



# Kelley Drye Represents Independent Inventor in Lawsuit Against USPTO Over the New Continuation Rules

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Within a day of the United States Patent and Trademark Office ("USPTO") publishing its final rule changes in respect to continuation practices, represented by Kelley Drye & Warren LLP, independent inventor Triantafyllos Tafas sued the USPTO and its Director, Jon Dudas, in the U.S. District Court for the Eastern District of Virginia. Dr. Tafas' attorneys filed a new and expanded complaint in early September. They recently reached an agreement with the Department of Justice on an expedited summary judgment briefing schedule. This deal permits an early court decision on the merits of the case.

Tafas' amended complaint sets forth that the USPTO exceeded its congressionally-delegated rulemaking authority and that the new rules violate numerous sections of the Patent Act. It is further asserted that USPTO failed to comply with the Administrative Procedure Act and the Regulatory Flexibility Act in promulgating the new rule changes. The suit also alleges that the USPTO has engaged in retroactive rulemaking.

The complaint asserts that the USPTO did not comply with Article I, Section 8, of the United States Constitution by failing to adequately determine the effect of its rulemaking on the promotion of the "progress of science and the useful arts." It is also asserted that the USPTO's rule changes violate the taking clause of the Fifth Amendment.

Dr. Tafas has characterized the new continuation rules as designed to crush the ability of the small inventor and small emerging companies to effectively pursue patent rights and protections.