Fraud in US Patent Office rejection of patent application in bubble fusion goes to Supreme Court

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Title:	Fraud in US Patent Office rejection of patent application in bubble fusion goes to Supreme Court
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Summary:	False Claims Act (FCA) action alleging the fraudulent USPTO rejection of patent application dismissed by the Alexandria court and affirmed by the Fourth Circuit is appealed to the Supreme Court.
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BACKGROUND

Bubble fusion is related to the field of sonoluminescence (SL) where high temperatures are generally thought to explain the visible light observed in the collapse of bubbles in water under ultrasound, the high temperatures claimed as utility in

initiating nuclear reactions and enhancing chemical reactions in sonochemistry. In sonochemistry, temperatures from 5,000 to 15,000 degrees are claimed while in bubble fusion the temperatures claimed exceed 2 million degrees.

However by Le Chatelier's principle, the water vapor in collapsing bubbles takes the minimum energy path in response to the decreasing volume by condensing to liquid instead of taking the higher path by increasing in temperature and pressure, as would be the case in a collapsing air filled bubble. Except for a small non-equilibrium effect, the water vapor in bubble collapse condenses with less than about a 60 C rise in temperature, and therefore claims of 5,000 to 15,000 degrees in sonochemistry are just as ludicrous as claims of 2 million degrees in bubble fusion.

NATURE ARTICLE AND ALLEGATION OF $250,000 OF SONOFUSION FUNDS

Recently, consequences of the USPTO granting patents on false prior art center on the recent Nature (Vol. 442, pp. 230-231, 20 July 2006) that suggested that $250,000 of DARPA funds were misused by Putterman and Taleyarkhan in sonofusion research based on erroneous reasoning that the collapse of vapor bubble produces high temperatures. However, far more money has been spent on sonofusion(bubble fusion)over the last decade, most funded by the US taxpayer. To make matters worse, proponents of sonofusion have criticized Nature because of the allegation of misused funds. See "Reich or Wrong – Nature on the attack", http://www.tcm.phy.cam.ac.uk/~bdj10/propaganda/taleyarkhan.html. But sonofusion proponents are in serious error. Indeed, the entire notion of bubble fusion is a fraud played on the US taxpayer. Perhaps the greatest hoax in the history of science should instead be funded from the pockets of bubble fusion proponents such as Putterman and Taleyarkhan.

PENDING LEGISLATION

In this regard, legislation pending in Congress is directed to why it is vitally important for the USPTO to be able to correct patents like those in bubble fusion and sonochemistry even after they have been issued. Of interest here is that third party inventors are to be directly involved and allowed to introduce appropriate evidence in the reexamination process. See "Patent Quality Improvement: Post-Grant Opposition, Hearing before the Subcommittee on the Courts, the Internet, and Intellectual Property of the Committee on the Judiciary House of Representatives." - http://www.judiciary.house.gov/media/pdfs/printers/108th/94459.pdf However, the pending legislation is harmless because it requires a patent review be made not later than nine months after the grant of the patent or issuance or a reissue patent, and therefore patents issued by the USPTO over the last half century would still remain as false prior art.

USPTO AND BUBBLE FUSION AND CONSEQUENCES

Since 1970, the USPTO by accepting the erroneous explanation that the SL light was caused by high temperatures has awarded US patent in sonochemistry and bubble fusion on false prior art.

For example, the USPTO issued bubble fusion patent to Hugh Flynn of the University of Rochester in 1970. See US 4,333,796: "Method of generating energy by acoustically induced cavitation fusion and reactor therefor." More recently, the USPTO awarded American Technologies Group researcher Shui-Yin Lo a bubble fusion patent in 1997. In the same year, the USPTO on claims of bubble temperatures of 100 million degrees granted Seth Putterman of UCLA a patent for a bubble fusion. See US 5,659,173: Converting acoustic energy into useful other energy forms.

In March 2006, allegations of fraud in bubble fusion research by Taleyarkhan at Purdue University were reported. See "Purdue to Review Bubble Fusion" – http://www.free-press-release.com/news/200603/1142567086.html . Not widely reported, however, was that the US patent office (USPTO) rejected Taleyarkhan's bubble-fusion patent application filed at Oak Ridge in 2002 on behalf of the Department of Energy (DOE). See "A sound investment?" http://www.geocities.com/qedpressrelease/sound.html and "Once is happenstance" – http://www.geocities.com/qedpressrelease/happenchance.html.

On 20 June 2006, Purdue University concluded their investigation of fraud allegations against Taleyarkhan saying, the “matter will be handled as a confidential internal affair.” See sonofusion research examination committee completes review in “Sonofusion research examination committee completes review” htttp://www.Pesn.com/2006/06/20/9500283_Purdue_completes_sonofusion_review/ and “Purdue wraps Sonofusion inquiry results” http://www.photonics.com/content/news/2006/June/21/83135.aspx

However, the Purdue statement avoids the larger problem that the USPTO issued bubble fusion and sonochemistry patents remain outstanding even though neutrons have never been found in bubble fusion and sonochemical and bubble fusion reactor walls have never melted at claimed temperatures of 5,000 to 2 million degrees, and therefore the issued patents remain on the USPTO record as prior art from which any patent application based on an alternative explanation of the SL light is summarily rejected.

USPTO FRAUDULENT REJECTION OF FIRST PATENT APPLICATION

On 25 September 2002, a First Patent Application 10/179,641 titled “Cavity QED Devices” was filed that claimed SL was produced at ambient temperature by cavity QED induced EM radiation. On 23 October 2003, the USPTO rejected the First Application on the grounds of prior art that SL was produced at high temperature.

FCA COMPLAINT

Because of the fraudulent reasons for rejection, an FCA action was filed in the DC court on 4 March 2004. However, on 19 April 2005, the FCA case was transferred to the Alexandria court for lack of venue.

SECOND PATENT APPLICATION AND REJECTION

On 6 May 2004 while the FCA litigation was pending in the DC court, a Second Patent Application 10/839,831 titled “Cavity QED Induced EM Radiation” that differed from the First Application in that the concept of the presence of particles, which limited the minimum size of the QED cavity could reach when collapsing, was modified. On 20 May 2005, the USPTO summarily rejected the Second Application on the same false grounds as the First.

DISMISSAL OF FCA COMPLAINT AND IRREGULARITIES

On 16 June 2005, the Alexandria court dismissed the FCA complaint on the grounds the action was taken in the name of the US government against the USPTO - another government agency, and as such is an action against itself, the dismissal of which was not disputed.

The Alexandria court also denied the motion for leave to amend the FCA complaint with a Bivens action that would have allowed the USPTO to be sued for damages. However, the proposed Bivens complaint, which was critical in order for the court to rule properly on the motion, was never transferred from the DC court. The grounds for the Alexandria court denying the motion for leave to amend were that the USPTO acted in an official capacity when they rejected the First and Second patent applications. See "Fraud in US Patent Office perpetrates perhaps the greatest hoax in the history of science" – http://www.free-press-release.com/news/200505/1117575404.html .

What this means is due process was violated because the Alexandria court proceedings commenced without ever receiving the proposed Bivens complaint as this document was never transferred from the Alexandria court to the DC court.

The USPTO administrative remedy was to appeal the rejection to the Patent Appeals Board, but this would have been futile because the USPTO Director, one of the FCA defendants, chaired the Patent Appeals Board. Thus, the administrative remedy was a conflict of interest in that the USPTO was required to rule against itself. Instead the FCA complaint was filed.

FOURTH CIRCUIT COURT OFAPPEALS AFFIRMATION AND WRIT OF CERTIORARI TO SUPREME COURT

On 24 May 2006, the Fourth Circuit appeals court affirmed the Alexandria court

decision and on 15 August 2006, the Fourth circuit order was appealed to the US Supreme Court for writ of certiorari. The writ of Certiorari absent appendices is given in: http://www.geocities.com/qedpressrelease/USsupreme.pdf and briefly summarized as follows.

QUESTIONS PRESENTED FOR SUPREME COURT REVIEW

1.Whether the Federal courts should allow Bivens actions alleging fraud within the USPTO until Congress enacts legislation to resolve the conflict of interest in the Patent Appeals Board ruling against itself in administrative remedies, and
2.Whether Congress should change pending Patent Quality Improvement legislation to allow the challenge of issued patents of questionable validity irrespective of the date of issue, and

3.Whether the instant case should be remanded to the Alexandria court with instructions to hear the petitioner's motion for leave to amend the FCA complaint with a Bivens action because the proceedings were commenced before all of the documents in the DC court were transferred to the Alexandria court.

CONCLUSION

The US Supreme Court is expected to do the right thing and remand the case to the Alexandria court for hearing the motion for leave to amend the FCA complaint against the USPTO with a Bivens action. The US taxpayer over the past decade is becoming impatient with supporting the hoax of bubble fusion.

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