COMPLAINT AGAINST DAVID J. KAPPOS

ATTENTION IS DIRECTED TO:

> ## Model Rules of Professional Conduct: Preamble & Scope
>
> PREAMBLE: A LAWYER'S RESPONSIBILITIES
>
> [6] As a public citizen, a lawyer should seek improvement of...access to the legal system,... A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should...use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.
>
> https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/

DAV ID J. KAPPOS AND HIS CONFIRMATION HEARING DISHONESTY

> David J. Kappos...[…]...was instrumental in the passage and implementation of the Leahy Smith America Invents Act (AIA). Prior to leading the USPTO, David served in a variety of roles for more than 25 years at IBM, most recently as the company's Vice President and Assistant General Counsel for Intellectual Property.
>
> https://www.stout.com/en/insights/article/insights-intellectual-property-expert-david-kappos

David J. Kappos was cocooned as a patent lawyer for his entire working life at IBM before being nominated to be Director of the US Patent and Trademark Office (USPTO). His nomination was met with resistance. A November 2, 2009, *Politico* article entitled "Critics raise concerns at Commerce" - https://www.politico.com/story/2009/11/critics-raise-concerns-at-commerce-029002 - we read that Mr. Kappos said this:

> "To me, it's extraordinarily important that I have absolutely nothing to do with any particular decision that involves my former employer if I am confirmed for this job," Kappos said at the time.
>
> He added: "Like other people who are in private industry and move to the government, I will put my previous role behind me and focus entirely on doing the right thing for the United States of America."

Mr. Kappos was dishonest in his confirmation hearing, since it is a known fact that Mr. Kappos took steps to benefit his former employer – IBM – as will be proven herein. IBM owned shares in Lenovo, and Mr. Kappos took steps to force inventors to buy personal computers, knowing that some of the computers purchased would be Lenovo computers, with these sales benefitting IBM, as well as Mr. Kappos personally, since it must be assumed that Mr. Kappos owned stock in IBM.

Here are two reports about IBM's ownership of shares in Lenovo. It is obvious: 1) that, since IBM owned Lenovo shares in 2004, at the time the IBM personal computer product line was sold to Lenovo and prior to Mr. Kappos's tenure at the USPTO; and, 2) that, since IBM owned shares in Lenovo in 2016 after Mr. Kappos's tenure at the USPTO; 3) that, therefore, IBM owned shares in Lenovo at some time - probably for the entire time - during Mr. Kappos's tenure at the USPTO. And, it will be assumed herein that Mr. Kappos, as a former IBM executive, must be an IBM shareholder.

- In a report that discusses the sale of IBM's personal computer product line to Lenovo, we read: "In December 2004, IBM announced it was selling its PC business to Lenovo for $1.75 billion. […] IBM already owned 19 percent of Lenovo, which would continue for three years under the deal, with an option to acquire more shares." https://spectrum.ieee.org/how-the-ibm-pc-won-then-lost-the-personal-computer-market
- A report from March 2, 2016, has this title: "IBM plans to sell up to $150 million worth of Lenovo Group shares: IFR." https://www.reuters.com/article/us-ibm-lenovo-stake/ibm-plans-to-sell-up-to-150-million-worth-of-lenovo-group-shares-ifr-idUSKCN0W40UT

MR. KAPPOS'S "BREAK SOME GLASS" BOAST

On January 13, 2012, *Politico* ran an article about Mr. Kappos, then the Director of the USPTO, entitled "Kappos: Patent systems reinventor" - https://www.politico.com/story/2012/01/kappos-the-patent-systems-reinventor-071412 – which concludes with Mr. Kappos saying this: "[t]hey brought me here to...break some glass."

Wikipedia says this about the "broken glass theory":

> The **broken windows theory** is a criminological theory that states that visible signs of crime, anti-social behavior, and civil disorder create an urban environment that encourages further crime and disorder, including serious crimes. https://en.wikipedia.org/wiki/Broken_windows_theory#:~:text=The%20broken%20windows%20theory%20is,and%20disorder%2C%20including%20serious%20crimes.&text=The%20theory%20was%20introduced%20in,by%20social%20scientists%20James%20Q.

MR KAPPOS'S USPTO-CORRUPTING ANTI-INVENTOR "ELECTRONIC FILING INCENTIVE"

Mr. Kappos is responsible for the "America Invents Act," which includes the anti-inventor "Electronic Filing Incentive" that corrupted the USPTO, since its intent is to force inventors to file electronically, and, of course, for inventors who are not on the internet, this might require the purchase of a computer, and a certain percentage of these computer purchases would be Lenovo computers, with these purchases benefitting IBM and Mr. Kappos.

> Electronic filing incentive
>
> Section 10(h) of the AIA [America Invents Act] provides for an additional fee [Electronic Filing Incentive] of $400 ($200 for small entities) fee to be paid for each application for an original patent that is not filed by electronic means (i.e., mailed or hand delivered). This provision excludes design, plant, and provisional applications. The fee is effective 60 days after date of enactment (i.e., November 15, 2011). Once collected by the USPTO, the fee must be deposited in the Treasury and is not available to the USPTO for spending. https://www.uspto.gov/patents/laws/america-invents-act-aia/fees-and-budgetary-issues

As a patent lawyer, Mr. Kappos cannot plead ignorance of the reality that the USPTO-corrupting anti-inventor "Electronic Filing Incentive" can create serious complications for inventors and can delay the filing of patent applications. But, if you ask him if he cares, he might "plead the fifth."

- Inventions must be kept confidential, so an inventor cannot use a friend's computer or their employer's computer to file a patent application electronically, not only because of the possibility of breach of confidentiality – and, thus, patentability – but because of ownership issues: if you use a friend's computer and the invention succeeds, the friend might think they deserve a share, and might sue you; and, if you use your employer's computer, legally the patent belongs to your employer. You can fight about it, arguing "I did it at home." Good luck.
- If an inventor is not on the internet but is "incentivized" to file electronically, that would require buying a computer – maybe a Lenovo! - and pay to get on the internet, and then climb the maybe-steep learning curve that would enable them to file electronically, and this would seriously delay the inventor's filing of their patent application, and, as everybody knows: the first to the Patent Office wins.
- An inventor who has a great idea but is not on the internet might just be very discouraged – thinking that the arrogant USPTO doesn't want them to invent - and decide not to file a patent application.
- If an inventor, despite knowing the USPTO's arrogant attitude, decides to file a patent application using the US Postal Service, the extra two-hundred dollars ($200) might cause a delay in filing the patent application, because maybe the inventor has to wait until there is an extra two-hundred dollars ($200) to give to the USPTO. And, as everybody knows: the first to the Patent Office wins.

MR. KAPPOS CONTINUED TO DECEIVE CONGRESS AFTER HIS CONFIRMATION

The fact that Congress passed the “America Invents Act” - a complex, controversial bill that happened to contain the “Electronic Filing Incentive” - doesn’t change the fact that the “America Invents Act” corrupted the USPTO by attempting to force inventors to buy computers, some of which would be Lenovo computers, sales of which benefit IBM and Mr. Kappos.

Mr. Kappos, after being dishonest in his confirmation hearing, continued with his deliberate deceptions of Congress once he became Director of the USPTO. Here is an explanation:

> At the time of the “America Invents Act,” every single member of Congress and their staffers would have been working on the internet, and, with all the other complexities of the bill, they might not have had the free time to realize that millions and millions of Americans are not on the internet, and the notion that the USPTO was being corrupted with the “Electronic Filing Incentive” might not have occurred to anybody. However, a certain curious aspect of the “Electronic Filing Incentive” might help explain why nobody prevented the USPTO from being corrupted by the “Electronic Filing Incentive.” If anybody wondered why the USPTO suddenly wanted another two-hundred dollars ($200) from inventors, the USPTO agreed to deposit to the Treasury – with the USPTO having no use of the money – all of the proceeds of the “Electronic Filing Incentive.” Certainly, this isn’t a bribe, but it certainly is a trick to make Congress not think too much about how the USPTO is being corrupted, since the USPTO isn’t getting the money: they are gifting it to the Treasury, out of the goodness of their hearts and the bank accounts of inventors. With the USPTO seemingly being so generous with fees wrongfully gouged from inventors, nobody would realize that the USPTO was being corrupted and that Mr. Kappos was working for IBM, and himself, by trying to force inventors to buy computers, and perhaps Lenovo computers. Congress wasn’t bribed, it’s just that the USPTO used money wrongfully gouged from inventors to distract them and sweeten their disposition.

They say that, sometimes, passing a Congressional bill is like making sausage – you don’t know what’s in it, and maybe you don’t want to know – and the fact that Mr. Kappos’s USPTO slipped this poisonous “Electronic Filing Incentive” into the “America Invents Act” and got Congress to vote for it does not mean that the real intent of the “Electronic Filing Incentive” was not the surreptitious corruption of the USPTO by Mr. Kappos for the benefit of IBM and Mr. Kappos.

THE USPTO DID NOT NEED THE $200 THEY GAVE TO CONGRESS, BECAUSE PAPER PATENT APPLICATIONS DO NOT ADD ADDITIONAL COSTS FOR THE USPTO

The USPTO is charged with recovering costs through fees charged to inventors, and, although the introduction of electronic filing provided savings to the USPTO, paper applications through the mail added no extra costs: through-the-mail paper applications were built into the cost structure.

> Fee Setting Authority
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> Section 10 of the AIA [America Invents Act] authorizes the Director of the USPTO to set or adjust by rule all patent and trademark fees established, authorized, or charged under Title 35 of the U.S. Code and the Trademark Act of 1946 (15 U.S.C. § 1051 et seq.), respectively. When fees are set, the aggregate revenue from the patent fees may only recover the aggregate estimated cost of the patent operations, including administrative costs to the USPTO. https://www.uspto.gov/patents/laws/america-invents-act-aia/fees-and-budgetary-issues

Given that the USPTO had traditionally gladly accepted paper patent applications submitted through the US Postal Service, the signing of a bill called the "America Invents Act" did not change – not for one penny – the costs incurred by the USPTO in processing paper patent applications; rather, it simply changed the costs incurred by inventors by two-hundred dollars ($200), making the "America Invents Act" - a/k/a the "Americans Can't Afford To Invent Act" – a prime candidate for the Oxymoronic Bill Title Hall of Fame. Sarcasm aside, signing the bill corrupted the USPTO, thanks to Mr. Kappos.

Of course, electronic filing might provide administrative savings for the USPTO, but, in that case, the only proper way to create a two-tiered fee structure for patent applications – electronic and paper – would be to reduce the fee paid by inventors who file their applications electronically. In this way, the USPTO would be allowing electronic filers to benefit from the cost savings achieved by the USPTO. Inventors would welcome this, but it would not provide an "incentive" to file their applications electronically, because, as described in the next section, inventors need absolutely no "incentive" to file their applications in the fastest way possible.

We can see that the USPTO is only allowed to recover costs, and since the "Electronic Filing Incentive" fees collected are not available for use by the USPTO, and since the USPTO is only supposed to recover their costs, we know that their existing fee structure has built-in the cost of paper applications, since they get no use of this "Electronic Filing Incentive," since there are no additional costs to cover. The "Electronic Filing Incentive" must be seen for what it is: an effort to force inventors to buy computers, some of these computers being Lenovo computers, which would benefit IBM and Mr. Kappos.

INVENTORS DO NOT NEED AN “INCENTIVE” TO FILE APPLICATIONS IN THE FASTEST WAY POSSIBLE

Patent applications are priority sensitive: the first to the Patent Office wins. Inventors would need no “incentive” to file their applications in the fastest and most secure way possible. Inventors want their applications filed as soon as possible, and they want information about this filing – a filing date and application number – as soon as possible so that, with the knowledge that their patent application is on file with the USPTO, they can begin to publish and promote their invention.

Here is the reality: if you file a patent application through the mail, the USPTO will – perhaps after a 3-4 week processing time – provide you with a printed filing receipt. However, because inventors need to be informed that their patent application is on file as soon as possible, the USPTO has, for many decades, had a system where the inventor would include with their application a postcard, and this postcard would be returned bearing a sticker showing the application number and the filing date for the application. The postcard would be received in perhaps a week, while the formal printed receipt would be received in maybe 3-4 weeks; thus, the inventor got this vital information perhaps 2-3 weeks sooner.

> **III. RETURN POSTCARD**
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> If a submitter desires a receipt for any item (e.g., paper or fee) filed in the USPTO...it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item.
>
> […]
>
> The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.
>
> https://www.uspto.gov/web/offices/pac/mpep/s503.html

It is proven that inventors do not need an “incentive” to file their patent applications in the fastest was possible.

MR. KAPPOS’S CONTEMPT FOR VITAL SERVICES AND PRINCIPLES OF THE UNITED STATES OF AMERICA

Mr. Kappos was dishonest in his confirmation hearing when he said that he would “focus entirely on doing the right thing for the United States of America,” since his actions show that he cared nothing about vital services and principles that are at the foundation of the United States of America.

In its great wisdom, somewhere deep in history, the government of the United States of America created the the US Post Office, now called the US Postal Service. The US Postal Service is a public service and the default communication system of the United States of America - the vital importance of

the US Postal Service was proven during the pandemic-impacted 2020 national and state elections - and the USPTO is not entitled to punish Americans for using this vital public service.

The United States of America is a huge country in which are scattered more than 330-million free people free to live their lives as Americans wherever they want, on or off of the internet, and living in many different economic situations, and living in situations with widely varying access to infrastructure such as broadband, and subject wherever they live to weather or fire or earthquake that can disable electronic communications like the internet, and the default communication system that ties all Americans together, and to their government, is the US Postal Service. And, every single one of these Americans is entitled to be an inventor, and is entitled to use the default communication system of the United States - the US Postal Service - and every single one of these Americans is entitled to not be coerced by the USPTO, on behalf of Mr. Kappos's IBM, to buy a computer, which computer might be a computer made by Lenovo, which is partially owned by Mr. Kappos's IBM.

In the United States of America as just described, the government cannot deny access to government services to Americans who do not use advanced electronic devices. The Social Security Administration made the assumption that everybody uses cell phones, but realized their mistake. Which proves that, by introducing and maintaining the "Electronic Filing Incentive" - despite the fact that millions of Americans are not on the internet, and may not be able to be on the internet, but are, nevertheless, entitled to be inventors – the "Electronic Filing Incentive" was an intentional corruption of the patent application system by Mr. Kappos for the benefit of IBM and Mr. Kappos.

> UPDATE (14 August 2016): I'm told that SSA has removed the mandatory cell phone text messaging access requirement that was strongly criticized in the original posting below. I appreciate that SSA has now done the right thing in this case. Perhaps in the future they'll think these things through better ahead of time! https://lauren.vortex.com/2016/07/29/ssa-cutting-off-users-who-cant-receive-text-messages

And, the United States of America is made up of fifty states, and in its great wisdom, somewhere deep in history, the United States established principles and rules and laws to guarantee the freedom of interstate commerce. You cannot impede interstate commerce. The USPTO is actually part of the Commerce Department, and the filing of a patent application is an act made with the ultimate intent to promote commerce, and we can see that the "Electronic Filing Incentive" of the "America Invents Act" actually inhibits interstate commerce by putting up corrupt barriers for the benefit of IBM and Mr.

Kappos. Essentially, the "Electronic Filing Incentive" is a tariff against a class of Americans, that class being inventors who are not on the internet and rely on the vital public service – the US Postal Service – that facilitates interstate commerce.

Americans are well aware – through the written word and depictions in movies and on television – of corrupt government officials in third-world countries who hold out their hands and demand payment before allowing their victims access to government services; and, now, we have it here in the United State of America, the only difference being that, in this analogous corrupt scheme in the computer age, Mr. Kappos doesn't get his hands dirty with filthy money, like a grubby third-world government official, it just shows up in his IBM stock account.

MR. KAPPOS AND MICROSOFT

When Mr. Kappos came to the USPTO from IBM, he brought a friend from Microsoft, Marc Berejka. The relationship between IBM and Microsoft is as old as the personal computer market in America.

> Berejka's job at the Commerce Department did not require Senate confirmation.
>
> The involvement of Kappos and Berejka in the patent reform process provides an example of how former lobbyists and appointees with corporate ties can exert power even in an administration that swept into Washington with promises of curbing their influence.
>
> https://www.politico.com/story/2009/11/critics-raise-concerns-at-commerce-029002

It must be pointed out that Microsoft might benefit from Mr. Kappos's corruption of the USPTO more than IBM, since, if inventors are forced - "incentivized" - to buy a computer, only a percentage of those computers would be Lenovo, and, thus, benefit IBM and Mr. Kappos; but, most of the computers that inventors would buy would use Microsoft's Windows operating system, unless the inventor can afford a more expensive Apple computer. Mr. Kappos corrupted the USPTO for Microsoft, as well as IBM.

And, if you search in Google for "A cross-industry Partnership for American Innovation," you can read that – after leaving the USPTO - Mr. Kappos had a relationship with a Microsoft partnership.

CONCLUSION

David J. Kappos, through dishonesty, obtained a government position – Director of the USPTO – and, while in office, he corrupted the USPTO. He took steps to benefit his former employer – IBM - as well

as himself. And, to accomplish this, he took steps to deny to inventors the foundational default communication system of the United States of America - the US Postal Service - and the foundational commercial principle of the United States of America – freedom of interstate commerce – both of which were established deep in the history of the United States of America, so as to benefit his former employer – IBM - and himself.

Afterwards, Mr. Kappos bragged about being "brought...here to...break some glass." Mr. Kappos certainly did break things – he admitted he did it intentionally – and what he broke was the system that allows people all across America to freely participate as inventors without being coerced to buy a computer, a certain percentage of these computers being Lenovo, which benefits Mr. Kappos's former employer – IBM - as well as himself.

Mr. Kappos is a patent lawyer, so he is not ignorant of the patent application process, he just decided that he could break it for the benefit of IBM and himself, and so he did; and, in so doing, he intentionally damaged an amount-to-be-determined number of inventors across America. Mr. Kappos sabotaged the opportunities for inventors across America by denying them the right to freely use a vital public service – the US Postal Service – and by introducing corrupt delays in the patent application process for inventors across America, when everybody – including, presumably, Mr. Kappos – knows: the first to the Patent Office wins.

Again, attention is directed to:

> Model Rules of Professional Conduct: Preamble & Scope
>
> PREAMBLE: A LAWYER'S RESPONSIBILITIES
>
> [6] As a public citizen, a lawyer should seek improvement of...access to the legal system,... A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should...use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.
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> https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/

Inventors are allowed to be pro se inventors, and pro se inventors do not need “equal access to...legal counsel.” However, what they do need – and are entitled to - is “equal access to ~~our system of justice~~ [the patent application process]” without “economic or social barriers” that are erected by “legal counsel” - i.e. a patent attorney, Mr. Kappos, doing business as Director of the USPTO – that intentionally corrupts the USPTO for the benefit of IBM and himself.

Using the word “should” instead of “shall” in “A Lawyer’s Responsibilities” allows non-integrity-minded lawyers to choose to do nothing. However, establishing what “should” be done in “A Lawyer’s Responsibilities” necessarily establishes what *should not* be done, and, thus, it establishes what *irresponsibility* is for a lawyer. Since a lawyer “should...use civic influence to ensure equal access to ~~our system of justice~~ [the patent application process]” such that there are not “economic or social barriers,” a lawyer *should not* – it is *irresponsible* to do so - deny equal access to our “system of justice” – the patent application process - by erecting economic or social barriers for inventors.

Mr. Kappos did what a lawyer *should not* do – he was *irresponsible* – and he bragged about it, using the word “break.” What he did was break the spirits of inventors by denying them their rights as citizens of the United States of America. Denying the right of inventors who are not on the internet to freely use – without the penalty of an “Electronic Filing Incentive” - the default communication system of the United States of America – the US Postal Service - is both an economic and a social barrier; as, too, is the alternative, which is incurring the financial cost and time delay – as everybody knows: the first to the Patent Office wins - associated with buying a computer – maybe a Lenovo! - and becoming internet connected and capable, so as to file a patent application electronically.

Mr. Kappos was extremely and intentionally *irresponsible* on a national scale, so as to corrupt the USPTO for the benefit of his former employer – IBM - and himself. As Director of the USPTO, Mr. Kappos *irresponsibly* used his immense “civic influence” to erect corrupt barriers for inventors, when he surely knows that rule number one in the inventing world is: the first to the Patent Office wins.

David J. Kappos must be disbarred.

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