

2 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**3  
4 Application Serial No. 11/736,3565  
6 Filed: 04/17/20077  
8 For: SYSTEM AND METHOD FOR SAFELY FLYING UNMANNED AERIAL VEHICLES  
9 IN CIVILIAN AIRSPACE10  
11 Examiner: Ronnie M. Mancho

Art Unit: 3664

12  
13 In re Application of: Jed Margolin14  
15  
16 Mail Stop Appeal Brief - Patents  
17 Commissioner for Patents  
18 P.O. Box 1450  
19 Alexandria, VA 22313-1450  
20

21 Sir,

22 **Reply Brief to Examiner's Answer**23  
24 Appellant ("Margolin") files his Reply Brief to Examiner's Answer to Margolin's Appeal  
25 Brief. This Reply is timely filed within two months of the September 14, 2011 mailing date of  
26 Examiner's Answer. In this Reply the term "Margolin" refers to the Appellant. The term  
27 "Margolin '724" refers to U.S. Patent 5,904,724 **Method and apparatus for remotely piloting**  
28 **an aircraft** issued May 18, 1999 to Margolin. (In his Answer the Examiner uses the term  
29 "Margolin" to refer to Margolin '724, which is confusing.) The term "Duggan" refers to U. S.  
30 Patent Application 20050004723, Duggan et al. inventors, published January 6, 2005.  
31

1 **I. Status of Claims**

2

3 The Application as filed included claims 1-14.

4

5 Claims 1-14 have been twice-rejected in the Office Action of February 15, 2011. Claims

6 1-14 are being appealed.

7

1 **II. Grounds of Rejection to be Reviewed on Appeal**

2  
3 **A.** Claims 1-14 stand rejected under 35 U.S.C § 103(a) as being unpatentable over U.S. Patent  
4 5,904,724 ('724) to Margolin (the same Margolin as the Appellant) in view of Patent Publication  
5 US 2005004723 to Duggan.

6  
7 **B.** Whether Margolin had a duty to define the term “civilian airspace” or whether he was  
8 entitled to use the common meaning of the term.

9  
10 **C.** Whether Margolin had a duty to define “safety” or whether he was entitled to use the  
11 common meaning of the term; and whether Margolin defined a particular level of safety.

12  
13 **D.** Whether the Examiner’s assertion that “It is believed that the aircraft flown in the prior art is  
14 flown safely ...” is proper.

15

1 **III. Argument**

2  
3 **Margolin's Reply**

4  
5 **A.** The Examiner has set up a *pro se* Straw Man, and then knocked him down. The Examiner's  
6 Straw Man is ignorant of (or confused by) Patent Law and USPTO Rules. The Examiner's Straw  
7 Man has also ignored the Examiner's wise and patient guidance.

8  
9 The Examiner spent so much time on his Straw Man that he either forgot to discuss the real  
10 issues or he carelessly (or deliberately) mischaracterized them.

11  
12 From Margolin's Appeal Brief Page 15, lines 4-5:

13 The current invention is a new and unobvious use for U.S. Patent 5,904,724 **Method and**  
14 **apparatus for remotely piloting an aircraft** issued May 18, 1999 to Margolin.

15  
16 The central issue is whether Margolin has the right to improve his own invention.  
17  
18

19 **B.** Claims 1-14 stand rejected under 35 U.S.C § 103(a) as being unpatentable over Margolin  
20 '724 in view of Duggan.

21  
22 The following is a quotation of 35 U.S.C § 103(a):

23 (a) A patent may not be obtained though the invention is not identically disclosed or  
24 described as set forth in section 102 of this title, if the differences between the subject matter  
25 sought to be patented and the prior art are such that the subject matter as a whole would  
26 have been obvious at the time the invention was made to a person having ordinary skill in  
27 the art to which said subject matter pertains. Patentability shall not be negated by the  
28 manner in which the invention was made.  
29

30 In order for the Examiner to make a *prima facie* case of obviousness he must find all of the  
31 elements in a claim in either one reference or the other.

32  
33 Margolin will present two examples here, but having argued all of the claims separately in his  
34 Appeal Brief, does not waive the right to present additional examples in the event it becomes  
35 necessary to file a 145 action in U.S. District Court (now the Eastern District of Virginia) and/or  
36 to go to the Court of Appeals for the Federal Circuit.

37  
38 Margolin's Claim 1 starts by describing a synthetic vision system such as the one taught by  
39 Margolin '724:  
40

- 1 1. A system for safely flying an unmanned aerial vehicle in civilian airspace comprising:  
2 (a) a ground station equipped with a synthetic vision system;  
3 (b) an unmanned aerial vehicle capable of supporting said synthetic vision system;  
4 (c) a remote pilot operating said ground station;  
5 (d) a communications link between said unmanned aerial vehicle and said ground  
6 station;  
7 (e) a system onboard said unmanned aerial vehicle for detecting the presence and  
8 position of nearby aircraft and communicating this information to said remote pilot;

9  
10 And then adds the element:

11  
12 whereas said remote pilot uses said synthetic vision system to control said unmanned aerial  
13 vehicle during at least selected phases of the flight of said unmanned aerial vehicle, and  
14 during those phases of the flight of said unmanned aerial vehicle when said synthetic vision  
15 system is not used to control said unmanned aerial vehicle said unmanned aerial vehicle is  
16 flown using an autonomous control system.

17  
18 Margolin's Claim 5 further limits the selected phases in which synthetic vision is to be used.

- 19  
20 5. A system for safely flying an unmanned aerial vehicle in civilian airspace comprising:  
21 (a) a ground station equipped with a synthetic vision system;  
22 (b) an unmanned aerial vehicle capable of supporting said synthetic vision system;  
23 (c) a remote pilot operating said ground station;  
24 (d) a communications link between said unmanned aerial vehicle and said ground  
25 station;  
26 (e) a system onboard said unmanned aerial vehicle for detecting the presence and  
27 position of nearby aircraft and communicating this information to said remote pilot;

28  
29 whereas said remote pilot uses said synthetic vision system to control said unmanned  
30 aerial vehicle during at least selected phases of the flight of said unmanned aerial  
31 vehicle, and during those phases of the flight of said unmanned aerial vehicle when said  
32 synthetic vision system is not used to control said unmanned aerial vehicle said  
33 unmanned aerial vehicle is flown using an autonomous control system, and

34  
35 whereas the selected phases of the flight of said unmanned aerial vehicle comprise:

1 (a) when said unmanned aerial vehicle is within a selected range of an airport or other  
2 designated location and is below a first specified altitude;

3 (b) when said unmanned aerial vehicle is outside said selected range of an airport or  
4 other designated location and is below a second specified altitude.

5 The Examiner asserts he found the new elements (in Claim 1 and Claim 5 respectively) in both  
6 Margolin '724 and Duggan. Margolin believes he has successfully refuted the Examiner's  
7 assertion in Margolin's Appeal Brief. For Claim 1 see page 15, line 13 - page 22, line 12. For  
8 Claim 5 see Margolin Appeal Brief page 23, line 13 - page 28, line 41.

9  
10 In brief, the Examiner asserted he found the new elements in the current invention in a Margolin  
11 '724 drawing showing the synthetic vision system. He asserts he found the new elements in  
12 Duggan by citing impossibly long passages. The only passages in Duggan that are even remotely  
13 relevant are the ones that relate to synthetic vision:

14 [0356] a synthetic vision display  
15

16 [0388] In one aspect of the present invention, synthetic vision display technical approach of  
17 the present invention is based upon integrating advanced simulated visuals, originally  
18 developed for training purposes, into UAV operational systems. In accordance with one  
19 embodiment, the simulated visuals are integrated with data derived from the ground control  
20 station during flight to enable real-time synthetic visuals.  
21

22 None of the Duggan passages cited by the Examiner teaches the Margolin limitation(s).  
23

24 In the Examiner's Answer he accuses Margolin of trying to separate the Examiner's 103  
25 rejection into two 102 rejections. (Examiner's Answer page 13, second full paragraph.) No,  
26 Margolin is not doing that. Margolin is objecting to the Examiner's tactic that somehow, by  
27 combining the two references, an element that appears in neither one is magically brought into  
28 existence. If Margolin failed to contest the motivation to combine the two references it is because  
29 neither reference teaches the element(s) described above, so that combining the two references is  
30 irrelevant. See, for example, Margolin Appeal: Page 15, line 13 - Page 21 line 33; Page 24, line  
31 1 - Page 28, line 41; Page 29, line 13 - Page 34, line 13; Page 35, line 1 - Page 39, line 44.  
32

1 The Examiner further states in his Answer (Page 14, first full paragraph):

2 Further, the appellant makes statements such as, "They certainly fail to make a  
3 *prima facie* case for rejection" instead of --They certainly fail to make a *prima facie* case of  
4 obviousness rejection--. Thus it is respectfully submitted that appellant is arguing a 102  
5 rejection, which 102 rejection is not in the final office action under appeal.<sup>1</sup>  
6

7 Margolin responds:

8 1. Margolin was referring to the Examiner's rejection, which was a 103 obviousness rejection;

9 2. In another place Margolin did use the Examiner's preferred magic phrase. See Margolin  
10 Appeal Brief Page 14, lines 31-32: "In the Examiner's 35 U.S.C. § 103(a) rejection he failed to  
11 make a prima facie case of obviousness."  
12  
13

14 **C.** The Examiner asserts (Examiner's Answer Page 13, second line from the bottom to Page 14,  
15 line 4):

16 As such the basis of the argument is not understood since appellant does not contest the  
17 motivation to combine references, but only insist that both US (5904724) and (US  
18 2005004723) have been inappropriately used beyond the broadest possible interpretation.  
19 Appellant fails to provide any reason to support the statement that prior arts have been used  
20 beyond the broadest possible interpretation. At best the examiner can only assume that the  
21 appellant is making conclusory statements with no support.  
22

23 {Emphasis added. The argument that the Examiner is referring to is his assertion that Margolin is  
24 attempting to divide the Examiner's 103 rejection into two 102 rejections.}

25  
26 Yes, the Examiner has used Margolin '724 and Duggan way beyond their broadest possible  
27 interpretation. He did this by denying Margolin the right to use the terms "civilian airspace" and  
28 "safety" as they are commonly used in the aerospace community. Margolin addressed this issue  
29 in his Appeal Brief on Page 41, line 1 - Page 46, line 18; and Page 46, line 21 - Page 48, line 15.  
30 In brief, the Examiner waited until his second rejection to proclaim that Margolin had not  
31 defined the term "civilian airspace" or "safety" or a "particular level of safety." As a result he  
32 defined the terms himself as meaning anything he wanted them to mean, which is why he  
33 asserted he had found them in both Margolin '724 and Duggan. Margolin pointed out in his  
34 Appeal Brief that the significance of the Examiner's strategy in denying Margolin the common

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<sup>1</sup> This statement comes from an Examiner whose grammatical, spelling, and typographical errors have sometimes made it difficult to determine what, exactly, he was trying to say.

1 use of the terms can be found in *Ex parte MAURICE GIVENS* Appeal 2009-003414, BPAI  
2 Informative Decision, Decided August 6, 2009. In other words, the Examiner was trying to get  
3 around *ex parte* MAURICE GIVENS.

4  
5 The Examiner's response to Margolin's argument was, only by indirectly and non-responsively  
6 saying, "At best the examiner can only assume that the appellant is making conclusory  
7 statements with no support."

8  
9 Margolin will note that the Examiner made the second rejection final and refused to allow  
10 Margolin the opportunity to respond to it. Margolin did not have the opportunity to respond to  
11 these new grounds for rejection until his Appeal Brief.

12  
13

14 **D.** The Examiner makes the statement (Examiner's Response, starting at Page 14, last  
15 paragraph):

16 *The examiner respectfully asserts that since the airspace in the prior art is referred to as*  
17 *any environment which the prior art aircraft can fly it implies that the prior art airspace is*  
18 *not restricted to any particular airspace. As such the prior art at least contemplates a*  
19 *civilian airspace as claimed. In addition, since the prior art indicates that the remote*  
20 *aircraft can be of any type e.g. flown by a RECREATIONAL ETHUSIAST the prior at least*  
21 *contemplates that the remote aircraft if flown in a civilian space.*

22  
23 Having failed to deny Margolin the meaning of the term "civilian airspace" as it is commonly  
24 understood in the aerospace community the Examiner is attempting to muddy the waters (or  
25 pollute the air) by using the term "RECREATIONAL ETHUSIAST." Presumably, the Examiner  
26 meant "Recreational **Enthusiast**." In any event, it is irrelevant. If the military wants to use  
27 Margolin's invention to safely fly their UAVs in their own (military) airspace they are free to do  
28 so. Margolin's invention is directed to safely flying UAVs in civilian airspace because safely  
29 flying UAVs in civilian airspace (which includes safely sharing civilian airspace with other  
30 aircraft) was a long unmet need at the time Margolin made his invention, and it is still an unmet  
31 need as of the date of this Reply.

32

1 **E.** The Examiner makes the statement (Examiner's Answer, Page 15, first full paragraph):

2 *The examiner further respectfully asserts that a "synthetic vision system" has been*  
 3 *interpreted as used in appellant's specification to refer to a 3-D vision system (appellants*  
 4 *specification filed 4/17/2007, section 002). Appellant specification section 003 even admits*  
 5 *that the prior art of record US (5904724) discloses a synthetic vision system as claimed.*  
 6

7 The Examiner is attempting to create a controversy where none exists. Margolin's current  
 8 invention uses synthetic vision. He explicitly states in his application (Paragraph 002,  
 9 Background of the Invention):

10 "Synthetic Vision" is the current term for three dimensional projected image data presented  
 11 to the pilot or other observer.  
 12

13 Margolin also incorporates by reference his own patent (U.S. Patent 5,904,724) in Margolin  
 14 Application Paragraph 003.

15  
 16 This is simply another attempt by the Examiner to avoid the real issues in this case.  
 17

18

19 **F.** The Examiner makes the statement (Examiner's Answer, Page 16, first full paragraph):

20 Some of appellant's remarks are that the prior art do not recite the phrase, "safely flying  
 21 an unmanned aerial vehicle in civilian airspace comprising: ...". Appellant thus insists that  
 22 the rejection is conclusory. The examiner disagrees and notes that any particular level of  
 23 safety is not described or disclosed in the specification nor is there any meaning provided for  
 24 "safety". It is believed that the aircraft flown in the prior art is flown with at least some  
 25 safely since the pilot is required to practice flying the aircraft using a simulation 609. All  
 26 aircraft pilots must go to school and practice before they are licensed to fly any aircraft be it  
 27 civilian or military. In addition, the aircraft of the prior art at least anticipates the structure  
 28 and operation of aircraft in the invention.  
 29

30

31 1. The Examiner simply repeats his mantra,

32 The examiner disagrees and notes that any particular level of safety is not described or  
 33 disclosed in the specification nor is there any meaning provided for "safety".  
 34

35

36 which is non-responsive to Margolin's Appeal Brief (Page 46, line 21 - Page 48, line 15).  
 37

38

39 2. The Examiner makes the extraordinary statement:

40 It is believed that the aircraft flown in the prior art is flown with at least some safely since  
 41 the pilot is required to practice flying the aircraft using a simulation 609. All aircraft pilots  
 must go to school and practice before they are licensed to fly any aircraft be it civilian or  
 military.

42

1 The Examiner's argument is nonsense. Practicing in a simulator does not guaranty safety in the  
2 real world. Would any member of this Board want to fly in a Boeing 747 whose pilots (all of the  
3 pilots), after extensive practice in a simulator, are making their first ever flight in an actual  
4 aircraft? Margolin wouldn't.<sup>2</sup>

5  
6 The Examiner has chosen to ignore the evidence. In Margolin's Appeal Brief he quotes from a  
7 speech given by FAA Administrator Babbitt in November 2009. From Margolin Appeal Brief,  
8 page 44, lines 24-32:

9 So if we are direct with ourselves here, as of today, unmanned aircraft systems are not ready  
10 for seamless or routine use yet in civilian airspace. The idea of pilots flying remotely has  
11 been around for a long time. And it is, I truly believe, the way of the future. But where we  
12 are, on numerous fronts, they're not ready for open access to the NAS and we can't give you  
13 the thumbs up.  
14

15 Margolin's definition of safety is consistent with the FAA Administrator's definition, only the  
16 FAA Administrator's definition is more eloquent.

17  
18 From Margolin's Application, paragraph 10:

19 [010] It is important when flying a UAV in an airspace shared with other aircraft, both  
20 civilian and military, that collisions during all phases of flight (including taking off and  
21 landing) not happen.  
22

23 FAA Administrator Babbitt's definition is (Margolin Appeal Brief, Page 47, line 31 - Page 38,  
24 line 6):

25 Good afternoon, and thank you, John [Langford, Chairman & President, Aurora Flight  
26 Sciences]. It's an exciting time in aviation and to be involved with introducing new  
27 technology into the National Airspace System. It's also a good time to be thinking and  
28 talking about personal and professional responsibility — something I have unfortunately had  
29 to do too much of lately. **But we all — every professional in aviation — have a shared  
30 responsibility to make this system as absolutely as safe as it can be, and never to just a  
31 level where we would ever say, "We could do more, but this is safe enough".**

32 {Emphasis added}  
33  
34

35 Margolin's Application claims priority from a Provisional Application filed April 19, 2006. At  
36 the time, Margolin's invention filled a long unmet need. As of FAA Administrator Babbitt's  
37 speech in 2009 the need was still unmet.

---

<sup>2</sup> Even experience in the real world does not guaranty safety. There are still aircraft accidents, both civilian and military, when the aircraft are flown by experienced pilots.

1 **G.** The Examiner is attempting to mislead the Board into believing that Margolin agrees that the  
2 sections cited by the Examiner read on Margolin's claims. From Examiner's Answer, starting at  
3 page 15 last paragraph:

4 The examiner believes that appellant's claims were all addressed. Some of the claims are  
5 have similar limitations only that the wording in some of the claims is different. As such the  
6 examiner refers the appellant back to the rejection of the claims that are similar. Appellant  
7 took on this position to indicate that the claims were ignored. The examiner respectfully  
8 does not acquiesce to the allegations since the sections cited and quoted by appellant are  
9 believed to read on the claims. **As such appellant's remarks citing MPEP 2143.03 is**  
10 **controversial since appellant has concurred that the examiner has cited sections that**  
11 **are believed the read on the claims.** As such it is respectfully submitted that all claim  
12 limitations were considered.

13  
14 {Emphasis added}

15  
16 While the **Examiner** may believe that the sections he cited read on Margolin's claims anyone  
17 who reads Margolin's Response to the FOAM, Margolin's Appeal Brief, or this Reply would  
18 know that Margolin does not agree with the Examiner. The Examiner's attempt to mislead the  
19 Board into believing otherwise is desperate and offensive.

20  
21

22 **H.** The Examiner makes the statement (Examiner's Answer, Page 16, second full paragraph):

23 **Now appellant's appeal brief is 506 pages long. Most of the material submitted by**  
24 **appellant is irrelevant to the appeal to the board because the material was not**  
25 **provided to the examiner for consideration during prosecution of the case. Appellant is**  
26 **making remarks relying on documents that the examiner was never given an**  
27 **opportunity to review during prosecution of the case.** As such the examiner  
28 respectfully submits that comments about such arguments related to the such  
29 documents are irrelevant to the appeal brief to the Board.

30  
31 {Emphasis added}

32  
33 The body of Margolin's Appeal Brief is approximately 59 pages including the required Claims  
34 Appendix as well as an index of the Evidence Appendix. The Evidence Appendix contains 15  
35 Exhibits taking an additional 446 pages.

36  
37 Exhibit 1 - Exhibit 12 come from the Image File Wrapper, with the exception of Exhibit 2 (a  
38 reproduction of Margolin '724) and Exhibit 4 (a reproduction of Duggan), both cited by the  
39 Examiner. The index of Exhibit 1 - Exhibit 12 is reproduced here:

40

1 Exhibit 1 Patent Application as filed ..... 61

2 Exhibit 2 U.S. Patent 5,904,724 ..... 87

3 Exhibit 3 First Office Action on the Merits ..... 102

4 Exhibit 4 U. S. Patent Application 20050004723 (Duggan) ..... 115

5 Exhibit 5 Applicant’s Response to First Office Action ..... 193

6 Exhibit 6 Second Office Action ..... 435

7 Exhibit 7 Applicant’s Summary of Telephone Interview with Examiner ..... 452

8 Exhibit 8 Applicant’s Summary of Telephone Interview with Examiner’s SPE ... 457

9 Exhibit 9 IDS References Considered by Examiner ..... 461

10 Exhibit 10 Sensing Requirements for Unmanned Air Vehicles, AFRL Air Vehicles

11 Directorate ..... 465

12 Exhibit 11 Developing Sense and Avoid Requirements for Meeting An Equivalent

13 Level of Safety, Russel Wolfe ..... 469

14 Exhibit 12 Article - Lockheed's Polecat UCAV Demonstrator Crashes, Aviation

15 Week & Space Technology, by Amy Butler, 03/19/2007, page 44 ..... 489

16

17 Margolin reproduced these exhibits in his Appeal Brief in order to satisfy the requirement of 37

18 CFR 41.37(c)(1)(ix):

19 (ix) Evidence appendix. An appendix containing copies of any evidence submitted pursuant

20 to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner

21 and relied upon by appellant in the appeal, along with a statement setting forth where in the

22 record that evidence was entered in the record by the examiner. Reference to unentered

23 evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after

24 appeal. This appendix may also include copies of the evidence relied upon by the examiner

25 as to grounds of rejection to be reviewed on appeal.

26

27 By including Exhibit 1 - Exhibit 12 Margolin has made it unnecessary for the Board to waste

28 time looking for them.

29

30 Exhibit 1 - Exhibit 12 occupy approximately 431 pages of the 446 page Evidence Appendix.

31 That leaves 15 pages in Exhibit 13 - Exhibit 15, which will be discussed shortly. Yet the

32 Examiner asserts:

33 Most of the material submitted by appellant is irrelevant to the appeal to the board because

34 the material was not provided to the examiner for consideration during prosecution of the

35 case. Appellant is making remarks relying on documents that the examiner was never given

36 an opportunity to review during prosecution of the case.

37

1 Fifteen pages (Exhibit 13 - Exhibit 15) divided by 446 pages equals approximately 3.36% of the  
2 total number of pages in the Evidence Appendix.<sup>3</sup> The Examiner has exaggerated 3.36% as  
3 being “Most of the material” which was not provided to him until Margolin’s Appeal Brief.<sup>4</sup>

4  
5 There is a very good reason that Exhibit 13 - Exhibit 15 were not introduced until Margolin’s  
6 Appeal Brief. In the Second Office Action (February 15, 2011) the Examiner expanded his  
7 grounds for rejection (constructively introducing additional grounds for rejection) and made the  
8 rejection final. In Margolin’s telephone interview with the Examiner, Margolin asked the  
9 Examiner to withdraw making the Office Action final so he could respond to the new grounds  
10 for rejection. The Examiner refused. Margolin discussed the situation with the Examiner’s SPE  
11 and was also refused.

12  
13 In his Answer the Examiner failed to state which documents were new. His statement “Most of  
14 the material” is a gross untruth. He denied Margolin the opportunity to respond to the additional  
15 grounds for rejection he made in the Second Office Action and now that Margolin has had the  
16 opportunity to respond, the Examiner, instead of responding to the evidence, is asking the Board  
17 to ignore it.

18  
19 Margolin is grateful to the Board for being allowed to respond to the Examiner’s new grounds  
20 for rejection by introducing Exhibit 13 - Exhibit 15.

21  
22 However, if the Board changes its mind and decides to ignore Margolin’s new evidence then the  
23 Board must also strike all of the Examiner’s grounds for rejection and associated arguments and  
24 comments that made Exhibit 13 - Exhibit 15 necessary.

25  
26 **I.** The Examiner states (Examiner’s Answer, Page 15, second full paragraph):

27       The appellant is a pro se and the office tried to help the appellant to explain how MPEP  
28 was interpreted to reject the claims. However, appellant in the reply to the first office action  
29 dated 9/01/2010 furnished a response that was 75 pages (see appellant's response dated  
30 11/29/2010). When asked why he submitted such a large swath of pages that mostly were  
31 about appellants personal papers referring to appellant's rents, taxes, personal contracts, etc  
32 appellant responded that he is trying to be diplomatic by submitted such large swaths of  
33 irrelevant documents even though appellant's specification is only 16 pages.

---

<sup>3</sup> Since the Examiner is obsessed with page counts Margolin will respond with page counts.

<sup>4</sup> While the Examiner might not have read Margolin’s Application and Margolin’s Response to the FOAM, they were provided to him.

1 Let's take the first part:

2 The appellant is a pro se and the office tried to help the appellant to explain how MPEP was  
3 interpreted to reject the claims.

4

5 By the "office" Margolin assumes the Examiner means himself and his SPE.

6

7 The Examiner's explanation of MPEP was as clear and reasonable as how 3.36% of the material  
8 became "Most of the material." *supra*.

9

10 MPEP 1207.02 **Contents of Examiner's Answer** states:

11 The examiner should furnish the appellant with a written statement in answer to the  
12 appellant's brief within 2 months after the receipt of the brief by the examiner.

13

14 Margolin's Appeal Brief was forwarded to the Examiner on 6/28/2011. Two months from  
15 6/28/2011 is 8/28/2011. The mailing date of the Examiner's Answer is not until 9/14/2011.

16 Either the Examiner's understanding of MPEP is deficient or he thinks the rules don't apply to  
17 him.

18

19 And now the second part, where the Examiner's Straw Man is obviously a lunatic.

20 However, appellant in the reply to the first office action dated 9/01/2010 furnished a  
21 response that was 75 pages (see appellant's response dated 11/29/2010). When asked why he  
22 submitted such a large swath of pages that mostly were about appellants personal papers  
23 referring to appellant's rents, taxes, personal contracts, etc appellant responded that he is  
24 trying to be diplomatic by submitted such large swaths of irrelevant documents even though  
25 appellant's specification is only 16 pages.<sup>5</sup>

26

27 This goes beyond a mischaracterization of Margolin. Or even a gross mischaracterization. It is a  
28 mixture of outright, subtle, and prejudicial lies.

29

30 In Margolin's Summary of Telephone Interview with the Examiner (Margolin Appeal Brief  
31 Exhibit 7, starting at 454, last paragraph) Margolin stated:

32 We moved on. I explained why I had discussed the Duggan application in such detail,  
33 starting with the fact that it had issued as a patent (U.S. Patent 7,343,232 **Vehicle control  
34 system including related methods and components**) on March 11, 2008, before the First  
35 Office Action. I also explained why I had introduced the extensive exhibit concerning the  
36 financial problems experienced by the Duggan Examiner. I explained that when I stated in  
37 my Response to the First Office Action that "Perhaps the Duggan Examiner was  
38 preoccupied with financial problems" I was being diplomatic. In fact, the evidence shows

---

<sup>5</sup> Again, the Examiner's obsession with counting pages.

1 that the Duggan Examiner was either incompetent or may have committed misconduct. I  
2 explained to the Examiner that my reason for bringing up the subject was to show that the  
3 USPTO Office discriminates against *pro se* inventors. Aerospace Companies with expensive  
4 Law Firms are given a free pass, while *pro se* inventors get kicked in the head. I was not  
5 asking for a free pass, only to be treated fairly.  
6

7 The documents of rents and taxes are not Margolin's ("Appellant's"). They are the rents and  
8 taxes of the Duggan Examiner. They show that the Duggan Examiner was experiencing  
9 substantial financial difficulties. The characterization of these documents as "irrelevant" was  
10 made by the Examiner, not by Margolin.  
11

12 Let's start at the beginning.

13  
14 Margolin was already well familiar with the Duggan Application before the Examiner cited it in  
15 his First Office Action.<sup>6</sup>  
16

17 In brief, Margolin discovered the Duggan Application not long after it was published. The  
18 claims, as filed, had substantial problems. For example, in Duggan claim 1 a term not only  
19 lacked an antecedent, the term was not defined in the Specification and did not have a commonly  
20 understood meaning. Duggan claim 31 contained two periods.  
21

22 Margolin brought this to the attention of the small patent licensing company which was then  
23 representing Margolin's patents.  
24

25 The small patent licensing company brought it to the attention of Geneva Aerospace, the  
26 Assignee of the Duggan Application. One of the results was that Geneva Aerospace licensed  
27 Margolin '724 as well as U.S. Patent 5,566,073 **Pilot Aid Using A Synthetic Environment** also  
28 issued to Margolin. Margolin reproduced the license agreement ("personal contract") in his  
29 Response to the First Office Action as evidence.  
30

31 The Duggan Application was allowed as filed in its First Office Action, including the defective  
32 claims. The Duggan attorney had to ask the Duggan Examiner to use an Examiner's Amendment  
33 to correct the punctuation in Duggan Claim 31.

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<sup>6</sup> Margolin's discussion of Duggan is contained in Margolin's Response to the First Office Action reproduced in Margolin's Appeal Brief Evidence Appendix Exhibit 5 starting at page 260.

1 Thus, Geneva Aerospace got a “free pass” for its patent application. (Margolin’s Examiner cited  
2 the Duggan Application even though the Duggan patent had been issued March 11, 2008 as U.S.  
3 Patent 7,343,232 **Vehicle control system including related methods and components.**)

4  
5 Subsequently, Margolin discovered evidence that the material in the Duggan disclosure, as well  
6 as products based on the Duggan disclosure, had been publicly available for several years before  
7 the Duggan Application had been filed. See Margolin Appeal Brief Evidence Appendix Exhibit 5  
8 starting at page 263, line 30.

9  
10 To put it bluntly, in the current case the Examiner’s rejection in the First Office Action was a *pro*  
11 *forma* specious rejection of the kind frequently given to *pro se* applicants. Margolin had hoped  
12 that by discussing in detail the defects in the Duggan Application (and later patent) the Examiner  
13 would rethink his strategy and give Margolin’s application the fair and honest examination the  
14 Examiner is legally required to perform.

15  
16 Instead, the Examiner has dug in his heels and is continuing to play the “*pro se* Bad” card and,  
17 unable to argue the case on its merits, is trying to persuade the Board that Margolin is a lunatic.

18  
19 In addition, the Examiner and his SPE have shown no knowledge of the real aerospace world and  
20 should be removed from the case.

21  
22 **Conclusion**

23  
24 For the reasons stated above, Margolin respectfully requests that the final rejection by the  
25 Examiner be reversed and that the Examiner be instructed to issue a Notice of Allowance of all  
26 claims.

27  
28 Respectfully submitted,

29  
30 /Jed Margolin/

31  
32 Jed Margolin  
33 pro se inventor  
34 October 21, 2011  
35 (775) 847-7845  
36

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I hereby certify that this correspondence is being filed through the USPTO's Electronic Filing System.

Date: October 21, 2011

Inventor's Signature: /Jed Margolin/

Jed Margolin