

Exhibit 5

DECLARATION OF MICHAEL RAZAVI

I, **MICHAEL RAZAVI**, declare as follows:

1. I make the following declaration based on personal knowledge.

2. I presently reside in North Potomac, Maryland.

3. I graduated from the University of Maryland with a Bachelor of Science degree in electrical engineering in 1984. I graduated from George Washington University with a Master's degree in medical engineering in 1987. I graduated from Syracuse University with a degree in Advanced Public Management in 1992

4. I started to work for the U.S. Patent and Trademark Office ("PTO") in 1985 as a patent examiner and I retired from the PTO in December, 2018 (after 34 years). I served as a patent examiner from 1985 to 1991. I was promoted to Supervisory Patent Examiner ("SPE") in 1992 and I served as a SPE from 1992 to 2010. I was an Administration Manager from 2010 to 2014. I served as the Intellectual Property Outreach Educator and Senior Advisor to the Office of Innovation Development and Office of Education and Outreach. From 2014 to 2017, I served in support of pro se inventors (inventors that represented themselves) many of which could not afford to hire a patent attorney to represent them. I served as a Senior Advisor to the Office of the Undersecretary of Commerce and Director of the PTO from 2018 until I retired from the PTO at the end of 2018.

5. I am the recipient of the U.S. Vice President Al Gore Hammer Award and the Department of Commerce Gold, Bronze, and Career Awards.

6. I was the envoy to Gulf Countries as a representative of the PTO representing the U.S. Government.

1 7. I have extensive experience with the examination of Gilbert Hyatt's patent
2 applications from about 1995 until 2011.

3 8. SPE Richard Hjerpe and I together were managing the examiners and their
4 examination of Mr. Hyatt's Pre-GATT patent applications from about 1997 until Mr. Hjerpe left
5 the PTO about 2010.

6 9. In the late 1990s, Group Director Nicholas Godici brought together what I
7 understood was all of Mr. Hyatt's patent applications in a single area that he called the "Hyatt
8 Room." At this time, patent application file histories were in paper form with all papers grouped
9 together in what was called a "file wrapper." The "Hyatt Room" contained the file wrappers for
10 Mr. Hyatt's applications and other materials such as prior art documents. I formed "Team Exam
11 Six," which was a group of six examiners, to examine Mr. Hyatt's patent applications.

12 10. In 1997, Mr. Godici told Mr. Hjerpe and me that we would not be issuing any
13 more patents to Mr. Hyatt until all issues within each Hyatt family of patent applications was
14 resolved. However, we at the PTO never resolved these issues and in fact we did not even try to
15 resolve these issues, we let Mr. Hyatt's patent applications sit "on hold" for the majority of the
16 time throughout the 2000s and beyond.

17 11. The PTO policy not to issue any more patents to Mr. Hyatt grew to be an even
18 stricter 'no patents' policy throughout at least 2010 when my involvement with Mr. Hyatt's
19 patent applications ended. In fact, since 2000, the policy expanded beyond the initial policy of
20 not issuing patents to Mr. Hyatt until all family related issues were resolved. We often placed
21 Mr. Hyatt's applications on hold meaning no examination for years at a time, we stopped issuing
22 examiner answers to his many appeal briefs so that Mr. Hyatt could not get to the Board of
23 Appeals, and we dismissed his many petitions to provide examination so that he could not go to
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1 court to question a petition denial. Senior Management decided to just suspend Mr. Hyatt's
2 applications for many years. It is a fact that the PTO had Mr. Hyatt trapped. Since Mr. Hyatt's
3 patent applications were not on pendency statistics, auditors would not see the true pendency
4 facts, since Mr. Hyatt was prevented from getting to the Board of Appeals, he could not get
5 Board review, and since his patent applications were not being examined, there was no way for
6 Mr. Hyatt to get out of the bureaucratic trap.

7 12. Mr. Hjerpe would occasionally brief Robert Barr, the Assistant Deputy
8 Commissioner for Patent Policy, and Mr. Godici about Mr. Hyatt's patent applications. Mr.
9 Hjerpe would give me guidance that he said that he received from Mr. Barr and Mr. Godici.
10 This guidance was – to keep Mr. Hyatt's patent applications on hold in order to protect the PTO
11 from political fallout. The ways of putting Mr. Hyatt's patent applications on hold included
12 putting Mr. Hyatt's applications into "shadow art units," assigning Mr. Hyatt's applications to
13 management personnel who did not examine applications, and suspending Mr. Hyatt's
14 applications. Mr. Hjerpe implemented this guidance to put Mr. Hyatt's patent applications on
15 hold.

16 13. One of the Hyatt-specific policies was that all of the office actions issued on Mr.
17 Hyatt's applications needed to be reviewed by a supervisor. This was quite unique because the
18 patent examiners examining Mr. Hyatt's applications were "primary examiners" that had
19 signature authority who had delegated rights to issue patents without review. But for Mr. Hyatt's
20 applications, the authority for these primary examiners to issue patents was usurped by Senior
21 Management.

22 14. Some of the examiners that were examining Mr. Hyatt's patent applications did
23 not appreciate the oversight and the PTO's special-made rules and went "face to face" with
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1 managers about the disparate treatment of these applications as it relates to taking away the
2 ability to issue patents and reducing their authority as primary patent examiners to that of junior
3 patent examiners. Other examiners that were examining Mr. Hyatt's patent applications
4 recognized that Mr. Hyatt's patent applications were perceived as "sensitive," were perceived to
5 be "submarine applications," and that they were "under the spotlight" of Senior Management.
6 Therefore, they were relieved that they did not have to make the final decisions regarding
7 allowance of Mr. Hyatt's applications and they accepted that PTO management needed a
8 safeguard to prevent Mr. Hyatt's patent applications from issuing.

9 15. Submarine applicants were a topic of the time especially in the 1990's and we
10 realized that perceived submarine applications were disfavored by Senior Management.

11 16. Prior to my involvement in 1997, the Hyatt applications were assigned to SPE
12 James Groody and Don Yosco. Mr. Groody and Mr. Yosco accomplished next to nothing for a
13 year. In 1997 I created Team Exam Six, an examination unit with six patent examiners solely to
14 examine Mr. Hyatt's patent applications at Mr. Godici's request. Team Exam Six did not
15 function as hoped. Team Exam Six did not make much progress because the Team Exam Six
16 examiners did not have a Docket Management ceiling (e.g., quota), the Team Exam Six
17 examiners knew it did not matter if it took a week or two months to issue an office action on
18 each of Mr. Hyatt's patent applications. The Team Exam Six examiners were taken out of
19 examiner Docket Management requirements. The Team Exam Six examiners knew that the
20 Group Directors would always give them more time to issue office actions on Mr. Hyatt's patent
21 applications. Team Exam Six unit became lax in moving examination of Mr. Hyatt's patent
22 applications forward.

1 17. Deputy Associate Commissioner for Patents Edward Kazenske and Mr. Godici
2 removed the examination production (Docket Management) requirements from Mr. Hyatt's
3 applications. I did not agree with Mr. Kazenske on the production goals. Mr. Kazenske had six
4 different team examination pilot programs with unique objectives. The examination teams that
5 required a defined production quota did quite well. However, Team Exam Six examining Mr.
6 Hyatt's applications did not have a production requirement and did not progress. The Team
7 Exam Six examiners were the reassigned and Mr. Hyatt's applications became largely unnoticed
8 and became "out of sight out of mind." Mr. Kazenske said something to the effect of "team
9 examination does not pay."

10 18. The leadership change after Commissioner Lehman resigned in late 1998 had a
11 further negative effect on examination of Mr. Hyatt's applications. Mr. Kazenske was
12 reassigned to a different management function and Mr. Godici became head of the Examining
13 Corps. Thus, Mr. Hyatt's patent applications lacked sufficient Senior Management sponsorship
14 to be adequately examined. The PTO policy delay of the examination of Mr. Hyatt's patent
15 applications continued. The guidance on examination of Mr. Hyatt's patent applications became
16 even more severe with time. For example, we were directed to stop and we did stop issuing
17 examiners answers on Hyatt appeal briefs. Thus, in addition to not issuing patents to Mr. Hyatt
18 after examination or after Board reversals, we at the PTO stopped issuing examiners answers
19 thus denying Mr. Hyatt the opportunity to get decisions by the Board of Patent Appeals and
20 Interference (BPAI) ("the Board") on the examiners rejections. We did not have strong enough
21 rejections to depend on the Board to sustain the rejections.

22 19. Mr. Hyatt's applications were delayed, at various times his applications were
23 assigned to "phantom art units" and were placed on SPEs' dockets like mine and on Directors'

1 dockets like James Dwyer and Joseph Rolla. All of these docketing dysfunctions masked Mr.
2 Hyatt's patent applications from pendency reports so as not to cause notice to auditing agencies.

3 20. From the late 1990s through the 2000s, I observed that patent examiners were
4 concerned about examining Mr. Hyatt's applications because Senior Management was paying
5 particular attention to his applications and calling him a "submariner" and a "bulk filer."

6 21. If an examiner came to a conclusion that one of Mr. Hyatt's applications was in
7 condition for allowance, the examiner would need to check with managers about the next steps.
8 Mr. Hyatt's applications were SAWS-flagged and thus his applications could not be allowed
9 much less issued without removal of the SAWS-flags by Senior Management. Thus, the
10 examiners were restricted from issuing allowances on Mr. Hyatt's applications regardless of their
11 GS grade.

12 22. I commented that Mr. Hyatt filed amendments that crossed in the mail with office
13 actions or that interfered with examiners preparing office actions. I had no personal knowledge
14 of these issues – I was told about these issues by my associate, SPE Hjerpe, and I was told that
15 this happened in the mid-1990s.

16 23. The guidance provided by Senior Management initially was -- let's not issue any
17 more patents to Hyatt until all issues within each Hyatt family are resolved. However, the
18 roadmap laid out by Senior Management did not fit this initial guidance. We did not reduce the
19 issues, we often put Mr. Hyatt's applications on "hold" and, most important, we never told Mr.
20 Hyatt or his representative, Vince Turner, what the real issues were. Thus, Mr. Hyatt did not
21 have an the opportunity to participate in resolving issues or at least reducing issues. In short, Mr.
22 Hyatt was being denied patents even after Board reversals but left in the dark as to our real
23 guidance and examination paths. The reality is that we simply stopped working towards
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1 resolving any patentability issues. We simply were not going to issue Mr. Hyatt any patents due
2 to the age of his applications and potential for embarrassment due to PTO delay. Since the late
3 1990's we went from the policy of not issuing Mr. Hyatt any patents until all issues in the
4 families of his applications were resolved to delaying examination so that the issues could not be
5 resolved. Therefore, the issues have grown over time.

6 24. In fact, because of Senior Management concerns about Hyatt's submarine
7 applications, the issues that the PTO contemplated compounded over time. This includes issues
8 such as laches.

9 25. Also, the obviousness rejections became more difficult for examiners over time.
10 Examiners were subject to hindsight reconstruction – determining what was obvious in the past
11 because they could not separate it from what was currently obvious. I personally have a hard
12 time disregarding the technology that I know about from patents that had issued and thus going
13 back to a place when the application was not obvious. For instance, our millennial examiners did
14 not remember a time without computers, social media, and cell phones. This hindsight issue
15 became worse over time.

16 26. Mr. Hyatt's patent applications were "on hold" when they were on the dockets of
17 Mr. Hjerpe, Mr. Rolla, and Mr. Dwyer and when they were on my docket.

18 27. In the early to mid-2000s, the PTO had an informal "Hyatt Panel." This Hyatt
19 Panel included Group Directors and SPEs -- SPE Hjerpe, Group Director Rolla, Group Director
20 Wiley, Group Director Faile, and others. I attended many of the meetings of the Hyatt Panel. Mr.
21 Hyatt's patent applications were on hold.

1 28. I was not given any guidance to instruct examiners to find allowable subject
2 matter with Mr. Hyatt's patent applications as was given to examiners examining applications of
3 other applicants.

4 29. I recall that Mr. Hyatt filed many petitions arguing for an expedited action on the
5 merits. SPE Kenneth Wieder dismissed many of these petitions saying "the examiner will be
6 notified that this application should be considered as special and appropriate for expedited
7 action." However, in truth, all of us managers knew that Mr. Hyatt's applications were on hold
8 and not receiving any sort of action at all much less expedited action. In fact, many of Mr.
9 Hyatt's applications were on my management (non-examining) docket at the time Mr. Wieder
10 made that dismissal of Mr. Hyatt's applications.

11 30. Mr. Godici told me in 1997 of the PTO policy not to issue any patents to Mr.
12 Hyatt until all issues in each family are resolved and at no point did Mr. Godici tell me that this
13 PTO policy had changed, even after Mr. Godici was promoted to the head of the Examining
14 Corps about 1999.

15 31. I believed during my tenure at the PTO and I believe now that the withholding of
16 patents from issuing that met the patentability requirements of the Patent Act as a result of the
17 Sensitive Application Warning System ("SAWS") program was improper.

18 32. Group Director Gerry Goldberg was a close associate of mine at the PTO. In the
19 1995 time period and thereafter, Mr. Goldberg told me that Mr. Hyatt had patentable inventions
20 and that he was working with Mr. Hyatt on an "early interview" program to get Mr. Hyatt's
21 patents issued. Mr. Goldberg told me that he wanted to "bundle Mr. Hyatt's cases" (group them
22 together) and allow them for issue.

1 33. I attended management meetings in early 1997 when Mr. Hyatt's issuing
2 applications were discussed. This was a time that the patent community was concerned with
3 submarine patents. Management referred to Mr. Hyatt's applications as submarine applications
4 and decided to withdraw them from issuance. It was not customary to withdraw any applications
5 from issue after the issue fees had been paid and without a significant patentability reason.

6 34. SPE Hjerpe had access to my docket and SPE Hjerpe told me that he had put
7 many of Mr. Hyatt's applications on my docket. In the 2000s, many of Mr. Hyatt's applications
8 were being placed on my docket, taken off of my docket, placed on my docket, as so forth over
9 and over again. Mr. Hjerpe often used my docket and that of Group Directors Joseph Rolla and
10 James Dwyer because these dockets were 'clean,' meaning that as managers we did not have
11 patent applications assigned to us and we certainly did not examine applications or have our
12 dockets counted on pendency reports. Therefore, Mr. Hyatt's patent applications could be put
13 "on hold" from examination without penalty to the PTO management and examiners.

14 35. In the mid-2000's, SPE Hjerpe told me that Management decided to suspend Mr.
15 Hyatt's applications. We were relieved when Mr. Hyatt's applications were suspended because
16 they were "out of sight and thus out of mind." I recall Mr. Hjerpe having to stay late one night at
17 the office to draft a whole series of new Suspension letters for Mr. Hyatt's applications for
18 management signatures. Mr. Hyatt filed many petitions to restart examination but without
19 success.

20 36. Mr. Hyatt filed many appeals and appeal briefs, but he could not get to the Board
21 of Appeals because management would not permit the examiners to issue examiner's answers
22 that were necessary to complete the process to get to the Board. It would have taken
23 Management to approve an order withhold examiner's answers in Mr. Hyatt's appeals.
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1 37. Management had a spoken *ad hoc* understanding that Mr. Hyatt's applications
2 would not be allowed for issuance until all of the issues in all of his family of related applications
3 were resolved.

4 38. Management's concern was that we were having Board reversals stacking up on
5 Mr. Hyatt's applications and we were delaying allowance on other ones of his applications. And
6 more than 15 years later, I do not know of a single one of Mr. Hyatt's applications where all of
7 the issues have been resolved. It appears from my vantage point that the issues have gotten
8 much more complex such as with unique new grounds of rejection such as laches.

9 39. I recall that Hyatt won some board reversals in the 2000's and have a recollection
10 that these applications were not returned to the examiner to prepare allowance and issuance. The
11 applications were placed on an SPE docket which would allow the examiner to not be
12 responsible for preparing for allowance and issuance.

13 40. Mr. Faile was very familiar with Mr. Hyatt's applications. Mr. Faile led the Hyatt
14 Panel. He would listen to us and then say 'here's what we are going to do.' Mr. Faile often spoke
15 with Joe Rolla who was a Deputy Commissioner in the mid-2000's. Mr. Faile told us to suspend
16 Mr. Hyatt's applications. For us in charge of Mr. Hyatt's applications, once something is said by
17 senior managers, it stays in your mind. The PTO made a decision in 1997 to not issue patents to
18 Mr. Hyatt until all family related issues were resolved and we waited for someone in Senior
19 Management to rescind their order. The problem was that Mr. Hyatt's applications were on hold
20 for extended periods of time, thus we were not always attempting to reduce the issues. The
21 policy against issuing Hyatt patents was not rescinded during my tenure with the PTO. From
22 1997 thru the end of my involvement with Mr. Hyatt's applications in about 2010, I understood
23 that the policy against issuing Mr. Hyatt any applications remained in effect. For most of the
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1 period from 1997 to 2010 we simply just stopped examining Mr. Hyatt's applications. Later in
2 that period we placed Mr. Hyatt's applications on PTO initiated suspensions because we were
3 out of reasons for not advancing prosecution of his applications and not issuing examiners
4 answers to his appeal briefs to keep Mr. Hyatt from getting to the Board.

5 41. In the early 2010s when Art Unit 2615 ("AU 2615") (the "Hyatt unit") was being
6 organized and the idea of promoting AU 2615 examiners to GS 15 grade, I said to myself, they
7 don't have to be GS 15s. The AU 2615 examiners have no time restriction and they are not
8 managers or experts and thus do not need to have a GS 15 grade. I understood that this was an
9 inducement.

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11 I declare under penalty of perjury that the foregoing is true and correct and that this
12 declaration was executed on this ~~26~~ day of January 2020, at Bethesda, Maryland.

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15 **MICHAEL RAZAVI**