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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

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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1 they were originally made, are they material and were they 01:32:54PM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

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