

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

- - - - -		
	)	
NADER ASGHARI-KAMRANI and	)	
KAMRAN ASGHARI-KAMRANI,	)	
	)	
Plaintiffs,	)	CIVIL ACTION NO.
	)	2:15cv478
v.	)	
	)	
UNITED SERVICES AUTOMOBILE	)	
ASSOCIATION,	)	
	)	
Defendant.	)	
- - - - -		

TRANSCRIPT OF PROCEEDINGS  
Day 5 (Afternoon session)  
Norfolk, Virginia  
April 24, 2017

BEFORE: THE HONORABLE ROBERT G. DOUMAR  
United States District Judge

APPEARANCES:  
  
MEI & MARK LLP  
By: Krystyna Colantoni  
Irene H. Chen  
Reece Nienstadt  
Laurence Sandell  
Lei Mei  
Jeff Pearson  
Counsel for the Plaintiffs

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES CONTINUED:

FISH & RICHARDSON  
By: Ahmed J. Davis  
Michael T. Zoppo  
Matthew C. Berntsen  
Counsel for the Defendants

1	(Luncheon recess from 12:30 to 1:31 p.m.)	01:31:16PM
2	THE COURT: All right. Who's going to argue?	01:31:19PM
3	MR. DAVIS: Good afternoon, Your Honor. Mr. Zoppo	01:31:21PM
4	is going to begin with Mr. Tadayon.	01:31:25PM
5	THE COURT: What points is Mr. Zoppo going to	01:31:30PM
6	argue?	01:31:32PM
7	MR. DAVIS: He's going to argue the points	01:31:33PM
8	specifically as it relates to Mr. Tadayon, Mr. Nader	01:31:35PM
9	Asghari-Kamrani, and Mr. Kim.	01:31:39PM
10	THE COURT: Who are you going to argue?	01:31:41PM
11	MR. DAVIS: I'm going to argue Mr. Kamran	01:31:43PM
12	Asghari-Kamrani, Mr. Fortkort, and Mr. Nienstadt.	01:31:45PM
13	THE COURT: Okay. Okay, Mr. Zoppo. You're on	01:31:50PM
14	board.	01:31:54PM
15	MR. ZOPPO: Thank you, Your Honor. Might I ask how	01:31:57PM
16	much time we're allotted?	01:32:09PM
17	THE COURT: Give you an hour.	01:32:13PM
18	MR. ZOPPO: Thank you, Your Honor.	01:32:23PM
19	THE COURT: Each get an hour, period.	01:32:24PM
20	MR. ZOPPO: Thank you, Your Honor.	01:32:26PM
21	THE COURT: Okay.	01:32:26PM
22	MR. ZOPPO: So we'll start with Dr. Bijan Tadayon,	01:32:28PM
23	and Dr. Tadayon is who filed the application for the '432	01:32:36PM
24	patent, and he is who made the priority claims in the '432	01:32:43PM
25	patent. The question is whether those priority claims, as	01:32:47PM

1 they were originally made, are they material and were they 01:32:54PM  
2 made with an intent to deceive. With respect to 01:32:59PM  
3 materiality, Mr. Pearson stated that there's no better prior 01:33:03PM  
4 art than the '837 patent, and that's a very important point, 01:33:09PM  
5 Your Honor. That's an important point because unless the 01:33:13PM  
6 plaintiffs are able to claim priority to the '837 patent, 01:33:17PM  
7 their patent is invalid. 01:33:23PM

8 Okay. That's because the '837 patent has the same 01:33:26PM  
9 specification as the '432 patent. So if the '432 patent was 01:33:30PM  
10 in the public domain prior, a year prior to the filing date 01:33:35PM  
11 of the '432 patent, the patentees would never have been able 01:33:40PM  
12 to get the patent that's at issue in this case. That's what 01:33:43PM  
13 makes that material. 01:33:47PM

14 THE COURT: Go over that again, Mr. Zoppo. 01:33:48PM

15 MR. ZOPPO: Sure. It's an important point, Your 01:33:53PM  
16 Honor. The '837 patent published in 2003 as a published 01:33:56PM  
17 patent application, and it describes an invention. 01:34:03PM

18 THE COURT: All right. 01:34:08PM

19 MR. ZOPPO: And the '432 patent application was not 01:34:10PM  
20 filed until 2008, and that was several months after the '837 01:34:13PM  
21 patent issued, but also importantly, many years, several 01:34:18PM  
22 years after the '837 patent application became a 01:34:25PM  
23 publication, something public, something that the whole 01:34:30PM  
24 world then knew about, okay. Patent law does not allow you 01:34:33PM  
25 to get a patent on something the whole world knows about. 01:34:40PM

1 It has to be something new. Okay. 01:34:44PM

2 And because the '837 patent application was in the 01:34:48PM  
3 public domain more than a year before the '432 patent 01:34:51PM  
4 application was filed, it's what's called prior art. And 01:34:56PM  
5 prior art is what the patent examiners use to reject patent 01:35:01PM  
6 applications. Okay. And it may seem odd that the 01:35:05PM  
7 plaintiffs' own application can be used against them, but 01:35:12PM  
8 this is the law. 01:35:16PM

9 If the patentees had voluntarily published their 01:35:18PM  
10 invention a year before they filed their patent application, 01:35:21PM  
11 the statute does not allow you to then apply for a patent on 01:35:26PM  
12 it. 01:35:30PM

13 THE COURT: Prior art? 01:35:31PM

14 MR. ZOPPO: Yes, Your Honor. That's exactly right. 01:35:33PM  
15 And the issue to keep in mind here is that Dr. Tadayon is 01:35:36PM  
16 not a newbie. He is a sophisticated practitioner. This is 01:35:43PM  
17 the gentleman I described in my opening statement as having 01:35:48PM  
18 gone to Georgetown and a Ph.D. from Cornell, and the 01:35:50PM  
19 pre-credentials go on and on, a former patent examiner. 01:35:56PM

20 What's also important to report is the testimony 01:36:00PM  
21 that Mr. Nader Asghari-Kamrani gave at this trial, that it 01:36:04PM  
22 was their intention to file a continuation of the '837 01:36:09PM  
23 patent, and that he relied on Dr. Tadayon's testimony -- I'm 01:36:16PM  
24 sorry, on Dr. Tadayon's advice in doing so. I have a cite 01:36:22PM  
25 for that testimony. That's Page 394, lines 3 through 12. 01:36:27PM

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.