

Joseph Matal in Bloomberg Law: ‘Hundreds of ‘Submarine Patents’ Likely in Peril After Ruling’

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Haynes Boone Partner Joseph Matal talked with Bloomberg Law about some of the longest-pending applications before the USPTO and his thoughts on the decades-long delays of Gilbert Hyatt's 381 submarine patents.

Below is an excerpt:

Gilbert Hyatt filed a series of lawsuits claiming the U.S. Patent and Trademark Office unfairly held on to four of his applications for more than 20 years.

A trial judge rejected the agency's arguments that the delays were caused by Hyatt's own actions. On Tuesday, the U.S. Court of Appeals for the Federal Circuit said the agency's arguments have merit.

The fate of 381 patent applications are at stake, all filed by Hyatt in 1995 before a change in how patent terms are calculated. The change addressed "submarine patents," where applicants would delay issuance of a patent until after the industry had adopted the technology and infringement suits would be profitable.

The patent office has been preoccupied with Hyatt's patents for decades, using time examiners could have used to review a thousand applications from other inventors each year, Joseph Matal, a Haynes Boone partner and former patent office official, said.

"Hyatt's conduct has been a grotesque abuse of the patent examination process, and a severe waste of the agency's resources," Matal said. "If Hyatt's conduct doesn't qualify as prosecution laches, nothing qualifies as prosecution laches."

...Matal attributes that to the court acknowledging that Hyatt has been gaming the system for decades. "I just think the judges realize this is getting ridiculous and needs to be brought to a conclusion," he said.

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