Note that Judge Whittemore struck this filing. I thought it was pretty good!

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

David W. R. Brown,

v. **Case Number: 8:05-CV-2166-T-27EAJ**

United States Patent and Trademark Office, *et al*.,

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PLAINTIFF'S MEMORANDUM TO THE COURT ABOUT THE ETHICS OF DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO STRIKE OR DENY

The court has before it "Plaintiff's Motion To Strike Or Deny Federal Defendants' Motion For Summary Judgment And For Order To Show Cause Why Defendants Should Not Be Sanctioned On Account Of Defendants' Misrepresentation To The Court" (Dkt.21) and now the defendants' Response to same (Dkt.25).

The plaintiff's motion documents that the defendants' purported Motion For Summary Judgment (Dkt. 20) was intentionally not served in accordance with Federal Rule 5(b)(2)(D), no doubt in hopes that the plaintiff would not find out about the Motion, in among all his email spam, until it was too late to file a response, thereby gaining a default decision. A number of easy options to serve the motion legally were available but were never used.

ETHICS CONCERNS

The counsel for the defendants is an Assistant District Attorney for the United States. He is a very smart man and knows the ins-and-outs of the Federal Rules of Civil Procedure a thousand times better than the plaintiff can ever hope to. And he has certainly demonstrated

his knowledge about service and about strictly adhering to the Federal Rules, as shown in extracts from emails that he has sent to the plaintiff in the past (see Exhibit A).

Mr. Zimmerman was made aware of his misrepresentations to the court back on March 20 (see Exhibit B). That was over two weeks ago! In the plaintiff's view, he should have told the court that very day, March 20, that he intentionally misstated his certification of service on the plaintiff.

Instead, two weeks later, counsel for the defendants now files a response in which, on page 3, line 7, he states that he "carefully modified the certificates of service on the two new filings to reflect service by electronic mail." Yes, he sure did! He "carefully modified the certificates of service" to intentionally violate Federal Rule 5(b)(2)(D) and deceive the court.

And please note that nowhere in his response does he ever refer to Federal Rule 5(b)(2)(D) nor does he ever apologize to the court for his intentional misrepresentation of service. Instead he asks the court "to exalt substance over form." The plaintiff thinks that means that the Assistant District Attorney wants the court to forget all about the Federal Rules of Civil Procedure and instead, admire his tap-dancing skills.

Dated: Sun City Center, FL
April 4, 2006

David W. R. Brown, *pro se*
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Phone: (813) 634-6048

Warren.Zimmerman@usdoj.gov wrote:

From September 9, 2004

Mr. Brown:

I received earlier this week your "certificate of service" in the above-referenced case.

The first line of this document begins, "On September2 26, 2004," the following documents ... were sent...."

Obviously, September2 is not a month, September 26 hasn't arrived yet and September 226 or "2 26" are likewise not dates of service. The postmark on the envelope reads "3 September," for what that's worth. ...will you be uploading the evidence of your own erroneous certificate of service?

From February 7, 2005

Dave:

I don't believe that it is ever proper to inform the court [if] the course of dealings between the parties does not unmistakably point to an implied consent. [Emphasis added.]

Warren A. Zimmerman
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