

RIORDAN & HORGAN

DENNIS P. RIORDAN
DONALD M. HORGAN

ATTORNEYS AT LAW
523 OCTAVIA STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE (415) 431-3472
FAX (415) 552-2703

E-MAIL: INFO@RIORDAN-HORGAN.COM

April 17, 2007

Magda Metwally
131 Rose Court, Apt. #5
Campbell, CA 95008

Dear Magda:

As Doctor Mohsen's lead counsel on appeal, I have been asked to provide an explanation of the legal significance of his appeal and a brief summary of the legal issues it will raise.

Let me begin by saying that, despite over thirty years of experience, I have never seen a case anything like this one, in which civil litigation over patent rights somehow spiraled into a criminal proceeding and a seventeen year prison sentence for a man who indisputably was a brilliant scientist and pioneering entrepreneur. The most obvious disturbing aspect of the entire process is the fact that the criminal proceedings were sensationalized by the government's leveling at Doctor Mohsen a charge that was baseless: soliciting the murder of a federal judge. Although Doctor Mohsen was eventually and quite properly acquitted of that charge, the government gained an enormous unfair advantage by wrongly accusing Doctor Mohsen of the crime.

The clearest example of that unfairness may well be the leading claim on appeal. The original criminal charge Doctor Mohsen faced was that he had made false statements and altered documents in a civil suit brought by his company, Aptix, due to patent violations by a rival computer company, Quickturn. The principal issue at the criminal trial was to be whether Doctor Mohsen's alleged alterations of his notebooks and alleged false statements about the notebooks were material to any issue in the civil patent suit, given that there was powerful evidence that Quickturn's liability for patent violations could have been established as a matter of law without reference to the notebooks in question. The issues raised by the original charges would have been dry and technical, not of a sort to inflame a jury's prejudices.

By accusing Doctor Mohsen of solicitation of the murder of the federal judge who had sat on the patent case and was to sit on the criminal case before recusing himself, the government succeeded in changing the nature of the case entirely. Although the solicitation allegation had nothing to do with the original false evidence charges, the government convinced the court to try the two sets of charges together in a single proceeding. Although the solicitation charge was bifurcated and heard after the false evidence charges, the jury was informed of the solicitation charge during jury selection, and thus decided the false evidence charges believing that the defendant was a dangerous and violent man. Only after convicting Doctor Mohsen on the first set of charges concerning the notebooks did the jury hear the unconvincing evidence on the

solicitation to murder charge, which came from a jailhouse informant whose testimony was purchased by a ten year reduction in his sentence. While the jury rejected the solicitation to murder charge (while convicting of charges of obstructing witnesses made by the informant), the damage had been done as far as the false evidence charges were concerned. This tainting of the false evidence case by the unfounded solicitation to murder allegation will be a major issue on appeal.

Second, there were no jury instructions which informed the jury of the issues in the civil patent suit, although those issues were critical to a correct determination of the pivotal materiality issue in the criminal case. Thus, the jury had no instructions to use to determine whether the allegedly altered notebooks were relevant to any issue in the patent suit. Also, there were no instructions that defined when a Chief Executive of a corporation, such as Doctor Mohsen, can be held responsible for the statements and pleadings made by the corporation. This is especially troublesome because for reasons of patent secrecy, the corporations agreed that the pleadings and correspondence could not be shown to the employees and executives of the corporation.

Third, although Doctor Mohsen was charged in the indictment only with the alleged fraudulent entries regarding the notebooks and the alleged false statements about the notebooks, in closing argument the prosecutor argued a new theory—that Doctor Mohsen could be convicted of fraud because of a note he allegedly fabricated regarding his meeting with Quickturn CEO Keith Lobo. This deprived Doctor Mohsen of his constitutional rights to notice of the charges, and also deprived him of his right to a unanimous verdict, because some jurors may have voted guilty based upon the Keith Lobo notes, while others may have voted guilty based upon the notebook fraud, with no agreement by all jurors on one set of facts, as required by the due process clause.

Fourth, the government argued that Doctor Mohsen had fabricated the Lobo notes and tried to use them to get triple damages against Aptix by showing that he met with Lobo; thus Quickturn (by not acting to correct the infringement after notice by Doctor Mohsen) was willfully infringing the patent. But, at sentencing, we found out for the first time that the government knew from conversations with Quickturn's attorneys that Lobo may well have met with Doctor Mohsen as set forth in the notes.

Fifth, and of great importance, the judge failed to notify Doctor Mohsen's attorneys that while deliberating on the false evidence charges the jury sent a note asking about the indictment. The judge improperly answered the question without informing the attorneys or Doctor Mohsen, an error that in past cases has been held to require automatic reversal.

Sixth, the judge repeatedly denied Doctor Mohsen his right to counsel of choice after the convictions. Doctor Mohsen wanted to hire new counsel to raise several issues of ineffectiveness of his appointed counsel. He told the judge that his appointed attorneys had a conflict of interest and that he wanted new counsel. The judge refused to give myself and Marc Zilversmit until October to prepare for the new trial hearing, because he said that the sentencing had to be done in September. But the sentencing ended up being continued in any case until December. New counsel could have raised several grounds of ineffectiveness; in particular, new counsel could

have pointed out that in the civil suit, Quickturn was estopped (or prohibited) from raising any defense as to which the allegedly false evidence would have been relevant. The estoppel in the civil suit was based upon the fact that while Quickturn made statements while applying for its patents that were inconsistent with their claim in the civil suit with Aptix which asserted that the date of its patents, and the entries in Mohsen's notebooks were relevant to the law suit.

Seventh, while Doctor Mohsen's false evidence case was pending, the government used its informant to record conversations with Doctor Mohsen, attempting to entrap him in violation of his fifth and sixth amendment rights.

Eighth, the judge did not give critical instructions about the credibility of the informant.

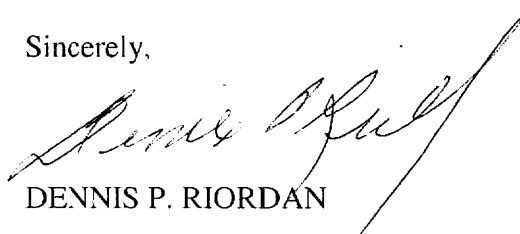
Finally, although Quickturn actually lost no money in the lawsuit and was reimbursed for most of its attorneys fees, the judge improperly increased Doctor Mohsen's sentence by approximately 8 years, on based upon a calculation of so-called "intended loss" of \$70 million. Yet, that figure was based upon an expert's report prepared during the patent litigation that had not been shown to Doctor Mohsen and that he was prohibited from reading, during the civil lawsuit.

This is only our preliminary list of issues. Upon further review, we may conclude that some of these issues will not hold up, and we may abandon them. Alternatively, we may find additional issues that we decide should be added to the brief.

The current due date for the opening brief is May 23. However, some of the reporters have not completed all of their transcripts. Thus, it is probable that the due date will be pushed back further. Also, depending on the due date, we may request additional time so that we can prepare the best brief possible.

I hope these answers will assist in gathering support for Doctor Mohsen in this very important case.

Sincerely,



DENNIS P. RIORDAN

DPR/mz