

Untitled

From: pulver@bmi.net [mailto:pulver@bmi.net]

Sent: Monday, January 30, 2012 11:53 PM

To: SatelliteOffices

Cc: Khan, Azam; Kappos, David

Subject: To avoid charges of unfairness/bias/corruption and protests, USPTO should not award satellite office to Columbus OH, home of Battelle that's admittedly engaged in patent fraud [Falsifying inventions] and perjury to conceal 2nd false claims violation.

USPTO,

Re: Public Comment on Future Locations for USPTO Satellite Offices

I send these comments [with 4-year email chain] in response to (i) Battelle Memorial Institute's [PNNL] admitted patent fraud and (ii) The 1/26/12 Congressional letter to USPTO Director Kappos urging him to select Columbus, OH, headquarters of Battelle.

As 2008-11 emails and the evidence sites [w/ Battelle smoking-gun emails] confirm, Battelle at PNNL has engaged in falsifying-misrepresenting inventions [18 USC §1001] to the patent office; notably, their staff openly admitted to such misconduct during 2008 depositions for a 7-year lawsuit that's still ongoing. All of the evidence implicating Battelle and chronicling its misconduct is at [www.PatentFraud.org](http://www.PatentFraud.org). Rather than repeat the details here, I cite these excerpts that summarize Battelle's defrauding USPTO:

1. Misrepresenting Inventions in Patent Filings: Battelle writes "new" reports on pre-existing inventions to buy more time for filing patent applications. By resetting the clock, Battelle circumvents USPTO statutory filing bars, thus misrepresenting the originally-dated inventions. This is confirmed by emails & testimony, e.g.,, this deposition excerpt of Battelle commercialization manager Morgan:

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5 Q. So in order to justify a new Invention Report, there  
6 would have had to be something new...

9 A. Most probably that would be the reason for doing a new  
10 Invention Report, although there could be other  
11 reasons, too.

12 Q. Okay. What, for instance? I mean, can you think of  
13 any?

14 A. Timeframes.

15 Q. What sort of timeframes? I don't understand why a  
16 change in time would justify a new Invention Report. 17 A. The timing  
on how long we have to process the patent  
18 application.

19 Q. So you only have so long after -- What event triggers  
20 you only having so much time to patent it? Releasing  
21 it to the public or what?

22 A. I'm not sure, but there are time constraints. [USPTO Statutory Bar]

23 Q. So sometimes you might do a new Invention Report  
24 because you need a new timeframe to run to get a  
25 patent?

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1 A. That's correct.

2. Example/Incident of Misrepresentation: In January 2005, after acknowledging that PDAC/MDM software was exclusively licensed to Pulver, Battelle suddenly wrote a "NEW" report on 2002 MDM inventions after DHS-RPMP adapted/ported MDM to the BlackBerry in 2004, renamed the invention "RDADS", reset the statutory patent filing deadline/bar from 10/1/03 [2002 MDM inventions] to 1/31/06 [2005 RDADS "new" invention], filed RDADS patent application in Sept. 2005 and commercially marketed RDADS [Battelle now admits this]. Documents/emails cited below confirm PDAC/MDM was

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marketed & publicized [example] in 2003 by Battelle, thereby invalidating the 1/31/06 deadline for the "new" 2005 RDADS invention. Battelle commercialization manager Morgan's explicit testimony is quite clear:

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22 Q. Were you having conversations with Mr. Dorow around  
23 this timeframe regarding PDAC?...

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6 A. We later decided to try and get a patent on it, after  
7 we did a fairly in-depth market analysis.

8 Q. So when you say, "New name - totally different  
9 please," what does that refer to?

10 A. It refers to trying to get a name that means something  
11 in the marketplace.

12 Q. So you were trying to get the name changed from PDAC  
13 because you didn't feel that was --

14 A. That didn't mean anything to anybody.

15 Q. So when you say, "New IP number driven from the NEW IR 16 that you  
write, "IR", is that Invention Report?

17 A. Correct.

18 Q. But it sounds like you were just changing the name; it  
19 doesn't sound like the invention had changed. Is that  
20 inaccurate?

21 A. No. He was still in the process of filing, I believe.

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23 Q. And is this the IR that you had asked Mr. Dorow to  
24 submit with a new name on it?

25 A. I assume so.

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1 Q. Okay. So the new name is Rapid Data Acquisition and  
2 Dissemination System? [RDADS]

3 A. That appears to be the case.

These and other questions/concerns will be raised by outraged cities and their representatives if USPTO nevertheless awards Columbus [and Battelle] with one of the two new satellite offices:

- Is the USPTO overlooking Battelle's admitted patent fraud and rewarding it with a satellite office in its back yard because it's a major customer of IBM [Kappos employer (1983-2009)] due to its near-monopoly on running billion-dollar national labs [DOE, DHS] that utilize its lucrative mainframe computers?
- After refusing to investigate Battelle's admitted patent fraud for over two years, why is Kappos rewarding them with a satellite office down the street from their headquarters? Isn't that enabling them to further influence the process by establishing relationships with patent examiners to seek more favorable treatment, priority and hence competitive advantage regarding Battelle's pending and future patent applications?
- Doesn't this further confirm to many small business inventors that USPTO, under Kappos who advocated the recently-passed America Invents Act [first to file...] despite their concerns, is clearly biased in favor of Battelle and other behemoths who are major fee revenue sources to the tight-budget patent office? Why is Battelle being rewarded when such documented fraud would disqualify any other business and community from getting a satellite office?

For more information on Battelle's admitted patent fraud, please visit [www . PatentFraud. org](http://www.PatentFraud.org) where this email will be posted for the benefit of other cities/communities researching the integrity/fairness of the USPTO/Kappos satellite office selection process, especially after the location of the two additional offices is announced. Thank you.

Sincerely yours,

Untitled

Philip C. Pulver  
CCOL Inc.  
2415 South Garfield Street  
Kennewick, Washington 99337

Fraud Evidence Site with 2008-10 Emails to USPTO re Battelle: [www . PatentFraud. org](http://www.PatentFraud.org)

Mirror Sites: [www . patentingfraud. org](http://www.patentingfraud.org) [www . patentfraud. info](http://www.patentfraud.info) [www . inventionfraud. org](http://www.inventionfraud.org)

Patent Fraud Related Documents:

[http :///patentfraud. org/Transcri pt-DeposTesti mony-Morgan-Battel l ePatentFraud. pdf](http://patentfraud.org/Transcript-DeposTestimony-Morgan-BattellePatentFraud.pdf)

[http :///patentfraud. org/2-Email s2005--NewCodeNewNameTacti cToEvadeLi cense-DefraudPatentOffi ce. htm](http://patentfraud.org/2-Emails2005--NewCodeNewNameTacticToEvadeLicense-DefraudPatentOffice.htm)

[http :///patentfraud. org/Battel l eRenamed2002I nventi onsl n2005-Appl i edForPatent. htm](http://patentfraud.org/BattelleRenamed2002InventionsIn2005-AppliedForPatent.htm)  
[Visual Evidence of Patent Fraud]

----- Original Message -----

From: Philip Pulver

Sent: Saturday, September 25, 2010 7:20 PM

To: David.Kappos@USPTO.GOV

Subject: IG Greg Friedman's Closing/Rejecting the DOE-OIG Complaint Submission Re: Battelle-PNNL Admitted Patent Filing Fraud -- PNNL

Testimony & Documents Confirm Practice of Invention Misrepresentations/Fraud to the USPTO [e.g., False Statements (18 USC 1001)]

Mr. Kappos,

Your email server rejected this email below due to size of the attachments.

Please click [http :///www . ccol -inc. com/PvB/Transcri pt-DeposTesti mony-Morgan-Battel l ePatentFraud. pdf](http://www.ccol-inc.com/PvB/Transcript-DeposTestimony-Morgan-BattellePatentFraud.pdf)

for the other document that was originally attached. Thank you.

Philip Pulver

----- Original Message -----

From: Philip Pulver

To: Madden, Ray

Cc: Friedman, Greg [DOE-IG] ; Steven Koonin [Science] ; Secretary Chu ; Commerce Secretary Locke ; David.Kappos@USPTO.GOV

Sent: Thursday, September 23, 2010 3:55 PM

Subject: Greg Friedman's Closing/Rejecting the DOE-OIG Complaint Submission Re: Battelle-PNNL Admitted Patent Filing Fraud -- PNNL

Testimony & Documents Confirm Practice of Invention Misrepresentations/Fraud to the USPTO [e.g., False Statements (18 USC 1001)]

Ray,

Thanks for informing me that Greg Friedman [IG] has closed and won't even pursue/investigate this matter [below] of Battelle's admitted patenting fraud (with cited example) occurring at PNNL [or at the other four Battelle-managed DOE Office of Science national labs].

As I mentioned today, this now necessitates my pursuing other avenues to address this ongoing illegal patent fraud [18 USC §1001 (false statements)] that casts serious doubts on the integrity of Battelle's patenting of taxpayer-funded inventions across the DOE complex.

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I re-attached the original complaint documents [Submitted 8/26/10 (Battelle testimony/admissions and documents proving fraud)] as FYI. Please place them in the closed case file if you have not already done so. Thanks. [In fall 2009, this and other evidence was sent to Science Undersecretary Koonin who never responded but kept funding Battelle's litigation fraud/perjury (research falsification etc.); it was later sent to Secretary Chu.]

[Note: As stated below, "Secretary Locke and USPTO Director Kappos are overlooking Battelle's fraud just as the SEC overlooked Madoff's". Given Friedman's decision, DOE is now also looking the other way regarding patent fraud by the prominent billion-dollar tax-exempt Battelle, thereby granting it an unfair/illegal advantage over all adversely impacted other inventors that abide by the USPTO patent Rules and Laws. Given the recent Congressional, White House and public concern over the patenting process, many will be dismayed/outraged.]

Sincerely,

Philip C. Pulver, Complainant  
CCOL Inc.  
2415 South Garfield St.  
Kennewick, WA 99337  
(509) 586-3051  
(509) 528-9212 cell  
<http://www.ccol-inc.com/PvB> [Evidence Site]

----- Original Message -----

From: Philip Pulver

To: Madden, Ray

Sent: Friday, August 27, 2010 8:37 AM

Subject: Re: OIG Complaint Submission: Battelle-PNNL Admitted Patent Filing Fraud -- PNNL Testimony & Documents

Confirm Patenting Misrepresentations/Fraud Practice to the USPTO [e.g., False Statements (18 USC 1001)]

Ray,

See my answers that immediately follow your questions below. Thanks.

Phil

----- Original Message -----

From: Madden, Ray

To: 'Philip Pulver'

Sent: Thursday, August 26, 2010 1:03 PM

Subject: RE: OIG Complaint Submission: Battelle-PNNL Admitted Patent Filing Fraud -- PNNL Testimony & Documents

Confirm Patenting Misrepresentations/Fraud Practice to the USPTO [e.g., False Statements (18 USC 1001)]

Phil:

Good afternoon and greetings!

Thank you for your two calls to the IG Hotline today, followed by your e-mail. I will incorporate this information into your complaint, IG Hotline Predication Number P10HL597.

Please provide me with an e-mail response to the following two questions:

1. When did you file your initial complaint with the USPTO and what was the outcome? The initial complaint was filed on 10/24/08 [see below]. USPTO responded on 1/16/09 [below] by avoiding/dropping the whole fraud matter and recommending I visit the online Inventors Assistance Center (IAC)
- 2.

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for general questions. And despite my subsequent emails to them, there's been no response.

3. Why are you reporting this matter to the DOE IG when the matter/issue may be under the jurisdiction of the USPTO? Battelle's admitted patent filing fraud is occurring on the premises of DOE facilities, PNNL which is the first lab Battelle operated prior to the other four DOE labs it now manages; hence, there's sufficient probable cause for concern that this patent filing fraud practice is systemic at these 4 labs as well. Battelle makes millions from patenting of DOE-funded inventions; while admitting patent filing fraud, Battelle is likely illegally "skimming" royalties away from DOE. Dept. of Commerce [overseeing USPTO] has done nothing to address this; moreover, Commerce has rewarded Battelle by naming it to the National Advisory Council on Innovation & Entrepreneurship.

4. Clearly, Secretary Locke and USPTO Director Kappos are overlooking Battelle's fraud just as the SEC overlooked Madoff's. Hence, if the DOE-IG passes on investigating this admitted patent fraud by Battelle, it will continue unabated across any or all five Battelle-managed national labs. Finally, keep in mind that Issue 2 [below] is an actual 2005 incident of such fraud; it pertains to the MDM software developed for my business under the DOE Technical Assistance Program in 2002-03 and thus is a continuation of Battelle's fraud cited in (complaint) I04RS007..

Thank you for your additional insight. I can just see my management asking me these questions. If I should have any further questions after I thoroughly review this information, I will contact you.

I hope you will enjoy a good afternoon.

Ray

From: Philip Pulver [mailto:pulverps@verizon.net]  
Sent: Thursday, August 26, 2010 2:47 PM  
To: Madden, Ray  
Subject: OIG Complaint Submission: Battelle-PNNL Admitted Patent Filing Fraud -- PNNL Testimony & Documents Confirm Patenting Misrepresentations/Fraud Practice to the USPTO [e.g., False Statements (18 USC 1001)]

Ray,

I am filing a complaint to the DOE Office of Inspector General. The issues of the allegations are as follows:

Issue 1 -- Practice of Patent Filing Misrepresentation to USPTO: In sworn testimony [Also attached], Battelle-PNNL openly admits to fraudulently evading statutory USPTO patent deadlines by writing "new" invention reports [with new names] on pre-existing inventions when it needs new "timeframes" [extensions] to file a patent on those inventions they plan to commercialize but for which prior patent filing deadlines [statutory bars] have expired due to Battelle's using or disclosing the invention publicly. By such "resetting the clock", Battelle circumvents statutory patent filing rules, thereby misrepresenting the originally-dated invention(s) to the USPTO when applying for a patent on the "new" invention; such false statements to the USPTO violate 18 USC §1001 [False Statements] and its patent Rules.

Note, because PNNL is Battelle's first national lab managed, it's most likely that such systemic patent fraud practice is occurring at the other Battelle-run national labs [ORNL, BNL, INL & NREL]. The public, including inventors and others who legitimately file patent applications, has a right to know that DOE Office of Science is granting Battelle an illegal exemption from patent rules [and unfair advantage] in applying for patents on taxpayer- and privately-funded inventions.

Issue 2 -- 2005 Incident/Example of 1A: In the testimony cited in Issue 1, Battelle acknowledged an example of such patent fraud, i.e., 2005 renaming the MDM [Mobile Data Manager] developed for Pulver's small business via funding from DOE's Technical Assistance Program in 2002-03. Namely, after acknowledging that the 2004-05 follow-on MDM software versions were exclusively licensed to Pulver, Battelle wrote

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a "NEW" invention report on the 2002 MDM software inventions [after DHS Radiation Portal Monitor Project adapted MDM to BlackBerry], renamed the "NEW" invention to "RDADS", "reset" the statutory patent filing bar/deadline from 10/1/03 [2002 MDM inventions] to 1/31/06 [2005 "NEW" invention], marketed RDADS under NDAs, filed RDADS patent application in Sept. 2005, and later invested in RDADS/RFID commercialization. Battelle's own documents confirm that MDM was marketed/publicized/demoed in 2003, thereby invalidating the "new" reset 1/31/06 deadline/bar. Click on the "new code" section for details on this documented patent fraud incident.

See also the evidence site [www.ccol-inc.com/PvB] that has extensive supporting Battelle documentation and deposition testimony transcripts. Battelle's patent-related fraud is detailed in this write-up [click to download]: P-BattelleMisrepresentationsToUSPTO.pdf [Also attached]

The emails below provide further background. Note, the USPTO never responded to my emails or the cited evidence including Battelle's admitting to patent filing fraud.

Because Battelle manages half the US national labs, DOE's investigating and stopping such ongoing admitted systemic patent fraud of DOE-funded research is clearly in the public interest; Battelle earns many millions off its patenting each year.

Ray, if you need more information, it's available on request. Thanks.

Sincerely,

Philip Pulver  
CCOL Inc.  
2415 South Garfield  
Kennewick, WA 99337  
(509) 586-3051  
(509) 528-9212 cell

----- Original Message -----

From: Philip Pulver  
To: Richard Cronin  
Cc: Steven Koonin ; Friedman, Greg [DOE-IG]  
Sent: Monday, August 23, 2010 10:28 PM  
Subject: Further Justification for DOE-ORO to Release the Trade Secret Patent-Related Pages Re: 2008-09 Emails Citing Battelle-PNNL Testimony & Documents Confirming Patenting Misrepresentations/Fraud Practice(s) to USPTO [e.g., False Statements (18 USC 1001)]

Richard Cronin [DOE-OHA],

Per my 8/17/10 email to you, I'm forwarding this 1/29/10 email to the USPTO that also pertains to Battelle's admitted patent fraud practice [e.g., evading filing deadlines/bars] and example/incident; see attached transcript and P-BattelleMisrepresentationsToUSPTO.pdf. That email cites implications of USPTO [and DOE] exempting Battelle [managing 5 national labs] from patent rules and laws; citations from the SEC Inspector General show that the Commerce [USPTO] and Energy Depts. are overlooking Battelle's fraud in the same way the SEC ignored evidence implicating prominent Madoff who [like Battelle] served on advisory committees. As stated below, "In key respects, USPTO's refusal to address this substantiated patent fraud/abuse [while still issuing patents to Battelle] is more egregious than SEC/Madoff" and gives "credence to recent concerns by Congress and businesses that Commerce Secretary Locke and the USPTO [Kappos (IBM) & Berejka (Microsoft)] are proposing patent reforms favoring 'technology behemoths' to the detriment of smaller businesses: <http://www.politico.com/news/stories/1109/29002.html>".

The Commerce Dept. never responded to my 1/29/10 email that cited evidence of Battelle's admitted patent fraud; instead, it named Battelle to the National Advisory Council on Innovation & Entrepreneurship [see 8/17/10 email]. As I stated

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then, "The absence of any meaningful reply will confirm that the USPTO stands by its current official position of ignoring the evidence [documents & testimony], overlooking billion-dollar Battelle's ongoing misrepresentations to the USPTO, granting Battelle exemption from USPTO Rules and Laws, and thus tainting the objectivity [level-playing field] of the patent process which adversely impacts entrepreneurs, small businesses, universities and others." DOE releasing the trade secret and patent-related documents would provide compelling evidence for the public, the administration, Congress/GAO and others to address/rectify/halt the fraud and illegal/unfair waiver of patent rules/laws that USPTO & DOE have granted Battelle to the detriment/disadvantage of other inventors and contrary to the President's declared support for small business in the worst economy since the 1930's.

Note: The scientist [Dorow] implicated in Battelle's 2005 patent fraud/misrepresentation [18 USC 1001 & Patent Rules §10.23 Misconduct] is a top-secret Q clearance holder who continues accessing DHS air cargo explosives research and other classified material. Thus, there is probable cause to conclude that the still withheld/concealed patent-related material in Pulver's file at Oak Ridge further implicates Dorow in false statements, fraud & perjury which concerns not only the taxpaying public [re: national security...] and law enforcement but also the FBI, DOD, DOE, DHS and other agencies divulging counter-terrorism and other classified information to him. [This Battelle breach of safeguarding classified information (10 CFR 710) is cited in my 1/13/10 letter to Secretary Chu.]

Richard, in addition to my evidence-based July FOIA appeal and other 2010 emails demonstrating that it is in the public interest to release all the still-withheld documents, the above situation that's tainting the patenting process further justifies DOE releasing the 180 trade secret and patent-related pages that Oak Ridge concealed from its 7/1/10 FOIA response, thus violating DOE-OHA Order TFA-0362 ["Under Department of Energy (DOE) regulations, a document exempt from disclosure under the FOIA shall nonetheless be released to the public whenever the DOE determines that disclosure is not contrary to federal law and in the public interest. 10 C.F.R. § 1004."] and forfeiting its right to still withhold those pages. OR's refusal to even list/describe the 180 pages raises reasonable suspicion that DOE-Science is hiding illegal and criminal activity by Battelle that runs/monopolizes five Office of Science labs and will soon bid PNNL; this further shows that releasing the other 106 pages [withheld per litigation FOIA exemption] with the 180 pages is in the public interest regarding integrity of the US patent process and safeguarding classified information at five national labs [PNNL, ORNL...] and regarding other matters cited in the extensive emails and at the evidence site.

Sincerely,

Philip Pulver  
CCOL Inc.  
2415 South Garfield  
Kennewick, WA 99337  
(509) 586-3051  
(509) 528-9212 cell  
Evidence site: [www.ccol-inc.com/PvB](http://www.ccol-inc.com/PvB)

----- Original Message -----

From: Philip Pulver  
To: Robert.Stoll@USPTO.GOV  
Cc: Margaret.Focarno@USPTO.GOV ; David.Kappos@USPTO.GOV ; Commerce Secretary Locke ; TZinser@OIG.DOC.GOV  
Sent: Friday, January 29, 2010 1:58 PM  
Subject: Update to USPTO & Request RE: 2008-2009 Emails Citing Battelle-PNNL Testimony & Documents Confirming Battelle's Patenting Misrepresentations/Fraud Practice(s) to USPTO [e.g., False Statements (18 USC 1001)]

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Information on Battelle's misrepresentations and false statements [18 USC 1001] to the United States Patent & Trademark Office is being provided to those with the authority & obligation to act in the public interest. Evidence Site is at [www.ccol-inc.com/PvB](http://www.ccol-inc.com/PvB).

CCOL Inc.  
2415 South Garfield St.  
Kennewick, WA 99337  
(509) 586-3051

January 29, 2010

Mr. Robert Stoll

Commissioner for Patents  
United States Patent and Trademark Office  
U.S. Dept. of Commerce  
600 Dulany Street  
Alexandria, VA 22314

Dear Patent Commissioner Stoll,

I'm a small business entrepreneur who is providing evidence of Battelle patenting misrepresentations [False statements 18 USC §1001] that was repeatedly sent to the USPTO since 2008, but which was ignored. These violations against the USPTO were uncovered during 2008 depositions at the Pacific Northwest National Laboratory [PNNL]; Battelle is being sued for misusing PNNL's Technical Assistance Program [TAP] by withholding/pocketing research [Mobile Data Manager [MDM] software] that DOE specifically paid Battelle to develop for my small business; details are at the evidence site. My lawsuit is NOT a patent dispute. However, in deposition testimony, Battelle acknowledged its violations of USPTO rules/laws:

(1) Practice of Patent Filing Misrepresentation to USPTO: Battelle writes "new" invention reports on pre-existing inventions when it needs new "timeframes" [extensions] to file a patent on inventions they intend to commercialize but for which they have shown publicly or used [statutory bar]. By resetting the clock, Battelle circumvents USPTO statutory filing rules and misrepresents the originally-dated invention(s).

(2) 2005 Incident/Example ["new code" scheme]: After acknowledging that MDM follow-on versions were exclusively licensed to Pulver's small business, Battelle wrote a "NEW" invention report on 2002 MDM software inventions [after DHS Radiation Portal Monitor Project adapted MDM to BlackBerry], renamed "NEW" invention to "RDADS", reset statutory filing bar/deadline from 10/1/03 [2002 MDM inventions] to 1/31/06 [2005 "NEW" invention], marketed RDADS under NDAs, filed RDADS patent application in Sept. 2005, and later invested in RDADS/RFID commercialization. Note, MDM was marketed/publicized/demoed in 2003, thereby invalidating the 1/31/06 bar.

Previously sent to USPTO, the attached P-BattelleMisrepresentationsToUSPTO.pdf includes Battelle emails, 2002 MDM invention reports, RDADS 2005 patent application, and 2008 PNNL testimony substantiating the violations. These excerpts from the PDF and the MisrepresentationToUSPTO section clearly implicate Battelle:

Battelle Testimony: Writing "New" Reports on Old Inventions to Reset Patent Deadlines, with 2005 Example [Q=Question, A=Battelle Answer]

"Q. So in order to justify a new Invention Report, there would have had to be something new, something different between...what Mr. Dorow was doing and what was previously listed on the Invention Report?

A. Most probably that would be the reason for doing a new Invention Report,

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although there could be other reasons, too.

Q. Okay. What, for instance? I mean, can you think of any?

A. Timeframes.

Q. What sort of timeframes? I don't understand why a change in time would justify a new Invention Report.

A. The timing on how long we have to process the patent application...there are time constraints. [USPTO Statutory Bar]...

Example/Incident:

Q. Were you having conversations with Mr. Dorow around this timeframe regarding PDAC [Software]?

A. We later decided to try and get a patent on it, after we did a fairly in-depth market analysis."

Q. So when you say, "New name - totally different please," what does that refer to?...

A. It refers to trying to get a name that means something in the marketplace...

Q. But it sounds like you were just changing the name; it doesn't sound like the invention had changed. Is that inaccurate?

A. No. "

[Note, the 2009 Tri-City Herald news article also references Battelle's patent-related misrepresentations.]

2009 emails below confirm that the USPTO and Commerce Dept. Inspector General [Zinser] have taken the official position of ignoring prima facie evidence/admissions of Battelle's patenting misrepresentations [False Statements] that's occurring at PNNL and possibly/likely at other labs [ORNL, INL, BNL...]. Since then, John Doll has retired; there are new officials in leadership roles at USPTO and Commerce including you, David Kappos, and Secretary Locke. Accordingly, I request that the USPTO again review the evidence of Battelle's misrepresentations to the patent office and confirm that the USPTO either:

(1) Affirms its official position of exempting Battelle from USPTO rules/laws [e.g., statutory bars, false statements] and continues granting Battelle unfair advantage over others who accurately/truthfully represent inventions to the patent office.

OR

(2) Rescinds Battelle's exemption, will conduct investigation [or DOJ referral], holds Battelle accountable for violations/fraud against the USPTO, and takes measures preventing this patenting fraud/abuse at ALL labs they manage [PNNL, ORNL...]

Concerns/Questions Re: Battelle Being Exempted from USPTO Rules & Laws

[Note: Prior cited concerns and issues are enumerated in the 2008 & 2009 emails below.]

- This patenting fraud/abuse may be systemic practice at half the US national labs where Battelle patents & commercializes DOE-funded inventions. USPTO's continuing to grant such an exemption to Battelle materially taints the objectivity of the patenting process and will outrage entrepreneurs, corporations, and others adversely impacted by the double-standard favoring Battelle, which is among the most prolific patent filers in the US, generates significant fee revenue for budget-strapped USPTO, earns millions on patenting & commercializing taxpayer-funded research, receives billions in federal contracts annually, and manages other sites [e.g., DHS National Biodefense Analysis and Countermeasures Center at Fort Detrick]. Is the USPTO overlooking these violations to ensure that Battelle [a major revenue source] wins the upcoming bid(s) of PNNL and ORNL [Oak Ridge]?

- For decades, Battelle's prominence/expertise in patenting and technology commercialization [e.g., R&D 100] has been well known by the USPTO and by Secretary Locke for whom Battelle-PNNL was a key constituent during his terms as WA governor. Similarly, undisputed was Madoff's stature on Wall Street and with the SEC, which helped him escape accountability for many years until he confessed. The 2009 SEC Inspector General Report, citing Madoff's prominence/reputation at the SEC, clearly shows parallels between SEC/Madoff & USPTO/Battelle situations. It further explains

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why USPTO senior officials are similarly overlooking Battelle's admitted patenting misrepresentations/fraud, as the following excerpts illustrate:  
<http://www.sec.gov/news/studies/2009/oig-509.pdf> - IG Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme

"The OIG investigation also found the Enforcement staff was skeptical about Markopolos' complaint because Madoff did not fit the "profile" of a Ponzi scheme operator, with the branch chief...noting..."an inherent bias towards sort of people who are seen as reputable members of society." [Pg. 36]

"Examiners...aware of Bernard Madoff's stature in the securities industry...that Madoff's firm "was very prominent"...served on various industry committees, was a well respected individual...SEC examiners used an NASD manual with Bernard Madoff's name in it...stated...because of [his] reputation...may not have been any thought to look into Madoff's operation any further." [Pg. 50]

"examiners recalled OCIE [Office of Compliance Inspections and Examinations] telling them Madoff was a powerful and well-connected individual... interpreted the statement to raise a concern for them about pushing Madoff too hard...supervisors at the SEC appear to have been reluctant to push issues against influential people" [Pg. 199]

"After Madoff confessed, Lamore [Examiner] reflected in an e-mail with...Enforcement Assistant Regional Director, about why they were unable to uncover the fraud...acknowledged that at the senior levels of the SEC, the hesitancy towards rocking the boat may be even more pronounced with respect to someone like Bernie Madoff, who's a well-known person in industry...easier to be more aggressive when you are examining a "penny-stock firm" rather than, for instance, Goldman Sachs... "very difficult"... "to tell Bernie Madoff that he's a liar."" [Pg. 387]

- If the USPTO continues allowing Battelle to act as a 'Madoff' of the patenting & intellectual property community, then inventors, Congress and others need to know that USPTO has granted Battelle [501(c)3] unfair advantage over small businesses, universities and others who abide by the patent Rules & Laws. It would also give credence to recent concerns by Congress and businesses that Commerce Secretary Locke and the USPTO [Kappos (IBM) & Berejka (Microsoft)] are proposing patent reforms favoring 'technology behemoths' to the detriment of smaller businesses: <http://www.politico.com/news/stories/1109/29002.html> [In key respects, USPTO's refusal to address this substantiated patent fraud/abuse [while still issuing patents to Battelle] is more egregious than SEC/Madoff.]

- The current situation raises many questions; many are in emails below, but I also cite some here. Is Battelle now further emboldened to violate USPTO rules/laws now that Gary Locke is Commerce Secretary? Battelle-PNNL was a key constituent when he was WA governor. Will Battelle rely on this relationship to shield them from oversight & enforcement in the same way that Madoff's interactions/reputation with SEC officials enabled him to defraud investors after SEC rebuffed credible whistleblower complaints for a decade? Is Battelle using its dominance/monopoly at the national labs [with substantial patenting] to bully the USPTO and/or DOE to overlook its admitted fraudulent patent practices at PNNL or elsewhere? If so, is Battelle violating anti-trust laws?

Note: Additional concerns, implications and questions are in the 2008-2009 emails below.

If you need more information or have questions, please let me know. The absence of any meaningful reply will confirm that the USPTO stands by its current official position of ignoring the evidence [documents & testimony], overlooking billion-dollar Battelle's ongoing misrepresentations to the USPTO, granting Battelle exemption from USPTO Rules & Laws, and thus tainting the objectivity [level-playing field] of the patent process which adversely impacts entrepreneurs, small businesses, universities and others.

I look forward to hearing from you. Thank you.

Untitled

Sincerely,

Philip C. Pulver  
CCOL Inc. [Small business]  
2415 South Garfield St.  
Kennewick, WA 99337  
(509) 586-3051  
(509) 528-9212 cell

<http://www.ccol-inc.com/PvB> [Evidence Site - Main Page]  
<http://www.ccol-inc.com/PvB/MisrepresentationToUSPTO.htm> [Dorow False Statements to Patent Office - Battelle Commercialization admits evading USPTO Statutory Bars]  
<http://www.ccol-inc.com/PvB/Emails-NewCode-2005.htm> [Dorow Suddenly Calling MDM-on-BlackBerry "new code" to Defraud Licensee ["Pulver is Toast"] and Mislead USPTO]  
<http://www.ccol-inc.com/PvB/Declaration-PulverAwards-CrtDoc221.pdf> [Pulver Background & Entrepreneurial Awards from Battelle]  
<http://www.ccol-inc.com/PvB/Depositions.htm> [Battelle-PNNL Scientist Testimony Showing Dorow's Perjury & False Declarations, and False Statements to USPTO]  
<http://www.ccol-inc.com/PvB/Documents.htm> [Summary Detailed Outlines by Topic with Pop-Open Exhibits]

----- Original Message -----

From: Philip Pulver  
To: David.Wiley@USPTO.GOV  
Cc: W. Covey [USPTO.gov]; john.doll@uspto.gov; M. Focarino [USPTO.gov]; TZinser@OIG.DOC.GOV; hotline@oig.doc.gov  
Sent: Sunday, March 15, 2009 10:34 PM  
Subject: Response to 2/23/09 USPTO Email Responding to Pulver's 1/31/09 Email Re: Testimony & Documents Confirming Battelle Patent Fraud Practice(s)

Dear Mr. Wiley [Office of Commissioner for Patents],

I have received your 2/23/09 USPTO final response to my 1/31/09 letter to Mr. Covey [Deputy General Counsel for General Law at USPTO] who responded to my 1/5/09 email; all are below. I am emailing a reply which consists of the following sections:

1. Specific responses to your 2/23/09 USPTO message [20090223103929044.pdf attached]
2. Questions raised by the USPTO ignoring Battelle's acknowledged/admitted patent fraud and false statements
3. Relevant closing points [e.g., SEC/Madoff vis-à-vis USPTO/Battelle and Congressional hearings]

1. Specific responses to your 2/23/09 USPTO message [20090223103929044.pdf]

As with Mr. Covey, your response ignores the critical Battelle deposition testimony acknowledging fraudulent patent filing practice at the Pacific Northwest National Lab. Instead, you did a cursory cut & paste from (1) Manual of Patent Examining Procedure [MPEP] (Regulations), (2) 18 USC §1001 [Fraud & False Statements] which I cited, and (3) USPTO General Information Page [<http://www.uspto.gov/go/pac/doc/general>]. The following excerpts of my 1/31/09 email reiterate the central, critical issue that the USPTO repeatedly disregards:

(i) "This message is response to your 1/16/09 email below that referred my complaint to the USPTO Inventors Assistance Center [IAC] Contrary to your email, I'm not a customer but a whistleblower who's providing evidence [testimony & documents] of

Untitled

Battelle's practice of evading statutory deadlines by writing "new" [faked] invention reports... By referring my complaint to an organization [IAC] that obviously doesn't address fraud, Deputy Director Doll's office is turning a blind eye and ignoring prima facie evidence of Battelle's patent fraud and false statements [18 USC §1001], allegations substantiated by Battelle documents & testimony to a Federal judge."

(ii) Battelle Testimony: "Writing "New" Reports on Old Inventions to Reset Patent Deadlines, with 2005 Example" [Q=Question, A=Battelle Answer]

"Q. So in order to justify a new Invention Report, there would have had to be something new, something different between what

Mr. Dorow was doing and what was previously listed on the Invention Report?

A. Most probably that would be the reason for doing a new Invention Report, although there could be other reasons, too.

Q. Okay. What, for instance? I mean, can you think of any?

A. Timeframes.

Q. What sort of timeframes? I don't understand why a change in time would justify a new Invention Report.

A. The timing on how long we have to process the patent application... there are time constraints. [USPTO Statutory Bar]...

[Example/Incident: ]

Q. Were you having conversations with Mr. Dorow around this timeframe regarding PDAC [Software]?

A. We later decided to try and get a patent on it, after we did a fairly in-depth market analysis."

Q. So when you say, "New name - totally different please," what does that refer to?...

A. It refers to trying to get a name that means something in the marketplace...

Q. But it sounds like you were just changing the name; it doesn't sound like the invention had changed. Is that inaccurate?

A. No. " [From re-attached Transcript-BattelleMorganDeposition-withExcerpt. pdf ]

You state that "the USPTO generally trusts that the applicant's statements are true". However, after being provided with information showing otherwise, you and Mr. Covey sidestep the issue by ignoring Battelle's candid testimony confirming ongoing deceptive patent filing practice(s). You cite the 2005 patent fraud example and mischaracterize my complaint as a patent dispute despite my prior emails to the contrary. In so doing, you evaded the central issue, i.e., Battelle's systemic patent fraud practice(s) at PNNL and possibly at other labs they manage.

You note that "since the USPTO is not a regulatory or judicial agency with prosecutorial authority, it does not prosecute people for fraud". Yes, that's true, which is why Dept. of Commerce and other agencies [DOE, SEC...] refer criminal matters [e.g., fraud & false statements (18 USC §1001)] to Dept. of Justice when wrongdoing is uncovered in agency investigations. Although not a regulatory agency per se, the USPTO has sole statutory responsibility to issue patents in accordance with its many regulations, some of which you emailed to me. In sum, their inability to prosecute doesn't justify the USPTO and its OIG turning a blind eye to patenting fraud & abuse, especially by Battelle, prominent in patenting of Government research.

Cited neither by you nor Mr. Covey, the Commerce Dept. OIG Web site states the following:

"As mandated by the Inspector General Act of 1978, the mission of the Office of Inspector General is to promote economy, efficiency, and effectiveness and detect and prevent waste, fraud, abuse, and mismanagement in the programs and operations of the Department of Commerce." [<http://www.oig.doc.gov>]

Accordingly, I sent complaints to the DOC-OIG on 10/24/08 and 1/5/09. Mr. Covey responded to my "complaint sent January 05, 2009, via email to the Department of Commerce Inspector General Hotline".

Therefore, the Covey and Wiley emails document that the USPTO and the Commerce Dept.

## Untitled

Office of Inspector General have taken the official position to overlook Battelle-PNNL's fraudulent patenting practice(s) that's unequivocally confirmed by Battelle testimony and their numerous exhibits.

2. Questions raised by the USPTO ignoring Battelle's acknowledged/admitted patent fraud and false statements

Others will now ask questions why USPTO senior officials flatly ignored Battelle's fraudulent patenting practice that's corroborated by testimony. Examples of such questions are as follows:

Why is the USPTO turning a blind eye to admitted patent filing fraud by tax-exempt Battelle which runs 5 of the 10 DOE national labs, manages many others [e.g., DHS (National Biodefense Analysis and Countermeasures Center) and DOD (Fort Detrick(Anthrax))], files far more patent applications than most, takes title to inventions and commercializes taxpayer-funded research, oversees top-secret Q clearance holders filing patents, and receives billions in Federal Gov. contracts annually?

Why are USPTO Deputy Director Doll and Patent Commissioner Focari no tolerating Battelle's admitted fraudulent patent filing practice(s) that could undermine the reputation and integrity of the patent-examining process that they've both worked in and managed for over 30 years?

Will Battelle be further emboldened to violate USPTO rules & laws once Gary Locke is confirmed as Commerce Secretary? Battelle-PNNL was a major constituent during his terms as WA governor.

Is the USPTO stonewalling a fraud investigation [and criminal referral to Dept. of Justice] that could jeopardize one of its "best customers", Battelle, winning the upcoming recompetebid of PNNL that's been managed & operated by Battelle since 1965?

Given the SEC/Madoff debacle and other fraud-related current events that have outraged Congress and the taxpaying public, why is the USPTO precluding an investigation of 501(c)3 tax-exempt Battelle regarding these serious fraud matters that have ominous implications for inventors, investors, small and large business, and others who, in good faith, rightfully rely on an unbiased, level-playing field regarding patents and trademarks?

3. Relevant closing points [e.g., SEC/Madoff vis-à-vis USPTO/Battelle and Congressional hearings]

The USPTO's ignoring Battelle's patenting fraud is akin to the SEC's overlooking detailed & analytical allegations against Madoff dating back to 1999. Madoff was prominent in finance/investing, e.g., Chairman of NASDAQ. Similarly, Battelle, preeminent in patenting/commercialization/ventures of taxpayer-funded research, manages more Federal labs than anyone. Given their dismissive responses to the extensive Battelle documents & testimony, it's quite apparent that USPTO senior officials are ignoring lessons learned from SEC/Madoff and will repeat history if they allow Battelle's fraudulent patenting practice(s) to continue.

There's a critical difference between the SEC/Madoff and USPTO/Battelle situations. Unlike the SEC which received an individual's allegations ["Markopolos v. Madoff"], the USPTO was provided with official Battelle-PNNL deposition testimony clearly acknowledging Battelle's fraudulent patenting practice(s). SEC ignored allegations while USPTO even ignores actual testimony with corroborating documents. In that important respect, the USPTO's abject refusal to investigate/address this substantiated patent fraud/abuse evidence [while nonetheless issuing patents to Battelle] is more egregious than the SEC dropping the ball with Madoff.

Due to key similarities between SEC/Madoff and USPTO/Battelle, the following

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excerpts of recent Madoff-related Congressional hearings are most relevant:

Excerpt of Congress's outrage at SEC agency abdicating oversight:

[http://www.youtube.com/watch?v=FOkSkaQoF\\_I&feature=related](http://www.youtube.com/watch?v=FOkSkaQoF_I&feature=related)

[Rep. Gary Ackerman (D-NY) re: SEC ignoring whistleblower Markopolos' reporting of Madoff fraud 10 years ago.]

Madoff whistleblower Markopolos testifying to Congress voicing concerns similar to mine:

<http://www.youtube.com/watch?v=06vrqMJd2NQ&feature=related>

[Excerpts: "Mr. Madoff was one of most powerful men on Wall Street. He owned a prestigious brokerage firm. He and his brother held numerous top-level positions on the most influential industry association boards. Clearly, the SEC was afraid of Mr. Madoff."]

This chain of emails, with explicit Battelle testimony & exhibits, provides a documented audit trail repeatedly showing that the USPTO and its OIG are waiving patenting rules for Battelle [prominent in intellectual property commercialization] which generates significant patent fee revenue back to the USPTO annually.

It's pointless to send a 3rd response dismissive of Battelle's admitted violations of USPTO regulations. Apparently, only parties external to the patent office will ultimately hold Battelle accountable and end their ongoing fraud/abuse.

Sincerely,

Philip Pulver

CCOL Inc.

2415 South Garfield St.

Kennelworth, WA 99337

(509) 586-3051

(509) 528-9212 cell

<http://www.ccol-inc.com/1/PatentingFraudAbuse.htm> [Patent Fraud Section]

<http://www.ccol-inc.com/1> [Main Case Site]

PS. As background for those later reading this email chain, I reattached the evidence documents [Transcript-BattelleMorganDeposition-withExcerpt.pdf & FraudFalseStatementsToUSPTO.pdf].

----- Original Message -----

From: "Jackson, Elisa" <Elisa.Jackson@USPTO.GOV>

To: <pulverps@verizon.net>

Sent: Monday, February 23, 2009 7:03 AM

Subject: Response to Your E-Mail of January 31, 2009

This e-mail is being sent to you on behalf of David Wiley. A copy of the signed letter is attached. [20090223103929044.pdf]

----- Original Message -----

From: Philip Pulver

To: Covey, William

Cc: Deputy Director Doll ; Commissioner Focari no ; hotline@oig.doc.gov

Sent: Saturday, January 31, 2009 8:55 PM

Subject: Re: January 05, 2009, Hotline Complaint to the Department of Commerce Inspector General Re: Battelle Patent Fraud

Dear Mr. Covey,

This message is response to your 1/16/09 email below that referred my complaint to

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the USPTO Inventors Assistance Center [IAC] [<http://www.uspto.gov/web/offices/pac/dapp/pacmain.html>]. However, for the following reasons, referring my complaint [re: Battelle fraud] to the IAC is clearly inappropriate:

1. In a 1/16/09 call, the IAC itself clearly confirmed that (a) It does NOT address fraud and other issues in my complaint, (b) IAC's purpose is to answer questions and provide instructions to inventors writing patent applications, and (c) Regarding fraud, I should call 541-272-8800 [Patent Commissioner Focari no's office (copied previously)].
2. Contrary to your email, I'm not a customer but a whistleblower who's providing evidence [testimony & documents] of Battelle's practice of evading statutory deadlines by writing "new" [faked] invention reports that's illustrated by their 2005 rename [RDADS] of 2002 software inventions.

By referring my complaint to an organization [IAC] that obviously doesn't address fraud, Deputy Director Doll's office is turning a blind eye and ignoring prima facie evidence of Battelle's patent fraud and false statements [18 USC §1001], allegations substantiated by Battelle documents & testimony to a Federal judge. [See attached FraudFalseStatementsToUSPTO.pdf.] Accordingly, the following questions are justified and likely to be asked by investigators, subcommittees, watchdog groups, GAO, inventors, bloggers, corporations, universities, and others outside USPTO:

- Why is USPTO abdicating oversight by looking the other way and waiving patent rules/laws for Battelle? Why the double standard?
- Is such a waiver occurring because Battelle nationally provides significant revenue [fees] to USPTO through its extensive patenting of Government-funded research?
- Did DOE Science Undersecretary & Tech. Transfer Coordinator Orbach or other DOE officials pressure USPTO not to investigate Battelle's admitted/documented patenting fraud in this matter? [Note, DOE-Science refused to address the patent fraud; see 8/27/08 email below.]
- Why is USPTO ignoring my evidence [95-page report, Web site & testimony] against Battelle just as the SEC previously ignored Markopolos' 19-page complaint against prominent financial advisor Madoff? Is it because Battelle Memorial Institute is prominent in patenting and commercializing intellectual property?

This email and attachments will document that the USPTO was aware of testimony & documents implicating Battelle Memorial Institute in patent filing fraud at PNNL and possibly at four other DOE national labs, at the DHS National Biodefense Analysis and Countermeasures Center, etc. To further show that the USPTO knew of this fraud, excerpts of Battelle testimony from the attached Transcript-BattelleMorganDeposition-withExcerpt.pdf are quoted below. Battelle's sworn statements speak for themselves.

[Writing "New" Reports on Old Inventions to Reset Patent Deadlines, with 2005 Example]

[Q=Question, A=Battelle Answer]

Q. So in order to justify a new Invention Report, there would have had to be something new, something different between what Mr. Dorow was doing and what was previously listed on the Invention Report?

A. Most probably that would be the reason for doing a new Invention Report, although there could be other reasons, too.

Q. Okay. What, for instance? I mean, can you think of any?

A. Timeframes.

Q. What sort of timeframes? I don't understand why a change in time would justify a new Invention Report.

A. The timing on how long we have to process the patent application...there are time constraints. [USPTO Statutory Bar].

...

Q. Were you having conversations with Mr. Dorow around this timeframe regarding PDAC [Software]?

A. We later decided to try and get a patent on it, after we did a fairly in-depth market analysis.

Q. So when you say, "New name - totally different please," what does that refer to?...

A. It refers to trying to get a name that means something in the marketplace...

Untitled

Q. So when you say, "New IP number driven from the NEW IR that you write," IR, is that Invention Report?

A. Correct.

Q. But it sounds like you were just changing the name; it doesn't sound like the invention had changed. Is that inaccurate?

A. No.

Q. And is this the IR that you had asked Mr. Dorow to submit with a new name on it?

A. I assume so.

Q. Okay. So the new name is Rapid Data Acquisition and Dissemination System? [RDADS] [See Patent App.]

A. That appears to be the case.

USPTO refusal to hold Battelle accountable for documented/admitted patent fraud necessitates others to investigate and ask why USPTO is granting 501(c)(3) Battelle an exemption from patent rules/laws, thereby granting them an unfair advantage over corporations, universities, other DOE/DOE/DHS contractors, and individual inventors that submit patent applications in good faith.

Sincerely,

Philip Pulver

CCOL Inc.

2415 South Garfield St.

Kennewick, WA 99337

(509) 586-3051

(509) 528-9212 cell

<http://www.ccol-inc.com/1/PatentingFraudAbuse.htm> [Patent Fraud Section]

<http://www.ccol-inc.com/1/Depositions.htm> [Official Testimony Corroborating

Battelle Patent Fraud]

<http://www.ccol-inc.com/1> [Main Case Site]

----- Original Message -----

From: Covey, William

To: pulverps@verizon.net

Sent: Friday, January 16, 2009 11:00 AM

Subject: January 05, 2009, Hotline Complaint to the Department of Commerce Inspector General

CCOL Inc.

2415 South Garfield

Kennewick, WA 99337

RE: Your January 05, 2009, Hotline Complaint to the Department of Commerce Inspector General

Dear Mr. Pulver:

I am sending this letter in response to your complaint sent January 05, 2009, via email to the Department of Commerce Inspector General Hotline. You copied John Doll, the United States Patent and Trademark Office (USPTO) Deputy Director, upon sending the complaint. The USPTO takes very seriously the concerns of its customers, such as yourself, and the public in general. Accordingly, I am responding to you directly on behalf of Deputy Director Doll and the USPTO.

In furtherance of the USPTO's commitment to serving our customers, the USPTO has established The Inventors Assistance Center (IAC), which provides patent related information and services to the public. The IAC is staffed by experienced former primary and supervisory patent examiners who are highly knowledgeable with regard to the policies and procedures of the USPTO.

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I invite you to contact the IAC with any concerns or questions you may have regarding our patent policies or procedures. The IAC operating hours are Monday through Friday from 8:30 AM to 5:30 PM EST. You may contact the IAC at the following telephone numbers: 800-786-9199 or 571-272-1000.

The USPTO is committed to providing its customers with the highest level of service. I encourage you to contact the IAC directly when you have any patent related questions or concerns

Sincerely,

William R. Covey  
Deputy General Counsel for General Law

---

From: Philip Pulver [mailto:pulverps@verizon.net]  
Sent: Monday, January 05, 2009 11:47 PM  
To: Hotline, OIG  
Cc: todd.ziuser@oig.doc.gov; Focari no, Margaret (Peggy); Doll, John; Caldwell, Andrew  
Subject: Complaint Re-Submission: Battelle documents & their 2008 deposition testimony confirm/admit fraudulent patent practice at PNNL - 2005 incident cited.

OIG at Dept. of Commerce,

As shown in the previous email, I provided the OIG hotline with detailed documents and candid testimony substantiating Battelle's fraudulent patent practice at PNNL; all this evidence originated from Battelle itself and not from me. The OIG did not respond to my complaint of 10/24/08 [over 60 days ago].

Today's email is my 2nd submission of this complaint to the Dept. of Commerce OIG. Battelle's violations of patent rules and its false statements [18 USC §1001] warrant diligent attention by appropriate officials. Battelle emails, other documents, and testimony speak for themselves. However, I re-emphasize the following key points made previously:

- My lawsuit against Battelle is NOT patent litigation. However, Battelle senior commercialization staff gave testimony [attached] clearly acknowledging: (1) Their practice of renaming prior inventions and filing them as "new" to bypass USPTO statutory bars [re: use & public disclosure] on the original invention[s] and (2) Their renaming 2002 software inventions in 2005 to call them "new", "resetting the clock" to extend previously missed statutory deadlines, and fraudulently filing a patent application on the "new" 2005 invention. See <http://appft1.uspto.gov/netacgi/nph-Parser?Sect1=PT02&Sect2=HITOFF&p=1&u=%2Fnethtml%2FPT0%2Fsearch-bool.html&r=1&f=G&l=50&co1=AND&d=PG01&s1=20070064477&OS=20070064477&RS=20070064477>
- The attached 96-page FraudFalseStatementsToUSPTO.pdf contains Battelle documents [e.g., emails, 2002 invention reports & 2005 patent application] and 2008 testimony confirming their patent filing fraud/abuse practices, the 2005 example/incident, and false statements to USPTO et al. This document also includes side-by-side comparison of their 2005 patent claims with the 2002 software inventions.
- The online version of this patenting-related information [exhibits, testimony & case background] is at <http://www.ccol-inc.com/1/PatentingFraudAbuse.htm>. Battelle deposition transcripts are at <http://www.ccol-inc.com/1/Depositions.htm>. The site homepage with additional evidence is at <http://www.ccol-inc.com/1>.
- The substantiated patent fraud/abuse allegations are highlighted in my 8/24/08 email to DOE below. On 8/27/08, DOE Office of Science acknowledged these concerns but flatly refused to take any action; it's apparent that DOE withheld this information from the Commerce Dept. Accordingly, I forwarded this information to the OIG at Commerce; now, senior USPTO officials are being copied.
- This patent filing fraud/abuse may be systemic practice at all five

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Battelle-managed national labs that involve Battelle's actively patenting and commercializing taxpayer-funded inventions.

- Note, developer Kevin Dorow is the primary named inventor on the patent application. Battelle documents and testimony implicate him in making false statements, perjury, patent fraud, and violating the False Claims Act. See <http://www.ccol-inc.com/1/Q-ClearanceDorow-RPMP-Falsification.htm>.

If I do not receive a substantive reply to this re-submitted complaint by 1/23/09 [90 days from 1st submission], it will confirm that Dept. of Commerce OIG is ignoring these substantiated allegations and waiving enforcement of USPTO patent rules & laws for Battelle [501(c)(3) tax-exempt] which manages half the country's national labs, has unique privileges in commercializing publicly-funded research, and is the largest private research organization in the US. Battelle files far more patents annually than most other government, educational or corporate/industrial organizations. Regardless of the OIG's decision, this email and accompanying Web site will serve as documented record that your office received a preponderance of evidence substantiating Battelle's violations of USPTO rules and US Code.

Technology companies, scientists, engineers, entrepreneurs, universities, other contractors, lawmakers, appropriation/oversight committees, licensees of Battelle patents, and others would want to know the extent of this fraudulent patenting practice at PNNL, at other Battelle-managed labs [ORNL, INL, NREL, BNL & LLNL], and at other facilities Battelle manages [e.g., Ft. Detrick] or owns. They would be justifiably concerned about such a USPTO rule waiver for Battelle Memorial Institute which is paid billions annually by DOE, DHS & DOD, and receives millions in income [license royalty/fee & venture] from its patenting of Government-funded research.

As stated previously, I waive confidentiality and it's okay to release my name and any of the exhibits to non-OIG personnel in order to investigate this complaint. [Note, because the site is currently in a sub-directory, Google searches by the public won't find it.]

If you have any questions, please contact me. I look forward to your response. Thank you.

Sincerely,

Philip Pulver  
CCOL Inc.  
2415 South Garfield  
Kennewick, WA 99337  
(509) 586-3051  
(509) 528-9212 cell  
<http://www.ccol-inc.com/1>

PS. On 9/29, I replied to DOE Office of Science's 8/27 email; see <http://www.ccol-inc.com/1/PulverResponseToDOE--092908.pdf>. A USPTO-relevant excerpt is as follows:

"DOE Technology Transfer Coordinator allows Battelle's admitted fraudulent patenting practices to USPTO.

As DOE Coordinator for Technology Transfer, you ignored PNNL testimony confirming the following: 1) Battelle's practice to evade USPTO filing rules and statutory bars, i.e., writing "new" invention reports on older inventions, resetting the filing deadline [re: use or public disclosure], and filing a patent application on the "new" invention. 2) The ongoing patent fraud, i.e., 2005 RDADS "new code" is the DOE-funded 2002 MDM inventions. Your decision puts in question the integrity of Battelle's patent filing process. Dept. of Commerce [USPTO] may ask why DOE withheld this information and investigate how pervasive is this practice at the 5 national labs and other facilities managed by Battelle. Companies licensing patents

Untitled

from Battelle may be at risk because the patents may later be invalidated if/when such fraud is determined."

----- Original Message -----

From: Philip Pulver

To: hotline@oig.doc.gov

Sent: Friday, October 24, 2008 9:18 PM

Subject: Complaint Submission: Battelle documents & 2008 deposition testimony confirm fraudulent patent practice at PNNL - 2005 incident cited

OIG Hotline at Dept. of Commerce,

I am filing a complaint regarding substantiated allegations that Battelle [manager of PNNL (Pacific Northwest National Laboratory)] is violating patent filing rules/laws of the USPTO. This complaint pertains not only to a 2005 incident of such patenting fraud, but also to systemic patent filing abuse at PNNL and possibly the national labs that Battelle manages. As cited below, the evidence supporting these allegations includes testimony [admitting such fraud/abuse], invention reports, patent application, Battelle emails and other exhibits. Attached are the following documents descriptively titled: FraudFalseStatementsToUSPTO.pdf [Main Evidence Compilation - Indexed]; BattelleTestimonyandEmails-PatentingViolations.pdf; CompleteTranscript-BattellesMorganDeposition.pdf, and RDADS-PatentApplication-US2007-0064477A1.pdf[<http://appft1.uspto.gov/netacgi/nph-Parser?Sect1=PT02&Sect2=HTOFF&p=1&u=%2Fnethtml%2FPT0%2Fsearch-bool.html&r=1&f=G&l=50&co1=AND&d=PG01&s1=20070064477&OS=20070064477&RS=20070064477>]

Summary of the allegations and related facts are presented below. Note, in the 8/24/08 email further below, I provided extensive documentation to senior DOE officials regarding Battelle's patenting violations and other issues; to expedite the review process, I highlighted the patent-related matters in that email. As their 8/27/08 reply email shows, DOE acknowledged but refused to take action on any of the issues, including the patenting fraud. Accordingly, I'm now contacting the Dept. of Commerce directly via its OIG email hotline and providing evidence substantiating the patent-related allegations.

[Note: My lawsuit is NOT a patent dispute; see [www.ccol-inc.com/1](http://www.ccol-inc.com/1) for case summary. However, Battelle testimony & documents revealed patent fraud/abuse that's now cited in this complaint to the DOC-OIG.]

#### Summary of Allegations

Battelle-PNNL documents & 2008 deposition testimony confirm that Battelle violates patent filing rules of US Patent & Trademark Office by rewriting and renaming prior inventions to "reset the clock" and evade statutory deadlines [bars re: invention public disclosure and/or usage]. This evidence also confirms the following 2005 incident: After DHS Radiation Portal Monitoring Project [RPMP] implemented the 2002 MDM software inventions to run on BlackBerry handheld in 2004, Battelle called it "new code" [RDADS] with a new filing deadline, and submitted a patent application on RDADS invention in 2005. In sum, Battelle evidence confirms the following:

1. Patent Filing Practice: Battelle writes "new" invention reports on pre-existing inventions when they need more time to file a patent on inventions that they intend to commercialize but for which they've already shown publicly and/or used [statutory bar]. By such "resetting the clock", Battelle circumvents USPTO statutory filing rules and misrepresents the originally-dated inventions; see attached BattelleTestimonyandEmails-PatentingViolations.pdf

2. Example/Incident: In early 2005, after acknowledging PDAC/MDM was exclusively licensed to Pulver, Battelle wrote a "new" report on the 2002 MDM software inventions after RPMP adapted/ported MDM to BlackBerry in 2004, renamed the report "RDADS", reset statutory patent filing deadline from 10/1/03 [2002 MDM inventions]

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to 1/31/06 [2005 RDADS "new" invention], filed RDADS patent in Sept. 2005, and marketed RDADS commercially. Emails chronologically show these events; see attached BattelleTestimonyandEmails-PatentingViolations.pdf. Documents also confirm that PDAC/MDM was marketed & publicized in 2002-2003 by Battelle [and myself], thereby invalidating the 1/31/06 statutory deadline for the "new" RDADS invention.

#### Other Relevant Facts

- As DOE's 8/27/08 email indicates, Undersecretary for Science Raymond Orbach [DOE Technology Transfer Coordinator for all national labs] acknowledged this documented evidence of Battelle's patent [and other] fraud/abuse but refuses to not only address the 2005 RDADS fraud to USPTO but also Battelle's ongoing practice of renaming inventions [to reset statutory clock] revealed in deposition testimony of a senior commercialization manager at PNNL.
- Battelle's renaming prior inventions to reset statutory patent deadlines at PNNL may be a systemic practice across all 5 national labs managed by Battelle. PNNL was the first lab Battelle managed; within the last 10 years, Battelle now runs four more labs. It's thus possible/likely that Battelle invokes this practice at these other labs that DOE has awarded to them.
- The primary inventor on the 2005 patent application is scientist Kevin Dorow [top security Q clearance holder]. Documents and testimony of 3 other PNNL scientists all confirm that Dorow has made false declarations and false testimony to the district court regarding RDADS and Radiation Portal Monitoring Project (RPMP) [DHS - US Customs & Border Protection]. Details and exhibits confirming his RDADS misrepresentation are downloadable at <http://www.ccol-inc.com/1/Q-ClearanceDorow-RPMP-Falsification.htm>
- Discovery documents and PNNL testimony confirm that industrial companies have signed agreements with Battelle regarding the RDADS technology.
- All of the information herein is accessible at <http://www.ccol-inc.com/1/BattellePatentFraudAbuse.htm>

I waive confidentiality and it's okay to release my name and any/all the extensive exhibits to non-OIG personnel in order to investigate this complaint. If you have any questions/issues or need additional information, please let me know. Thank you.

Sincerely,

Philip Pulver  
CCOL Inc.  
2415 South Garfield  
Kennewick, WA 99337  
(509) 586-3051  
(509) 528-9212 cell

----- Original Message -----

From: Streit, Devon <Devon.Streit@science.doe.gov>

To: pulverps@verizon.net

Sent: Wednesday, August 27, 2008 10:29 AM

Subject: Confidential Update to 5-Year Case: Litigation & Patent Fraud; Q-Clearance Violations; Health/Safety Implications for Lab Staff; Competing PNNL & Hanford Contracts [Bid-Protest]

Dear Mr. Pulver:

This email is in response your email dated August 24, 2008 sent to Under Secretary Orbach which provided, as you stated, an update on Battelle evidence to corroborate the allegations in your OIG complaints. We acknowledge your concerns; however, because the issues you raised are currently being addressed in your ongoing lawsuit against Battelle, action by this office is not warranted outside the context of that

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Litigation.  
Sincerely,

Devon Streit

---

L. Devon Streit  
Associate Director  
Office of Laboratory Policy & Evaluation  
Department of Energy Office of Science  
1000 Independence Avenue, SW  
Washington, DC 20585  
Phone: 202-586-9129 Fax: 202-586-3119

----- Original Message -----

From: Philip Pulver  
To: Orbach, Raymond  
Cc: Glenn Podonsky ; David Dillman ; Friedman, Greg ; Secretary Bodman ; James Rispoli ; fraudnet@gao.gov  
Sent: Sunday, August 24, 2008 8:57  
Subject: Confidential Update to 5-Year Case: Litigation & Patent Fraud; Q-Clearance Violations; Health/Safety Implications for Lab Staff; Competing PNNL & Hanford Contracts [Bid-Protest]

This email & Web site is not currently available to or intended for dissemination to the public.  
This information on fraud and abuse is being provided to those with the authority to act in the public interest.  
This email & Web site is for sole use of the intended recipient(s). Any unauthorized use, disclosure or distribution is prohibited.

CCOL Inc.  
2415 South Garfield  
Kennewick, WA 99337

August 24, 2008

Dr. Raymond L. Orbach  
Under Secretary for Science  
Office of Science  
U. S. Department of Energy  
S-4 / Forrestal Building  
1000 Independence Ave., S.W.  
Washington, DC 20585

Dear Under Secretary Orbach:

This email with its accompanying Web site is a five-year update/culmination of the preponderance of evidence that has confirmed the following Battelle-PNNL fraud/abuse: 2003 Allegations [OIG - Misusing Technical Assistance Program (TAP)], Q-clearance holder fraud, misrepresentation/falsification of Radiation Portal Monitoring Project [RPMP], misappropriation [due to Use Permit], and violation of U. S. Code [False Declarations (18 USC §1623), Perjury (18 USC §1621), False Statements (18 USC §1001) & False Claims (31 USC §3729)].

The evidence-testimony site [[www.ccol-inc.com/1/](http://www.ccol-inc.com/1/)] consists of case background/chronology, the 2008 PNNL depositions, Battelle's own documents [2006-2008], DOE letters [ORO & PNSO], relevant GAO reports, links to US Code statutes, descriptions & invention reports of TAP-funded 2002 MDM software, RDADS patent application, Battelle commercialization & Use Permit re: MDM, my prior emails

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& evidence to DOE, court filings by DOE-funded counsel Miller, WA Supreme Court and news articles condemning Miller's prior firm [Bogle] for same litigation fraud, and other related information.

This detailed email [with links to the evidence site] is organized in the following parts:

1. Battelle Scientist Dorow Misrepresenting/Falsifying DHS Radiation Portal Monitoring Project [RPMP] to Conceal Fraud [Violation of False Claims Act by Withholding DOE-Funded Research from Small Business TAP Recipients] [In 2006, Dorow obtained DOE Q-Clearance for DHS & DOD classified work.]
2. DOE-Funded Counsel Litigation Fraud by Misrepresenting RPMP to Conceal Evidence. WA Supreme Court Sanctioned/Fined Prior Firm for Same Tactics, Hiding Smoking-Gun Evidence of Drug Toxicity that Brain Damaged 3-Year Old. Implications for Health/Safety Related Lawsuits at Office of Science Labs & Hanford.
3. Patent Filing Fraud to USPTO. PNNL Testimony Confirms Battelle Evades Statutory Deadlines by Rewriting Old Invention Reports & Renaming as "New" [Reset Clock].
4. Potential Implications: Battelle Competing PNNL & Hanford Contracts [Bid Protests]
5. Closing Points: Consequences to Others if Battelle Ongoing Litigation Fraud Continues, Whistleblowers & Others Impacted, OIG Abdicating Oversight per its Policy, GAO Copied

The 2008 depositions of PNNL staff [<http://www.ccol-inc.com/1/Depositions.htm>] are the most significant new information. They confirm the allegations in the lawsuit and the 2003 OIG complaint [I04RS007], but with one exception, Kevin Dorow. PNNL depositions, Battelle documents, Dorow Lab Record Book, MDM software source code, his testimony, patent documents, and other evidence implicate Q-Clearance holder Dorow in the violations cited above and in Part 1; this evidence is posted on the site [[www.ccol-inc.com/1/](http://www.ccol-inc.com/1/)]. Because of these violations and given Dorow's current access to classified information [via his Q], DOE's Chief Health, Safety and Security Officer, Glenn Podonsky, has been copied on this email. As cited in Part 1, the list of agencies potentially impacted by Dorow is attached and is not on the site.

This email and site [with Battelle documents & testimony] will serve as notice to other agencies [DHS, USPTO, FBI, DOD], GAO, US Attorney, media, watchdog groups, and others that you were well informed of Battelle's 5-year misconduct that includes the following: RPMP research misrepresentation & perjury by Q-clearance holder, False Claims Act violation, DOE-funded counsel fraud [discovery abuse], violating 48 CFR 970.5228-1 [Litigation], threats/retaliation/injury against my spouse at PNNL, and other misconduct used to conceal criminal violations and to protect Battelle's corporate opportunities, e.g., Use Permit [root cause of fraud in this case and JC Laul's]. If this ongoing litigation fraud is not finally stopped, many will ask why the DOE Undersecretary for Science [with a \$4B budget] chose to continue financing it, especially in light of Battelle's documents and testimony confirming the allegations.

A court hearing will be held on September 23, 2008 in Richland, WA. [Note, hearing was held on 11/18/08] If DOE-funded counsel Miller and Q-clearance holder Dorow continue to falsify/misrepresent DHS Radiation Portal Monitoring Project [RPMP] and other material facts, then DOE Office of Science complicity in this ongoing litigation fraud will be confirmed. Setting such a precedent & de-facto DOE policy would have long-term adverse consequences to Office of Science Lab staff regarding health, security, safety, whistleblower, research integrity, and other important matters. As shown in Part 2, Hanford workers [union & non-union] would also be impacted if Battelle is awarded the contract on 9/30/08. Accordingly, Assistant

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Secretary for Environmental Management James Rispoli is copied on this email.

The GAO has been copied for two very critical reasons. One, the OIG [under Mr. Friedman] closed the case in 2007 despite requesting and acknowledging extensive discovery evidence showing Battelle's "intent to mislead" DOE and a Federal judge. [OIG told me to come back after my appeal.] Two, the five-year evidence of Battelle misconduct pertains to the following topics in recent GAO reports: DOE contractor litigation cost reimbursement; re-competing national labs; oversight; Radiation Portal Monitoring Project [Ports & Borders]; and DOE small business goals. This case goes far beyond the general concern of paying litigation costs because DOE is funding fraudulent litigation tactics previously condemned by the WA Supreme Court and a federal court. See <http://www.ccol-inc.com/1/GAO-RelatedReports.htm>.

David Dillman, Chief Operating Officer of the Downtown Seattle Association, is copied for the following reasons: 1) He is a first-hand witness to Battelle's misconduct dating back to mid-2002 when Battelle commercialization staff began their abuse, Use Permit interference with TAP, and misappropriation; 2) Working with DOE-HQ, he obtained the original 3161 funding for PNNL Technical Assistance Program [TAP]. Battelle acknowledged his expertise in economic development and small business: [http://www.pnl.gov/news/1996/bnw96\\_28.htm](http://www.pnl.gov/news/1996/bnw96_28.htm)

Although nearly every document cited is already public information, my assimilation and discussion of it is not. Dr. Orbach, in the interest of other parties that may be impacted by the facts and evidence presented herein, please have your staff treat this information with elevated discretion. At this time (prior to 9/23/08), I have no intention to make this site widely available to the public. Because the site is a sub-directory, Google searches won't find it. The site can also be password-protected, and will be if Web referrer logs show unauthorized access by Battelle as happened last year after my 5/11/07 email below.

If any recipient of this email has questions, needs more information, wants the CD version of the site, or finds a broken link, please let me know. The detailed information now follows.

1. Battelle Scientist Dorow Misrepresenting/Falsifying DHS Radiation Portal Monitoring Project [RPMP] to Conceal Fraud [Violation of False Claims Act by Withholding DOE-Funded Research from Small Business Recipients] [In 2006, Dorow obtained DOE Q-Clearance for DHS & DOD classified work.] [Evidence & Testimony at <http://www.ccol-inc.com/1/Q-ClearanceDorow-RPMP-Falsification.htm>]

#### 1a. Summary

Under oath, software developer Dorow is falsely stating that (i) RPMP abandoned/junked the 2002-03 MDM software funded by the Technical Assistance Program [TAP] and (ii) RPMP instead, in 2004, funded development of all "new" mobile data software for radiation portal installers at US Ports & Borders, software completely unrelated to small business TAP-recipient Pulver and his exclusive license to MDM and follow-on [derivative] versions. [Dorow developed MDM]. He's making these sworn declarations & testimony to claim the 2004 versions are irrelevant, thus block discovery of post-2003 MDM code and conceal that Battelle withheld TAP-funded research [software] when it delivered a non-working MDM version to Pulver on 8/29/03. [Documents & testimony show Battelle was marketing their MDM version to Fortune 500 Ecolabs (1831 Use Permit opportunity) and nominating "their" MDM version for R&D 100 Award in 2003. In 2008, Battelle's own software expert confirmed that the 8/29/03 MDM crashed.]

However, 2008 depositions of 3 PNNL staff, Battelle documents [2004 software screens, PNNL-RPMP emails, MDM Developer [Dorow] Lab Record Book], and PNSO-provided timecard records refute Dorow and confirm that RPMP indeed funded him to modify/adapt TAP-funded MDM to run on BlackBerry with enhanced searching & dialing. This evidence confirms that Dorow is misrepresenting RPMP-funded research and

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concealing "smoking-gun" evidence, i.e., post-2003 MDM versions that Battelle renamed RDADS]. He's doing so for the following reasons:

1. RDADS would provide further confirmation that Battelle withheld ["pocketed"] MDM code from the small businesses for whom DOE-TAP paid Battelle to develop MDM, and thus violated the False Claims Act [31 USC §3729]. [Cited in Congressional Record, Battelle previously made False Claims: <http://www.ccol-inc.com/1/FCA-Violation-UsePermit-Dorow.htm>
2. Verifying that RPMP-funded 2004 versions are follow-on to MDM would shut down any Battelle commercialization [licensing/ventures] of the newer versions due to Pulver's exclusive license to MDM & derivatives as Battelle staff confirmed to DOE and others. [<http://www.ccol-inc.com/1/Exclusivity-MDM.htm> & <http://www.ccol-inc.com/1/Commercialization-MDM.htm>]
3. Confirming RPMP funded enhancements to 2003 MDM would refute Q-clearance Dorow's representations and implicate him in making False Declarations [18 USC §1623], Perjury [18 USC §1621] and False Statements [18 USC §1001] to DOE [SC & OIG] when claiming Pulver received the actual Best-Efforts TAP MDM version.
4. The post-2003 RPMP versions would confirm that the "new code" [now called RDADS] invention is actually the MDM inventions, thereby implicating Dorow in fraudulently filing the RDADS patent to the USPTO. [See Part 3 below.]

6/30/08: Pulver filed a declaration with complete evidence [e.g., source code, funding & timecards, TAP-completion reports, USPTO documents] confirming that Dorow violated the False Claims Act [31 USC §3729] by withholding code from the TAP recipients when he delivered MDM software to Pulver on 8/29/03. See <http://www.ccol-inc.com/1/FCA-Violation-UsePermit-Dorow.htm>.

7/28/08: In his reply, Q-clearance holder Dorow provided absolutely no evidence [nothing] to refute this serious allegation that he made False Claims against the US Government. In fact, he even further implicated himself by stating the 8/29/03 MDM version was unfinished & pre-Beta [untested] quality, which is contradicted by documents showing Battelle marketed "their" MDM to Fortune 500's, nominated it for R&D 100 Award, and stated MDM was Beta quality [tested]. He again verified two versions: 1) An unfinished non-working MDM delivered to me [TAP recipient] and 2) The working Beta-quality MDM that they kept for themselves and Use Permit opportunities.

1b. Dorow Q-Clearance

1b-1. As cited above, Battelle documents and PNNL testimony consistently confirm Dorow is violating the following U. S. Codes: False Declarations [18 USC §1623]; Perjury [18 USC §1621]; False Statements [18 USC §1001]; False Claims [31 USC §3729]. I reiterate that Dorow, in response to my 6/30/08 sworn declarations, did not cited any evidence to refute my allegations that he violated the False Claims Act; he merely denied it, saying he's offended. Moreover, PNNL 2008 testimony and documents alone clearly show that Dorow, under oath, continues to misrepresent the Radiation Portal Monitoring Project to the court to block discovery of evidence that would implicate him in the violations cited above.

1b-2. At the same time, Battelle documents show that Dorow obtained his top secret Q-clearance from DOE in 2006. Furthermore, they cite the following Gov. agencies or labs that involve classified work:

- DHS Air Cargo Explosives Detection Pilot Program [ACEDPP] – ORNL, LLNL & PNNL [In his deposition, Dorow stated ACEDPP was using RDADS]
- Matchmaker software FBI work at Quantico
- RFID Development for PMJ-AIT [DOD]

Attached is Dorow-Q-Clearance-ProjectsImpacted.pdf which cites excerpts of his 2006 & 2007 reviews also attached; these two documents are not on the site.

1b-3. Due to the extensive evidence of Dorow's multi-year US Code violations, in conjunction with his current access to classified facilities and projects cited above [e.g., ACEDPP], the following Code of Federal Regulations is applicable: 10 CFR 710 - CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL. The most relevant subparts are as follows:

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§710.7 Application of the criteria. (a) The decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security. Absent any derogatory information, a favorable determination usually will be made as to access authorization eligibility.

§710.8 Criteria. Derogatory information shall include, but is not limited to, information that the individual has:... (1) Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior...

§710.9 Action on derogatory information. (a) If the reports of investigation of an individual or other reliable information tend to establish the validity and significance of one or more items in the criteria, or of other reliable information or facts which are of security concern, although outside the scope of the stated categories, such information shall be regarded as derogatory and create a question as to the individual's access authorization eligibility.

§710.10 Suspension of access authorization. (a) If information is received that raises a question concerning an individual's continued access authorization eligibility, the Local Director of Security shall authorize action(s), to be taken on an expedited basis, to resolve the question pursuant to §710.9(b). If the question as to the individual's continued access authorization eligibility is not resolved in favor of the individual... the individual's access authorization be suspended pending the final determination..."

1b-4. Dorow's ongoing misconduct raises the following valid questions that others may have regarding how Battelle manages and safeguards access to classified information by its Q-clearance holders:

- In addition to misrepresenting DHS research [RPMP & ACEDPP] under oath, could Dorow be pressured by Battelle [or others] to misuse classified information for financial, career or other reasons?
- Do any of the Battelle managers or internal attorneys [e.g. James Jackson] who pressured Dorow to make false representations under oath have Q-clearances themselves?
- Is such Q-clearance fraud/abuse acceptable practice at all Battelle-managed labs [INL, NREL, BNL, ORNL and possibly LLNL], especially when its venture or Use Permit interests are at stake?
- Was Dorow's obtaining a QClearance Battelle's reward/incentive for making false declarations and testimony in order to protect Use Permit and other commercial/venture interests? Is a major criterion for getting a Q-clearance at PNNL the scientist's ability to bring in profitable Use Permit business for Battelle Corporate?
- Will DOE administer polygraph tests to Dorow, given the preponderance of evidence and testimony that, at the very least, creates a question as to his access authorization eligibility cited in 10 CFR 710?  
OR
- Will Battelle do another "self-investigation" [run by managers with Use Permit compensation packages] which will result in false statements and cover-up that occurred in my case and Laul's? [<http://www.ccol-inc.com/1/FalseClassification--Laul-v-Battelle.htm>]
- Because Battelle is allowing or coaching Dorow to lie under oath to protect corporate interests, are there other "exemptions" from Q-clearance policy such as misusing/leaking/trading classified information that could give Battelle competitive

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advantages in securing commercial/ventures opportunities [domestic or foreign]?

1b-5. In the interest of national security, DHS, DOD-Army, FBI and others that have provided classified information to Q-clearance holder Dorow should be notified; they are potentially at risk given his misconduct that's substantiated by Battelle documents and testimony. They should at least be shown the extensive evidence that he (i) repeatedly lied under oath regarding DHS-RPMP and (ii) he misused the Technical Assistance Program and violated the False Claims Act due to Use Permit opportunities. Note, 10 CFR 710.10(c) addresses notification to such other agencies in this very situation. At this time, I will defer the disposition of this matter to Mr. Podonsky who is copied on this email.

2. DOE-Funded Counsel Litigation Fraud by Misrepresenting RPMP to Conceal Evidence. WA Supreme Court Sanctioned/Fined Prior Firm for Same Tactics, Hiding Smoking-Gun Evidence of Drug Toxicity that Brain Damaged 3-Year Old. Implications for Health/Safety Related Lawsuits at Office of Science Labs & Hanford.

[Evidence & Testimony at <http://www.ccol-inc.com/1/DOE-FundedCounsel-Misrep-RPMP.htm>]

2a. Summary & Motive

DOE-funded counsel Miller is also materially misrepresenting that RPMP (i) abandoned/junked the 2003 TAP-funded MDM software and (ii) developed new & different mobile software in 2004 [called RDADS] to which Pulver had no rights. Miller stated to the court that "Battelle has developed a new software product called RDADS (Rapid Data Acquisition and Dissemination System). RDADS was created for and is being used in the Department of Homeland Security's Radiation Portal Monitoring Project. It has absolutely nothing to do with Plaintiffs [MDM, Pulver] or their lawsuit." [Exhibit 2 at link above.]

However, Battelle & USPTO evidence unequivocally refute Miller. As cited in Section 1a, 2008 Battelle testimony and documents [from Battelle, DOE & USPTO] clearly confirm that RPMP funded Dorow to adapt/port MDM to the BlackBerry with enhanced features, i.e., derivative [follow-on] MDM versions. This evidence confirms that Miller is misrepresenting RPMP-funded research to conceal "smoking-gun" evidence, i.e., post-2003 MDM code [RDADS]. Like Q-clearance holder Dorow, he's falsifying RPMP for the following key reasons:

1. RDADS would provide further confirmation that Battelle withheld ["pocketed"] MDM code from the small businesses for whom DOE-TAP paid Battelle to develop MDM, which violates the False Claims Act [31 USC §3729].
2. Verifying that post-2003 versions are derivative to MDM would shut down Battelle's commercialization/venture of any follow-on versions [e.g., RDADS] due to Pulver's exclusive license to MDM & derivatives.
3. The post-2003 code would thus confirm Miller materially misrepresented RPMP to conceal evidence, the same tactic [discovery abuse] for which his prior firm was condemned by state and federal courts; see Part 2b.
4. Examining the post-2003 "new code" [RDADS] would show it's based on the 2002 MDM inventions, thereby implicating Battelle in fraudulently filing the RDADS patent to the USPTO. [See Part 3.]

2b. Miller's Prior Firm Sanctioned/Fined by WA Supreme Court for Discovery Abuse Litigation Fraud Condemned for Withholding "Smoking-Gun" Drug Toxicity Evidence

[Part 2c shows relevancy & potential impact to Office of Science Lab staff.]

Delbert Miller was managing senior partner in the litigation group at now-defunct Bogle & Gates law firm which engaged in the same litigation abuses to conceal evidence that he's now using in Pulver's case by blatantly misrepresenting RPMP [DHS Customs & Border Protection] and other commercialization matters. In one of the most notorious litigation fraud cases, the WA Supreme Court unanimously sanctioned Bogle \$325K for flagrant discovery abuse in the Fisons

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personal injury case because they withheld smoking-gun documents on a toxic drug [theophylline] that permanently brain damaged a 3-year old girl. The following excerpts of articles on Bogle & Gates discovery abuses speak for themselves:

<http://seattlepi.nwsource.com/archives/1994/9401300070.asp>  
BOGLE & GATES AGREES TO PAY SANCTION FOR MISCONDUCT IN SUIT

"Bogle & Gates, one of Seattle's three largest law firms, and a New York drug company agreed

yesterday to pay \$325,000 for withholding "smoking gun" documents in a lawsuit involving a

3-year-old girl left brain-damaged by an asthma medication.

The case, which produced a landmark decision by the Washington State Supreme Court, has

drawn national attention as breaking new ground in the field of lawyer ethics...Bogle acknowledged

that it advised its client, the New York drug maker Fisons Corp., to withhold documents that

indicated the pharmaceutical company was concerned with the toxicity of the medication.

The sanctions are the largest ever imposed in Washington for attorney misconduct and among the highest ever imposed in the United States, legal experts said."

<http://www.law.com/jsp/article.jsp?id=1015973958083>

THE MORAL COMPASS: Calculated Malfeasance. The ongoing abuse of discovery requires stronger, surer sanctions.

"Less than 2 years after Fisons opinion, their litigators were in trouble again.

This time Bogle & Gates

represented Subaru of America on charges that the driver's seatbacks in Subaru's Justy could collapse

backwards when hit from the rear, potentially causing grave injury. In the view of federal Judge Robert Bryan,

Bogle obfuscated, stonewalled, and gave answers that were just plain wrong. In one request, plaintiffs had

asked for National Highway Traffic Safety Administration records that showed the collapse of driver's seats

from a rear-impact force of 30 miles per hour. Bogle's response was that the request was "vague, confusing

and unintelligible...Specifically, 30 miles per hour is a velocity, not a force, and due to this confusion of

technical terms, no meaningful response can be given."

Judge Bryan called this "lawyer hokum," and forced Bogle to pay the other side's attorneys' fees."

More national articles on Bogle's litigation abuses are at <http://www.ccol-inc.com/1/Articles-BogleGates.htm>.

The WA Supreme Court Fisons decision is downloadable from Cornell Law School:

[http](http://www3.lawschool.cornell.edu/faculty-pages/wendel/Law%20Governi ng%20Lawyers_files/f)

[://www3.lawschool.cornell.edu/faculty-pages/wendel/Law%20Governi ng%20Lawyers\\_files/fisons.pdf](http://www3.lawschool.cornell.edu/faculty-pages/wendel/Law%20Governi ng%20Lawyers_files/fisons.pdf)

The extensive evidence [incl. 2008 PNNL testimony] confirms that Miller is using these same Bogle discovery abuse tactics by misrepresenting DHS-RPMP [US Customs & Borders Protection] to withhold smoking gun evidence that would implicate Battelle in violating the following statutes: False Statements [18 USC §1001], Perjury [18 USC §1621], Subornation of Perjury [18 USC §1622], False Declarations [18 USC §1623], and False Claims [31 USC §3729].

The attached ORO letter confirms that Office of Science is financing Battelle and Miller's litigation fraud, tactics for which his prior firm was condemned by courts and legal community as among the most egregious discovery abuse in US history. Financing his falsification of Federally-funded research [RPMP] is misappropriation

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of DOE funds and violates the "litigation in good faith" provision in 48 CFR 970.5228-1 [<http://www.ccol-inc.com/1/48CFR970-5228-1.pdf>]. Appropriations committees and GAO would be concerned that taxpayers are funding Miller's false representations that are concealing fraud, security breaches [Q-clearance], and criminal violations by the tax-exempt charitable trust that manages half the national labs and possibly the Hanford site on 10/1/08.

For years, Congress and watchdog groups have been concerned/outraged that DOE reimburses contractors' defense litigation costs, e.g., <http://www.gao.gov/new.items/d04148r.pdf>. In my case, Battelle and Miller's conduct goes one giant step further by forcing taxpayers to fund research falsification [RPMP], security clearance breach, hiding commercialization ventures, and other litigation fraud to wrongfully conceal smoking-gun evidence that would implicate them in violating statutes cited above and misusing the small business Technical Assistance Program for Use Permit opportunities. Fisons and Subaru financed their litigation fraud, not the taxpaying public. If DOE Office of Science, after receiving all extensive Battelle testimony and documents confirming this fraud, continues to allow 501(c)3 Battelle to soak taxpayers for this ongoing litigation fraud, Congress, GAO, watchdog groups and others will have justifiable concerns.

2c. Office of Science, by funding litigation fraud in Pulver Case, will set the stage for Battelle to use Fisons-like tactics in safety/health-related lawsuits.

While my case dealt with commercial/business litigation, GAO reports [GAO-04-148R] that most lawsuits against DOE contractors pertain to "radiation and/or toxic exposure, personal injury, and wrongful discharge." DOE's authorizing "personal injury defense lawyer" Fisons tactics in my case to conceal critically relevant evidence is most relevant to staff at Office of Science labs that entail HAZMAT, radiation, machinery, high-temperature apparatus, and other potential work hazards. This sets a potentially dangerous precedent. With my case, Battelle now knows these are allowable tactics toward anyone suing them at the five labs it manages and at Hanford if DOE awards them the contract on 9/30/08. In summary, litigation fraud [condemned by WA Supreme & federal courts] used to conceal drug toxicity warnings [Fisons] and rear-impact crash injury data [Subaru] is apparently approved procedure at Office of Science labs and potentially soon at Hanford.

Illustrating the possible impact of such tactics could be a scenario in which a staff member sues Battelle for personal injury due a malfunctioning apparatus involving radiation and/or HAZMAT. During discovery, Battelle would object to releasing relevant data [e.g., maintenance records, usage logs, mfr. warnings, safety infractions, bulletins, defective part or material notices, recall notices, accident history, witness accounts]; they would object to such requests being "overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence" in the same way Miller's prior firm did to the parents of Jennifer Pollack [permanently brain damaged by Fisons drug] [Ref: <http://www.ccol-inc.com/1/WA-SupremeCourt-Fisons.pdf> - Page 9] Miller had nearly identical responses in my case, but went even further by misrepresenting RPMP as irrelevant and concealing it; for example, when I requested SBMS procedures [at PNNL's suggestion], Miller claimed this request was harassment. As my case shows, if "unhelpful" evidence was produced, Battelle will direct/coach/suborn scientists to make false/misleading declarations and perjured testimony to "neutralize" the evidence, and soak taxpayers in the process. Such tactics would financially drain the injured worker and likely cause him/her to drop the lawsuit; Miller and Battelle know this. The adverse implications for Office of Science Lab staff and Hanford workers are self-evident.

An actual example suggesting that Battelle would invoke such tactics in health/safety-related lawsuits is their conduct in an ORNL whistleblower case. Seven years ago, ORNL health physicist Janet Westbrook voiced concerns of Battelle's quintupling radiation dose exposure alarm levels [rem/hour] and having technicians [not engineers] conduct radiation safety reviews; both were implemented to increase profit. Battelle responded by ignoring these health issues, downgrading her

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performance rating, and terminating her. DOE Office of Hearings & Appeals ruled that Battelle had engaged in "manipulation of the system to reach a predetermined result" (termination) and "used the criterion "transferability of skills" in a distorted manner...an afterthought, one designed to downgrade Westbrook and target her for termination." See <http://www.oha.doe.gov/cases/whistle/vba0059.htm> for OHA Director Breznay's decision repudiating Battelle's retaliation tactics against Westbrook. Currently, Battelle-ORNL has dose exposure alarm levels 2½ times the average of all other national labs.

The Westbrook case, in conjunction with DOE funding RPMP and other falsification in my case, undoubtedly confirms that Battelle & DOE will violate 48 CFR 970.5228-1 and use Fisons-like litigation fraud to withhold smoking-gun evidence relevant to cause of injury, illness, cancer, wrongful death or other damage incurred someone [or their estate] suing Battelle at Office of Science Labs. This effectively eliminates Battelle's financial and legal risk of not only violating civil or criminal statutes but also ignoring/relaxing staff safety/security regulations, violating DEAR, and undermining recently enacted whistleblower laws; this could further incent Battelle to relax staff health/safety/security policies to reduce overhead costs.

[One final footnote is a harbinger of things to come if Battelle keeps PNNL and wins Hanford contract. One day after I filed an 8/31/07 declaration that Battelle misrepresented the RPMP to the court, its senior management [Chief Research Officer Doug Ray with Use Permit compensation] threw my wife Sharon Pulver out of her job. For the next few months Battelle made her "tin cup" for funding, urging her to take a position requiring lifting heavy equipment which resulted in her being injured. Within two weeks and realizing she would lose health insurance, Battelle terminated her when she had an open injury claim [L&I]. Are you aware that Doug Ray shelved a DOE-required investigation of the April 2005 phone threats against her at PNNL, shortly after I filed the lawsuit? These incidents further how this case is very germane to health/safety/security/whistleblower issues at Battelle-managed facilities that may include Hanford.]

#### 2d. Questions Regarding DOE-Funded Litigation Fraud

- Was Battelle instructed to retain an attorney with a history of litigation fraud, i.e., discovery abuse via misrepresentations to conceal smoking-gun evidence? Was the determination made that Fisons-like tactics were "necessary" for Battelle to escape accountability/prosecution in my case?
- Was Battelle told to repeatedly suborn perjury, protract litigation at taxpayer expense, and have me "go away" thereby letting them get away with fraud/abuse against the Government and my small business?
- Is the purpose of the ongoing DOE-funded perjury to have this case ultimately appealed, which would occur well after any re-bid or quiet renewal whereby Battelle retains PNNL without controversy or bid protest? [In March 2007, acknowledging the perjury, OIG told me to come back after my appeal.]
- Why would industry, individuals, and universities risk working with Battelle after Office of Science funded nationally repudiated Fisons tactics to cover up Battelle fraud, false claims and plagiarism in my lawsuit?
- Do you realize the impact of making Miller/Battelle/Fisons tactics standard practice at Office of Science Labs, especially on whistleblowers and staff suing for health, injury and wrongful death?
- Have you considered adverse effects on safety/security at DOE Labs by funding product injury defense lawyers who falsify research to block discovery production of injury, radiation exposure, equipment maintenance logs, HAZMAT, or other necessary data needed by staff suing to recover damages due to Battelle's negligent or tortuous conduct?

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3. Patent Filing Fraud to USPTO. PNNL Testimony Confirms Battelle Evades Statutory

Deadlines by Rewriting Old Invention Reports & Renaming as "New" [Reset Clock] [Details & Evidence at <http://www.ccol-inc.com/1/BattellePatentFraudAbuse.htm>]

Battelle exhibits and 2008 deposition testimony by a senior commercialization manager confirm that Battelle violates patent filing rules of the US Patent & Trademark Office. Testimony, Battelle exhibits and the RDADS patent application confirm the following:

1. Battelle practice is to write "new" invention reports on prior [older] inventions when they want to patent them but have run out of time. By "resetting the clock", Battelle is circumventing/violating statutory bar rules of the USPTO and misrepresenting the originally-dated inventions.

2. In 2005, Battelle wrote a "new" invention report on the original TAP-funded 2002 MDM inventions, renamed it RDADS and reset [circumvented] the USPTO Statutory Bar from 10/1/03 [original] to 1/31/06, and filed a patent on the "new code" in Sept. 2005. [Note, the 2003 MDM code was refinement of the 2002 inventions; Battelle coined "PDAC" as alias to MDM in August 2002.]

Nationwide, Battelle files far more patents than most other government, educational or industrial organizations. USPTO would likely want to know the extent of this fraudulent practice at PNNL, at other Office of Science Labs, and other facilities that Battelle manages or owns [e.g., Ft. Detrick].

Because of your critical role as DOE Coordinator for Technology Transfer and Commercialization, I provided you with Battelle documents, patent application, and surprisingly candid Battelle-PNNL testimony confirming the above abusive practices and citing RDADS "new code" from TAP-funded MDM [PDAC] as an example of such patent filing fraud.

If I don't soon hear from anyone on this email regarding this patent fraud that Battelle testimony confirms is systemic at PNNL, I will contact the Dept. of Commerce and USPTO directly. The integrity of Battelle's patent process is in question; they are violating USPTO rules. [[http://www.uspto.gov/web/offices/pac/mpep/documents/appxr\\_10\\_23.htm](http://www.uspto.gov/web/offices/pac/mpep/documents/appxr_10_23.htm)]

4. Potential Implications: Battelle Competing PNNL & Hanford Contracts [Bid Protests]

A DOE decision to continue financing Battelle's litigation fraud and cover-up of their five-year misconduct would likely trigger a bid protest or Congressional/GAO investigation if Battelle wins PNNL or keeps it via renewal. Many will ask why DOE knowingly funded Battelle's cover-up of the following: DEAR & CFR violations; abuse of technical assistance program; harassment/threats of whistleblower spouse; and, evidence of their violating 18 USC§1001 [False Statements], 18 USC §1623 [False Declarations], 18 USC §1621 [Perjury] and 31 USC §3729 [False Claims]. They will have greater concerns if Battelle keeps its unique & lucrative Use Permit which was motive for the fraud/abuse/perjury and criminal violations in my case and the well-documented Laul False Claims case. [<http://www.ccol-inc.com/1/FalseClaimsViolation--Laul-v-Battelle.htm>]

Losing bidders, who spent millions to compete, may conclude that DOE solicited the PNNL bid under false pretenses that there was a level-playing field, when in reality it was a pre-determined result that Battelle would keep the lab for decades to come. In sum, it would strongly suggest that DOE is rebuffing the intent of Congress: objective competition of national labs. See related GAO report at <http://www.gao.gov/new.items/d03932t.pdf>.

For example, LA-based AECOM Government Solutions, GAO and others would be dismayed that DOE-Science awarded Battelle the PNNL contract after financing cover-up of

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fraud/abuse by using the following tactics: falsifying DHS-RPMP research; false declarations & perjury by Q-clearance holder working on air cargo explosive, military, FBI and other classified projects; throwing my wife out of her job one day after my declaration that Battelle misrepresented RPMP; admitted patent fraud; and DOE-funded counsel litigation tactics previously condemned by WA Supreme and federal courts [Fisons & Subaru] as among the most egregious discovery tactics ever.

If there's even the perception that DOE and its Inspector General are waiving enforcement of statutes [CFR, DEAR, US Code] and financing litigation fraud to protect Battelle's corporate interests, then the objectivity of the PNNL re-compete will be questioned by competing bidders [and Representatives], Congressional oversight and appropriations, watchdog groups, science community, media [e.g., Nature] and the GAO. DOE's unprecedented canceling of the PNNL re-bid on the same day I deposed Battelle's Associate Lab Director Mike Schwenk regarding Use Permit misconduct would feed that perception.

Finally, this case could impact public reaction to Battelle's winning the Hanford contract. As cited herein, Battelle's conduct in my case pertains to the following issues: Security [Q-clearances]; Litigation Fraud [Fisons] in whistleblower and personal injury cases; and, Retaliation/threats toward whistleblower relatives. If Battelle wins the Hanford contract, staff [union & non-union] could witness similar misconduct and then incur DOE-funded retaliation and cover-up if they report fraud/abuse against Battelle corporate. Occurring both at Hanford, Laul's case and mine already establish a pattern that this will happen. Battelle's documented [OHA(Breznay)] retaliation against health physicist Janet Westbrook [re: radiation dose exposure] is a third example of Battelle's treatment toward those voicing concerns that impact corporate profit. In its role of managing Hanford, Battelle may train other contractors to use Fisons tactics to ward off lawsuits from injured or sickened workers, many whom are exposed to toxic and high-level radiation on a daily basis. Enough said. The implications are clear.

5. Closing Points, Consequences to Others if Battelle Ongoing Litigation Fraud Continues,  
Whistleblowers & Others Impacted, OIG Abdicating Oversight per its Policy,  
GAO Copied

Undersecretary Orbach, as stated above, this detailed email and Web site [<http://www.ccol-inc.com/1/>] is a five-year culmination of evidence confirming Battelle's fraud/abuse, Q-clearance holder misuse and violation of U.S. Code [False Declarations [18 USC §1623], Perjury [18 USC §1621], False Statements [18 USC §1001], False Claims [31 USC §3729]. The evidence substantiating these violations is all from Battelle's own documents, 2008 PNNL scientist depositions, court filings by DOE-funded counsel Delbert Miller, and DOE letters [ORO & PNSO]. All of this evidence substantiating the violations is on the site.

In context of current events, Martha Stewart, Scooter Libby [VP Chief of Staff] and US Senator Ted Stevens were each indicted for violating 18 USC §1001 on a minor fraction of evidence in this case showing Battelle's multiple U.S.C. violations. In contrast with Battelle, attached ORO letter confirms that DOE is funding their litigation despite the preponderance of evidence provided to DOE since 2003. Is tax-exempt Battelle immune from prosecution because of a double-standard? Bidders on the PNNL and Hanford contracts, and others potentially impacted, would like to know.

To date, well over \$200K [taxpayers] has been squandered to cover-up Battelle's Use Permit motivated fraud/abuse. My case shows a systemic corporate conflict of interest previously exhibited in the Laul False Claims case that cost taxpayers over \$1M and for which John Layton [prior IG] recommended criminal sanctions against Battelle for "theft, conspiracy and false statement". The extensive evidence confirms that Battelle is a repeat offender of Use Permit fraud/abuse. However, after requesting/receiving/acknowledging discovery evidence confirming the "intent to mislead on the part Battelle" [<http://www.ccol-inc.com/1/DocsToOIG.htm>], the

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OIG closed my case in 2007, said to come back after my appeal, stating that OIG has a hands-off litigation policy.

Mr. Friedman's policy to exclude litigation from OIG purview has thus given Battelle carte-blanche to engage in false declarations & perjury by scientists [inc. Q-clearance holders], research falsification; Fisons-like discovery abuse, obstruction of justice, retaliation against plaintiffs' spouses, and other litigation fraud. This policy ignores many millions that DOE spends yearly on contractor litigation; see <http://www.gao.gov/new.items/d04148r.pdf>. Laul's case being featured on NBC's Fleeing of America and placed in Congressional Record illustrates ongoing concern of Battelle et al. misusing DOE-funded litigation indemnification policy. Note, Bill Madia cited this policy as a threat to whistleblowers after Battelle settled with Laul and the Justice Dept. for False Claims violations. See <http://www.ccol-inc.com/1/Laul/Tri-CityHerald--Madia-Laul--010497.pdf> & <http://www.ccol-inc.com/1/FalseClaimsViolation--Laul-v-Battelle.htm>. The OIG, by addressing and curtailing such emboldened abuse could return significant funds to DOE.

Therefore, the GAO [Fraudnet@gao.gov] is being copied because the OIG has relinquished oversight of this DOE-funded litigation waste, abuse, and fraud [e.g., perjury by Q-clearance holder] that's happening now, in real-time. The meter is running for taxpayers.

Congressional appropriations & oversight committees will want to know if DOE [taxpayers] intends to continue financing Battelle's litigation fraud [outside counsel & Q-clearance holder Dorow] that's occurring at the expense of national security, whistleblower rights [§629 EPA-2005], integrity of research, and taxpayers. The key consequences of Office of Science choosing to still fund this fraud will be as follows:

- Emboldened by Dorow's misconduct, Battelle may coach other Q-clearance holders to misuse/leak classified information to gain competitive advantage winning commercial contracts or closing venture deals [Use Permit] at home or abroad including China or India where it recently opened offices. 10 CFR 710 and related procedures will be selectively enforced.
- Fisons-like litigation tactics, condemned by state & federal courts, will be policy at Office of Science labs and the whole Hanford site if Battelle wins the pending contract. These tactics will be used against those suing for radiation, toxic exposure, personal injury, and/or wrongful discharge. Realizing they can invoke such DOE-funded tactics Battelle may relax health/safety procedures to increase profit. Hence, many thousands of lab employees will be at greater risk.
- Battelle will have de-facto license, at taxpayer expense, to "coach" its lab scientists to engage in research misrepresentation, false statements & declarations, perjury, obstruction of justice, retaliation, hostile work environment, and other abuses to conceal misconduct and protect corporate/venture/UsePermit interests.
- Phone threats and other intimidation of whistleblower's spouses is now acceptable at Office of Science labs [For example, Battelle's Chief Research Officer Doug Ray blocked investigation of PNNL phone threats against my wife when my lawsuit was filed.]
- DOE directives for staff to report fraud/abuse/waste will have been issued under false pretenses. Instead of protecting/assisting those coming forward, DOE will finance retaliation against them. Especially at risk is staff reporting corporate-motivated fraud at any of the five Battelle-run labs.
- Businesses & universities working with Office of Science labs will face greater risk of Battelle's predatory commercialization/venture practices [misappropriation, misrepresentation] because DOE-funded Fisons litigation fraud will effectively shield Battelle from accountability.

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- Patent fraud will be allowable practice at Office of Science Labs. Battelle can continue misrepresenting original inventions by rewriting & renaming them to "reset the clock" and bypass statutory bar USPTO rules.
- Bid protests and GAO investigations will occur if Battelle wins/keeps PNNL or wins the pending Hanford contract on 9/30/08. Losing bidders will perceive that Battelle's keeping PNNL was a pre-determined result because DOE financed this cover-up that pertained to security, research integrity, treatment of staff and other relevant issues.
- The critical provision [right to jury trial] in recent whistleblower laws that has overwhelming bi-partisan support in Congress will be severely undermined. [E.g., §629 in the Energy Policy Act] Battelle would repeatedly suborn perjury [at taxpayer expense] to financially drain whistleblowers/plaintiffs and win by default. Such blatant shredding of these protections by the manager of five national labs will concern/anger many.

Battelle's fraud and abuse in this case has continued unabated for five years. As in Laul, taxpayers are incurring escalating costs in my lawsuit. Battelle's litigation fraud by outside counsel and Q-clearance holder Dorow is occurring in real-time and violating the following US Code: 48 CFR 970.5228-1 [Litigation], 10 CFR 710 [Access to Classified Material], 18 USC§1623 [False Declarations], 18 USC§1621[Perjury], and [18 USC §1622] [Subornation of perjury].

On September 23, 2008 [in Richland, WA], court hearing will be held on this case. If DOE-funded counsel and Q-clearance holder Dorow continue to falsify/misrepresent DHS RPMP and other material matters, then DOE-Science complicity in this real-time litigation fraud [e.g., Dorow perjury] will be confirmed. As discussed above, setting such a precedent would have long-term implications adversely impacting Office of Science Lab staff regarding health, security, safety and other material matters. Hanford workers [union & non-union] would also be affected if Battelle is awarded the contract on 9/30/08; this could be very problematic given very hazardous working conditions that have been basis for lawsuits involving health afflictions.

As you're aware, such a decision to continue the fraud and protect Battelle's corporate [Use Permit] interests, would contradict prior DOE public statements. In Oct. 2007, DOE acknowledged PNNL Use Permit conflict of interest: "In order to ensure that [PNNL] laboratory resources are dedicated to the public benefit and governmental purposes" the Permit won't be in the new PNNL contract. [<http://www.energy.gov/news/5663.htm>] And, in your public opposition to the Use Permit you stated "no other arrangement like this exists at any other DOE national laboratory because a use permit creates at least two significant problems. First, it permits a private entity to use government facilities to compete against the private sector." <http://www.tri-cityherald.com/964/story/55319.html>

Dr. Orbach, this case provides you with an unprecedented opportunity to effectively address Battelle's decades-long conflict of interest due to special privileges that they've misused against JC Laul, me and others.

If anyone on this email needs more information or wants the CD version of the site, please let me know. A Word version of this email is also available.

Sincerely,

Philip Pulver  
CCOL Inc.  
2415 South Garfield  
Kennewick, WA 99337  
(509) 586-3051  
(509) 528-9212 cell

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Attachments

----- Original Message -----

From: Philip Pulver

To: Orbach, Raymond

Cc: Secretary Bodman ; Friedman, Greg ; Jeff Salmon

Sent: Friday, May 11, 2007 13:58

Subject: CONFIDENTIAL - Update - Evidence Battelle-PNNL Violated the False Claims Act

This confidential online communication is for Government Use Only. Per DOE Order 221.11, this information on fraud and abuse is being provided to those who have the authority to act in the public interest.

This information is not openly available and is not intended for dissemination to the public.

CCOL Inc.  
1177 Jadwin Avenue  
Richland, WA 99352

May 11, 2007

Dr. Raymond L. Orbach  
Under Secretary for Science  
Office of Science  
U. S. Department of Energy  
S-4 / Forrestal Building  
1000 Independence Ave., S.W.  
Washington, DC 20585

Dear Under Secretary Orbach:

Per DOE Order 221.11, I am sending this supplemental update to my detailed April email below. Further examination of the RDADS patent application and discovery documents reveals that Battelle actually withheld ["skimmed"] TAP-funded software development [functionality] when they delivered the Mobile Data Manager software to me on August 29, 2003. This functionality pertained to "drill-down-thru-category-levels" that's necessary & critical for handheld/mobile and online catalogs. Exhibits also show Battelle was concurrently pursuing private [1831] commercial business with Ecolabs [\$3.8 bil. rev.] to license MDM as a handheld catalog [sales automation] solution for use by its worldwide sales force.

In summary, Battelle "pocketed" DOE-funded functionality and deprived it from the Government's intended technical assistance program [TAP] recipients. As discussed below, these actions violated the False Claims Act and confirm the critical allegation [sabotage] in OIG complaint I04RS007 ["Alleged Irregularities in Administering the Technical Assistance Program"]. Office of Science directly funded this TAP development work on MDM.

Summary points, supporting evidence, and observations/concerns are presented below. All evidence substantiating these serious allegations is from Battelle's own documents.

Summary Points

- Battelle [Dorow et al] removed the TAP-funded category drilldown [and other] functionality from the MDM software and delivered a non-working MDM version to Pulver on 8-29-03. Their explicit Aug. 1, 2003 TAP project report confirms that the catalog functionality was already developed for MDM. However, the 8-29-03 MDM source code shows that this functionality was removed and missing from the

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software's main control panel, rendering the TAP-delivered code dysfunctional; the software was inoperable. See <http://www.mobiledatamanager.com/OIG/1A-Graphics.htm#Drilldown> and other evidence in the next section. [Note, Pulver provided Battelle with sample catalog data sets [for category drilldown] during the 2002 - 2003 MDM TAP development; his online catalog clients were interested in handheld catalogs.]

- Battelle kept the functionality in "their" MDM version to pursue Ecolabs [et al] and prevent Pulver from being a future competitor to their highly profitable 1831 corporate business. The RDADS patent application clearly confirms they kept this critical TAP-funded and commercially valuable functionality for themselves. 2003-04 documents show Battelle promoted/represented MDM/PDAC as having handheld catalog functionality. [Note: In 2004 statements to OIG & SC, Vince Branton, Battelle-PNNL's Manager of Intellectual Property Legal Services affirmed Pulver's exclusive rights to MDM [and derivatives] and warned Battelle staff NOT to market/demo MDM/PDAC to non-Government prospects; see <http://www.mobiledatamanager.com/OIG/Intro-Timeline.htm#Branton>. Battelle management ignored this legal obligation, and instead hired a DOE-funded attorney who committed wanton discovery abuse and had scientists make false declarations to conceal Battelle's illegal RDADS private/1831/commercial pursuits.]
- Battelle violated the False Claims Act [31 USC §3729]. They received Government [Office of Science] payment for research that they claimed was provided to the technical assistance recipients through Pulver. Their withholding TAP-funded work and delivering non-working dysfunctional/skimmed software [while marketing "their" MDM working version] prove Battelle's claims for payment were false. [See PNNL timecard, SC funding, 8-01-03 TAP report, laboratory record book and software screens in the next section.] 31 USC §3729 text is at [http://www.law.cornell.edu/uscode/31/uscode\\_sec\\_31\\_00003729----000-.html](http://www.law.cornell.edu/uscode/31/uscode_sec_31_00003729----000-.html)
- Their withholding/skimming DOE-funded work and sabotaging the TAP-delivered MDM proves that Battelle again misled [18 USC §1001] DOE when it told SC & OIG in 2004 that "best efforts" were delivered. Battelle's 2006 admission of pursuing private PDAC/MDM business and discovery evidence further prove they kept the "best efforts" version for their corporate opportunities. In 2003, Spanner [TAP manager at PNNL] improperly funded Battelle staff to engage in MDM licensing discussions re: Ecolabs, a clear MDM license violation and 1831 conflict of interest with the DOE-funded TAP work.
- After removing critical TAP-funded functionality, delivering a crippled/sabotaged non-working MDM version to Pulver, and keeping "their" MDM version [a.k.a. PDAC, RDADS], Battelle misled the district court in July 2006 by audaciously declaring that Pulver's "little" MDM was so functionally inferior, thus unrelated to RDADS, and that discovery on RDADS should be denied. Battelle then demanded and received sanctions [\$17K] for his filing a motion to compel them to deliver the patent application and other RDADS documents. The revealing patent application now further proves Battelle misappropriated/falsified DOE research, suborned perjury, and used/manipulated the court as means for "de facto extortion" [against Pulver] to conceal their false claims against the Federal Government and their commercial misappropriation of DOE-funded MDM technology. See <http://www.mobiledatamanager.com/OIG/Index-PatentSection.htm> and <http://www.mobiledatamanager.com/OIG/FalseStatementsToTheCourt.htm>.

#### Supporting Documentati on/Evi dence

Funding directly from Office of Science: [http://www.mobiledatamanager.com/OIG/GES-00227\(011904-OfficeOfScienceWP\).pdf](http://www.mobiledatamanager.com/OIG/GES-00227(011904-OfficeOfScienceWP).pdf)  
DOE-HQ approval of TAP work: [http://www.mobiledatamanager.com/OIG/GES-00252\(071702-DOE\\_HQ-ApprovesJES\).pdf](http://www.mobiledatamanager.com/OIG/GES-00252(071702-DOE_HQ-ApprovesJES).pdf)

RDADS patent application and MDM screens showing functionality missing from 8-29-03 MDM: <http://www.mobiledatamanager.com/OIG/1A-Graphics.htm#Drilldown>

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Scientist Dorow's and other Battelle documents:

August 1, 2003 TAP report explicitly stating handheld catalog functionality ["category drill down"] had already been developed for MDM: [http://www.mobiledatamanager.com/OIG/GES-00202\(080103-TAPreports-MDM-DrilldownDone\).pdf](http://www.mobiledatamanager.com/OIG/GES-00202(080103-TAPreports-MDM-DrilldownDone).pdf)  
Excerpt: drill-down capability for multiple levels based on categories defined in the extraction plan...The coding required to support a "drill-down" mechanism on both the administrative application server component and the handheld application was completed. This included modifications and additions to the web pages of the administrative application server component [control panel] to support defining the fields to be used as the "drill-down" categories...

2003 exhibits of Battelle [Dorow, Goodwin, et al] 1831 (corporate) business pursuits that show conflict of interest with TAP-funded MDM and motive to skim Office of Science funded research from the software delivered to the recipient of the technical assistance: <http://www.mobiledatamanager.com/OIG/Ecolabs-2003-HandheldCatalogOpportunity.htm>

Dorow laboratory notebook showing catalog drilldown functionality in MDM prior to 8-29-03 delivery to Pulver: <http://www.mobiledatamanager.com/OIG/DorowLabRecordBook-Excerpts.htm>

Source Code of TAP-delivered MDM on 8-29-03 showing removed of functionality: <http://www.mobiledatamanager.com/OIG/SourceCode-MDM-082903.zip> [IdentifyFields.java --> catalog drilldown missing from control panel]  
Observations and Concerns

The two main allegations in OIG Complaint I04RS007 complaint were 1) sabotage/crippling of the MDM software and 2) Battelle's plagiarizing & competing against Pulver with the working/functional MDM/PDAC version. This latest evidence of their withholding TAP-funded code from the 8-29-03 TAP-delivered MDM version confirms the first. Battelle's discovery evidence and their 10-26-06 admission to the court confirm the second main allegation.

Battelle financially damaged the government. By withholding the critical MDM catalog and other TAP functionality from the non-working 8-29-03 TAP version delivered to Pulver, Battelle prevented him and his team from selling MDM and generating royalties to DOE-PNNL. Pulver and Battelle had signed a royalty-bearing license for the TAP-funded MDM. Battelle suppressed this material fact from SC & OIG in 2004; Pulver was also informed that the local site office would thwart any future False Claims Act claim by testifying to a US attorney that Battelle didn't financially damage the government because no royalties were at stake.

The preponderance of evidence [e.g., Ecolabs] shows Battelle's motive for its fraud & abuse was their 1831 Use Permit [to 1830 M&O PNNL contract], which is a rare/unique privilege that lets Battelle use Government facilities to conduct private/corporate business. My case shows that DOE's conflict-of-interest directive on Non-Interference with DOE-funded work was willfully ignored by Battelle management, including an Associate Lab Director who was involved in the fraud/misappropriation as discovery documents show.

This latest update further shows the following compelling commonality between my case and JC Laul:

- Violation of the False Claims Act driven by 1831 corporate/commercial interests.
- False statements to cover-up and mislead DOE and OIG [18 USC §1001]
- Misrepresenting scientific data to mislead district court. [Laul--chemistry, Pulver--software engineering]
- Blatant retaliation [In my case, this included uninvestigated phone threats against my wife at PNNL.]
- Exploiting taxpayer-funded litigation reimbursement to "churn the process" to escape accountability

[For more details, see my March 8, 2007 letter to House Oversight and Government

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Reform Committee below. JC can be reached at LANL.]

This update regarding Battelle's violation of the False Claims Act is very significant. Evidence from 2003-2007 now proves Battelle withheld/skimmed DOE-funded research from the technical assistance recipients to whom they were statutorily and contractually obligated to provide. As the OIG said in 2003, Congress didn't appropriate funds for Battelle to use the technical assistance program as means to take advantage of small business and compete against them. The Energy Policy Act [§1001 re: annual DOE reports] shows Congress remains very concerned about such abuses.

As indicated by its documents, Battelle is nevertheless proceeding ahead with its deception [to DOE, OIG, district court, patent office, firms that signed RDADS NDAs] to escape accountability for documented violations against the US Government and small businesses.

In this supplement to the April letter, I provided additional and material evidence for DOE to diligently address Battelle's fraud, abuse and false statements in OIG cases that began in 2003. It will serve notice to other government organizations that may choose to investigate allegations of False Claims Act violations and any other information provided herein. More detail on this updated information is at the main site [<http://www.mobiledatamanager.com/OIG/>].

Sincerely,

Philip Pulver  
CCOL Inc.  
1177 Jadwin Avenue  
Richland, WA 99352  
(509) 946-1110  
(509) 946-2411

----- Original Message -----

From: Philip Pulver  
To: Orbach, Raymond  
Cc: Secretary Bodman ; Friedman, Greg ; Jeff Salmon  
Sent: Wednesday, April 25, 2007 4:25 PM  
Subject: CONFIDENTIAL - Update and Delivery of Evidence of Fraud, Abuse & False Statements Per DOE Order 221.11

This confidential online communication is for Government Use Only. Per DOE Order 221.11, this information on fraud and abuse is being provided to those who have the authority to act in the public interest. This information is not openly available and is not intended for dissemination to the public.

CCOL Inc.  
1177 Jadwin Avenue  
Richland, WA 99352

April 25, 2007

Dr. Raymond L. Orbach  
Under Secretary for Science  
Office of Science  
U. S. Department of Energy  
S-4 / Forrestal Building  
1000 Independence Ave., S.W.  
Washington, DC 20585

Untitled

Dear Under Secretary Orbach:

Per DOE Order 221.11, I am sending this email to provide DOE with an update on Battelle evidence including their admissions/acknowledgments that corroborate the allegations in my OIG complaints [2003 - 2007]. These allegations include Battelle's false statements to mislead DOE-SC and OIG, plagiarism, misrepresentation of funded research, discovery abuse and misrepresentations by DOE-funded Battelle outside counsel, misappropriation, and others cited in this email or at the evidence site referenced below. Note, all the evidence substantiating the allegations is from Battelle's own documents.

This letter will also serve notice to any other government body (Congress, GAO, DOJ, etc.) that I have provided all necessary evidence to the Office of Science beforehand and have given DOE the opportunity to properly address Battelle's continued fraud, abuse, and false statements to the government. This email and all content at the evidence site will be copied to CD and sent by certified mail to your office by May 1, 2007.

This email consists of the following three parts:

1. Evidence and Other Documents Re: Allegations
2. Emphasis On Certain Issues/Allegations
3. Closing Summary Points

1. Evidence and Other Documents Re: Allegations

Based on the evidence released in 2006, Battelle's statements to the court, and the OIG's request for Battelle discovery documents, an allegations-with-exhibits Web site was developed in late 2006; note, the site is configured to make it unreachable by search engines [e.g., Google]. The site material has been since updated with new evidence, including Battelle's RDADS software patent application [released 3-22-07] that clearly confirms my OIG allegations [e.g., false statements, plagiarism, misappropriation]. This online material includes the actual Battelle documents corroborating the allegations; relevant excerpts are cited to expedite review. The information can be found at the following locations:

1A. <http://www.mobiledatamanager.com/OIG/> is a comprehensive site detailing the allegations with supporting evidence of Battelle-PNNL fraud, abuse, and false statements to SC & OIG. The site was developed in response to the OIG November 2006 requests for discovery documents showing Battelle's intent to mislead. It includes the following topics: Background & timeline [2001- 2007]; Pulver detailed emails to DOE & OIG; Battelle false statements to DOE & OIG [18 USC §1001]; Concealing corporate/1831 pursuits; RDADS "new code" misappropriation; Misrepresenting DHS US Customs & Border Protection Radiation Portal Monitoring Project [RPMP] research to conceal fraud; False statements/declarations & material suppressions to district court.

1B. <http://www.mobiledatamanager.com/Patent/> presents new evidence discovered in FY07 that materially substantiates allegations in the site above. It consists of the following sub-sections: RDADS patent application [released 3-22-07] with graphics and detailed text showing plagiarism/misappropriation of MDM software; Named inventor on patent repeatedly stating RDADS is new name for PDAC/MDM; Battelle's 10-26-06 admission of pursuing private business for PDAC/MDM thereby implicating itself in making false statements to SC & OIG in 2004; Timcards showing that Battelle misrepresented US Customs & Border Protection RPMP work. The patent application and other new evidence consistently confirm that Battelle has been misleading DOE, OIG and the court.

## Untitled

1C. <http://www.mobiledatamanager.com/OIG/022607-Issues-Summary-OIG.doc> summarizes the following issues in the OIG complaints including fraud, abuse, false statements, and damages to the government:

I04RS007: Alleged Irregularities in Administering the Technical Assistance Program

I05RR039: Sabotage & Misrepresentation of PalmFon

P07HL035-1: Submission of fraudulent copyright documents and invention reports to DOE.

P07HL035-2: False statements by outside counsel and two Battelle scientists.

[All DOE-funded]

P07HL035-3: Deliberate sabotage and manipulation by Battelle of the DOE-funded MDM software.

P07HL035-4: Material misrepresentations to OIG and Science.

P07HL035-5: Misrepresentation of DOE technology pertaining to licensing DOE-funded technology.

P07HL035-6: Battelle's false statements to mislead the court to impose financial sanctions on Pulver

P07HL035-7: DOE-Science funding Battelle's litigation costs to defend willful misconduct

1D. <http://www.mobiledatamanager.com/OIG/030807-LetterToCommitteeOnOversight.htm> is an initial letter to the House

Committee on Oversight and Government Reform sent on March 8th. It discussed how my OIG cases and abuses by Battelle outside counsel, if left unaddressed by DOE, undermine the intent of Congress to protect whistleblowers via the Whistleblower Enhancement Act of 2007 and the 2005 Energy Policy Act [§629: "... seeking relief under this paragraph, such person may bring an action at law or equity for de novo review in the appropriate district court of the United States"]. Cited are GAO reports and Chairman Waxman's 2003 letter to the Energy Secretary indicating concern over how DOE practices [that subsidize contractors engaging in willful misconduct or illegal activity] will encourage wrongdoing contractors to needlessly protract lawsuits at significant taxpayer and whistleblower expense. The relevant JC Laul fraud case is cited because (1) It was a prior instance of Battelle-PNNL making false statements that the OIG confirmed, (2) Battelle issued a blunt public warning to future whistleblowers, and (3) An in-depth article on Battelle-PNNL's conduct toward DOE, taxpayers and Laul was placed in the Congressional Record by Rep. David Skaggs.

Per the Committee's February request, I made recommendations to help prevent Battelle et al. from misusing taxpayer funds in order to conceal fraud, abuse whistleblowers, and escape accountability. I promised to keep the Committee posted.

Two material events have occurred since the March 8th letter: 1. The Patent and Trademark Office released the RDADS patent application which further confirms the allegations. 2. The OIG, after requesting and receiving discovery evidence of Battelle's "intent to mislead", summarily closed the case. However, prior to sending an update to the Committee chairman, I am sending this letter with the extensive evidence [Battelle documents] to you and Secretary Bodman; although Mr. Friedman closed the case, I'm copying him as a courtesy.

## 2. Emphasis on Certain Issues/Allegations

Within the extensive information provided at the links above, there are some issues that warrant emphasis due to their impact on DOE, oversight, taxpayers, others doing business with Battelle-managed labs, the court, and future whistleblower protection. These issues are as follows:

2A. Battelle repeatedly misled Science and OIG to conceal their fraud and abuse; extensive exhibits are at <http://www.mobiledatamanager.com/OIG/FalseStatementsToScience&OIG.htm> For example, emails from two PNNL staff prove that Battelle made false statements to DOE when they denied any wrongful competing/misappropriating. Mark Goodwin [later promoted to a director], who plagiarized and interfered with the technical assistance MDM software project in

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2002, was goaled on 1831 [private] business volume; he willfully violated the MDM license agreement, marketed the MDM software under Battelle's PDAC alias and misled a major corporation[s]. Kevin Dorow [MDM developer/inventor], two weeks after delivering non-working software in 2003, stated he would demo the working MDM version to my prospects only if Battelle thought it would lead to the more profitable 1831 business.

2B. Battelle's outside counsel engaged in discovery abuse [misrepresentation] and PNNL scientists made false/inaccurate sworn declarations to the court in order to conceal Battelle's misappropriation/plagiarism [e.g., RDADS "new code" scheme]. They stated that RDADS had "absolutely nothing to do with" Pulver [and MDM software] and they blatantly misrepresented research funded by DHS US Customs & Border Protection RPMP; see exhibits at <http://www.mobiledatamanager.com/Patent/7-BattelleMisledTheCourt.htm>. Using the scientists' declarations, Battelle successfully misled the court.

Battelle then demanded sanctions against me and received them [\$17,043] on 10/13/06.

In early November, they threatened to seek contempt sanctions for more money; all the while, they were deceiving the court as the RDADS patent application now so clearly proves. As I wrote to Mr. Friedman, Battelle later cashed my check and thus consummated their intent to mislead the court and committed de-facto extortion as the following links indicate:

<http://www.mobiledatamanager.com/OIG/MisleadingCourt-DefactoExtortion.htm>

<http://www.mobiledatamanager.com/OIG/113006-CCOLtoMiller--Letter&Check.pdf>

<http://www.mobiledatamanager.com/OIG/111006-ContemptThreat.pdf>

Details on outside counsel's discovery abuse are at <http://www.mobiledatamanager.com/OIG/DiscoveryAbuse.doc>; as noted, his prior law firm [employer] was sanctioned a record \$325,000 for wanton discovery abuse. Note, after ignoring my extensive evidence in 2004, the PNSO [site office] authorized Battelle to retain outside counsel in June 2005 to fight my lawsuit: <http://www.mobiledatamanager.com/OIG/RM-00002.pdf>

2C. The OIG closed the case on March 22, 2007, the same day that the revealing RDADS patent was released. In November, the OIG specifically requested and received discovery evidence [Battelle documents] that indicated the "intent to mislead on the part of Battelle". The OIG's 11-24-06 email to me and documents that I then sent to them are as follows: <http://www.mobiledatamanager.com/OIG/112406-Email-OIG-Pulver-BattelleMislead.htm> & <http://www.mobiledatamanager.com/OIG/112706-P07HLO35SummaryToOIG.htm>

After specifically requesting, receiving and acknowledging the extensive discovery [lawsuit] evidence that corroborated Battelle's intent to mislead and the other allegations, the OIG closed the case and apparently chose not to hold Battelle accountable for its fraud, abuse, and false statements to DOE. My detailed response/concern to their decision is at <http://www.mobiledatamanager.com/OIG/041007-Email-ReOIG-ClosingCase.htm>. [Excerpt: "In sum, although the Battelle evidence and admissions have validated my allegations, the OIG is nonetheless allowing Battelle's misconduct [e.g. discovery abuse & false declarations] to continue at DOE expense [allowable cost]. Unfortunately, my 3½-year case shows that reporting fraud allegations [per DOE Order 221.1] against a major DOE contractor to the OIG is effectively pointless and fraught with significant risk to those coming forward. ]

### 3. Closing Summary Points

3A. The 2007 evidence [RDADS patent application & PNNL timecard records] show that Battelle materially misled the court to conceal their misappropriation of the MDM software that was developed/funded under the technical assistance program [TAP] in 2002 and enhanced in 2003 under TAP. The patent application's visual evidence [<http://www.mobiledatamanager.com/Patent/1A-Graphics.htm>] alone reveals their plagiarism; it explains why Battelle "had" to mislead the court and conceal this smoking gun evidence. The RDADS patent application further underscores their fraudulent tactics to deceive the court into imposing a \$17K sanction for my pressing to obtain the application and other RDADS documents; it proves Battelle

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knowingly misled and used the court as a vehicle for extortion. As I stated to the Committee, this abusive conduct of using/suborning national lab scientists and outside counsel to mislead courts [and extort plaintiffs] undermines the most critical protection of any whistleblower, i.e., having their day in court.

3B. Battelle and outside counsel, through false declarations and representations, successfully deceived the court. Their actions have thus tainted the case; even the OIG acknowledges the case is tainted because they told me on 3-22-07 to come back to them after the appeal. As stated in my 2-27-07 email to the OIG, "Until Undersecretary Orbach, the Secretary or the OIG intervenes, Battelle's taxpayer-funded deception to DOE and the court will continue unabated...As mentioned previously, unless Battelle redresses its willful misrepresentations to the court, the case is tainted and could thus result in an appeal on grounds of discovery abuse by their DOE-funded attorney. If Science doesn't hold Battelle accountable for misconduct that's now overwhelmingly proven by their own documents, Battelle will have a de-facto license to defraud/abuse DOE, the courts, the taxpayer, and those small businesses or universities working with any of the five national labs that Battelle manages." Note, Battelle's conduct in the Laul case forced an appeal to the Ninth Circuit which JC won [new trial].

3C. The preponderance of evidence and admissions reveal that Battelle's conduct has violated, pertains to, and/or undermines the following regulations, directives, laws or policies:

Whistleblower Protection Enhancement Act of 2007 - <http://oversight.house.gov/story.asp?ID=1172> and <http://www.govtrack.us/congress/bills.xpd?bill=h110-985>

Energy Policy Act of 2005 - <http://www.energy.gov/about/EPAct.htm>  
§ 629 [Whistleblower Protection]  
§ 1001 [Improved Technology Transfer Of Energy Technologies.]

18 USC § 1001 - Fraud And False Statements - [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse\\_usc&docid=Cite:+18USC1001](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+18USC1001)

DOE Order 221.11 [Reporting Fraud, Waste, and Abuse] - <http://www.directives.doe.gov/pdfs/doe/doetext/neword/221/n22111.html>

DOE Policy on Research Misconduct - <http://www.epa.gov/EPA-IMPACT/2005/June/Day-28/i12645.htm>

DOE CFR Title 48 Part 970.5227-2 [Commercialization & Asserting Copyright] - <http://www.mobiledatamanager.com/OIG/CFR48-970--SW-Copyright-Commercialization.htm>

GAO Report on DOE Reimbursement of Litigation Costs - <http://www.gao.gov/new.items/d04148r.pdf>

Battelle internal SBMS Policy on Plagiarism - <http://www.mobiledatamanager.com/OIG/P20620.pdf>

Battelle-PNNL 1831 Non-Interference Policy - <http://www.mobiledatamanager.com/OIG/DOE-Battelle-NonInterference-1831.htm>

Patent Rules on Misconduct § 10.23 - [http://www.uspto.gov/web/offices/pac/mpep/documents/appxr\\_10\\_23.htm](http://www.uspto.gov/web/offices/pac/mpep/documents/appxr_10_23.htm)

By way of this letter, I have provided substantial and sufficient evidence for the DOE Office of Science to diligently address Battelle's fraud, abuse and false statements to the government in OIG cases that began nearly four years ago. It will serve notice [of providing such] to other government organizations (Congress, GAO, DOJ...) that may choose to investigate the allegations, the preponderance of

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evidence, and/or Battelle's statements/declarations/admissions to the court.

Sincerely,

Philip Pulver  
CCOL Inc.  
1177 Jadwin Avenue  
Richland, WA 99352  
(509) 946-1110  
(509) 946-2411

**Excerpts: Battelle Admitted Patent Filing Fraud** [See details at [www.PatentFraud.org](http://www.PatentFraud.org)]

**Morgan Testimony Confirms Battelle Practice of Circumventing Patent Filing Rules/Bars**  
**Actual Incident Cited: Renaming 2002 PDAC Inventions to “RDADS” in 2005**

To bypass statutory patent deadlines, Battelle files “new” reports on old inventions. They obtained new “timeframes” on 2002 PDAC/MDM inventions by writing a “new” invention report [IR] and filing RDADS patent in Sept. 2005. [Renaming: PDAC → RDADS]

**Excerpt #GBM-p34 – Battelle practice is to rewrite older invention reports to have a new “timeframe” [extension] to file a patent application.**

34

5 Q. [So in order to justify a new Invention Report, there](#)

6 [would have had to be something new](#), something  
7 different between what Mr. Dorow was doing and what  
8 was previously listed on the Invention Report?

9 A. [Most probably that would be the reason](#) for doing a new  
10 Invention Report, [although there could be other](#)  
11 [reasons](#), too.

12 Q. Okay. What, for instance? I mean, can you think of  
13 any?

14 A. [Timeframes](#).

15 Q. What sort of timeframes? I don't understand why a  
16 change in time would justify a new Invention Report.

17 A. [The timing on how long we have to process the patent](#)  
18 [application](#).

19 Q. So you only have so long after -- What event triggers  
20 you only having so much time to patent it? Releasing  
21 it to the public or what?

22 A. I'm not sure, [but there are time constraints](#). [USPTO Statutory Bar]

23 Q. So sometimes [you might do a new Invention Report](#)  
24 [because you need a new timeframe to run to get a](#)  
25 [patent?](#)

35

1 A. [That's correct](#).

**Excerpt #GBM-p31 – On 2/22/05, Battelle was changing the “PDAC” name to something more meaningful in the market; however, the PDAC invention itself had not changed.**

31

19 Q. So Exhibit 115, is this an e-mail from yourself to  
20 Kevin Dorow?

21 A. Yes.

22 Q. Were you having conversations with Mr. Dorow around  
23 this timeframe regarding [PDAC](#)?...

32

6 A. [We later decided to try and get a patent on it, after](#)  
7 [we did a fairly in-depth market analysis](#).

8 Q. So when you say, "[New name - totally different](#)  
9 [please](#)," what does that refer to?

10 A. It refers to trying to [get a name that means something](#)  
11 [in the marketplace](#).

- 12 Q. So you were trying to get the name changed from PDAC  
13 because you didn't feel that was --  
14 A. That didn't mean anything to anybody.  
15 Q. So when you say, "New IP number driven from the NEW IR  
16 that you write," IR, is that Invention Report?  
17 A. Correct.  
18 Q. But it sounds like you were just changing the name; it  
19 doesn't sound like the invention had changed. Is that  
20 inaccurate?  
21 A. No. He was still in the process of filing, I believe.

***Excerpt #GBM-p35 – RDADS [“new code”] patent application caused Battelle to cancel external/public publication of the cleared PDAC [MDM] white paper in order to preserve RDADS patent rights.***

35

3 (PLAINTIFFS' EXHIBIT NO. 116)...

38

- 17 Q. Okay. So at the top of page 2 you say, "We'll only  
18 have one year from your public exposure to patent in  
19 the US, and we lose our foreign rights the minute you  
20 go public - it's your call."  
21 A. Correct.  
22 Q. Is that what you and I were talking about a minute ago  
23 with the timing of --?  
24 A. Yes.  
25 Q. So your concern was that if this IR was taken public,

39

- 1 that maybe you would potentially lose some patent  
2 rights?  
3 A. Uh-huh.  
4 Q. So then going to the front page, I'd take you up to  
5 the top e-mail. And this is an e-mail from yourself  
6 to Mr. Dorow, it looks like. Is that correct?  
7 A. The top?  
8 Q. Yeah, the top e-mail.  
9 A. That's correct.  
10 Q. So you're suggesting that the publication of the -- Is  
11 it the publication of the White Paper be delayed?  
12 A. It says the ERICA clearance of PDAC document, which I  
13 believe before we established as being that White  
14 Paper.  
15 Q. PDAC White Paper. So you're saying don't put the PDAC  
16 White Paper even up on the website?  
17 A. That's correct.  
18 Q. Okay. And the reason for that is so that you can have  
19 time to file a patent application?  
20 A. That would be correct, yes.

**Excerpt #GBM-p37 – RDADS was new name for the PDAC[MDM] invention report [IR].  
Outside Firms were interested in commercializing [licensing] PDAC.**

37

1 Q. So you were having communications with somebody from  
2 [outside Battelle about them being interested in PDAC?](#)

3 A. People being interested in the general capability of  
4 mobile data communications...

10 Q. Okay. And so when Mr. Dorow says he submitted an IDR  
11 on the e-IDR system, what does that mean?

12 A. Well, that must be at about the timeframe where the  
13 lab introduced an electronic IR submittal system to  
14 replace the paper IRs, and they titled it, the system,  
15 e-IDR.

16 Q. Okay. So he submitted his report via an electronic  
17 system?

18 A. That's correct. That's what he's telling us. And the  
19 electronic system has a tracking number, which is not  
20 the IR number, but is just a tracking number that the  
21 system assigns to it, so that the inventor can keep  
22 track of the fact that he filed it.

23 Q. And is this the [IR that you had asked Mr. Dorow to](#)  
24 [submit with a new name on it?](#)

25 A. [I assume so.](#)

38

1 Q. Okay. So the [new name is Rapid Data Acquisition and](#)  
2 [Dissemination System? \[RDADS\]](#)

3 A. [That appears to be the case.](#)

**Excerpt #GBM-p56 – A strong private/commercial market with large potential  
drove Battelle's decision to patent PDAC/RDADS software invention.**

56

7 Q. We're still talking about this [market study](#).  
8 I think you indicated earlier that the result of  
9 the market study was that there was a wide array of  
10 potential users for this technology. Is that correct?

11 A. [There was a positive and broad marketplace, a large](#)  
12 [potential marketplace, or I wouldn't have made the](#)  
13 [decision to patent.](#)

14 Q. And I think before you indicated that some of the  
15 interest was from government entities and some of it  
16 was from [private business](#). |

17 A. [Certainly.](#)

**Excerpt #GBM-p19 – Morgan confirms his 1/26/05 email statement that Pulver had exclusive license to the 3 components that comprised the PDAC[MDM] software; Battelle could only license 2 of the 3 parts to other companies. [Note, the very next day, Morgan tells developers to call PDAC [MDM] “new code”. In February 2005, a “NEW” invention report titled “RDADS” was written; the RDADS patent application was filed September 2005 and published in March 2007. See emails below.]**

[Note: MDM = “Mobile Data Manager” Software. Battelle renamed MDM to PDAC in 2002.]

19

22 Q. What's been marked as Exhibit 110, is that an e-mail [Note: Exhibit 110 is attached on next page.]  
23 from yourself to Mr. Shoemaker?

24 A. Yes, it is.

25 Q. So you must have been having some communications with

20

1 Mr. Shoemaker around this time, the January 26, 2005  
2 time period. Is that correct?

3 A. My recollection is only what I can see in front of me  
4 on that paper.

5 Q. I guess I'd ask, Exhibit 109, which we just looked at,  
6 which is this flyer that was submitted to you, that  
7 was done on January 25th, 2005. So this e-mail,  
8 Exhibit 110, looks like it would be the next day.

9 A. Correct.

10 Q. But you don't recall any conversations with  
11 Mr. Shoemaker going on around that time?

12 This mentions Mobile Data Components. Is that  
13 familiar to you?

14 A. I believe that I'm referring to the agreement where we  
15 had a license that we could only license two of the  
16 three parts of that piece of software. And I was  
17 cautioning Mr. Shoemaker that if he was talking to  
18 anybody, that he should not violate that agreement.

**From:** Morgan, Gary B  
**Sent:** Wednesday, January 26, 2005 7:39 AM  
**To:** Shoemaker, Steven V  
**Subject:** Mobile data components

Steve, If you are talking about the same MDC pieces of code that were licensed to Pulver, then we're still under the agreement with him that we can only license any 2 of the 3 parts of this three part set.

Thanks, Gary

Gary B. Morgan, Battelle, Pacific Northwest National Lab.  
Commercialization Manager, 509-375-2373 or 509-521-5980 cell



> From: Morgan, Gary B  
> Sent: Thursday, January 27, 2005 1:41 PM  
> To: Shoemaker, Steven V; Dorow, Kevin E  
> Subject: RE: PDAC white paper  
>  
> Why don't you guy's file a new IR and tell me that this is all "new  
> code".....

>  
> Gary B. Morgan  
> Commercialization Manager  
> Information, Electronics and Security Technologies  
> Battelle, Pacific Northwest National Laboratory  
> 3230 Q Avenue, NSB Rm 2421  
> Richland, WA 99352  
> Phone: 509-375-2373 Fax:  
> 509-375-2345 Cell: 509-521-5980  
> Email: gary.morgan@pnl.gov

---

> From: Shoemaker, Steven V  
> Sent: Thursday, January 27, 2005 1:40 PM  
> To: Dorow, Kevin E; Morgan, Gary B; Marr, C Thomas Jr; Flynn, Don F;  
> Robinson, R Eric  
> Subject: PDAC white paper

> All  
> The PDAC white paper has been thru clearance , so here is the new  
> version with the document number.

> << File: PDACWhitePaper PNNL-SA-44024.doc >>

> Thanks  
> Steve Shoemaker

---

**From:** Morgan, Gary B  
**Sent:** Tuesday, February 22, 2005 10:58 AM  
**To:** Dorow, Kevin E  
**Cc:** Darling, Kristine K  
**Subject:** WP for IR on "wireless data handling"

**Importance:** High

New name – totally different please

New IP number driven from the NEW IR that you write – use WP# F05040 for a few hours to write the IR

Thanks

*Gary B. Morgan*

Commercialization Manager  
Information, Electronics and Security Technologies  
Battelle, Pacific Northwest National Laboratory  
3230 Q Avenue, NSB Rm 2421  
Richland, WA 99352  
Phone: 509-375-2373 Fax: 509-375-2345 Cell: 509-521-5980  
Email: [gary.morgan@pnl.gov](mailto:gary.morgan@pnl.gov)

---

**From:** Morgan, Gary B  
**Sent:** Monday, February 28, 2005 9:54 AM  
**To:** Dorow, Kevin E; Darling, Kristine K  
**Subject:** RE: Erica clearance of PDAC document

Need to know the IP that's involved Kevin.

## *Gary B. Morgan*

Commercialization Manager  
Information, Electronics and Security Technologies  
Battelle, Pacific Northwest National Laboratory  
3230 Q Avenue, NSB Rm 2421  
Richland, WA 99352  
Phone: 509-375-2373 Fax: 509-375-2345 Cell: 509-521-5980  
Email: [gary.morgan@pnl.gov](mailto:gary.morgan@pnl.gov)

---

**From:** Dorow, Kevin E  
**Sent:** Monday, February 28, 2005 9:44 AM  
**To:** Darling, Kristine K  
**Cc:** Morgan, Gary B  
**Subject:** RE: Erica clearance of PDAC document

Kristine,

I just submitted the IDR on the e-IDR system--the tracking number is 1052 and the title is Rapid Data Acquisition and Dissemination System.

Let me know if you need any other information.

Kevin

---

Kevin Dorow  
Senior Research Scientist, Information Sciences & Engineering  
Pacific Northwest National Laboratory operated by Battelle for the U.S. Department of Energy  
 (509) 375-2517  
 [kevin.dorow@pnl.gov](mailto:kevin.dorow@pnl.gov)

---

**From:** Darling, Kristine K  
**Sent:** Wednesday, February 23, 2005 10:18 AM  
**To:** Dorow, Kevin E

7/21/2005

KED-00047  
Page 1 of 4

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON

PHILIP PULVER and CATALOGS ) ONLINE, INC., a Washington ) corporation, ) Plaintiff(s), ) vs. ) NO. CV-05-5028-RHW )

BATTELLE MEMORIAL INSTITUTE,) a non-profit corporation ) d/b/a Pacific Northwest ) Laboratory and/or Pacific ) Northwest National ) Laboratory, ) Defendant(s). )

DEPOSITION UPON ORAL EXAMINATION OF GARY MORGAN

January 10, 2008 Richland, Washington

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY: DORENE BOYLE

INDEX PULVER, CATALOGES ONLINE, INC. Vs. BATTELLE MEMORIAL INSTITUTE Cause No. CV-05-5028-RHW January 10, 2007

TESTIMONY GARY MORGAN PAGE NO. Examination by Mr. Bailey 5 - 56

EXHIBITS No. 102 License Agreement between Battelle and Mobile Data Methods, Inc., MLS-00003, Pages 17-31 of 202 13 No. 103 10/24-27/05 e-mails, VAB 00017, pages 1-4 of 5 No. 104 Interview Notes - Mark Goodwin, 1/15/04, GRL-00007, Pages 1-16 of 16 No. 105 Lab Notes, Avoiding plagiarism: Giving credit where credit is due, P20620 No. 106 3/22/07 US Patent Application Publication 42 No. 107 Battelle's Agreement for DOE-Funded 4 Technical Assistance, KED-01369, Pages 1-2 of 3, GES-00372, Page 1 of 1 THE FOLLOWING WERE MARKED DURING GARY MORGAN'S DEPOSITION: No. 108 12/22/03 and 1/20/04 e-mails, WRF-00024, Page 1 of 6 12 No. 109 1/25/05 e-mail with Information Release Form, GBM-00023, Pages 1-3 of 3 16

1 APPEARANCES: 2 FOR THE PLAINTIFF(S): 3 MR. TIMOTHY J. CARLSON 4 MR. ROGER W. BAILEY 5 Carlson, Boyd & Bailey 6 Attorneys at Law 7 230 South Second Street 8 Yakima, Washington 98901 9 10 FOR THE DEFENDANT(S): 11 MR. DELBERT D. MILLER 12 Rohde & Van Kampen 13 Attorneys at Law 14 1001 Fourth Avenue, Suite 4050 15 Seattle, Washington 98154-1000 16 17 MR. JIM JACKSON 18 Manager, Legal Department 19 Pacific Northwest National Laboratory 20 902 Battelle Boulevard 21 Richland, Washington 99352 22 23 24 25

ALSO PRESENT: MR. PHILIP PULVER

1 No. 110 1/26/05 e-mail to Shoemaker from Morgan, 2 GBM-00022, Page 1 of 1 19 3 No. 111 1/27/05 e-mail from Shoemaker Re Pocket 4 Data Access Components, PNNL-SA-44024, 5 SVS-00112, pages 1-5 of 5 20 6 No. 112 e-mails 1/27/05 thru 1/28/05 to Dorow, 7 from Thurman, KED-00926, Pages 1-2 of 2 23 8 No. 113 2/1/05 e-mails, GBM-00032, Page 1 of 2 29 9 No. 114 1/25/05 and 2/13/05 e-mails, GBM-00037, 10 Page 1 of 6 30 11 No. 115 2/22/05 e-mail, KED-00045, Page 1 of 1 31 12 No. 116 1/25/05 thru 1/28/05 e-mails, KED-00049, 13 Pages 1-5 of 5 35 14 No. 117 3/11/05 e-mail, KED-00062 Page 1 of 1 44 15 16 17 18 19 20 21 22 23 24 25

1 BE IT REMEMBERED that on Thursday, January 10,  
 2 2008 commencing at 1:00 p.m., at Battelle Memorial  
 3 Institute, 902 Battelle Boulevard, Richland, Washington,  
 4 the deposition of GARY MORGAN was taken before Dorene  
 5 Boyle, Court Reporter and Notary Public.

6 The following proceedings took place:  
 7

8 GARY MORGAN, being first duly sworn to tell  
 9 the truth, the whole truth and  
 10 nothing but the truth,  
 11 testified as follows:  
 12

13 EXAMINATION

14 BY MR. BAILEY:

15 Q. Hi, Mr. Morgan, my name is Roger Bailey, and I  
 16 represent the plaintiff, Mr. Pulver.

17 Could you state your full name for the record.

18 A. Gary B. Morgan.

19 Q. Where do you reside?

20 A. 312 Columbia Center Boulevard, Kennewick, Washington.

21 Q. What's your current employment status? What's your  
 22 position?

23 A. I'm a member of staff. Senior Program Manager.

24 Q. And how long have you worked in that capacity?

25 A. Three years.

1 Q. How long have you been with Battelle here in Richland?

2 A. Since 1991.

3 Q. And when you came on in 1991, what were you doing for  
 4 them?

5 A. I was a member of staff in the Computer Sciences  
 6 Department.

7 Q. And what did you do? I mean, what are your job duties  
 8 as a member of the staff in the Computer Sciences  
 9 Department?

10 MR. MILLER: In '91?

11 MR. BAILEY: In '91.

12 A. In '91?

13 Q. Yes.

14 A. I was in charge of a lab initiative for about six  
 15 months.

16 Q. Okay. So you were in that job only six months?

17 A. Uh-huh.

18 Q. Then what job did you have after that?

19 A. Then I was Technical Group Manager.

20 Q. And what were your job responsibilities in that  
 21 position?

22 A. To manage a technical group of computer scientists. I  
 23 was line manager.

24 Q. And what were the computer scientists doing? What  
 25 were you managing? What did they do?

1 A. They designed computer systems to solve problems for  
 2 various government clients.

3 Q. So how long were you a Technical Group Manager, then?

4 A. I don't recall exact timeframes in that.

5 Q. Do you recall what your next position was after that?

6 A. I believe the next position after that was to do  
 7 commercial business for the Applied Physics Center.

8 Q. Commercial business, okay. What was involved in that  
 9 job?

10 A. Trying to bring in business from commercial clients  
 11 that would make use of the lab's capabilities.

12 Q. So you would take technology that was owned by the lab  
 13 and try and market it to various businesses?

14 A. Uh-huh. Yes.

15 Q. What did you do after that position? What was your  
 16 next position with Battelle?

17 A. After that, I took an off-site loan executive  
 18 position.

19 Q. In other words, Battelle was involved in some sort of  
 20 venture and you were asked to manage it in some way?

21 A. That's correct.

22 Q. What business was that?

23 A. It was a business in doing -- trying to develop and  
 24 market an acoustic holographic imaging technology.

25 Q. Okay. And then how long did that position last?

1 A. Approximately two and a half years.

2 Q. Okay. And then when you came back from that, did you  
 3 come into your current position?

4 A. No.

5 Q. What was next? What position was next after that?

6 A. When I came back?

7 Q. Yes.

8 A. I took a job as commercialization manager for the  
 9 National Security Directorate.

10 Q. Now, what were your duties in that job?

11 A. To again develop business with commercial companies  
 12 using capabilities in intellectual property that the  
 13 laboratory and Battelle owned, but intellectual.

14 Q. What is the National Security Directorate, is that a  
 15 branch of Battelle?

16 A. That's a major division of the laboratory.

17 Q. But in commercializing these things, you were working  
 18 with private business rather than within the  
 19 government?

20 A. That's correct. My major focus would be.

21 Q. Okay. After doing what, what was your next position  
 22 with Battelle?

23 A. I did that job up until three years ago. The job --  
 24 So that's what I did up until three years ago.

25 Q. And then you came into your current position, which

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1 you said is a Senior Program Manager?  
2 A. Uh-huh.  
3 Q. What's the difference between what you're doing now  
4 and your commercialization work for the NSD?  
5 A. I don't have any involvement in licensing or  
6 intellectual property protection in my current job.  
7 Q. What do you do in your current job?  
8 A. I have about ten different activities.  
9 Q. Okay. What are the primary ones?  
10 A. Helping our laboratory initiatives accelerate their  
11 performance, in terms of doing basic research, would  
12 be one major activity.  
13 Q. So did you come over to your current position in the  
14 beginning of 2004, roughly, or was it --?  
15 A. It was about -- It would have been midyear 2006.  
16 Q. Midyear 2006, okay. In which one of these capacities,  
17 which one of these jobs that we talked about, did you  
18 come into contact with Mr. Pulver?  
19 A. Well, I first came in contact with Mr. Pulver back in  
20 my first job because we were in the same building  
21 together.  
22 Q. Okay. When did you come into contact with Mr. Pulver  
23 regarding the software we've been referring to as  
24 Mobile Data Manager? I'm going to call it MDM.  
25 A. I did not come into contact with Mr. Pulver relative

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1 to MDM.  
2 Q. What about Pocket Data Access Components, PDAC?  
3 A. Neither.  
4 Q. You didn't ever have any contact with Mr. Pulver  
5 regarding that?  
6 A. That's correct, I did not.  
7 Q. What was your involvement with PDAC at the lab?  
8 A. None.  
9 Q. You had no involvement at all? Didn't ever deal with  
10 PDAC?  
11 A. That's correct.  
12 Q. Okay. Just as a commercialization manager, sort of  
13 walk me through the process of what you do. I mean,  
14 when you get an invention, you get an Invention Report  
15 and you see that there's new technology or do you  
16 just -- You know, how do you go about marketing the  
17 stuff?  
18 A. We have a process called fairness opportunity in which  
19 we advertise the technology broadly and openly. We  
20 also have a website of available technologies that  
21 most of the technologies, if they have protection in  
22 terms of copyright or patent, then they are publicly  
23 announced both for fairness opportunity and they're  
24 put on the website as available.  
25 Q. So then people contact you if they're interested in

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1 developing something with these technologies?  
2 A. Correct.  
3 Q. And then you kind of try and put that together?  
4 A. Correct.  
5 MR. MILLER: Could we get a timeframe on  
6 these questions. Is that as of the time that he  
7 was --  
8 MR. BAILEY: I'm just talking in general. I  
9 think what he said is his job as a commercialization  
10 manager for NSD, is really what I was talking about.  
11 MR. MILLER: So it's not currently. It was  
12 at that time.  
13 MR. BAILEY: Right. For right now, yes,  
14 that's what I want to talk about. The 2004 timeframe.  
15 Q. So did I understand correctly your testimony that you  
16 never did any commercialization work with PDAC?  
17 A. I don't recall that I did.  
18 Q. Did you ever have any communications with a guy named  
19 Ty Daniels at Onyx Corporation?  
20 A. Yes.  
21 Q. Do you remember the general timeframe of when you  
22 talked to Mr. Daniels?  
23 A. I don't remember. If you have some records, I could  
24 refresh my memory, but I don't recall the dates.  
25 (PLAINTIFF'S EXHIBIT NO. 108

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1 MARKED FOR IDENTIFICATION).  
2 Q. Go ahead and tell me when you've had a chance to look  
3 at that.  
4 A. Okay.  
5 Q. What has been referred to here as Exhibit 108, is this  
6 an e-mail that you sent to Mr. Akers and Mr. Dorow?  
7 A. That's correct.  
8 Q. In it you refer to a conversation with Ty Daniels.  
9 But I take it from the tone and sort of the context of  
10 it that you must have had previous communications with  
11 Mr. Daniels. Is that correct?  
12 A. I don't recall how the content with Mr. Daniels  
13 occurred or whether it was prior to this or not,  
14 but --  
15 Q. It --  
16 A. Okay.  
17 Q. It says you talked again to Ty Daniels. So I assume  
18 that means you talked to him previously.  
19 A. Right.  
20 Q. Do you recall what Ty Daniels and Onyx were -- why did  
21 they get in contact with you?  
22 A. As I recall, he was inquiring about trying to license  
23 the technology that was licensed to Mr. Pulver.  
24 Q. Which technology was that that was licensed to  
25 Mr. Pulver?

1 A. I don't recall the name of it.  
 2 Q. You say in your e-mail Mobile Data Methods. What's  
 3 that?  
 4 A. I don't know.  
 5 Q. Have you ever seen the licensing agreement between  
 6 Mr. Pulver and Battelle?  
 7 A. I have seen that. I saw that later on in the process.  
 8 Q. If I showed it to you right now, would that perhaps  
 9 refresh your recollection as to what software was  
 10 licensed to Mr. Pulver?  
 11 A. You can show it to me. It won't really help me know  
 12 the exact intellectual property or anything.  
 13 Q. Well, okay. I think we've marked this as Exhibit 102.  
 14 I'm going to go ahead and show this to you.  
 15 I'd draw your attention to Appendix A and  
 16 Appendix B and see if -- Well, you're welcome to  
 17 review the whole thing.  
 18 MR. MILLER: So what's the question?  
 19 MR. BAILEY: My question was would it  
 20 refresh his recollection, and he said that he thought  
 21 it wouldn't.  
 22 MR. MILLER: Okay. So what's the next  
 23 question?  
 24 MR. BAILEY: I'm letting him review it.  
 25 A. (Reviewing document).

1 Q. So does looking at that agreement refresh your  
 2 recollection as to what software was licensed to  
 3 Mr. Pulver?  
 4 A. Not really, because I'm not familiar with the  
 5 software. I recognize the agreement, that there was  
 6 some prior software that was licensed to -- And the  
 7 name here, Mobile Data Methods, is the name of the  
 8 company.  
 9 Q. So as commercialization manager, do you need to know,  
 10 you know, what the various technologies are that are  
 11 available to -- licensed to people?  
 12 A. We try to. I had 1,100 pieces of intellectual  
 13 property in my portfolio.  
 14 Q. Sure. So you never had any efforts to commercialize  
 15 MDM, the software known as MDM?  
 16 A. No, I did not.  
 17 Q. Mr. Daniels, then, he wasn't interested in licensing  
 18 MDM?  
 19 A. I don't recall what Mr. Daniels' question was, but it  
 20 related to that technology. And in the discussions  
 21 back and forth with my management and the IP services,  
 22 IP legal department, they indicated to me that we were  
 23 under a current license with Mr. Pulver, and so that  
 24 was my response.  
 25 And it was some -- I don't know if it was in that

1 agreement or a later agreement that there was some  
 2 negotiated agreement that there were three parts to  
 3 the software somehow, and that we could do one or two  
 4 of the parts or something, but we couldn't do all  
 5 three of the parts. It was very confusing.  
 6 Q. So your understanding from your communications with  
 7 legal or whoever else you communicated with were that  
 8 you could license two of the parts, but not all three  
 9 of them?  
 10 A. I don't recall the details of that agreement right  
 11 now.  
 12 Q. I mean, when were you talking to at Battelle? I mean,  
 13 who was giving you your understanding? Somebody was  
 14 telling you this.  
 15 A. Well, obviously Meg Soldat was one of the people. And  
 16 I believe my direct supervisor at the time was Bill  
 17 Farris, and I believe we had a discussion, and he  
 18 briefed me on the agreement.  
 19 Q. Who is Meg Soldat?  
 20 A. She's our licensing.  
 21 Q. Is she an attorney?  
 22 A. She's a licensing agent that works for Vince Branton.  
 23 Q. Did you ever have any conversations with Vince about  
 24 this issue?  
 25 A. I believe this was before Vince. I don't know. I

1 don't remember what date Vince was employed, but I  
 2 believe this occurred before Vince.  
 3 Q. Well, we just deposed Vince. I can tell you that he  
 4 was at least here in October of 2003. So that would  
 5 have been at least a couple of months before this  
 6 e-mail was sent.  
 7 But you don't recall any conversations with Vince  
 8 Branton regarding this?  
 9 A. I do not recall, no.  
 10 Q. Okay. This is dated January 20, 2004. Did you have  
 11 think further communications with Ty Daniels after  
 12 this e-mail was sent?  
 13 A. I don't recall.  
 14 Q. Do you recall any circumstances where you licensed  
 15 anything to Onyx Corporation?  
 16 A. We did not. To my knowledge, we did not.  
 17 Q. Okay.  
 18 (PLAINTIFFS' EXHIBIT NO. 109  
 19 MARKED FOR IDENTIFICATION).  
 20 A. (Reviewing document).  
 21 Q. This Exhibit 109, is this an e-mail from yourself to  
 22 Mr. Dorow and Mr. Shoemaker?  
 23 A. Yes.  
 24 Q. What is ERICA? That's E-R-I-C-A, all caps.  
 25 A. It's an information clearance process that PNNL uses.

1 Q. For what? This refers to something called Pocket Data  
 2 Access Components, which appears to be a piece of  
 3 software. Is that correct?  
 4 A. It's a Java application. According to the abstract,  
 5 it's a Java application.  
 6 Q. Okay. So take me through the process of how do you  
 7 get ERICA clearance for something like this, like  
 8 PDAC.  
 9 A. The clearance that the particular staff member is  
 10 applying for is a brochure or a flyer that he has  
 11 prepared and wants to use publicly.  
 12 Q. Would this be like a White Paper, what's referred to  
 13 as a White Paper?  
 14 A. It could be any kind of a -- It could be a very nice  
 15 slick sheet flyer, it could be slideshows, it could be  
 16 a piece of paper, it could be a website.  
 17 Q. So it's some piece of paper that somebody from  
 18 Battelle wants to go public with and use it for some  
 19 purpose?  
 20 A. That's correct.  
 21 Q. And so when that happens, then it has to go through an  
 22 ERICA review?  
 23 A. That's correct.  
 24 Q. I see that you're listed here as Commercialization  
 25 Manager Reviewer on page 3 of this document. When you

1 Q. Okay. So somebody wants to take the information  
 2 public. That sounds a lot like they're trying to do  
 3 what you've sort of told me is your job, which is to  
 4 try and promote the software and sell it or license  
 5 it. But you wouldn't have been involved in this?  
 6 MR. MILLER: Well, I'm going to object to  
 7 the form of that question.  
 8 Q. You wouldn't be involved in marketing PDAC?  
 9 A. I was not involved in marketing PDAC.  
 10 Q. Okay. And you don't know who was?  
 11 A. I do not know.  
 12 MR. MILLER: If anyone.  
 13 MR. BAILEY: Excuse me?  
 14 MR. MILLER: If anyone.  
 15 MR. BAILEY: If you'd like.  
 16 MR. MILLER: I'd object to the form of the  
 17 question as assuming that someone was.  
 18 MR. BAILEY: It doesn't assume that at all.  
 19 He just said he didn't know if anyone was.  
 20 (PLAINTIFF'S EXHIBIT NO. 110  
 21 MARKED FOR IDENTIFICATION).  
 22 Q. What's been marked as Exhibit 110, is that an e-mail  
 23 from yourself to Mr. Shoemaker?  
 24 A. Yes, it is.  
 25 Q. So you must have been having some communications with

1 get a request -- When you got this PDAC flyer here,  
 2 what did you do to review it?  
 3 A. I read that.  
 4 Q. Just read this portion here on page 2?  
 5 A. Sure. That's all I get.  
 6 Q. Okay. And from that, what determination are you  
 7 supposed to make?  
 8 A. The only determination I'm supposed to make is whether  
 9 or not the information should be held back because  
 10 we're processing patent or, you know, some  
 11 intellectual property rights that we don't want made  
 12 public because we haven't filed patent or something  
 13 like that. That's what my part of the responsibility  
 14 is.  
 15 Q. I see. So in this case, who was wanting to take this  
 16 public?  
 17 A. I don't know.  
 18 Q. If you go about halfway down that second page there  
 19 that you're looking at it says IR Submitter, Steven v.  
 20 Shoemaker. What's the IR Submitter?  
 21 A. Invention Report.  
 22 Q. But that doesn't necessarily mean that Mr. Shoemaker  
 23 was the one who wanted to use the information?  
 24 A. That's correct. That's the reason I hesitated and  
 25 said I don't know.

1 Mr. Shoemaker around this time, the January 26, 2005  
 2 time period. Is that correct?  
 3 A. My recollection is only what I can see in front of me  
 4 on that paper.  
 5 Q. I guess I'd ask, Exhibit 109, which we just looked at,  
 6 which is this flyer that was submitted to you, that  
 7 was done on January 25th, 2005. So this e-mail,  
 8 Exhibit 110, looks like it would be the next day.  
 9 A. Correct.  
 10 Q. But you don't recall any conversations with  
 11 Mr. Shoemaker going on around that time?  
 12 This mentions Mobile Data Components. Is that  
 13 familiar to you?  
 14 A. I believe that I'm referring to the agreement where we  
 15 had a license that we could only license two of the  
 16 three parts of that piece of software. And I was  
 17 cautioning Mr. Shoemaker that if he was talking to  
 18 anybody, that he should not violate that agreement.  
 19 Q. Is it a fair inference, then, that Mr. Shoemaker was  
 20 probably the one who was seeking approval of this?  
 21 A. Well, I don't know.  
 22 Q. Okay.  
 23 (PLAINTIFFS' EXHIBIT NO. 111  
 24 MARKED FOR IDENTIFICATION).  
 25 A. (Reviewing document).

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1 Q. What was Mr. Shoemaker's capacity with the company at  
 2 this point in time, do you know?  
 3 A. A member of technical staff in the Computer Sciences  
 4 Department.  
 5 Q. Would it have been unusual for him to actually be  
 6 doing the marketing of the product in that capacity?  
 7 A. No.  
 8 Q. That would be something he would do?  
 9 A. Yeah.  
 10 Q. This document that's attached to the e-mail, which is  
 11 Exhibit 111, do you recognize it?  
 12 A. This White Paper?  
 13 Q. Sure, yeah.  
 14 A. Is that the document you're referring to?  
 15 Q. Yes, that's the document I'm referring to.  
 16 A. And what was the question?  
 17 Q. Do you recognize it?  
 18 MR. MILLER: Has he ever seen it before?  
 19 MR. BAILEY: Sure.  
 20 Q. Is it familiar to you? Have you ever seen it?  
 21 A. You know, I would assume that I saw it, based on the  
 22 cover sheet, but I don't have a recollection of it.  
 23 Q. What is a White Paper? What's the purpose of it?  
 24 A. The purposes of White Paper at PNNL are very broad.  
 25 They are a means of communicating PNNL capabilities or

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1 staff capabilities to various potential clients to  
 2 generate interest in their work.  
 3 Q. This White Paper, would it have been the thing that  
 4 they were seeking to get ERICA clearance for? Or  
 5 could it have been?  
 6 Would it be out of the ordinary for somebody to  
 7 seek ERICA approval to distribute a White Paper?  
 8 A. No. The procedure would be, if they wanted to send a  
 9 White Paper to a government client to generate work,  
 10 they would ask for ERICA approval to send the White  
 11 Paper out.  
 12 Q. That's for government work, you said.  
 13 A. That's correct.  
 14 Q. What about nongovernment work?  
 15 A. It depends.  
 16 Q. It could still be that they would seek ERICA approval  
 17 to distribute a White Paper for nongovernment work?  
 18 A. Could be.  
 19 Q. Let me make sure I understand your testimony, then.  
 20 At this point in time, which is January 27, 2005,  
 21 you don't have any involvement in marketing or  
 22 commercializing PDAC?  
 23 A. No.  
 24 (PLAINTIFF'S EXHIBIT NO. 112  
 25 MARKED FOR IDENTIFICATION).

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1 Q. I'm going to ask you to look at page 2, which actually  
 2 seems to be the start of this e-mail chain. And at  
 3 the top of page 2, is that an e-mail from yourself to  
 4 Mr. Shoemaker and Mr. Dorow?  
 5 A. That's correct.  
 6 Q. And what is that e-mail regarding?  
 7 A. PDAC White Paper is the subject on it.  
 8 Q. Now, I thought you didn't have any involvement with  
 9 PDAC.  
 10 MR. MILLER: You misstated his testimony.  
 11 MR. BAILEY: I'm just asking.  
 12 MR. MILLER: He said he didn't commercialize  
 13 it.  
 14 Q. Did you have any involvement with PDAC? What was your  
 15 involvement?  
 16 A. My involvement with PDAC was to understand our license  
 17 obligations so that I could give guidance to the staff  
 18 as to what they could do and what they couldn't do.  
 19 And I came in late on that, after the license was  
 20 done. Prior management had taken care of all of that.  
 21 So that was my involvement.  
 22 Q. So were other people at Battelle trying to  
 23 commercialize PDAC, to your knowledge?  
 24 A. I have no knowledge of that.  
 25 Q. So you don't recall what Mr. Shoemaker was doing at

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1 this point in time?  
 2 A. I do not.  
 3 Q. What is the meaning of your suggestion that they file  
 4 a new IR and tell you that this is, quote, "new code"?  
 5 A. I had been over in the hallway of the computer  
 6 sciences building and Mr. Dorow had stopped me in the  
 7 hallway and pulled me into his office to show me a new  
 8 set of code that he had written for handling  
 9 communications on mobile devices, and he pulled me in  
 10 his office and showed me the code. I mean, he didn't  
 11 show me the code. He showed me the capability that he  
 12 had developed.  
 13 And my first question to him was, Is that new or  
 14 is that mobile data, you know? And he assured me that  
 15 he had written it all as new code on a new project,  
 16 government funded project. I don't remember the name  
 17 of the project.  
 18 And so it looked interesting to me from a  
 19 commercial marketing perspective, and what I was  
 20 starting here was the normal process of having them  
 21 file an Invention Report and documenting that it was  
 22 new code in fact and not some derivative.  
 23 Q. So Mr. Dorow told you in this meeting that it was all  
 24 new code, it didn't have any --  
 25 A. That's correct.

1 Q. Okay. Nothing was copied from previous --  
 2 A. That's correct. Because I emphasized that verbally  
 3 and I was reemphasizing it in the e-mail.  
 4 Q. So you would be surprised to learn, then, that some of  
 5 the code -- If some of the code from Mobile Data  
 6 Manager actually showed up in PDAC, that would be a  
 7 surprise to you?  
 8 A. That's correct.  
 9 Q. Did Mr. Dorow tell you what project this new code had  
 10 been developed for?  
 11 A. He did at the time, but I don't recall the name of the  
 12 project.  
 13 Q. Was it the RPMP project? Are you familiar with that?  
 14 A. Yes, but I don't remember.  
 15 Q. You don't recall if that was --  
 16 A. I just don't recall.  
 17 MR. BAILEY: RPMP is Radiation --  
 18 MR. PULVER: Portal Monitoring Project.  
 19 MR. CARLSON: Let the witness answer.  
 20 MR. BAILEY: Sorry. It wasn't a question.  
 21 I was telling the court reporter.  
 22 Q. Then on page 1 of this same e-mail, down at the  
 23 bottom, it appears that Mr. Dorow responded to your  
 24 e-mail by saying, "Actually, that is already in the  
 25 works since we have added/changed substantial

1 new software, the new product.  
 2 Q. But your understanding is the new product was totally  
 3 separate from anything that related to Pulver.  
 4 A. That's correct. So we would have freedom to operate.  
 5 Q. So other than these e-mails that we're looking at here  
 6 and your meeting with Kevin Dorow in the hallway or  
 7 wherever he pulled you into, was there other  
 8 communications you were having with anybody at  
 9 Battelle related to Mr. Pulver's license agreement?  
 10 A. Well, as I stated previously, I was having discussions  
 11 with IP legal and my management about the prior  
 12 agreement, so that I understood what our freedom to  
 13 operate was and was not.  
 14 Q. But that was in 2004, correct?  
 15 A. Well, it may have been --  
 16 Q. Ongoing?  
 17 A. It may have been ongoing, yeah.  
 18 Q. So when you said "Pulver is toast", you meant that you  
 19 didn't have to worry about any of Pulver's rights  
 20 under the licensing agreement?  
 21 A. Yeah, because it would be a totally separate, new  
 22 capability that we would have to commercialize.  
 23 Q. So at this point in time, I mean, were people  
 24 concerned about Pulver? I mean, was there a concern  
 25 that was generally voiced by people?

1 functionality."  
 2 A. Right.  
 3 Q. What did that mean to you?  
 4 A. That means to me that he was already in the process of  
 5 filing the Invention Report, which goes to IP legal.  
 6 Q. So the Invention Report would have been on PDAC? Is  
 7 that the way you interpreted that?  
 8 A. I don't know if the name PDAC is unique to that set of  
 9 code or not, you know. I just don't know that.  
 10 Q. When he says he's "added/changed substantial  
 11 functionality," added or changed from what, do you  
 12 know?  
 13 A. I don't know.  
 14 Q. Was he talking about MDM?  
 15 A. I don't know.  
 16 Q. Okay. So then proceeding up the page to the next  
 17 e-mail, which appears to be a response from you to  
 18 Kevin Dorow, do you see that?  
 19 A. Yes.  
 20 Q. So what is the phrase "Pulver is toast"? I mean, what  
 21 does that have to do with -- I haven't seen any  
 22 mention of Pulver anywhere in here. Now all of the  
 23 sudden he's toast. What does that mean?  
 24 A. My recollection would be that I was interested in  
 25 seeing if we had an opening for commercializing the

1 A. No.  
 2 Q. I'm just wondering why you would tell Mr. Dorow that,  
 3 We don't have to worry about Pulver, if there wasn't a  
 4 concern about him?  
 5 A. I was just referring to the licensing agreement, I  
 6 believe.  
 7 Q. So at the top of this e-mail you'll see what appears  
 8 to be a mail from Dave Thurman to Kevin Dorow. Who's  
 9 David Thurman?  
 10 A. He's a member of staff.  
 11 Q. I don't understand his response: "Hope no one ever  
 12 subpoena's GM's e-mail records." GM, is that you?  
 13 A. I assume so.  
 14 Q. Why do you suppose he -- Why is he worried about  
 15 somebody subpoenaing your e-mail records?  
 16 MR. MILLER: Objection, lack of foundation.  
 17 Q. Can you speculate on it?  
 18 A. I don't know.  
 19 MR. MILLER: I object. The question is  
 20 asking for speculation. It's an improper question.  
 21 MR. BAILEY: You can ask him to speculate  
 22 about it all you want.  
 23 MR. MILLER: Speculation is not admissible.  
 24 MR. BAILEY: This is a deposition, Del. It  
 25 doesn't have to be admissible.

1 MR. MILLER: Don't speculate. Tell him what  
2 you know.

3 You can't force a witness to speculate.

4 Q. Is it your understanding that this new code that  
5 Mr. Dorow has written for this project is totally  
6 separate from the MDM code?

7 A. Yes.

8 (PLAINTIFFS' EXHIBIT NO. 113  
9 MARKED FOR IDENTIFICATION).

10 MR. BAILEY: Just for the record, Exhibit  
11 113 is Bates numbered GBM-00032.

12 Q. So on Exhibit 113, the top half of the page, is that  
13 an e-mail from Mr. Shoemaker to you and others?

14 A. Yes.

15 Q. Were you having conversations with Mr. Shoemaker  
16 around February 1st regarding the commercialization of  
17 this new code that was created by Mr. Dorow, PDAC?

18 A. No. Steve Shoemaker was simply informing me that he  
19 had had conversations with this company.

20 Q. You never had any conversations with Omni?

21 A. No.

22 Q. Or Meier's?

23 A. No.

24 Q. So when Shoemaker says, "Let me know what we need to  
25 do to give Omni and Meier's access to this IP," what

1 website.

2 Q. Was she suggesting that the PDAC White Paper that  
3 we've looked at be posted on there somehow?

4 A. She was. But she wouldn't post the White Paper as per  
5 se. She would use the White Paper as, you know,  
6 background information.

7 Q. She developed something that she puts on the website  
8 based on that?

9 A. Correct.

10 Q. Okay. Do you know why she wanted to know about  
11 linking the paper to a preexisting page?

12 A. I had organized our available technology web page in  
13 sections of related technologies, and so she was just  
14 asking where this fit.

15 Q. Okay.

16 MR. BAILEY: This is going to be 115.

17 (PLAINTIFF'S EXHIBIT NO. 115  
18 MARKED FOR IDENTIFICATION).

19 Q. So Exhibit 115, is this an e-mail from yourself to  
20 Kevin Dorow?

21 A. Yes.

22 Q. Were you having conversations with Mr. Dorow around  
23 this timeframe regarding PDAC?

24 A. I don't recall, but I would assume so, based on the  
25 fact that we were interested in pursuing forward if we

1 did you tell him?

2 A. I don't recall. There's probably something in the  
3 record, but I don't recall what it was.

4 Q. It says, "Kevin is creating a new IR since the whole  
5 system has been updated." What whole system is he  
6 talking about there?

7 A. Don't know.

8 Q. You don't know if he's talking about PDAC itself being  
9 updated?

10 A. A person would have to look at the actual Invention  
11 Report, and then underneath that you would have to  
12 look at what they meant by the term system.

13 Q. But you don't know?

14 A. I don't know.

15 (PLAINTIFF'S EXHIBIT NO. 114  
16 MARKED FOR IDENTIFICATION).

17 Q. Okay. This has been marked as 114 and it's an e-mail.  
18 Who is Rae S. Weil?

19 A. She was -- She's no longer with PNNL. She was  
20 marketing communications person.

21 Q. Do you know what she's referring to in this e-mail  
22 when she says, "Where do we list this on the website?"

23 A. Yes.

24 Q. What is she referring to?

25 A. She was referring to the available technologies

1 could get IP clearance to do that.

2 Q. To get IP clearance for what?

3 A. For his new code.

4 Q. So does that mean you were trying to get it patented  
5 or something?

6 A. We later decided to try and get a patent on it, after  
7 we did a fairly in-depth market analysis.

8 Q. So when you say, "New name - totally different  
9 please," what does that refer to?

10 A. It refers to trying to get a name that means something  
11 in the marketplace.

12 Q. So you were trying to get the name changed from PDAC  
13 because you didn't feel that was --

14 A. That didn't mean anything to anybody.

15 Q. So when you say, "New IP number driven from the new IR  
16 that you write," IR, is that Invention Report?

17 A. Correct.

18 Q. But it sounds like you were just changing the name; it  
19 doesn't sound like the invention had changed. Is that  
20 inaccurate?

21 A. No. He was still in the process of filing, I believe.  
22 I would assume that's what I'm talking about there.

23 Q. Okay.

24 A. Otherwise we'd have the IR number.

25 Q. Was there an IR number for PDAC?

1 A. I don't know.  
 2 Q. But if there wasn't an IR number for PDAC, what would  
 3 have been the policy on generating a new Invention  
 4 Report? Would there have to have been some major  
 5 change to the program in order to justify a new  
 6 Invention Report?  
 7 A. Change -- I don't understand the question.  
 8 Q. Well, you've got an Invention Report for PDAC, and  
 9 Mr. Dorow has invented that. Now you're telling him  
 10 do a new Invention Report.  
 11 A. I don't know that that's true. I believe he was still  
 12 in the process of doing an Invention Report for this  
 13 new code, and I was giving him some guidance here that  
 14 the name sucked and that he needed to get it done.  
 15 They tend to not get these things done.  
 16 Q. So you think there was an Invention Report on PDAC  
 17 until --?  
 18 A. That's my recollection.  
 19 Q. Okay.  
 20 A. The records might show me wrong on that recollection.  
 21 I don't know.  
 22 Q. Well, okay. Let's delve into that.  
 23 Let's say you were wrong about it, and I can't  
 24 tell you whether you were or not, but what would have  
 25 justified -- If you just wanted to change the name of

1 A. That's correct.  
 2 Q. Okay.  
 3 (PLAINTIFFS' EXHIBIT NO. 116  
 4 MARKED FOR IDENTIFICATION).  
 5 A. Okay.  
 6 Q. So if you turn to page 4 of this exhibit, which is  
 7 116, do you recognize the bottom half of that as the  
 8 same e-mail we were just talking about on Exhibit 114?  
 9 A. Correct.  
 10 Q. So this is an e-mail trail that appears to generate  
 11 from there. I'm going to talk about the top half of  
 12 page 4, which appears to be an e-mail from yourself to  
 13 Rae Weil; is that correct?  
 14 A. Uh-huh.  
 15 Q. You say in here that, "It's new IP and have several  
 16 interests coming around." Are you referring to PDAC  
 17 when you say "it's new IP"?  
 18 A. I don't know, based on the subject matter there. But  
 19 many times you do an e-mail, you know, an old subject,  
 20 so I don't know. I mean, the names of PDAC, RDAC, all  
 21 those names is total -- it's a -- it's just a -- it's  
 22 mud sliding down the hill. I don't know.  
 23 Q. What do you mean by that? You mean it's all the same  
 24 thing?  
 25 A. I don't recognize them in terms of distinct phases or

1 something, would you do a new Invention Report?  
 2 A. No.  
 3 Q. Just change the name at that point?  
 4 A. Right.  
 5 Q. So in order to justify a new Invention Report, there  
 6 would have had to be something new, something  
 7 different between what Mr. Dorow was doing and what  
 8 was previously listed on the Invention Report?  
 9 A. Most probably that would be the reason for doing a new  
 10 Invention Report, although there could be other  
 11 reasons, too.  
 12 Q. Okay. What, for instance? I mean, can you think of  
 13 any?  
 14 A. Timeframes.  
 15 Q. What sort of timeframes? I don't understand why a  
 16 change in time would justify a new Invention Report.  
 17 A. The timing on how long we have to process the patent  
 18 application.  
 19 Q. So you only have so long after -- What event triggers  
 20 you only having so much time to patent it? Releasing  
 21 it to the public or what?  
 22 A. I'm not sure, but there are time constraints.  
 23 Q. So sometimes you might do a new Invention Report  
 24 because you need a new timeframe to run to get a  
 25 patent?

1 anything. I don't recall what those names mean.  
 2 Q. So are you suggesting that to you, I mean, that PDAC  
 3 and RDADS were just part of a continuum, I mean, one  
 4 came as part of another?  
 5 A. No, I'm not suggesting they're part of a continuum, in  
 6 terms of the code. I'm just suggesting that names --  
 7 that those names tend to be used in continuum and they  
 8 may be referring to different pieces of code at  
 9 different parts of time incorrectly.  
 10 Q. Well, if we look down at the bottom of page 4, the  
 11 e-mail from Rae Weil, where she was asking about the  
 12 PDAC clearance, knowing that that's the context, that  
 13 e-mail is dated February 13th and your e-mail is dated  
 14 February 14th, do you think you were talking about  
 15 PDAC at that point?  
 16 A. I don't know. I don't know whether the White Paper  
 17 was the same code as we had later that we were trying  
 18 to produce patent on, was the same code. I don't know  
 19 that.  
 20 Q. When you say you have several interests coming around,  
 21 who did you have in mind there?  
 22 A. I don't know. We must have had inquiries.  
 23 Q. Were those inquiries to you or to Mr. Shoemaker or  
 24 someone else?  
 25 A. Probably all of the above.

1 Q. So you were having communications with somebody from  
 2 outside Battelle about them being interested in PDAC?  
 3 A. People being interested in the general capability of  
 4 mobile data communications.  
 5 Q. Okay. I'm now on page 3 of this document, on the top  
 6 half of it, an e-mail which is from Kevin Dorow to  
 7 Kristine K. Darling, which was copied to you. Who is  
 8 Kristine Darling?  
 9 A. She was my administrative assistant at that time.  
 10 Q. Okay. And so when Mr. Dorow says he submitted an IDR  
 11 on the e-IDR system, what does that mean?  
 12 A. Well, that must be at about the timeframe where the  
 13 lab introduced an electronic IR submittal system to  
 14 replace the paper IRs, and they titled it, the system,  
 15 e-IDR.  
 16 Q. Okay. So he submitted his report via an electronic  
 17 system?  
 18 A. That's correct. That's what he's telling us. And the  
 19 electronic system has a tracking number, which is not  
 20 the IR number, but is just a tracking number that the  
 21 system assigns to it, so that the inventor can keep  
 22 track of the fact that he filed it.  
 23 Q. And is this the IR that you had asked Mr. Dorow to  
 24 submit with a new name on it?  
 25 A. I assume so.

1 that maybe you would potentially lose some patent  
 2 rights?  
 3 A. Uh-huh.  
 4 Q. So then going to the front page, I'd take you up to  
 5 the top e-mail. And this is an e-mail from yourself  
 6 to Mr. Dorow, it looks like. Is that correct?  
 7 A. The top?  
 8 Q. Yeah, the top e-mail.  
 9 A. That's correct.  
 10 Q. So you're suggesting that the publication of the -- Is  
 11 it the publication of the White Paper be delayed?  
 12 A. It says the ERICA clearance of PDAC document, which I  
 13 believe before we established as being that White  
 14 Paper.  
 15 Q. PDAC White Paper. So you're saying don't put the PDAC  
 16 White Paper even up on the website?  
 17 A. That's correct.  
 18 Q. Okay. And the reason for that is so that you can have  
 19 time to file a patent application?  
 20 A. That would be correct, yes.  
 21 Q. Okay. So after you wrote this e-mail to Mr. Dorow and  
 22 at least suggested that the publication be delayed,  
 23 what role did you have in moving the thing forward to  
 24 get the patent applied for?  
 25 A. None.

1 Q. Okay. So the new name is Rapid Data Acquisition and  
 2 Dissemination System?  
 3 A. That appears to be the case.  
 4 Q. Is that commonly known as RDADS? Are you familiar  
 5 with that terminology?  
 6 A. No.  
 7 Q. You've never heard of RDADS?  
 8 A. Well, I don't remember the acronyms. I stated before  
 9 I had 1,100 pieces of intellectual property.  
 10 Q. Now I'm on page 2, down at the bottom, and you appear  
 11 to be responding to Mr. Dorow's e-mail about Rapid  
 12 Data Acquisition and Dissemination System and his  
 13 filing that IR. Are you saying you don't know what  
 14 the IP is that's involved with this new IR?  
 15 A. That's correct. I'm trying to clarify. You see, I'm  
 16 obviously confused about naming at that point.  
 17 Q. Okay. So at the top of page 2 you say, "We'll only  
 18 have one year from your public exposure to patent in  
 19 the US, and we lose our foreign rights the minute you  
 20 go public - it's your call."  
 21 A. Correct.  
 22 Q. Is that what you and I were talking about a minute ago  
 23 with the timing of --?  
 24 A. Yes.  
 25 Q. So your concern was that if this IR was taken public,

1 Q. Okay. How would that have occurred, to your  
 2 knowledge?  
 3 A. It goes into IP legal and they assign an IP agent or  
 4 lawyer to it and it gets in their cue and they begin  
 5 working with the inventor to define the claims and  
 6 file the patent.  
 7 My responsibility is to make a business decision  
 8 as to whether or not I'm willing to spend the money  
 9 for a patent and spend the money to do market research  
 10 and spend the money to market it.  
 11 Q. And did you make the determination that it was worth  
 12 doing that in this case?  
 13 A. I did.  
 14 Q. What information did you base that decision on?  
 15 A. We did a market study, I believe, and it looked as  
 16 though there was a good market for this.  
 17 Q. Do you know when the market study was done?  
 18 A. I don't recall.  
 19 Q. So in your study that you did, was the question  
 20 whether it could be commercialized to private business  
 21 or whether it could be commercialized to the  
 22 government or both?  
 23 A. No, that's not the question in either case of a market  
 24 study.  
 25 Q. Okay. What does the market study tell you?

1 A. The market study tells you whether or not, with the  
 2 features and capabilities that our people have  
 3 described, there is a market for it generally.  
 4 Q. There's generally a market. Somebody wants to use it?  
 5 A. Right. And who is that somebody. You know, how big  
 6 is the market, blah, blah, blah.  
 7 Q. And do you recall what the answer of that question  
 8 was? Who the market was for this particular product?  
 9 A. My recollection is that the market was broad.  
 10 Q. Both private enterprises and government perhaps?  
 11 A. That's correct.  
 12 Q. Okay. So you made your recommendation to the IP  
 13 legal. Maybe I'm putting words in your mouth.  
 14 Do you make the recommendation to IP legal; do  
 15 you tell them you're willing to spend the money on  
 16 this?  
 17 A. I authorized them to go ahead with patent using the  
 18 money that I had authority to use.  
 19 Q. Okay. So then are you kept in the loop as to what the  
 20 status of the patent is by IP legal?  
 21 A. I am, but the wheels of patenting turn very slowly.  
 22 Q. Okay. So once the patent application has been  
 23 submitted, then is it your understanding that at that  
 24 point Battelle has protected itself, its rights; now  
 25 it can go out and begin marketing or commercializing

1 application had been filed.  
 2 A. No, I was not.  
 3 Q. You were not.  
 4 A. No, I was not.  
 5 Q. How do you know when you can start, you know, trying  
 6 to market this thing, if they don't tell you when the  
 7 patent is filed?  
 8 A. That's a very good question.  
 9 Q. So after you gave the go ahead to spend some money to  
 10 patent this thing, what was your next involvement with  
 11 this software?  
 12 A. I had none. I believe that I was probably out of the  
 13 loop of commercialization manager by the time this was  
 14 filed.  
 15 Q. Oh, because that was filed in 2007?  
 16 A. Or shortly thereafter. I wasn't notified that it was  
 17 file, so I probably --.  
 18 Q. I'm going to hand 106 back to you. There's a place on  
 19 there where it says it was filed September 20, 2005.  
 20 A. Oh, yeah, okay.  
 21 Q. I'm not sure what that other date is.  
 22 A. That's when it was published.  
 23 Q. Okay.  
 24 A. Yeah, so it was filed 9-20. I should have known that,  
 25 but I don't recall that. I didn't know.

1 the product?  
 2 A. Once the patent is filed, did you say?  
 3 Q. Yes.  
 4 A. Yes.  
 5 Q. Do you know when the patent on the PDAC was filed?  
 6 A. To my knowledge -- No, I do not know.  
 7 Q. Did you ever see the patent application?  
 8 A. No, I never did.  
 9 Q. So you didn't have any knowledge of what claims were  
 10 being made in the patent?  
 11 A. That's correct.  
 12 Q. I'm going to hand you what's been marked as Exhibit  
 13 106. That was something we talked to Mr. Branton  
 14 about earlier this morning.  
 15 A. Is this the patent?  
 16 Q. That's my question to you. Is that the patent  
 17 application?  
 18 A. I don't know. I would have to go back through the  
 19 files and try and track the IR number to this patent  
 20 number, and I have no way of doing that.  
 21 Q. Is the IR number referred to on that patent  
 22 application?  
 23 A. No, they don't, you know, because that's an internal  
 24 number and this is a U.S. Patent.  
 25 Q. At some point you were told that the patent

1 Q. So you didn't know, then, that you could begin, you  
 2 know, commercializing that product. And then is it  
 3 your testimony that shortly thereafter you moved into  
 4 your new job?  
 5 A. Yes.  
 6 Q. And in the capacity of your new job, you wouldn't have  
 7 had anything to do with PDAC or RDADS?  
 8 A. I wouldn't have had anything to do with the marketing  
 9 of the intellectual property or the patenting.  
 10 Q. Okay, thank you. That's what I meant.  
 11 So are you aware of any commercialization  
 12 attempts that related to PDAC or RDADS?  
 13 A. I'm not aware of any.  
 14 Q. Okay. In your new position, do you have any  
 15 involvement with RDADS in any way?  
 16 A. No. I have not to date.  
 17 MR. BAILEY: Let me take a little bit of a  
 18 break.  
 19 (A SHORT RECESS WAS HAD).  
 20 (PLAINTIFFS' EXHIBIT NO. 117  
 21 MARKED FOR IDENTIFICATION).  
 22 A. Okay.  
 23 Q. Okay. What's been marked as Exhibit 117, is this an  
 24 e-mail that you sent to Mr. Dorow and other people?  
 25 A. Yes, it is.

1 Q. It refers to a meeting held March 9, 2005, in regards  
 2 to, quote, "the subject IR". Is the IR that you're  
 3 referring to here the Invention Report we've been  
 4 talking about that Mr. Dorow submitted sometime in  
 5 early 2005?  
 6 MR. MILLER: Excuse me. Where do you find  
 7 the reference to March 9?  
 8 MR. BAILEY: That's in bold in the second  
 9 paragraph.  
 10 A. The subject is reference to IR 14714-E.  
 11 Q. Which is the IR that we've been discussing?  
 12 A. I don't know that because up until this point we  
 13 haven't had a number.  
 14 Q. The name of the subject is Rapid Data Acquisition and  
 15 Dissemination System.  
 16 A. Correct.  
 17 Q. So that's RDADS.  
 18 A. Correct.  
 19 Q. So you don't know whether or not that's the Invention  
 20 Report that you told Mr. Dorow to file on this?  
 21 A. Well, there was a previous communication where we  
 22 talked about RDADS. I would assume that's the same  
 23 thing that he's referring to here.  
 24 Q. Okay. So who was at this meeting on March 9th? Do  
 25 you know what kind of meeting that was?

1 publicized and it's a very large project. And that's  
 2 about all I know.  
 3 Q. Okay. You don't have any knowledge about whether PDAC  
 4 or RDADS is involved with the RPMP project?  
 5 A. I do not.  
 6 Q. Okay. Do you know how much revenue Battelle has  
 7 received from PDAC or RDADS?  
 8 A. I do not.  
 9 Q. Who would be the right person to ask about that, do  
 10 you know?  
 11 A. The technology commercialization department.  
 12 Q. So if you had been still in your previous job, you  
 13 would have probably known the answer to that question?  
 14 A. Correct.  
 15 Q. Were you involved in any way with an internal  
 16 investigation that was conducted by the Office of  
 17 Inspector General related to Mr. Pulver's licensing  
 18 rights?  
 19 A. No.  
 20 Q. We spoke with Mr. Branton a little earlier about the  
 21 perception, at least his perception, that Mr. Pulver  
 22 was difficult to work with. That was something that  
 23 he'd heard from a number of people at Battelle. Did  
 24 you have any of those kind of conversations with  
 25 anybody or heard those kind of conversations?

1 A. Yeah. It's a standard commercialization office IR  
 2 review meeting in which all of the commercialization  
 3 managers meet together with management and make  
 4 decisions on whether or not we're going to go forward  
 5 with particular, you know, patenting action, which  
 6 begins to cost money.  
 7 Q. So it says here that "IP is actively being marketed -  
 8 but only under NDA."  
 9 A. Correct.  
 10 Q. What does that mean?  
 11 A. That means only under nondisclosure agreement, so that  
 12 we don't violate our patent rights.  
 13 Q. I see. So who was it being actively marketed to?  
 14 A. Don't know.  
 15 Q. That wasn't something you were involved with?  
 16 A. I don't know. I don't remember.  
 17 Q. Do you have any familiarity with the Radiation Portal  
 18 Monitoring Project?  
 19 A. RPMP.  
 20 Q. RPMP.  
 21 MR. MILLER: It's a yes or no question.  
 22 A. Do I have what?  
 23 Q. Do you have any familiarity with the project?  
 24 A. Very, very vaguely. I mean, everybody at the lab  
 25 knows about the RPMP project because it's well

1 A. No.  
 2 Q. So in your experience, Mr. Pulver was not difficult to  
 3 work with?  
 4 A. I didn't work with Mr. Pulver in any -- once he left  
 5 the laboratory. Never have worked with Mr. Pulver.  
 6 Q. I don't necessarily want to limit my question to just  
 7 something related to the licensing agreement. I mean,  
 8 you said you had at least contact with Mr. Pulver from  
 9 pretty much the time you got there in 1991, didn't  
 10 you?  
 11 MR. MILLER: He said he first met him at  
 12 that time.  
 13 MR. BAILEY: Right.  
 14 MR. MILLER: I don't know how much contact.  
 15 A. He lived down the hallway from me and we shared coffee  
 16 once in a while.  
 17 MR. PULVER: '93.  
 18 A. Yeah. I don't remember whether Mr. Pulver left the  
 19 building before or after I left the building. I don't  
 20 remember when that was even.  
 21 Q. But you never worked with him directly?  
 22 A. Not directly.  
 23 Q. So, to your knowledge, Mr. Phil Pulver was not  
 24 difficult to work with, as far as you know?  
 25 A. I didn't really work with him directly, so I don't

1 know.  
 2 Q. But you didn't hear anything that he was difficult to  
 3 work with?  
 4 A. No.  
 5 Q. Okay.  
 6 (AN OFF-THE-RECORD  
 7 DISCUSSION WAS HAD).  
 8 Q. I'm going to take you -- just skip around here with  
 9 you.  
 10 We talked a little bit about there was a  
 11 marketing study done at some point by your department,  
 12 which came to the conclusion that there was commercial  
 13 interest in PDAC. Do you recall that?  
 14 A. No. There was commercial interest in the capabilities  
 15 that Kevin Dorow was describing to me.  
 16 Q. The mobile data technologies.  
 17 A. In general.  
 18 Q. Not specifically PDAC.  
 19 A. That's correct.  
 20 Q. Okay. Was that ever published? I mean, was that a  
 21 study that was published?  
 22 A. Oh, no, huh-uh.  
 23 Q. There's nothing in writing about it.  
 24 A. Oh, there may be something in writing internally.  
 25 Q. Sorry. I don't mean published to the world. I mean

1 MR. BAILEY: I'm not referring to an  
 2 exhibit. I'm talking about the marketing study that  
 3 was done by the commercialization department to  
 4 determine whether mobile data technology was  
 5 marketable.  
 6 MR. MILLER: I'm just trying to remember  
 7 when that testimony popped up, during what exhibit, if  
 8 you've got a timeframe.  
 9 MR. BAILEY: (Reviewing documents).  
 10 MR. MILLER: It doesn't matter. Go ahead.  
 11 Q. The question was just when was the study done?  
 12 A. It would have been done just prior to my authorization  
 13 to patent because I would not have produced -- it  
 14 provided my business basis for the business decision  
 15 to spend money on it. So sometime before that.  
 16 Q. So probably sometime in early 2005?  
 17 A. I don't know, you know.  
 18 Q. I'm looking at Exhibit 116 where you say, "Yes, I'd  
 19 agree you can delay the publication until we file a  
 20 patent." So it looks like at that time you agreed  
 21 that a patent was going to be filed. Is that right?  
 22 A. No.  
 23 Q. That wasn't --  
 24 A. I had in my mind that I would like to file a patent if  
 25 it was deemed approved by the committee.

1 it was a written report.  
 2 A. I believe it was written report. I don't recall for  
 3 sure.  
 4 Q. Okay.  
 5 A. But generally they would provide me with a written  
 6 report, okay?  
 7 Q. Okay. So if there was a written report, where would  
 8 that be located? I mean, would it be in -- What file  
 9 would it be in?  
 10 A. I don't know.  
 11 Q. Did the commercialization office have a file? I mean,  
 12 how did it organize its files? Would it be by  
 13 Invention Report or would they have a file for PDAC?  
 14 A. Yes. But whether or not the market analysis would be  
 15 in that file is anybody's guess.  
 16 Q. Sure.  
 17 MR. PULVER: Can we take a two-minute break?  
 18 MR. BAILEY: I guess, yes.  
 19 (A SHORT RECESS WAS HAD).  
 20 MR. BAILEY: Back on the record.  
 21 Q. I'm going to keep talking about this marketing study  
 22 that was done.  
 23 Approximately what timeframe was that study done?  
 24 MR. MILLER: Are you referring to an  
 25 exhibit?

1 Q. Oh, I see. So we've got to look at Exhibit 117, which  
 2 is where the committee approved, okay. So that was  
 3 March 11th. So you believe the study would have been  
 4 done before March 11th?  
 5 A. Correct. So it may or may not have been done, you  
 6 know, in the February timeframe.  
 7 Q. Sure. Well, the question is, okay, you did a study,  
 8 but how did you define what the study was going to  
 9 cover? I mean, for instance, did somebody give them  
 10 the PDAC White Paper and say, Here's what this  
 11 technology is, and so go do a study based on that?  
 12 A. No. I usually set up a request that the competitive  
 13 intelligence people go have a meeting with the  
 14 inventors, and they have an iterative process whereby  
 15 they extract important features that the inventors  
 16 believe are really valuable to the marketplace. And  
 17 then they go back and do market, you know,  
 18 intelligence searches based on those. And based on  
 19 what they find, they will go back and have subsequent  
 20 meetings with the inventors. And that process could  
 21 take some time, depending on what they find.  
 22 Q. You said that was competitive intelligence; is that  
 23 what you said?  
 24 A. Competitive intelligence people, yes.  
 25 Q. So the competitive intelligence people would have gone

1 to talk to Mr. Dorow and Mr. Shoemaker probably?  
 2 A. Probably Mr. Dorow for sure.  
 3 Q. Mr. Dorow. And, to your knowledge, was Mr. Dorow  
 4 working on any other mobile data technologies other  
 5 than what we've talked about, PDAC?  
 6 A. I have no idea what he's working on.  
 7 Q. So when the competitive intelligence people go talk  
 8 Mr. Dorow and they find out what he views the  
 9 essential elements of this technology to be, then do  
 10 they create a study? I mean, how do they then go out  
 11 and find out who's interested in this?  
 12 A. They have multiple data bases that they search. Like  
 13 I said, they do multiple in-depth reviews. You know,  
 14 they will find -- It's not unlike doing a patent  
 15 search. You find some data, and then you go back and  
 16 bet it against whether or not that's pertinent data,  
 17 and then you iterate and do some more of it.  
 18 Q. So what sort of documents are generated?  
 19 A. Well, they usually do a report then to me.  
 20 Q. Okay. So somebody then from competitive intelligence  
 21 did a report to you on what their conclusions were?  
 22 A. Correct.  
 23 MR. MILLER: Well, usually, he said.  
 24 A. Usually I said.  
 25 Q. In this case, do you recall such a report?

1 A. I don't recall for sure, but usually they do. We  
 2 might have just had a meeting about it, too, but I  
 3 don't know. I don't recall.  
 4 Q. Do you know who from competitive intelligence was  
 5 working on this project?  
 6 A. No.  
 7 Q. How could we find that out?  
 8 A. It's been so long ago, I don't know. So many changes.  
 9 Q. So you don't know how we could figure out who was  
 10 involved?  
 11 A. I don't know.  
 12 Q. You did indicate that the study was related to mobile  
 13 data technologies broadly, not any particular  
 14 technology. That's the part I'm having trouble  
 15 understanding. Let me rephrase that.  
 16 You don't really recall what the competitive  
 17 intelligence people said exactly, but you recall that  
 18 it was related to mobile data technology. Is that  
 19 right?  
 20 A. No.  
 21 Q. Okay.  
 22 A. I believe what I said was that they go out and do a  
 23 market search on a broad area of the market around  
 24 mobile data technologies and what's in the marketplace  
 25 and what's being needed. That's what I meant to say.

1 I think that's what I said.  
 2 Q. What other technologies was Battelle working on at  
 3 that time that were related to mobile data  
 4 transmission or technology?  
 5 A. None to my knowledge, but at any point in time I don't  
 6 have knowledge of all the technologies that Battelle  
 7 is working on.  
 8 Q. But you were the one who commissioned the study.  
 9 A. That study, yes.  
 10 Q. So doesn't it follow that -- I mean, if there were  
 11 other projects that were similar that Battelle was  
 12 working on, wouldn't those have been studied at the  
 13 same time?  
 14 A. No. They were going outside in the market to do a  
 15 marketplace study outside.  
 16 Q. Right. Right. But you're not aware of any other  
 17 mobile data projects that were going on around that  
 18 same time?  
 19 A. I'm not aware of any.  
 20 Q. When you do a market study, do you have to relate that  
 21 market study to a particular Invention Report or a  
 22 particular piece of IP?  
 23 A. You don't have to. We generally, you know, have  
 24 the -- I have the competitive intelligence people meet  
 25 with the inventor of a particular piece of IP and

1 understand from their perspective what to search for.  
 2 Q. Okay.  
 3 MR. PULVER: Can we talk for a second?  
 4 (AN OFF-THE-RECORD  
 5 DISCUSSION WAS HAD).  
 6 MR. BAILEY: Back on the record.  
 7 Q. We're still talking about this market study.  
 8 I think you indicated earlier that the result of  
 9 the market study was that there was a wide array of  
 10 potential users for this technology. Is that correct?  
 11 A. There was a positive and broad marketplace, a large  
 12 potential marketplace, or I wouldn't have made the  
 13 decision to patent.  
 14 Q. And I think before you indicated that some of the  
 15 interest was from government entities and some of it  
 16 was from private business.  
 17 A. Certainly.  
 18 Q. What sort of industries did they conclude, you know,  
 19 private industries, business enterprises, that this  
 20 technology would be useful to?  
 21 A. I don't recall that they tried to even break it down  
 22 by industries. I don't recall.  
 23 Q. How did they break it down?  
 24 A. I don't know. It's been a long time. I don't  
 25 remember the contents of the study.

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1 MR. BAILEY: Okay. I don't think I have any  
 2 more questions.  
 3 MR. MILLER: Okay. No questions.  
 4  
 5 (DEPOSITION CONCLUDED AT  
 6 3:01 P.M.)  
 7  
 8 (SIGNATURE RESERVED.)  
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Page 59

1 CERTIFICATE  
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 3 STATE OF WASHINGTON)  
 ) ss.  
 4 COUNTY OF YAKIMA )  
 5 THIS IS TO CERTIFY that I, Dorene Boyle, Notary  
 6 Public in and for the State of Washington residing at  
 7 Yakima, reported the within and foregoing deposition; said  
 8 deposition being taken before me as a Notary Public on the  
 9 date herein set forth; that the deponent was first by me  
 10 duly sworn; that said examination was taken by me in  
 11 shorthand and thereafter under my supervision transcribed,  
 12 and that same is a full, true and correct record of the  
 13 testimony of said deponent, including all questions,  
 14 answers and objections, if any, of counsel.  
 15  
 16 Further certify that I am not a relative or  
 17 employee or attorney or counsel of any of the parties, nor  
 18 am I financially interested in the outcome of the cause.  
 19  
 20 IN WITNESS WHEREOF I have hereunto set my hand  
 21 and affixed my official seal this day of ,  
 22 2007.  
 23  
 24 CERT/LIC NO. 2521  
 Notary Public in and for the State  
 25 of Washington, residing at Yakima

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1 CERTIFICATE OF SIGNATURE  
 2  
 3 Deposition of GARY MORGAN  
 4 January 10, 2007  
 5 PULVER vs. BATTELLE  
 6 US Eastern District Court Cause No. CV-05-5028-RHW  
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 23 I have read the original or a copy of the  
 24 above-described transcript and my answers contained therein  
 are correct with the above-noted changes.  
 25 SIGNATURE OF DEPONENT DATE OF SIGNATURE

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Congress of the United States  
Washington, DC 20515

January 26, 2012

The Honorable David Kappos  
Director  
United States Patent and Trademark Office  
Mail Stop Congressional Relations  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Mr. Kappos:

The United States Patent and Trademark Office (PTO) will soon select a new satellite office for its operations. We strongly urge you to consider locating one of those offices in Ohio. The PTO is looking for a location with: world-renowned universities; a highly-skilled workforce; numerous patent filers; reasonable cost of living; and a culture of innovation. Ohio can deliver on each of these criteria and is a natural fit for the expanded PTO operations. Furthermore, Ohio's world-class transit infrastructure ensures that Americans can access Columbus with ease.

As the birthplace of the Wright Brothers and Thomas Edison, Ohio has a long and storied history of innovation. Global companies such as Procter & Gamble, Goodyear, Honda of America, and First Solar today call Ohio home and have long invested in commercializing new technology in the state. Ohio also boasts an impressive lineup of world-class research institutions such as the Cleveland Clinic, The Ohio State University, the Directorate of the U.S. Air Force Research Laboratory, Case Western Reserve University, NASA Glenn Research Center, and Battelle Memorial Institute.

The Columbus Region is an ideal location for a satellite PTO office. Columbus is home to a wide-array of high-level research projects and is home to a workforce where forty-percent of the population holds an advanced degree and over 140,000 individuals are enrolled as college students.

Ohio offers the advantages of a large state – world class universities, brilliant labor pool, and innovators – coupled with Midwestern value and work ethic. We support the enclosed proposal, and urge you to strongly consider the Columbus Region for U.S. Patent and Trademark Office.

Sincerely,



Sherrod Brown  
United States Senate



Rob Portman  
United States Senate



Steve Stivers  
Member of Congress



Patrick J. Tiberi  
Member of Congress