2 (GR page 4, lines 27-28):

12 2 Throughout its filings, Defendant uses "Optima Technology Group" interchangeably with  
13 "Optima Technology Communication." (See Graham Supp. Dec. ¶ 9). <sup>[1]</sup>

14  
15  
16 NASA's behavior in this matter is not only scandalous, it is a moral outrage.

17 And that leads to the Supplemental Declaration of Courtney B. Graham ("Graham"). NASA cites

18 "Graham Supp. Dec. ¶ 9" *supra*. In Graham's Supplemental Declaration ¶ 9 she states:

19 9. When the CIPL practice group received Plaintiff's FOIA request No. 08-270, the  
20 group conducted a search of its records. A copy of the CIPL practice group file for Case I-  
21 222 was forwarded to the FOIA office on January 21, 2009. On May 14, 2009, the NASA  
22 Headquarters FOIA Office issued an initial determination in response to Plaintiffs FOIA  
23 request No. 08-270 releasing responsive documents to Plaintiff. *See* NASA's Initial  
24 Determination on Plaintiff's FOIA Request, FOIA No. 08-270, dated May 14, 2009. A true  
25 and correct copy of that Initial Determination is annexed hereto as Exhibit F.

26  
27 Graham's Supplemental Declaration ¶ 9 doesn't say anything about Optima Technology

28 Corporation. NASA may have meant to cite Graham's Supplemental Declaration ¶ 8, which

29 states:

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<sup>1</sup> NASA has miscited and misquoted Graham. Graham says (Graham ¶ 8):

For clarity, all references to "Optima Technology Corporation" and "Optima Technology Group" in Defendant's documents should be read interchangeably to reference the entity referred to by Plaintiff as "Optima Technology Group."

1 8. Publicly available documents in the record of Case No. I-222 contain conflicting  
2 information regarding the corporate name of the entity that received an assignment of  
3 Plaintiffs patents. The name may be Optima Technology Group, Inc. or Optima Technology  
4 Corporation. *See* Patent Assignment Abstract of Title and records from online databases,  
5 Bates Nos. 04780-04785. True and correct copies of that Abstract of Title and those online  
6 database records are annexed hereto as Exhibit D. This uncertainty was highlighted in  
7 Defendant's final determination in Case No. I-222. *See* NASA Final Determination, Case I-  
8 222 at 3, dated March 19, 2009. A true and correct copy of that Final Determination is  
9 annexed hereto as Exhibit E. For clarity, all references to "Optima Technology Corporation"  
10 and "Optima Technology Group" in Defendant's documents should be read interchangeably  
11 to reference the entity referred to by Plaintiff as "Optima Technology Group."

12  
13 Graham cites "Patent Assignment Abstract of Title and records from online databases, Bates  
14 Nos. 04780-04785" which she reproduced as Graham Exhibit D. Graham Exhibit D is the  
15 Assignment Abstract of Title as of August 15, 2008. (See Document 52-1 page 11). It is not  
16 easy to read but it says: "Search Results as of 08/15/2008 11:57 AM". These are the records  
17 that the Arizona Court, in its Order dated August 18, 2008, ordered the Patent Office to correct.  
18 Margolin has previously reproduced NASA's copy of the Order of the Arizona Court in  
19 Document 32-1 (Appendix Volume 1 Motion for Summary Judgment) at A48 and has  
20 reproduced it here as Exhibit 3 at 27 *supra*.

21  
22 The Patent Office complied with the Arizona Court's Order. Margolin has reproduced the  
23 Patent Assignment Abstract of Title as of 9/5/2008 as Margolin Exhibit 5 at 33. It says "Search  
24 Results as of 09/05/2008 05:09 PM" . Margolin has also reproduced the Patent Assignment  
25 Abstract of Title as of 11/02/2010 as Margolin Exhibit 6 at 36. It says "Search Results as of  
26 11/02/2010 20:42:48 PM".

27  
28 Graham states (Graham Supplemental Declaration ¶ 4):

29 4. My knowledge of the FOIA request that is the subject of this litigation is based on:  
30 (1) my role as an attorney staff member of the CIPL practice group during the period from

1 July 2008 through June 2009 and my personal support for the activity of that practice group  
2 during that time, and (2) my role as direct supervisor of the CIPL practice group from June  
3 2009 to the present.  
4

5 and (Graham Supplemental Declaration ¶ 6)

6 6. On August 12, 2009, I assumed direct responsibility for the FOIA request that is the  
7 subject of this litigation. See E-Mail, ACTION REQUIRED: Margolin FOIA Suit, dated  
8 August 12, 2009. A true and correct copy of that e-mail is annexed hereto as Exhibit B. As a  
9 result, I personally reviewed all of the documents and correspondence related to the matter  
10 as of that date.  
11

12 Therefore, Graham would have had knowledge of the Arizona Court Order (it was reproduced  
13 in the approximately 4,000 pages that NASA sent Margolin in November 2009). She (or  
14 NASA's Counsel) would certainly have read Margolin's discussion of the issue in Margolin's  
15 Motion For Summary Judgment because NASA picked out and quoted one sentence from the  
16 paragraph discussing the issue. At any time after September 5, 2008 Graham could have  
17 checked the USPTO's patent assignment database and seen that the Patent Office had complied  
18 with the Arizona Court's Order. Yet she and NASA continue to question the ownership of the  
19 Patents and even attempt to justify using Optima Technology Corporation and Optima  
20 Technology Group interchangeably. (Graham's Supplemental Declaration ¶ 8).

21  
22 This may not be perjury but it is an attempt to mislead this Court through a serious Act of  
23 Omission. It is scandalous and Margolin respectfully requests that the following be stricken.

24 **Government's Reply ("GR")**

25 *GR page 2, line 26-28*

26 *GR page 4, lines 15 -16 ("the patents in question were subsequently acquired by Optima*  
27 *Technology Corporation*[\[2\]](#) *(#50 at p. 56)"*  
28



1 *GR page 4, lines 27-28*

2 *GR page 6, lines 8-15*

3 *GR page 7, line 1*

4 *Graham Supplemental Declaration, paragraph 8*

5 **C. The Vaughn Index that isn't one**

6 In Document 16-1 (Margolin's Second Amended Complaint), page 10, line 10 - page 11, line 9

7 he complained:

8 22. On November 16, 2009 Margolin received two boxes of documents from Stephen L.  
9 McConnell ("McConnell"), NASA Freedom of Information Act Officer. See Exhibit 17 at  
10 Appendix Volume 2 A4. The cover letter is Exhibit 18 at Appendix Volume 2 A6.

11  
12 According to NASA there are about 4,000 pages of documents, which is a great deal more  
13 than the 100 pages they admitted to withholding in their Denial of FOIA Appeal.

14  
15 They are not in any particular order. There is no index. There are many duplicates. Although  
16 the pages are numbered the numbers are frequently illegible. There are gaps in the numbers  
17 indicating that sections were entirely withheld, usually in the most interesting parts. Is  
18 NASA really this disorganized?

19  
20 The pages run from 00017 to 05605 indicating that around 1600 pages were entirely  
21 withheld. Many of the emails are redacted. Sometimes the entire body of the email is  
22 redacted under §552 (b)(5) which McConnell characterizes as:

23  
24 (b)(5) – which protects inter-agency documents generated which "are predecisional  
25 and/or deliberative in nature" and information protected as attorney work product;  
26 and ...

27  
28 That is what this entire case is about. However, by providing the documents (such as they  
29 are) it may mean NASA does not have to provide a Vaughn Index or provide them to the  
30 Court for in camera inspection or have the Court appoint a Special Master to review them.  
31 This places the entire burden on Margolin. The documents are too voluminous to file in their  
32 entirety in this Court action. The most relevant parts are reproduced in Appendix Volume 2  
33 and Appendix Volume 3.

34

1 In Document 30 (NASA's Answer to Second Amended Complaint), page 7 lines 17 -19, NASA  
2 replied:

3 Defendant admits that 4,000 is a number greater than 100. Defendant admits that it did not  
4 provide an index of the documents included in the supplemental response to Plaintiff's 2008  
5 FOIA request and that it had no duty to do so.  
6

7 In Document 42 (NASA's Opposition to Motion for Summary Judgment and Cross-Motion for  
8 Summary Judgment) NASA referred to an "index" (#42, page 8, lines 21-22) and cited Graham  
9 Dec. ¶ 39; Ex. I.

10  
11 The Graham Declaration (Document 42-1) ¶ 39 is as follows:

12 39. NASA provided RIS with notice under 14 C.F.R. § 1206.610 (a) and (f) advising  
13 RIS that a FOIA request for RIS information had been received by the agency and that  
14 litigation had been commenced seeking disclosure of the RIS documents. In response to this  
15 notice, RIS provided a basis for its objection to NASA's proposed disclosure of these  
16 records. NASA made a determination to withhold the RIS records as privileged attorney-  
17 client communications and attorney work product under Exemption 4. See Letter from  
18 Courtney Graham to Benjamin Allison, dated January 11, 2010 (annexed hereto as Exhibit  
19 J), NASA's notice to RIS and RIS objections are not attached to this Declaration as they  
20 include information sufficient to identify the withheld documents. Examples of these  
21 documents are identified at lines 221 through 247 of the Margolin FOIA Withheld Index  
22 Final (annexed hereto as Exhibit I).

23  
24 {Emphasis added}

25  
26 Exhibit I (Document 44) is entitled "Margolin FOIA Withheld Index Final.xls"

27  
28 Somehow, in Document 52 (Government's Reply) the "Margolin FOIA Withheld Index  
29 Final.xls" has been magically transformed into a *Vaughn* Index and NASA argues that because  
30 Margolin has not argued each of the 396 entries he has lost the right to dispute their exemption.  
31 (Document 52, page 3, lines 1 -15).  
32

1 A *Vaughn* Index has very demanding requirements (Document 50 page 25, line 11- page 26, line  
 2 18). It is the King of Indexes. In view of NASA’s previous statement that it was not required to  
 3 provide an index (Document 30 - NASA’s Answer to Second Amended Complaint, page 7, lines  
 4 17 -19 *supra*), and a *Vaughn* Index is an index, Margolin had no reason to believe that the  
 5 “Margolin FOIA Withheld Index Final.xls” was a *Vaughn* Index. That is why Margolin  
 6 requested that the withheld and redacted documents be produced for *in camera* review.  
 7  
 8 In addition, the “Margolin FOIA Withheld Index Final.xls” does not include the redacted  
 9 documents in the approximately 4,000 pages that NASA sent him in November 2009. A few of  
 10 these redacted documents, that would have belonged in a *Vaughn* Index, are in Exhibit 7:

<b>NASA Bates Number</b>	<b>Email Dated</b>	<b>From</b>	<b>Exhibit 7 at</b>
04713	19 May 2003 11:15:04	Barry V. Gibbens	39
04605	February 13, 2004 10:52 AM	Fein, Edward K.	40
00095? (not legible)	September 25, 2006 8:55 AM	Fein, Edward K.	41
00380, 00381	October 16, 2008 11:42 AM	Borda, Gary G.	42,43
02223	February 11, 2009 4:00 PM	Rotella, Robert F.	44

11  
 12 NASA’s deception in this material issue is scandalous, and Margolin respectfully requests that  
 13 the following be stricken:

14 **Government’s Reply (“GR”)**

15 *GR page 3, lines 1 -15*

16 *GR page 6, line 1: “If the Court concludes that the Vaughn index and”*

17 *GR page 6, line 4: “(permitting agencies to submit revised Vaughn index to correct*  
 18 *deficiencies in the original)”*

19  
 20 *GR 8, page 8: “In any event, the Vaughn index (#46-1, Ex. I, entry #247)”*

21

1 **D. Klamath**

2 Margolin cited *Klamath* in his Second Amended Complaint (Document 16-1, ¶ 28, page 40, lines  
3 5 -18).

4  
5 NASA failed to address *Klamath* in its Answer to Second Amended Complaint (Document 30,  
6 ¶ 28, page 10, lines 4 -9, or anywhere else).

7  
8 Margolin cited *Klamath* again, in his Motion for Summary Judgment. For example: Document  
9 32, page 8, lines 13 - 24 and page 14, line 6 - page 9, line 7.

10  
11 In NASA's Opposition to Motion For Summary Judgment and Cross-Motion for Summary  
12 Judgment (Document 42) NASA responds to *Klamath* with only a conclusory statement in a  
13 footnote. (Document 42, page 16, lines 27 - 28):

14 [4] Plaintiff's reliance on *Dep't of Interior and Bureau of Indian Affairs v. Klamath Water*  
15 *Users Protective Ass'n*, 532 U.S. 1 (2001) is misplaced, That case does not address the  
16 grounds for non-disclosure discussed above.  
17

18 In Margolin's Reply to NASA's Opposition to Margolin's Motion for Summary Judgment  
19 (Document 49) he noted (Document 49, page 10, line 10 - page 13, line 12) that NASA had  
20 made only a conclusory statement regarding *Klamath* and that, according to The Federal Rules of  
21 Civil Procedure Rule 56(e)(2):

22 (2) Opposing Party's Obligation to Respond. When a motion for summary judgment is  
23 properly made and supported, an opposing party may not rely merely on allegations or  
24 denials in its own pleading; rather, its response must — by affidavits or as otherwise  
25 provided in this rule — set out specific facts showing a genuine issue for trial. If the  
26 opposing party does not so respond, summary judgment should, if appropriate, be entered  
27 against that party.  
28

1 It is only now, in Government's Reply (Document 52) that NASA has argued against *Klamath*.  
2 NASA did this in a filing that Margolin does not have the right to respond to. NASA waived its  
3 right to respond to Margolin's *Klamath* argument by failing to respond to it in their Opposition to  
4 Motion For Summary Judgment and Cross-Motion for Summary Judgment (Document 42).  
5 Therefore, Margolin respectfully requests that the following be stricken from Government's  
6 Reply:

7 *GR page 10, line 21- page 11, line 12*

8

9 **E. The Fein Email of July 12, 2004.**

10 Margolin cited the Fein email in his Second Amended Complaint (For example: Document 16-1,  
11 ¶ 25, page 23, line 20 - page 24, line 22).

12

13 NASA denied the allegation (Answer to Second Amended Complaint (Document 30, ¶ 25, page  
14 9, line 16) but provided no argument.

15

16 Margolin cited the Fein email again, in his Motion for Summary Judgment. For example:  
17 Document 32, page 8, lines 3 -10.

18

19 In NASA's Opposition to Motion For Summary Judgment and Cross-Motion for Summary  
20 Judgment (Document 42) NASA responds to the Fein mail, indirectly, with only a conclusory  
21 statement in a footnote. (Document 42, page 16, lines 24 - 26):

22 [3] Plaintiff argues that documents created after 2004 are post-decisional. Plaintiff is  
23 mistaken. The patent infringement claim was denied on March 19, 2009. (Graham Dec. ¶ 7).  
24 Thus, that is the determinative date for post-decisional documents.  
25

1 As with *Klamath*, Margolin notes in his Reply to NASA's Opposition to Margolin's Motion for  
2 Summary Judgment NASA's failure to respond (Document 49, page 6 , line 11 - page 7, line 7).  
3 Federal Rules of Civil Procedure Rule 56(e)(2) *supra* applies to the Fein email as well.

4  
5 And again, it is only now, in Government's Reply (Document 52) that NASA has argued against  
6 the Fein email. NASA did this in a filing that Margolin does not have the right to respond to.  
7 NASA waived its right to respond to Margolin's Fein argument by failing to respond to it in their  
8 Opposition to Motion For Summary Judgment and Cross-Motion for Summary Judgment  
9 (Document 42). Therefore, Margolin respectfully requests that the following be stricken from  
10 Government's Reply:

11 *GR page 9, line 19 - page 10, line 18*

12

13 **E. NASA Miscites a Margolin Document in order to reply to a document that they have no**  
14 **right to reply to in Government's Reply.**

15

16 In Footnote 6 (GR page 14) the second reference to Document 50 (“#50 at p. 21”) is actually in  
17 Document 49 (Margolin's Reply to NASA's Opposition to Margolin's Motion for Summary  
18 Judgment), page 21, line 3 - 12. NASA does not have the right to reply to Document 49 here.  
19 Therefore, Margolin respectfully requests that the sentence citing “#50 at p. 21” be stricken.

20

1 **Conclusion**

2  
3 For the foregoing reasons, Margolin respectfully requests that:

4 **1.** The Court grant his Motion To Strike GOVERNMENT’S REPLY (Document 52) in its  
5 entirety.

6 **2.** In the event the Court decides not to strike the GOVERNMENT’S REPLY in its entirety  
7 Margolin respectfully requests that the following portions be stricken:

8 **a.** The title “GOVERNMENT’S REPLY.

9 **b.** References to Optima Technology Corporation:

10 GR page 2, line 26-28;

11 GR page 4, lines 15 -16: “the patents in question were subsequently acquired by Optima  
12 Technology Corporation<sup>[2]</sup> (#50 at p. 56)”;

13  
14 GR page 4, lines 27-28;

15 GR page 6, lines 8-15;

16 GR page 7, line 1;

17 Graham Supplemental Declaration, paragraph 8;

18 All other scandalous references to “Optima Technology Corporation”.

19 **c.** References to a “*Vaughn*” Index:

20 GR page 3, lines 1 -15;

21 GR page 6, line 1: “If the Court concludes that the *Vaughn* index and”;

22 GR page 6, line 4: “(permitting agencies to submit revised *Vaughn* index to correct  
23 deficiencies in the original)”;

24  
25 GR 8, page 8: “In any event, the *Vaughn* index (#46-1, Ex. I, entry #247)”;

1 Any other statements referring to the “Margolin FOIA Withheld Index Final.xls” as a  
2 *Vaughn* Index.

3 **d.** References to *Klamath*:

4 GR page 10, line 21- page 11, line 12.

5 **e.** References to the Fein email:

6 GR page 9, line 19 - page 10, line 18.

7 **f.** GR page 14, Footnote 6: the sentence citing “#50 at p. 21” .

8

9

Respectfully submitted,

10

/Jed Margolin/

11

Jed Margolin, plaintiff pro se

12

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13

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14

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15

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16

17 Dated: November 8, 2010

18



1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 JED MARGOLIN, )

Plaintiff, )

vs. )

NATIONAL AERONAUTICS AND )  
SPACE ADMINISTRATION, )

Defendant. )  
\_\_\_\_\_ )

Case No. 3:09-cv-00421-LRH-(VPC)

SUPPLEMENTAL DECLARATION OF  
JED MARGOLIN

4  
5  
6 I, Jed Margolin, declare as follows:

7  
8 **A.** I am the plaintiff in this case.

9  
10 **B.** Exhibit 1 is a true and accurate reproduction of the President’s January 21, 2009  
11 Memorandum for the Heads of Executive Departments and Agencies that I downloaded from the  
12 Government Web site www.gpoaccess.gov/presdocs/2009/DCPD200900009.htm on or around  
13 September 19, 2009.

14  
15 **C.** Exhibit 2 is a true and accurate reproduction of Attorney General’s March 19, 2009  
16 **Memorandum For Heads of Executive Departments and Agencies** that I downloaded from  
17 the Department of Justice Web site www.usdoj.gov/ag/foia-memo-march2009.pdf on or around  
18 September 19, 2009.

1 **D.** Exhibit 3 is a true and accurate reproduction of the Arizona Court's ORDER dated August  
2 18, 2008 that was among the approximately 4,000 pages that NASA provided me in November  
3 2009. The Arizona Court's Document footer ("**Case 4:07-cv-00588-RCC Document 131**  
4 **Filed 08/18/2008**") is not present in the document that NASA provided to me.

5  
6 **E.** Exhibit 4 is a true and accurate copy of the Arizona Court's Order (Document 131) that I  
7 downloaded from PACER on or about August 19, 2008.

8  
9 **F.** Exhibit 5 is a true and correct copy of the **Patent Assignment Abstract of Title** for U.S.  
10 Patent 5,566,073 and for U.S. Patent 5,904,724 that I downloaded from the Patent Office Web  
11 site on 9/5/2008.

12  
13 **G.** Exhibit 6 is a true and correct copy of the **Patent Assignment Abstract of Title** for U.S.  
14 Patent 5,566,073 and for U.S. Patent 5,904,724 that I downloaded from the Patent Office Web  
15 site on 11/2/2010.

16  
17 **H.** Exhibit 7 is a true and accurate reproduction of documents that were included in the  
18 approximately 4,000 pages of documents that NASA sent me in November 2009.

19  
20 I hereby declare under the penalty of perjury that the foregoing is true and correct to the best of  
21 my knowledge and belief.

22  
23 Dated: November 8, 2010

Jed Margolin

Jed Margolin

Exhibit 1

Exhibit 1

*Administration of Barack H. Obama, 2009*

**Memorandum on the Freedom of Information Act**

*January 21, 2009*

*Memorandum for the Heads of Executive Departments and Agencies*

*Subject: Freedom of Information Act*

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.

I direct the Attorney General to issue new guidelines governing the FOIA to the heads of executive departments and agencies, reaffirming the commitment to accountability and transparency, and to publish such guidelines in the *Federal Register*. In doing so, the Attorney General should review FOIA reports produced by the agencies under Executive Order 13392 of December 14, 2005. I also direct the Director of the Office of Management and Budget to update guidance to the agencies to increase and improve information dissemination to the public, including through the use of new technologies, and to publish such guidance in the *Federal Register*.

This memorandum does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the *Federal Register*.

BARACK OBAMA

[Filed with the Office of the Federal Register, 11:15 a.m., January 23, 2009]

NOTE: This memorandum was released by the Office of the Press Secretary on January 22, and it was published in the *Federal Register* on January 26.

*Categories:* Communications to Federal Agencies : Freedom of Information Act, memorandum.

*Subjects:* Freedom of Information Act.

*DCPD Number:* DCPD200900009.

Exhibit 2

Exhibit 2



## Office of the Attorney General

Washington, D.C. 20530

March 19, 2009

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM:  THE ATTORNEY GENERAL

SUBJECT: The Freedom of Information Act (FOIA)

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, reflects our nation's fundamental commitment to open government. This memorandum is meant to underscore that commitment and to ensure that it is realized in practice.

### A Presumption of Openness

As President Obama instructed in his January 21 FOIA Memorandum, "The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails." This presumption has two important implications.

First, an agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.

Second, whenever an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure. Agencies should always be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information. Even if some parts of a record must be withheld, other parts either may not be covered by a statutory exemption, or may be covered only in a technical sense unrelated to the actual impact of disclosure.

At the same time, the disclosure obligation under the FOIA is not absolute. The Act provides exemptions to protect, for example, national security, personal privacy, privileged records, and law enforcement interests. But as the President stated in his memorandum, "The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."

Pursuant to the President's directive that I issue new FOIA guidelines, I hereby rescind the Attorney General's FOIA Memorandum of October 12, 2001, which stated that the Department of Justice would defend decisions to withhold records "unless they lack a sound

Memorandum for Heads of Executive Departments and Agencies  
Subject: The Freedom of Information Act

Page 2

legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.”

Instead, the Department of Justice will defend a denial of a FOIA request only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law. With regard to litigation pending on the date of the issuance of this memorandum, this guidance should be taken into account and applied if practicable when, in the judgment of the Department of Justice lawyers handling the matter and the relevant agency defendants, there is a substantial likelihood that application of the guidance would result in a material disclosure of additional information.

#### FOIA Is Everyone’s Responsibility

Application of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure but also an effective system for responding to FOIA requests. Each agency must be fully accountable for its administration of the FOIA.

I would like to emphasize that responsibility for effective FOIA administration belongs to all of us—it is not merely a task assigned to an agency’s FOIA staff. We all must do our part to ensure open government. In recent reports to the Attorney General, agencies have noted that competing agency priorities and insufficient technological support have hindered their ability to implement fully the FOIA Improvement Plans that they prepared pursuant to Executive Order 13392 of December 14, 2005. To improve FOIA performance, agencies must address the key roles played by a broad spectrum of agency personnel who work with agency FOIA professionals in responding to requests.

Improving FOIA performance requires the active participation of agency Chief FOIA Officers. Each agency is required by law to designate a senior official at the Assistant Secretary level or its equivalent who has direct responsibility for ensuring that the agency efficiently and appropriately complies with the FOIA. That official must recommend adjustments to agency practices, personnel, and funding as may be necessary.

Equally important, of course, are the FOIA professionals in the agency who directly interact with FOIA requesters and are responsible for the day-to-day implementation of the Act. I ask that you transmit this memorandum to all such personnel. Those professionals deserve the full support of the agency’s Chief FOIA Officer to ensure that they have the tools they need to respond promptly and efficiently to FOIA requests. FOIA professionals should be mindful of their obligation to work “in a spirit of cooperation” with FOIA requesters, as President Obama has directed. Unnecessary bureaucratic hurdles have no place in the “new era of open Government” that the President has proclaimed.



Memorandum for Heads of Executive Departments and Agencies  
Subject: The Freedom of Information Act

Page 3

Working Proactively and Promptly

Open government requires agencies to work proactively and respond to requests promptly. The President's memorandum instructs agencies to "use modern technology to inform citizens what is known and done by their Government." Accordingly, agencies should readily and systematically post information online in advance of any public request. Providing more information online reduces the need for individualized requests and may help reduce existing backlogs. When information not previously disclosed is requested, agencies should make it a priority to respond in a timely manner. Timely disclosure of information is an essential component of transparency. Long delays should not be viewed as an inevitable and insurmountable consequence of high demand.

In that regard, I would like to remind you of a new requirement that went into effect on December 31, 2008, pursuant to Section 7 of the OPEN Government Act of 2007, Pub. L. No. 110-175. For all requests filed on or after that date, agencies must assign an individualized tracking number to requests that will take longer than ten days to process, and provide that tracking number to the requester. In addition, agencies must establish a telephone line or Internet service that requesters can use to inquire about the status of their requests using the request's assigned tracking number, including the date on which the agency received the request and an estimated date on which the agency will complete action on the request. Further information on these requirements is available on the Department of Justice's website at [www.usdoj.gov/oip/foiapos/2008foiapos30.htm](http://www.usdoj.gov/oip/foiapos/2008foiapos30.htm).

\*\*\*\*\*

Agency Chief FOIA Officers should review all aspects of their agencies' FOIA administration, with particular focus on the concerns highlighted in this memorandum, and report to the Department of Justice each year on the steps that have been taken to improve FOIA operations and facilitate information disclosure at their agencies. The Department of Justice's Office of Information Policy (OIP) will offer specific guidance on the content and timing of such reports.

I encourage agencies to take advantage of Department of Justice FOIA resources. OIP will provide training and additional guidance on implementing these guidelines. In addition, agencies should feel free to consult with OIP when making difficult FOIA decisions. With regard to specific FOIA litigation, agencies should consult with the relevant Civil Division, Tax Division, or U.S. Attorney's Office lawyer assigned to the case.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees, agents, or any other person.

Exhibit 3

Exhibit 3

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

UNIVERSAL AVIONICS SYSTEMS CORPORATION,

Plaintiff,

vs.

OPTIMA TECHNOLOGY GROUP, INC.,  
OPTIMA TECHNOLOGY CORPORATION, ROBERT ADAMS and  
JED MARGOLIN,

Defendants.

No. CV 07-588-TUC-RCC

**ORDER**

OPTIMA TECHNOLOGY INC. a/k/a  
OPTIMA TECHNOLOGY GROUP, INC.,  
a corporation,

Counterclaimant,

vs.

UNIVERSAL AVIONICS SYSTEMS CORPORATION, an Arizona corporation,

Counterdefendant,

OPTIMA TECHNOLOGY INC. a/k/a  
OPTIMA TECHNOLOGY GROUP, INC.,

Cross-Claimant,

vs.

OPTIMA TECHNOLOGY CORPORATION,

Cross-Defendant.

02947

1 This Court, having considered the Defendants' Application for Entry of Default  
2 Judgment against Cross-Defendant Optima Technology Corporation, finds no just reason to  
3 delay entry of final judgment.

4 Therefore, IT IS HEREBY ORDERED:

5 Final Judgment is entered against Cross-Defendants Optima Technology Corporation,  
6 a California corporation, and Optima Technology Corporation, a Nevada corporation, as  
7 follows:

8 1. Optima Technology Corporation has no interest in U.S. Patents Nos. 5,566,073 and  
9 5,904,724 ("the Patents") or the Durable Power of Attorney from Jed Margolin dated July  
10 20, 2004 ("the Power of Attorney");

11 2. The Assignment Optima Technology Corporation filed with the USPTO is forged,  
12 invalid, void, of no force and effect, and is hereby struck from the records of the USPTO;

13 3. The USPTO is to correct its records with respect to any claim by Optima  
14 Technology Corporation to the Patents and/or the Power of Attorney; and

15 4. OTC is hereby enjoined from asserting further rights or interests in the Patents  
16 and/or Power of Attorney; and

17 5. There is no just reason to delay entry of final judgment as to Optima Technology  
18 Corporation under Federal Rule of Civil Procedure 54(b).

19 DATED this 18<sup>th</sup> day of August, 2008.

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Raner C. Collins  
United States District Judge

Exhibit 4

Exhibit 4

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

UNIVERSAL AVIONICS SYSTEMS)  
CORPORATION,

Plaintiff,

vs.

OPTIMA TECHNOLOGY GROUP, INC.,  
OPTIMA TECHNOLOGY  
CORPORATION, ROBERT ADAMS and  
JED MARGOLIN,

Defendants.

OPTIMA TECHNOLOGY INC. a/k/a  
OPTIMA TECHNOLOGY GROUP, INC.,  
a corporation,

Counterclaimant,

vs.

UNIVERSAL AVIONICS SYSTEMS)  
CORPORATION, an Arizona corporation,

Counterdefendant,

OPTIMA TECHNOLOGY INC. a/k/a  
OPTIMA TECHNOLOGY GROUP, INC.,

Cross-Claimant,

vs.

OPTIMA TECHNOLOGY)  
CORPORATION,

Cross-Defendant.

No. CV 07-588-TUC-RCC

**ORDER**

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9 5,904,724 ("the Patents") or the Durable Power of Attorney from Jed Margolin dated July  
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12 invalid, void, of no force and effect, and is hereby struck from the records of the USPTO;

13 3. The USPTO is to correct its records with respect to any claim by Optima  
14 Technology Corporation to the Patents and/or the Power of Attorney; and

15 4. OTC is hereby enjoined from asserting further rights or interests in the Patents  
16 and/or Power of Attorney; and

17 5. There is no just reason to delay entry of final judgment as to Optima Technology  
18 Corporation under Federal Rule of Civil Procedure 54(b).

19 DATED this 18<sup>th</sup> day of August, 2008.

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22  
23 Raner C. Collins  
United States District Judge

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Exhibit 5

Exhibit 5





United States Patent and Trademark Office

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Assignments on the Web > Patent Query

Patent Assignment Abstract of Title

NOTE: Results display only for issued patents and published applications. For pending or abandoned applications please consult USPTO staff.

Total Assignments: 2

Patent #: 5566073 Issue Dt: 10/15/1996 Application #: 08513298 Filing Dt: 08/09/1995
Inventor: JED MARGOLIN
Title: PILOT AID USING SYNTHETIC REALITY

Assignment: 1

Reel/Frame: 020279/0880 Recorded: 12/21/2007 Pages: 2
Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).
Assignor: MARGOLIN, JED Exec Dt: 07/20/2004
Assignee: OPTIMA TECHNOLOGY GROUP, INC.
1981 EMPIRE ROAD
RENO, NEVADA 89521-7430
Correspondent: JAY STELACONE
100 CAMBRIDGE STREET, SUITE 2101
BOSTON, MA 02114

Assignment: 2

Reel/Frame: 020279/0863 Recorded: 12/21/2007 Pages: 9
Conveyance: SUBMISSION TO CORRECT ERRORS IN PREVIOUSLY RECORDED DOCUMENTS PURSUANT TO MPEP 323.01(C)
Assignor: OPTIMA TECHNOLOGY GROUP, INC. Exec Dt: 12/21/2007
Assignee: OPTIMA TECHNOLOGY GROUP, INC.
1981 EMPIRE ROAD
RENO, NEVADA 89521-7430
Correspondent: JAY STELACONE
100 CAMBRIDGE STREET, SUITE 2101
BOSTON, MA 02114

Search Results as of: 09/05/2008 05:09 PM
If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.0.1
Web interface last modified: April 20, 2007 v.2.0.1

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USPTO Assignments on the Web

Page 1 of 1



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Assignments on the Web > Patent Query

Patent Assignment Abstract of Title

NOTE: Results display only for issued patents and published applications. For pending or abandoned applications please consult USPTO staff.

Total Assignments: 1

Patent #: 5904724 Issue Dt: 05/18/1999 Application #: 08587731 Filing Dt: 01/19/1996

Inventor: JED MARGOLIN

Title: METHOD AND APPARATUS FOR REMOTELY PILOTING AN AIRCRAFT

Assignment: 1

Reel/Frame: 020279/0863 Recorded: 12/21/2007 Pages: 9

Conveyance: SUBMISSION TO CORRECT ERRORS IN PREVIOUSLY RECORDED DOCUMENTS PURSUANT TO MPEP 323.01(C)

Assignor: OPTIMA TECHNOLOGY GROUP, INC. Exec Dt: 12/21/2007

Assignee: OPTIMA TECHNOLOGY GROUP, INC. 1981 EMPIRE ROAD RENO, NEVADA 89521-7430

Correspondent: JAY STELACONE 100 CAMBRIDGE STREET, SUITE 2101 BOSTON, MA 02114

Search Results as of: 09/05/2008 05:10 PM If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.0.1 Web interface last modified: April 20, 2007 v.2.0.1

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Exhibit 6

Exhibit 6

1 of 1

11/2/2010 5:43 PM

08/513,298 PILOT AID USING SYNTHETIC REALITY 11-02-2010::20:42:52

**Patent Assignment Abstract of Title****Total Assignments: 2**

**Application #:** 08513298      **Filing Dt:** 08/09/1995      **Patent #:** 5566073      **Issue Dt:** 10/15/1996  
**PCT #:** NONE      **Publication #:** NONE      **Pub Dt:**

**Inventor:** JED MARGOLIN**Title:** PILOT AID USING SYNTHETIC REALITY**Assignment: 1****Reel/Frame:** 020279 / 0880      **Received:** 12/21/2007      **Recorded:** 12/21/2007      **Mailed:** 12/26/2007      **Pages:** 2**Conveyance:** ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).**Assignor:** MARGOLIN, JED**Exec Dt:** 07/20/2004

**Assignee:** OPTIMA TECHNOLOGY GROUP, INC.  
1981 EMPIRE ROAD  
RENO, NEVADA 89521-7430

**Correspondent:** JAY STELACONE

100 CAMBRIDGE STREET, SUITE 2101  
BOSTON, MA 02114

**Assignment: 2****Reel/Frame:** 020279 / 0863      **Received:** 12/21/2007      **Recorded:** 12/21/2007      **Mailed:** 12/26/2007      **Pages:** 9

**Conveyance:** SUBMISSION TO CORRECT ERRORS IN PREVIOUSLY RECORDED DOCUMENTS PURSUANT TO MPEP  
323.01(C)

**Assignor:** OPTIMA TECHNOLOGY GROUP, INC.**Exec Dt:** 12/21/2007

**Assignee:** OPTIMA TECHNOLOGY GROUP, INC.  
1981 EMPIRE ROAD  
RENO, NEVADA 89521-7430

**Correspondent:** JAY STELACONE

100 CAMBRIDGE STREET, SUITE 2101  
BOSTON, MA 02114

Search Results as of: 11/02/2010 20:42:48 PM

**Disclaimer:**

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*If you have any comments or questions concerning the data displayed, contact OPR / Assignments at 571-272-3350*

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08/587,731 METHOD AND APPARATUS FOR REMOTELY PILOTING AN AIRCRAFT 11-02-2010::20:44:21

Patent Assignment Abstract of Title

Total Assignments: 1

Application #: 08587731 Filing Dt: 01/19/1996 Patent #: 5904724 Issue Dt: 05/18/1999  
PCT #: NONE Publication #: NONE Pub Dt:

Inventor: JED MARGOLIN

Title: METHOD AND APPARATUS FOR REMOTELY PILOTING AN AIRCRAFT

Assignment: 1

Reel/Frame: 020279 / 0863 Received: 12/21/2007 Recorded: 12/21/2007 Mailed: 12/26/2007 Pages: 9

Conveyance: SUBMISSION TO CORRECT ERRORS IN PREVIOUSLY RECORDED DOCUMENTS PURSUANT TO MPEP 323.01(C)

Assignor: OPTIMA TECHNOLOGY GROUP, INC. Exec Dt: 12/21/2007

Assignee: OPTIMA TECHNOLOGY GROUP, INC.  
1981 EMPIRE ROAD  
RENO, NEVADA 89521-7430

Correspondent: JAY STELACONE  
100 CAMBRIDGE STREET, SUITE 2101  
BOSTON, MA 02114

Search Results as of: 11/02/2010 20:44:15 PM

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Close Window

Exhibit 7

Exhibit 7

[REDACTED] Claim 1

X-Sender: [REDACTED]  
X-Mailer: QUALCOMM Windows Eudora Version 5.1  
Date: Mon, 19 May 2003 11:15:04 -0400  
To: [REDACTED]  
From: "Barry V. Gibbens, LaRC" <[REDACTED]> d(6)  
Subject: Fwd: Re: X-38, Synthetic Vision, Patents, Claim for Compensation  
Cc: "Linda B. Blackburn" <[REDACTED]>  
robin W Edwards <[REDACTED]>  
"Kurt G. Hammerle" <[REDACTED]>

b(5) [REDACTED]

Date: Tue, 13 May 2003 17:14:07 -0400  
To: "Jed Margolin" <[REDACTED]> b(6)  
From: "Kurt G. Hammerle @ Langley Research Center" <[REDACTED]>  
Subject: Re: X-38, Synthetic Vision, Patents, Claim for Compensation  
Cc: linda

Dear Mr. Margolin:

This reply acknowledges my receipt of your correspondence below.

Sincerely,  
Kurt Hammerle

At 11:13 PM 5/12/2003 -0700, you wrote:  
Dear Mr. Hammerle,

This is in reference to our telephone conversation of May 12, 2003, where I expressed my belief that NASA may have used one or more of my patents in connection with the X-38 project and may be using one or more of my patents in other projects using Synthetic Vision.

Summary

[REDACTED]

04713 1

From: FEIN, EDWARD K. (JSC-HA) (NASA)  
Sent: Friday, February 13, 2004 10:52 AM  
To: MURATORE, JOHN F. (JSC-MS) (NASA)  
Cc: 'Kennedy, Alan'  
Subject: Administrative Claim of Jed Margolin for Infringement of U.S. Patent 5,904,724 by the X-38 Project

b(5)

[Redacted]

-Ed

Edward K. Fein  
Intellectual Property Counsel  
NASA Johnson Space Center


[Redacted]  
Fax: [Redacted]  
E-Mail: [Redacted]

b(6)

**FW: Margolin Infringement**

From: FEIN, EDWARD K. (JSC-HA) (NASA) <[Redacted]>  
To: DICKERSON, MARY E. (JSC-HA) (NASA) <[Redacted]>  
Date: Jul 09 2004 - 2:43pm  
Viewed On: -- ?date?

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RE: - 267k  
  
RE: - 100k  
  
RE: - 9.7k  
  
FW: - 12k  
  
FW: - 12k

-----Original Message-----  
From: FEIN, EDWARD K. (JSC-HA) (NASA)  
Sent: Friday, July 09, 2004 2:41 PM  
To: 'Kennedy, Alan'

04605



RA/cp

-enclosure links-

~~~~

**RE: Rapid Imaging Software, Inc. patent infringement**

From: Fein, Edward K. (JSC-AL) [redacted]  
To: Mike Abernathy [redacted], Delgado, Francisco J. (JSC-ER2)  
[redacted], Kennedy, Alan J. (HQ-MC000) [redacted]  
Date: Sep 25 2006 - 9:59am

Thanks, Mike!

(b)(6)

(b)(6)

**RE: Rapid Imaging Software, Inc. patent infringement**

From: Fein, Edward K. (JSC-AL) [redacted]  
To: Delgado, Francisco J. (JSC-ER2) [redacted], Mike Abernathy  
[redacted], Kennedy, Alan [redacted]  
Date: Sep 25 2006 - 8:55am

(b)(5)

(b)(6)

[redacted]

[redacted]

(b)(5)

Edward K. Fein  
Deputy Chief Counsel/  
Intellectual Property Counsel  
NASA Johnson Space Center

[redacted]  
[redacted]  
[redacted]

(b)(6)

within JSC, JPL, and Langley that use independently developed technology (i.e. technology that does not use what RIS and I came up with) that I am sure Mr. Adams and company would claim infringes on their "Patents." We seem to be on his radar at the moment because we do what government organizations are encouraged to do ("Publish their work").

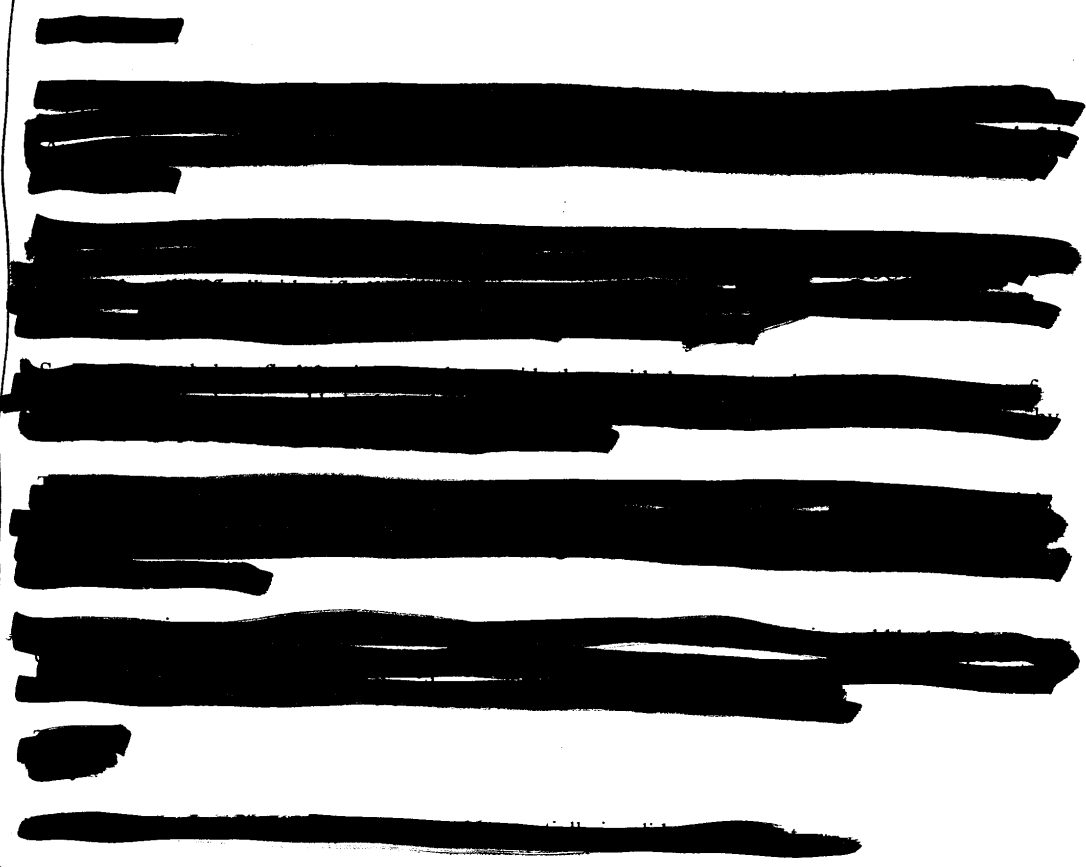
Thank You,

Frank Delgado

---

**From:** Borda, Gary G. (HQ-MC000)  
**Sent:** Thursday, October 16, 2008 11:42 AM  
**To:** Fein, Edward K. (JSC-AL); Homer, Mark W. (JPL-0910)  
**Cc:** McNutt, Jan (HQ-MC000); Rotella, Robert F. (HQ-MA000); Samuels, David A. (DFRC-L)  
**Subject:** Admin Claim for Patent Infringement - Optima Technology Group  
**Importance:** High

(b)  
(5)



Gary G. Borda  
Agency Counsel for Intellectual Property  
Office of the General Counsel

NASA Headquarters



(b)(6)

\*\*\*\*\*

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This communication should only be used for the particular matter discussed herein. Changes in circumstances and changes in law can greatly alter any current legal advice.

\*\*\*\*\*

00381

[Redacted]

**From:** Rotella, Robert F. (HQ-MA000)  
**Sent:** Wednesday, February 11, 2009 4:00 PM  
**To:** Homer, Mark W. (JPL)  
**Cc:** McNutt, Jan (HQ-MC000); Borda, Gary G. (HQ-MC000)  
**Subject:** FW: Margolin Claim

Mark-

We just received the attached extensive analysis of the Margolin technology, prepared by Margolin himself.

[Redacted]

b(5)

Please let Jan or myself know if you have any questions.

Thanks for your assistance,  
Bob

This document, including any attachments, contains information that is confidential, protected by the attorney-client or other applicable privileges, or constitutes non-public information. It is intended only for the designated recipient(s). If you are not an intended recipient of this information, please take appropriate steps to destroy this document in its entirety and notify the sender of its destruction. Use, dissemination, distribution, or reproduction of this information by unintended recipients is not authorized and may be unlawful.

**From:** McNutt, Jan (HQ-MC000)  
**Sent:** Wednesday, February 11, 2009 3:01 PM  
**To:** Hammerle, Kurt G. (JSC-AL)  
**Cc:** Delgado, Francisco J. (JSC-ER6); Rotella, Robert F. (HQ-MA000); Borda, Gary G. (HQ-MC000); Graham, Courtney B. (HQ-MA000); Fein, Edward K. (JSC-AL)  
**Subject:** Margolin Claim

Kurt (and Frank),

Jed Margolin sent me this document.



auvsj\_answer.pdf

[Redacted]

b(5)

Regards,

Jan S. McNutt  
Senior Attorney (Commercial)  
Office of the General Counsel  
NASA Headquarters

[Redacted]

b(6)

1

CERTIFICATE OF SERVICE

2 The undersigned hereby certifies that service of the foregoing MOTION TO STRIKE has been  
3 made by electronic notification through the Court's electronic filing system on November 8,  
4 2010.

5

6 /Jed Margolin/

7 Jed Margolin

8