

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

DAVID E. BOUNDY, an individual,

Plaintiff,

v.

UNITED STATES PATENT AND TRADEMARK  
OFFICE

Defendant\

Civil Action No.

**COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF  
UNDER 5 U.S.C. § 552**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, for injunctive, declaratory, and other appropriate relief. Plaintiff David E. Boundy challenges the failure of the United States Patent and Trademark Office (“PTO”) to respond to requests for records maintained by the agency.

2. This case seeks declaratory relief that the PTO is in violation of the FOIA, specifically: (1) 5 U.S.C. § 552(a)(3)(A), for failing to provide all responsive records; (2) 5 U.S.C. § 552(a)(6)(A), for failing to provide Mr. Boundy with a determination on his request within 20 business days; (3) 5 U.S.C. § 552(a)(4)(A), for failing to comply with the FOIA deadlines; (4) injunctive relief ordering the PTO to process and release to Mr. Boundy immediately the requested records in their entirety; (5) and attorneys’ fees and litigation costs.

### NATURE OF THE CASE

3. Plaintiff David E. Boundy brings this action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, which allows an aggrieved party to seek relief when records are unlawfully withheld or delayed. FOIA requires agencies to produce records in 20 business days, with limited 10-day extensions. Plaintiff Mr. Boundy requested records that state the rules used by the PTO to evaluate matters that affect members of the public. These records should have been published as a matter of course years ago. § 552(a)(2)(B) and (C). The FOIA request has now been pending for over eight months, with *no* records produced and *no* determination.

4. At issue in this case are records that are relied on by agency staff as if they were binding rules, and of which the public has no notice. These records are used to determine validity of signatures of documents submitted by members of the public, for example, an applicant's signature on a Power of Attorney. Attorneys regularly complain that the PTO refuses to accept Powers of Attorney for reasons that are entirely unpredictable. For example, 91 patent and trademark attorneys co-signed a letter on the issue during a recent notice-and-comment period. [https://downloads.regulations.gov/PTO-P-2021-0018-0002/attachment\\_1.pdf](https://downloads.regulations.gov/PTO-P-2021-0018-0002/attachment_1.pdf). A 2013 PTO document (see Exhibit A) exemplifies the unpredictability. This PTO document sets out instructions to PTO staff for evaluating signatures. Those instructions have no rational relation to the legal principles relating corporate titles to power to act on behalf of the company and no rational connection to practical operating practices of typical companies. This 2013 document is unpublished, the criteria in this 2013 document are not published in the Federal Register, are not published on the PTO's web site, and are not made available in the manner required by the Administrative Procedure Act's basic notice statute, 5 U.S.C. § 552(a)(2)(B) and (C). On March 12, 2021, Mr. Boundy filed a FOIA request for records to reveal these secret signature

acceptance criteria, so that they could be disseminated to the public, to provide the public with the statutorily-required notice and predictability

5. Two months *after* the FOIA statutory deadline for production, a PTO representative sent an email to Mr. Boundy that promised to produce records on a “rolling basis.” Five months *later*, the PTO had produced *nothing*. Mr. Boundy has sent PTO officials several emails (*e.g.*, Exhibit F and Exhibit H) and left PTO officials several voice mail messages offering to retune the request to reduce work, and reassuring that he would be available to discuss any issues by phone. As of November 30, 2021, Mr. Boundy has not received any response to those requests.

6. FOIA authorizes a reviewing court to enjoin the agency from withholding records and to order the production of any agency records improperly withheld from the complainant. § 552(a)(4)(B).

7. Mr. Boundy alleges:

- a. he provided the PTO a well-defined request for well-specified records; and
- b. the PTO both failed to timely produce the requested records and to timely provide a “determination” .

8. This case seeks declaratory relief that the PTO is in violation of the FOIA for failing to timely fulfill Mr. Boundy’s request for records, and injunctive ordering the PTO to immediately and fully comply with Mr. Boundy’s request under the FOIA.

### **PARTIES**

9. Plaintiff David E. Boundy is an individual residing in Newton, Massachusetts. Mr. Boundy is an attorney admitted in Massachusetts, New York, the Southern and Eastern

Districts of New York, the Court of Appeals for the Federal Circuit, and the United States Supreme Court, and the United States Patent and Trademark Office.

10. Defendant PTO is a component agency within the U.S. Department of Commerce, and it is the agency responsible for issuing U.S. patents. The PTO is headquartered in Alexandria, Virginia. Defendant PTO is an “agency” within the meaning of 5 U.S.C. §§ 552(f) and 701(b)(1).

11. The PTO has possession and control of the requested records and is responsible for fulfilling Mr. Boundy’s FOIA requests.

### **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction under 5 U.S.C. § 552(a)(4)(B), which allows an aggrieved party to seek relief when records are unlawfully withheld or delayed, and authorizes a reviewing court to enjoin the agency from withholding records and to order the production of any agency records improperly withheld from the complainant. 5 U.S.C. § 706(1) also gives the Court jurisdiction to “compel agency action unlawfully withheld or unreasonably delayed.” This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

13. This Court has personal jurisdiction over the PTO pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 706(1), because the PTO is an agency of the federal government and operating within the United States.

14. By statute, § 552(a)(6)(C)(i), a requester satisfies constructive exhaustion of administrative remedies if the agency fails to meet any of the deadlines of § 552(a)(6). The PTO failed to meet at least one relevant deadline, and thus Mr. Boundy benefits from constructive exhaustion.

15. Venue lies in the United States District for the Eastern District of Virginia under 5 U.S.C. § 703, 28 U.S.C. § 1391(e)(1), and under 5 U.S.C. § 552(a)(4)(B) because the PTO is resident of the Eastern District, 35 U.S.C. § 1(b), and the records sought are most likely situated in the PTO's principal office at 600 Dulaney St., Alexandria, VA 22314, which is located within the Eastern District.

### **STATUORY AND REGULATORY BACKGROUND**

16. The Freedom of Information Act requires that an agency, upon any request for records, shall make the requested records available promptly, 5 U.S.C. § 552(a)(3)(A), unless certain extensions of time specified in statute apply (not applicable here), and unless one or more statutory exemptions apply (likewise not applicable here).

17. The PTO has FOIA regulations, as required by 5 U.S.C. § 552, elaborating the PTO's statutory obligations to respond to FOIA requests. 37 C.F.R. Part 102.

18. FOIA sets the following deadlines.

19. **A maximum of 10 days for intra-agency mailroom routing.** An agency's deadlines run from the date of "receipt" of a request by the relevant "component" of the agency. 5 U.S.C. § 552(a)(6)(A)(ii) limits an agency to delaying "receipt" by no more than ten calendar days for mailroom and intra-agency routing.

20. **20 business days for a "determination."** 5 U.S.C. § 552(a)(6)(A) gives an agency twenty (20) business days after the date of receipt of the request to either produce the requested records, or provide a "determination" letter that must include all of the following components:

- a. the "determination" whether the agency intends to comply with the request, and the reasons therefor, 5 U.S.C. § 552(a)(6)(A)(i)(I);

- b. the right of the requester to seek assistance from the FOIA Public Liaison of the agency, 5 U.S.C. § 552(a)(6)(A)(i)(II);
- c. if the determination is adverse, the right of the requester to appeal the agency's determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i) and § 552(a)(6)(A)(i)(III)(aa);
- d. if the determination is adverse, the right of the requester to seek dispute resolution services from the PTO's FOIA Public Liaison or Office of Government Information Services. 5 U.S.C. § 552(a)(6)(A)(i)(III)(bb);
- e. a date for production, which may be extended no more than ten additional days for "unusual circumstances" (as specified by 5 U.S.C. § 552(a)(6)(B)) or a further explanation and invitation to reframe the request as specified by 5 U.S.C. § 552(a)(6)(B)(ii).
- f. if the determination is adverse, the letter "shall set forth the names and titles or positions of each person responsible for the denial of such request." 5 U.S.C. § 552(a)(6)(C)(i).
- g. a "determination" that triggers the requirement for administrative exhaustion requires the agency to have "(i) gather[ed] and review[ed] the documents; (ii) determine[d] and communicate[d] the scope of the documents it intends to produce and withhold, and [stated] the reasons for withholding any documents; and (iii) inform[ed] the requester that it can appeal whatever portion of the "determination" is adverse," *Citizens for Responsibility and Ethics in Washington v Federal Election Comm'n*, 711 F.3d 180, 186-87 (D.C. Cir. 2013) (Kavanaugh, J.) (*CREW*).

- h. at least the showings of paragraphs 20.a, 20.c, and 20.e, with “the reasons therefor,” 5 U.S.C. § 552(a)(6)(A)(i), are each independently necessary, and omission of any one is a failure to provide a “determination” that satisfies the 20-business-day limit of 5 U.S.C. § 552(a)(6)(A). *CREW*, 711 F.3d at 186-87.
21. No statute authorizes the agency to extend beyond the 20 business days of 5 U.S.C. § 552(a)(6)(A) unless accompanied by a showing of “unusual circumstances.” “Unusual circumstances” are defined by statute, § 552(a)(6)(B).
22. No statute authorizes an agency to withhold records for the *eight months* that has occurred here.
23. If an agency fails to comply with the deadlines set by statute, the agency may not assess *any* search fee. 5 U.S.C. § 552(a)(4)(A)(viii)(I).
24. **Constructive exhaustion.** An agency’s failure to make this determination within 20 business days results in constructive exhaustion of administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).
25. **Fee waiver.** Under 5 U.S.C. § 552(a)(4)(A)(iii), requesters may request a public interest fee waiver for the records, which requires an agency to furnish records without any charge or at a reduced charge where a disclosure is in the public interest, because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.
26. **Attorney fee award.** 5 U.S.C. § 552(a)(4)(E) provides for an award of attorney fees and litigation costs if the complainant substantially prevails, even if government acts moot the case, *Nationwide Bldg. Maintenance, Inc. v. Sampson*, 559 F.2d 704, 710 (D.C. Cir. 1977), and based upon well defined factors, *Negley v. FBI*, 818 F.Supp.2d 69 (D.D.C. 2011).

27. These well defined factors are (1) the public benefit derived from the case; (2) the commercial benefit to the plaintiff; (3) the nature of the plaintiff's interest in the records; and (4) the reasonableness of the agency's withholding of the requested documents.

28. **Referral to special counsel.** If the court orders production of improperly-withheld records, and attorney fees are assessed against the agency (5 U.S.C. § 552(a)(4)(E)), and the court makes an additional written finding that “the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously,” that finding triggers an investigation by the Attorney General’s FOIA Special Counsel. 5 U.S.C. § 552(a)(4)(F); *cf. Bergeron v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 2016 WL 1229050, at \*1 (D. Nev. 2016) (statute says “raise questions whether”). The relevant “withholding” may be the failure to publish agency rules when they were initially promulgated, § 552(a)(1) and (2), in addition to “withholding” in response to a FOIA request. *New York Legal Assistance Gp. v. Board of Immigration Appeals*, 987 F.3d 207, 218-19 (2d Cir. 2021).

### **FACTUAL BACKGROUND**

29. **March 12: Mr. Boundy’s Initial Request.** On March 12, 2021, at “Date: Friday, March 12, 2021 11:51:33 AM”, Mr. Boundy sent the initial request by email (Exhibit A) to the PTO. It fully complied with PTO FOIA Regulation in 37 CFR § 102.4(a) and (b), as “[t]he records requested [were] described in enough detail to enable USPTO personnel to locate them with a reasonable amount of effort.”

- a. The request included an attached exhibit, a known PTO document as an example of the documents sought.
- b. The request was sent to the email addresses specified by the PTO for receipt of FOIA requests, [FOIARequests@uspto.gov](mailto:FOIARequests@uspto.gov) and [efoia@uspto.gov](mailto:efoia@uspto.gov).



30. Email is normally delivered in a few seconds, not hours or days.

31. It is overwhelmingly likely that the March 12 email was delivered in fact on March 12. On that basis, Mr. Boundy pleads that the email was delivered March 12.

32. Twenty business days from March 12 sets a “determination” date of April 9, 2021.

33. **March 31: PTO Acknowledgement letter.** On March 31, 2021, the PTO sent a letter (by email) acknowledging receipt of the March 12, 2021 request. The PTO’s letter was sent by email from email address FOIARequests@uspto.gov (see Exhibit B). The PTO’s March 31 letter assigns a FOIA request number F-21-00084. The PTO’s March 31 letter stated that the “Agency expects to send its response to this request no later than Monday, April 26, 2021.”

34. The PTO’s March 31, 2021 letter claims that the request was “received by the United States Patent and Trademark Office (USPTO) FOIA Office on **Monday, March 29, 2021**” (emphasis in original).

35. March 29 is more than 10 days after March 12 (ten days is the maximum time allotted by statute for mailroom and intra-agency routing, 5 U.S.C. § 552(a)(6)(A)(ii)).

36. The PTO’s March 31 acknowledgment letter gives no explanation for the PTO’s alleged date of receipt of March 29 instead of March 12.

37. The March 31 letter does not contain the showings and notifications necessary for it to be a 5 U.S.C. § 552(a)(6)(A)(i) statutory “determination.”

38. Pursuant to § 552(a)(4)(viii)(I), the PTO delay prevents the PTO from assessing search fees and duplication fees.

39. **April 12: PTO fee estimate letter.** The PTO sent its second response on April 12, 2021 estimating its search costs at \$739.45 and demanded payment within 30 days. (Exhibit C).

40. The PTO's April 12, 2021 letter also omits the information required for a "determination" under 5 U.S.C. § 552(a)(6).

41. **May 10: Mr. Boundy's request for fee waiver.** On May 10, 2021, Mr. Boundy sent a letter to the PTO (Exhibit D) requesting a fee waiver, pursuant to several of the criteria of 5 U.S.C. § 552(a)(4)(F)(i)

42. **June 16: PTO email waiving fees.** The PTO took no action on the May 10, 2021 letter until June 16, 2021, over a month later. On June 16, 2021, the PTO sent an email (Exhibit E) confirming that the request "will be processed without fees due to an error on my part with regards to the date of receipt." In the email, the PTO indicated that it identified "a large number of potentially responsive records" and that it will need unspecified amount of "time to complete your request," and where possible, provide "any responsive documents on a 'rolling' basis."

43. The PTO's June 16, 2021 email is inadequate to be a "determination" pursuant to the FOIA statute:

- a. The PTO's email of June 16, 2021 admits that the search for responsive records has not been completed and did not "at least indicate within the relevant time period the scope of the documents it will produce and the exemptions it will claim with respect to any withheld documents." *CREW v. FEC*, 711 F.3d 180, 189 (D.C. Cir. 2013). Instead, it states that, "Where possible" the PTO will "responsive documents on a 'rolling' basis," and, sets *no date whatsoever* for completion, and, provides no "reasons therefor" for setting any date after 20 business days. All

these things are necessary for there to have been a statutory “determination” letter. 5 U.S.C. § 552(a)(6)(A)(i)(I); *CREW, supra*.

- b. The PTO’s email of June 16, 2021 does *not* state the right of the requester to seek assistance from the FOIA Public Liaison of the agency, as required for a “determination” letter. 5 U.S.C. § 552(a)(6)(A)(i)(II).
- c. PTO’s email of June 16, 2021 does *not* state the requester’s right to appeal the agency’s determination to the agency head, as required for a “determination” letter. 5 U.S.C. § 552(a)(6)(A)(i) and § 552(a)(6)(A)(i)(III)(aa).
- d. PTO’s email of June 16, 2021 does *not* state the right of the requester to seek dispute resolution services from the PTO’s FOIA Public Liaison or Office of Government Information Services, as required for a “determination” letter. 5 U.S.C. § 552(a)(6)(A)(i)(III)(bb)
- e. The PTO could have extended the 20-business-day deadline for an additional ten days by identifying “unusual circumstances,” pursuant to 5 U.S.C. § 552(a)(6)(B). The PTO’s email of June 16, 2021 does not seek any statutory extension and it does *not* explain “unusual circumstances” that would permit the agency to extend ten days, let alone eight months.

44. **June 16: Boundy Reply.** On June 16, 2021, Mr. Boundy replied by email (Exhibit F) indicating the limited scope of his request and offering to discuss by phone “plausible way to reduce work for you.”

45. No communication was received from the PTO between June 16 and November 15.

46. **November 15: PTO email.** The PTO's next communication came on November 15, 2021, by email (Exhibit G). This communication was not accompanied by either responsive records or the showings necessary for a "determination" letter as required by the FOIA statute. The PTO's email stated only that the FOIA Officer attempted to reach Mr. Boundy by phone and could not leave a voicemail message.

47. Neither the call log on Mr. Boundy's phone nor the call log at Mr. Boundy's carrier show any call from any 571 phone number between October 1 and November 29, except for calls identifiable as being to/from patent examiners.

48. Mr. Boundy replied to the PTO's email on November 15 (Exhibit H), and left voice mail message on November 15 and November 23. To date, Mr. Boundy has received no return phone call from the PTO FOIA office.

49. To date, Mr. Boundy has received neither the records sought nor a "determination" under 5 U.S.C. § 552(a)(6)(A) in response to Mr. Boundy's March 12, 2021 FOIA Request, now identified as "F-21-00084."

50. The PTO has failed to comply with the timing requirements for a FOIA determination.

51. The PTO has failed to comply with the FOIA production requirements.

52. Had the PTO taken all lawful extensions, and even the PTO's date of "receipt" of the request, the latest date on which records could be produced expired long ago (10 calendar days for mailroom routing, plus 20 business days, plus the time between the PTO's fee estimate letter and the June 16 email granting the fee waiver, plus 10 additional business days for "unusual" circumstances).

53. The PTO has not provided any communication that satisfies requirements for a “determination” pursuant to 5 U.S.C. § 552(a)(6)(A)e. Mr. Boundy has constructively exhausted his administrative remedies of 5 U.S.C. § 552(a)(6)(C)(i).

**PLAINTIFF’S CLAIMS FOR RELIEF**

**COUNT I**

**5 U.S.C. § 552(a)(6): Failure to Produce Records or a Determination  
Within Statutory Time Limit**

54. All preceding paragraphs are repeated, realleged, and incorporated herein by reference.

55. Mr. Boundy’s FOIA Request F-21-00084 of March 12, 2021 is a valid FOIA request, requesting identified records within the PTO’s custody and control. FOIARequests@uspto.gov is the PTO’s designated point of receipt for FOIA requests.

56. The PTO has offered no claim of statutory exemption, and no statutorily recognized claim of “unusual” circumstances to extend time.

57. Therefore, the PTO violated the 5 U.S.C. § 552(a)(6)(B) 20-business-day deadline.

58. The claim by the PTO’s Office of General Counsel that the March 12 FOIA request was “received by the United States Patent and Trademark Office (USPTO) FOIA Office on **Monday, March 29, 2021**” is inconsistent with the evidence. This misdating raises questions whether agency personnel acted arbitrarily or capriciously.

59. A receipt date of March 29 is more than the maximum ten calendar days that by which a receipt date could be extended for actual mailroom and intra-agency routing delays of receipt. 5 U.S.C. § 552(a)(6)(A)(ii).

60. The PTO wrongfully withheld responsive agency records requested by Mr. Boundy in his FOIA Request F-21-00084 of March 12, 2021, 5 U.S. C. §§ 552(a)(3)(A), 552(a)(4)(B), and by failing to timely provide a “determination” on that request as required by 5 U.S. C. § 552(a)(6)(A)(i).

61. The circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously.

62. Plaintiff Mr. Boundy is entitled to declaratory judgment and injunctive relief with respect to the search, identification, release and disclosure of the records requested in Mr. Boundy’s FOIA Request F-21-00084 of March 12, 2021.

**PRAYER FOR RELIEF**

WHEREFORE, as relief, Plaintiff Mr. Boundy requests an order of this Court:

A. Declaring, pursuant to 5 U.S.C. § 552, that the PTO violated the Freedom of Information Act by failing to lawfully and timely satisfy Mr. Boundy’s March 12, 2021 FOIA request;

B. Ordering the PTO to immediately and expeditiously conduct a search that is reasonably calculated to uncover all relevant records, process and release all non-exempt records responsive to Mr. Boundy’s FOIA Request F-21-00084 of March 12, 2021, at no cost to Mr. Boundy;

C. Retaining jurisdiction of this action to ensure expeditious processing of Mr. Boundy’s FOIA Request F-21-00084 of March 12, 2021 and to ensure that no agency records are wrongfully withheld;

D. Awarding of attorneys’ fees and litigation costs to the Mr. Boundy pursuant to 5 U.S.C. § 552(a)(4)(E) and/or 28 U.S.C. § 2412;

E. Finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously; and

F. Granting Mr. Boundy such other relief as the Court deems just and proper.

Date: 12/7/2021

Respectfully submitted,

/s/ Richard Neifeld  
Neifeld IP Law PLLC  
9112 Shearman Street, Fairfax VA 22032-1479,  
United States  
Mobile/Office: 7034150012  
Fax: 15712810045  
Email: [rneifeld@neifeld.com](mailto:rneifeld@neifeld.com)  
VA Bar: 37310

*Attorneys for Plaintiff David Boundy*

Attachments:

- Exhibit A FOIA request email Boundy to [FOIARequests@uspto.gov](mailto:FOIARequests@uspto.gov) (Mar. 12, 2021)
- Exhibit B Acknowledgement letter from FOIARequests@uspto.gov to Boundy, acknowledging FOIA request and proposing to produce by April 26, 2021 (Mar. 31, 2021)
- Exhibit C Letter PTO to Boundy, estimating fees of \$739.45 (Apr. 12, 2021)
- Exhibit D Letter Boundy to PTO, requesting fee waiver (May 10, 2021)
- Exhibit E Email Dorothy Campbell (PTO) to Boundy, acknowledging error in date of receipt, and proposing rolling production (Jun. 16, 2021)
- Exhibit F Email Boundy to Campbell (Jun. 16, 2021)
- Exhibit G Email Campbell to Boundy (Nov. 15, 2021)
- Exhibit H Email Boundy to Campbell (Nov. 15, 2021)



## **Exhibit A**

FOIA request email Boundy to  
FOIARequests@uspto.gov (Mar. 12, 2021)

**Exhibit A**

**From:** [David Boundy](#)  
**To:** [FOIA Requests](#); [FOIA Requests](#)  
**Subject:** Fwd: Request for documents  
**Date:** Friday, March 12, 2021 11:51:33 AM  
**Attachments:** [TitlesOn POA \(November 2013\).pdf](#)

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Slight revision -- please replace the earlier one. Thank you

Dear FOIA office --

Please provide all documents issued since, or in effect at any time since, the America Invents Act in September 2011 that purport to govern or recommend either form of signature, title of a signatory, or establishing authority of a natural person signatory to act on behalf of an applicant or assignee, for signatories who are not registered attorneys or agents. This request covers internal and external documents authored by the PTO or PTO personnel.

Excluded from this request are the text of the relevant regulations, 37 CFR § 1.4, § 1.32(b)(4), § 3.71, and § 3.73, but guidance, memoranda, instructions, or other documents (internal or external) that purports to elaborate on, or guide application of, regulation would be responsive.

As examples --

-- Attached is a document I received from a colleague that is an example, directed to the document categories "title of signatory" and "establishing authority."

-- I already have [https://www.uspto.gov/sites/default/files/documents/sigexamples\\_alt\\_text.pdf](https://www.uspto.gov/sites/default/files/documents/sigexamples_alt_text.pdf) and [https://www.uspto.gov/sites/default/files/documents/s\\_sig\\_public\\_01122007.pdf](https://www.uspto.gov/sites/default/files/documents/s_sig_public_01122007.pdf) and <https://www.uspto.gov/patents/apply/filing-online/tps-info-s-signature> -- if there are earlier versions (but post-AIA), or later updates, or other documents, those would be responsive.

Please provide these in their native electronic form, such as Excel, MS Word or PDF documents, preferably by email to [DavidBoundyEsq@gmail.com](mailto:DavidBoundyEsq@gmail.com).

Thank you.

**[David Boundy](#)**

[DBoundy@cambridgetechlaw.com](mailto:DBoundy@cambridgetechlaw.com) / [+1 646.472.9737](tel:+16464729737)

**Exhibit A**

<b>Acceptable Apparent Authority</b>	<b>Not Acceptable Apparent Authority</b>
Authorized and a title following it (Officer, Official, Representative, Signatory, Signer, etc.)	Administrator
Chairman, abbreviations and variations of this title (Examples: Chrmn., Company Chairman, Executive Chairman, Chariman of the Board, Vice-Chairman of the Board of Directors)	Attorney (Examples: Attorney in Fact, Principle Attorney, Senior Attorney, Corporate Attorney)
Chief Executive Officer or CEO	Counsel and all variations of Counsel, unless combined with an Officer title (Examples: Chief Patent Counsel, IP Counsel, Patent Counsel, Patent Procurement Counsel, Senior Corporate Counsel, Supervisory Patent Counsel)
Chief Financial Officer or CFO	Delegation on behalf
Chief Operating Officer or COO	Engineering leader
Chief Scientific Officer or CSO	Founder
Chief Technical Officer or CTO	Intellectual Property Manager, IP Manager
Dean of University	IP Attorney (Other Examples: IP Fellow, IP Patent Manager, IP Professional)
Director, variations and abbreviations of Director (Dir., Assistant Director, Associate Director, Executive Director, Managing Director)	Legal Representative (Note: Legal rep CAN be acceptable where the legal rep is an applicant, but not when used by a non-applicant)
Executive Vice President and Patent Counsel	Managing Member
General Counsel and Corp secretary	Owner
General Manager or GM	Partner
Geschäftsführer (non-English title) (This means CEO or Managing Director)	Patent Agent, Patent Attorney, Patent Executive, Patent Professional, Patent Team Leader
Manager	Principal Engineer
Officer	Principle, Principle Attorney, Principle Professional
President, variations and abbreviations of President (e.g., Pres., Assistant President, President of Operations)	Proxy
Secretary, variations and abbreviations of Secretary (examples: Assistant Secretary, Asst. Sec., Corporate Secretary)	Representative
Treasurer, abbreviations and variations of Treasurer (examples: Treas., Assistant Treasurer, Treasurer of Sales)	Researcher
Vice President, abbreviations and variations of Vice President (examples: VP, Vice President for Sales, Executive Vice President, EVP)	Senior IPR specialist
Revised November 2013 (Internal Use ONLY)	Technical Developer

## **Exhibit B**

Acknowledgement letter from FOIARequests@uspto.gov to Boundy, acknowledging FOIA request and proposing to produce by April 26, 2021 (Mar. 31, 2021)

**Exhibit B**



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**UNITED STATES PATENT AND TRADEMARK OFFICE**

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Wednesday, March 31, 2021

**VIA EMAIL**

Mr. David Boundy  
Cambridge Technology, Law LLC  
P.O. Box 590638  
Newton, MA 02459

Dear Mr. Boundy:

Your Freedom of Information Act (FOIA) and/or Privacy Act request was received by the United States Patent and Trademark Office (USPTO) FOIA Office on **Monday, March 29, 2021.**

Your request has been docketed as **"FOIA Request No. F-21-00084."** Any further inquiries regarding your request should include that number. A copy of your request is attached for reference.

In the event your original request was incorrectly addressed, please address all inquiries regarding your request to:

FREEDOM OF INFORMATION ACT (FOIA) OFFICER  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Or via email to [foiarequests@uspto.gov](mailto:foiarequests@uspto.gov)

The Agency expects to send its response to this request no later than Monday, April 26, 2021. You will be notified if it appears that additional time is required. You may check on the status of your request at the Agency's website: [www.uspto.gov](http://www.uspto.gov), click on "Freedom of Information Act" at the bottom of the page, and then "Check FOIA Request Status." You will need your request number, shown above, to check on the status of your request.

Sincerely,

USPTO FOIA Office

Enclosure

## **Exhibit C**

Letter PTO to Boundy, estimating fees of \$739.45 (Apr.  
12, 2021)

**Exhibit C**



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**UNITED STATES PATENT AND TRADEMARK OFFICE**

OFFICE OF THE GENERAL COUNSEL

April 12, 2021

**VIA EMAIL**

Mr. David Boundy  
Cambridge Technology, Law LLC  
P.O. Box 590638  
Newton, MA 02459  
DBoundy@cambridgetechlaw.com

**Re: *Freedom of Information Act (FOIA) Request No. F-21-00084***

Dear Mr. Boundy:

The United States Patent and Trademark Office (USPTO) FOIA Office received your e-mail dated requesting, under the Freedom of Information Act (5 U.S.C. § 552) a copy of:

[a]ll documents issued since, or in effect at any time since, the America Invents Act in September 2011 that purport to govern or recommend either form of signature, title of a signatory, or establishing authority of a natural person signatory to act on behalf of an applicant or assignee, for signatories who are not registered attorneys or agents. This request covers internal and external documents authored by the PTO or PTO personnel.

Preliminary estimates indicate that the approximate processing cost for this FOIA request is **\$ 739.45**. This estimate includes estimated search time of approximately five hours and estimated review time of approximately six hours. Associated copy charges cannot be estimated until a final determination regarding releasability is made.

This estimate does not necessarily represent the final cost. Estimates are inherently imprecise, and the final cost could be higher or lower than the amount provided here. However, the estimate provided herein is reasonably calculated to represent search costs required to adequately respond to your request.

As a commercial use FOIA requester, you are responsible for the costs involved in search, review and duplication. See 37 C.F.R. § 102.11(c)(1)(i).

Please note that a search fee is chargeable even when no responsive records are found, or when the records requested are determined to be totally exempt from disclosure. See 37 C.F.R. § 102.11(c)(3)(i).

**Exhibit C**

Requestors must pay the entire anticipated fee before the Agency begins processing a request when the fee estimate exceeds \$250.00. See 37 C.F.R. § 102.11(i)(2).

Please remit, within 30 calendar days of the date of this letter, a check made payable to the “**Department of Treasury**” in the amount of \$ **739.45**. The payment must be sent to:

United States Patent and Trademark Office  
Freedom of Information Act Officer  
Office of the General Counsel  
P.O. Box 1450  
Alexandria, VA 22313-1450

If payment in the full amount of the initial estimate is not received by **May 12, 2021** this request will be considered withdrawn and closed. Please contact us before that date, however, if you would like to discuss your request in order to reformulate it to meet your needs at a reduced cost.

Sincerely,



Charletta Blackshear  
USPTO FOIA Specialist  
Office of General Law



**Exhibit C**

**Exhibit D**

Letter Boundy to PTO, requesting fee waiver (May 10,  
2021)

Exhibit D

# CAMBRIDGE TECHNOLOGY LAW LLC

*TECHNOLOGY LAW WITH A BUSINESS PERSPECTIVE*

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DAVID E. BOUNDY

MAILING: P.O. Box 590638, NEWTON MA 02459  
PHONE: 646.472.9737  
FAX: 978.443.4812  
E-MAIL: [DBOUNDY@CAMBRIDGETECHLAW.COM](mailto:DBOUNDY@CAMBRIDGETECHLAW.COM)  
HTTP://[WWW.CAMBRIDGETECHLAW.COM](http://WWW.CAMBRIDGETECHLAW.COM)

May 10, 2021

*Via Email* [FOIARequests@uspto.gov](mailto:FOIARequests@uspto.gov); [efoia@uspto.gov](mailto:efoia@uspto.gov); [Carletta.Blackshear@uspto.gov](mailto:Carletta.Blackshear@uspto.gov)

Carletta Blackshear  
USPTO FOIA Specialist  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Re: Fee waiver for request F-21-00084

Dear Ms Blackshear:

Thank you for your letter of April 12, 2021, estimating search fees of \$ 739.45.

Fees should be waived under the public interest provision of 5 U.S.C. § 552(a)(4)(A)(iii).

The request seeks:

Please provide all documents issued since, or in effect at any time since, the America Invents Act in September 2011 that purport to govern or recommend either form of signature, title of a signatory, or establishing authority of a natural person signatory to act on behalf of an applicant or assignee, for signatories who are not registered attorneys or agents. This request covers internal and external documents authored by the PTO or PTO personnel.

First, the request was prompted by a discussion on one of the email discussion lists of the unpredictability in the PTO's handling of Powers of Attorney. Powers are bounced based on the title of the signatory (for example, a Power may be accepted or bounced depending on whether the title of the signatory is "CEO" vs. "Managing member" vs. "Vice President" for certain functional areas). The patent bar has had no idea that the Application Assistance Unit considered some titles to be "approvable" vs. "not approvable" for Powers of Attorney and for § 3.73 statements, so AAU's behavior is perceived to be entirely unpredictable. This unpredictability creates several million dollars per year in excess costs on the public. A colleague provided me with a document she had obtained years ago. From that document, the apparently-random behavior of AAU became clear.

The public is entitled to know the rules and standards that the PTO applies, so the public can comply, and so that the public can inform the PTO of errors.

**Exhibit D**

**CAMBRIDGE TECHNOLOGY LAW LLC**

May 10, 2021

Page 2

United States Patent and Trademark Office re Fee waiver for request F-21-00084

I intend to write and publish an article for publication in Patently-O or IP Watchdog to explain to the patent bar the standards that the Application Assistance Unit actually applies. I regularly publish articles in both blogs on topics of patent prosecution and on administrative law (see Exhibit D). The documents produced by FOIA and incorporated into this article will be in the public interest because it will tell the patent bar about a rule that the PTO enforces, but with no published notice of its content.

**Second**, the Department of Commerce committed to the public that all such guidance documents would be posted via the Commerce guidance portal, <https://www.commerce.gov/guidance>, which in turn refers to the PTO's page, <https://www.uspto.gov/guidance>. Department of Commerce, *Promoting the Rule of Law Through Improved Agency Guidance Documents*, 85 Fed. Reg. 60694, 60695 (Sep. 28, 2020). The requested documents should be listed, but aren't. Since they aren't up on the PTO's guidance page, and the PTO continues to enforce the standards that (presumably) are stated in these documents, the documents should be produced by FOIA so they can be made available to the public via an article. And then they should be up on the PTO's guidance page.

**Third**, I have no current client or patent application involving this issue; my inquiry is purely in the public interest. I have no current commercial interest.

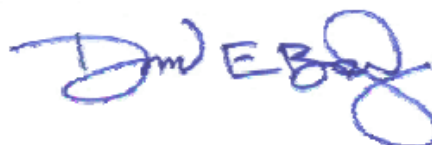
**Fourth**, I tried to frame the request as narrowly and specifically as possible, to get "the real rules," the guidance documents used by PTO personnel to evaluate signatures for Powers of Attorney and § 3.73 statements. If you can suggest an easier search, of course I'm open to that, and I look forward to a phone call to discuss. The relevant phone number is 646 472 9737.

**Fifth**, the PTO's Acknowledgement letter March 31, 2021 claims that the request was "received by the United States Patent and Trademark Office (USPTO) FOIA Office on Monday, March 29, 2021." That is false. The copy of the request that the PTO sent with the acknowledgement (Exhibit C) confirms that the FOIA request was sent to the correct email address for the FOIA component of the agency, and received on March 12, 2021. Please docket this request with the correct receipt date.

I prefer to receive the documents by email, at [DBoundy@CambridgeTechLaw.com](mailto:DBoundy@CambridgeTechLaw.com) or some other electronic form that preserves all documents' native electronic format and integrity.

Thank you. You may contact me at the email or postal address in the letterhead.

Very truly yours,



## Exhibit E

Email Dorothy Campbell (PTO) to Boundy,  
acknowledging error in date of receipt, and proposing  
rolling production (Jun. 16, 2021)



David Boundy <[dboundy@cambridgetechlaw.com](mailto:dboundy@cambridgetechlaw.com)>

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### Fee Estimate Commercial - F-21-00084

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Campbell, Dorothy <[Dorothy.Campbell@uspto.gov](mailto:Dorothy.Campbell@uspto.gov)>  
To: David Boundy <[dboundy@cambridgetechlaw.com](mailto:dboundy@cambridgetechlaw.com)>  
Cc: "Blackshear, Charletta" <[Charletta.Blackshear@uspto.gov](mailto:Charletta.Blackshear@uspto.gov)>

Wed, Jun 16, 2021 at 12:08 PM

Mr. Boundy,

This is a follow-up to the inquiry you sent on May 10, 2021, to Ms. Charletta Blackshear. Please be advised that your FOIA Request # F-21-00084 will be processed without fees due to an error on my part with regards to the date of receipt. We would also like to advise you that the initial search for documents has resulted in a large number of potentially responsive records that need to be reviewed and possibly redacted in part. As such, we will need an additional amount of time to complete your request. Where possible, we will provide you with any responsive documents on a "rolling" basis to facilitate your review and use of the records as well. If you have any questions or need further assistance with this request, please feel free to contact me at the number below.

Respectfully,

Dorothy G. Campbell

Associate Counsel/FOIA Officer

U.S. Patent and Trademark Office

Office of General Law

P.O. Box 1450

Alexandria, VA 22313-1450

571-272-0512 (Phone)

571-273-0099 (Fax)

[Dorothy.Campbell@uspto.gov](mailto:Dorothy.Campbell@uspto.gov)



# Exhibit F

## Email Boundy to Campbell (Jun. 16, 2021)



David Boundy <[dboundy@cambridgetechlaw.com](mailto:dboundy@cambridgetechlaw.com)>

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### Fee Estimate Commercial - F-21-00084

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David Boundy <[dboundy@cambridgetechlaw.com](mailto:dboundy@cambridgetechlaw.com)>  
To: "Campbell, Dorothy" <[Dorothy.Campbell@uspto.gov](mailto:Dorothy.Campbell@uspto.gov)>  
Cc: "Blackshear, Charletta" <[Charletta.Blackshear@uspto.gov](mailto:Charletta.Blackshear@uspto.gov)>

Wed, Jun 16, 2021 at 12:33 PM

Dear Ms Campbell --

Thank you. I thought I was requesting at most a handful of documents. If there's a plausible way to reduce work for you, I'm more than happy to have a phone call to do so. 646 472 9737

Thanks

David

[Quoted text hidden]

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Strategy 300  
Recommended  
Individual 2018

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TECHNOLOGY  
LAW

Listed as one of the world's 300 leading intellectual property strategists  
Articles at <http://ssrn.com/author=2936470>  
Click here to add me to your contacts.

**David Boundy**

[DBoundy@cambridgetechlaw.com](mailto:DBoundy@cambridgetechlaw.com) / +1 646.472.9737

**Cambridge Technology Law LLC**

686 Massachusetts Avenue #201, Cambridge MA 02139

<http://www.CambridgeTechLaw.com>

<http://www.linkedin.com/in/DavidBoundy>

# Exhibit G

## Email Campbell to Boundy (Nov. 15, 2021)



David Boundy <dboundy@cambridgetechlaw.com>

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### Fee Estimate Commercial - F-21-00084

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Campbell, Dorothy <Dorothy.Campbell@uspto.gov>  
To: David Boundy <dboundy@cambridgetechlaw.com>  
Cc: "Blackshear, Charletta" <Charletta.Blackshear@uspto.gov>

Mon, Nov 15, 2021 at 3:55 PM

Hi Mr. Boundy,

I know that it has been a while since we've communicated about this request, and it seems like the number you provided below cannot take my messages. Could you please provide an alternate number or contact me at (571) 272-0512 to discuss? Thank you,

[Quoted text hidden]

# Exhibit H

## Email Boundy to Campbell (Nov. 15, 2021)



David Boundy <dboundy@cambridgetechlaw.com>

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### Fee Estimate Commercial - F-21-00084

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David Boundy <dboundy@cambridgetechlaw.com>

Mon, Nov 15, 2021 at 5:37 PM

To: "Campbell, Dorothy" <Dorothy.Campbell@uspto.gov>

Cc: David Boundy <dboundy@cambridgetechlaw.com>, "Blackshear, Charletta" <Charletta.Blackshear@uspto.gov>

Dear Ms Campbell --

Sorry I missed you. I'm available by phone, 646 472 9737. If you get to voice mail, go ahead and leave a message -- then send me an email to let me know that it's are there. Android just doesn't give a helpful heads-up for voice mails -- I'll get your voice mail, eventually -- but eventually can take a while if you don't give me a ding.

Thank you.

David

[Quoted text hidden]