Appellee's Brief

BRIEF FOR THE COMMISSIONER OF
PATENTS AND TRADEMARKS

UNITED STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT

APPEAL NO. 86-554

STEPHEN WYDEN,

Appellant,

v.

COMMISSIONER OF PATENTS AND TRADEMARKS, ET AL.,

Appellees.

Appeal from the United States
District Court for the
District of Columbia, Judge Harris

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Patent and Trademark Office

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February 7, 1986

Francis X. Gindhart
Clerk
U.S. Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Re: Fed. Cir. Appeal No. 86-554
Stephen Wyden v. Commissioner
of Patents and Trademarks, et al.

Dear Mr. Gindhart:

We have this day served two copies of the enclosed Commissioner's brief and appendix in the above-identified appeal on Stephen Wyden, 26 West 9th Street, New York, New York 10011.

With reference to the jurisdictional issue addressed in the Commissioner's brief at pages 11-15, we respectfully suggest that a published opinion would be of significant interest to the bar generally and to the Commissioner. In this regard, we note that there are several other proceedings under 35 U.S.C. §32 currently pending in the PTO and in the courts. In the case of Edmund M. Jaskiewicz v. Gerald J. Mossinghoff, Civil Action No. 84-3292 (D.D.C. Dec. 5, 1985), we have been advised that an appeal has been taken to the U.S. Court of Appeals for the D.C. Circuit.

Very truly yours,

Fred McKelvey

Fred E. McKelvey
Deputy Solicitor

Enclosures

cc: Stephen Wyden

OTHER APPEALS AND RELATED CASES

The Commissioner is not aware of any previous appeals in or from this civil action before this or any other appellate court, nor are any related cases known to be pending in this or any other court.

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STATEMENT OF THE ISSUES

In the opinion of the Commissioner, there is a threshold issue in this appeal, viz., whether this Court has subject matter jurisdiction.

With respect to the merits, the issue is whether the District Court committed reversible error in granting summary judgment for the Commissioner and the remaining federal

defendants.[1] More specifically, the issue is whether the District Court correctly found that some of plaintiff's (Wyden's) claims were untimely under Local Rule 1-26 of that Court and that the remainder of those claims were barred by res judicata because Wyden litigated the same matters in three prior lawsuits in that Court, viz., Civil Actions No. 80-2581, No. 81-543 and No. 81-544.[2]

STATEMENT OF THE CASE[3]

This appeal, if properly before this Court,[4] is an appeal under 28 U.S.C. §1295(a)(1) from a decision (CA-193) of the

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1 The Complaint in the District Court appears to name four defendants. The federal defendants are the Commissioner of Patents and Trademarks, the Secretary of Commerce and the Office of Enrollment and Discipline. For convenience, the federal defendants (appellees) will be referred to hereinafter as "Commissioner".

2 The District Court subsequently denied Wyden's motion for a new trial by an ORDER dated August 5, 1985 (Commissioner's Appendix, hereinafter "CA", page 195). Wyden's notice of appeal (CA-196) is directed to that ORDER.

3 Wyden's brief does not contain a statement of the case, as such, and the Commissioner is not in agreement with the factual picture which can be understood from Wyden's brief. Accordingly, the following counterstatement is believed appropriate. In this connection, it is noted that the appendix submitted by Wyden was filed without either agreement or designation pursuant to Rule 12(b) of the rules of this Court and Rule 30(b) of the Federal Rules of Appellate Procedure (FRAP). Since Wyden's appendix omits relevant portions of the record below, including the order or decision in question, and also includes documents which were not part of the record below (e.g., at pages 21-25), we submit herewith a Commissioner's Appendix containing those documents called for by Rule 30(a), FRAP.

4 The Commissioner believes there are serious doubts as to the jurisdiction of this Court over the subject matter of this appeal. The question of jurisdiction will be discussed in the argument portion of this brief.

United States District Court for the District of Columbia granting the Commissioner's motion for summary judgment in a civil action (CA-5) brought by Wyden for review of a final decision of the Commissioner (CA-188). That decision denied Wyden's petition (CA-181) from the action of the Director of the Office of Enrollment and Discipline in failing to award Wyden a passing grade on an examination for registration to practice before the Patent and Trademark Office (PTO). Other relief sought in the civil action relates to Wyden's prior suspension from practice before the PTO in 1978 (CA-62).

Facts Relevant to the Civil Action

The following statement of facts corresponds substantially to the statement of material facts submitted in support of the Commissioner's motion for summary judgment below (CA-40).

1. Wyden formerly was a patent agent registered to practice before the PTO in patent cases.

2. On May 9, 1978, the Solicitor of the PTO, pursuant to 35 U.S.C. §32 and 37 CFR §1.348(b), brought charges against Wyden, seeking his suspension or disbarment as a patent agent. Exhibit 1 (CA-47).

3. In a motion made jointly with the Solicitor in those proceedings, Wyden admitted that he was "incompetent" to practice as a patent agent, within the meaning of 35 U.S.C. §32, and he agreed to be:

> suspended from practice as an agent before the U.S Patent and Trademark Office in patent

> cases for a period of two (2) years beginning August 30, 1978. Respondent [Wyden] and the Solicitor further agree that respondent may be reinstated as an agent registered to practice before the U.S. Patent and Trademark Office upon a showing satisfactory to the Committee on Enrollment that respondent is competent in all respects to practice patent law before this agency.

Exhibit 2 (CA-60).

4. The Commissioner of the PTO entered a final order dated July 27, 1978, which incorporated the terms of the joint motion. Exhibit 3 (CA-62).

5. In June 1980, the Deputy Commissioner of the PTO notified Wyden that if, upon completion of his suspension, he desired to resume practice as a patent agent, then he would be required to pass a written examination, administered pursuant to 37 CFR §1.341(c), to those seeking permission to practice before the PTO.

6. In October 1980, Wyden commenced his first civil action against the Commissioner in the District Court, Wyden v. Banner, C.A. No. 80-2581 (Judge Gasch) ("Wyden I"). Exhibit 4 (CA-63). As relief, Wyden sought reinstatement as a patent agent, without written examination. In support of his claims, Wyden complained broadly about the PTO's investigation of the "Raymond Lee Organization" and "Lawrence Peska Associates." Exhibit 4, ¶3 (CA-64). He also complained about the PTO's alleged correspondence with his former clients. Exhibit 4, ¶6 (CA-65).

7. On cross-motions, Judge Gasch entered summary judgment for the Commissioner in Wyden I. Mem. & Order filed December 10, 1980. Exhibit 5 (CA-67). Judge Gasch found the requirement for a written examination "eminently reasonable" because Wyden had agreed, in his joint motion for a two-year suspension, to make a showing, satisfactory to the PTO, of his competence to resume practice (CA-70, 73). Because Wyden had not yet taken that examination, Judge Gasch found that his request for reinstatement as a patent agent was premature (CA-69). Finally, Judge Gasch rejected, as untimely under Local Rule 1-26, Wyden's apparent request for judicial review of the Commissioner's 1978 suspension order (CA-70).

8. Judge Gasch subsequently denied Wyden's motions for post-judgment relief. Order filed January 8, 1981, and Memorandum Order filed April 2, 1982. Exhibits 6 and 7 (CA-74, 75).

9. In March 1981, Wyden filed his second and third civil actions against the Commissioner in the District Court, Wyden v. Diamond, C.A. Nos. 81-0543 ("Wyden II") and 81-0544 ("Wyden III") (Judge Parker). Exhibits 8 and 9 (CA-77, 84).

10. In Wyden II, Wyden again complained about the activities of the Raymond Lee Organization ("RLO"). It was Wyden's work on behalf of RLO that had led to the charges resulting in his suspension from practice. Exhibit 1, ¶14 (CA-57). Wyden sought equitable and monetary relief against

RLO, under a host of legal provisions, contending that RLO, and its successor, improperly were retaining fees and patent assignments that Wyden claimed on behalf either of himself or his former clients. Exhibit 8, ¶¶4-6, 8-9, 11-13 (CA-78- 80). Wyden referred to an article in the October-November 1979 edition of the American Patent Law Association's Bulletin, which described investigations of the RLO, id., ¶7 (CA-79), and he urged the Commissioner to take action against RLO. Id., ¶10 (CA-80). Wyden asked the Court to order the Commissioner to act against RLO, and to award him damages for harm supposedly caused by insufficient action against RLO. Id., relief ¶¶2, 7 (CA-81, 82).

11. In Wyden III, Wyden once again challenged his July 1978 suspension from practice as a patent agent, as he had in Wyden I. Exhibit 9, ¶5-8 (CA-85, 86); see supra ¶6. Again as in Wyden I, he also complained about the PTO's alleged correspondence with his former clients. Compare Exhibit 9, ¶9 (CA-86-87) with Exhibit 4, ¶6 (CA-65). As in Wyden II, he again mentioned the APLA Bulletin article about the RLO. Exhibit 9, ¶12 (CA-88). As a new matter, Wyden described a request he had made to the PTO, allegedly under the Freedom of Information Act, 5 U.S.C. §552, and the Privacy Act, 5 U.S.C. §552a. Id., ¶3 (CA-85), relief ¶1 (CA-89).

12. Judge Parker entered summary judgment for the Commissioner in both Wyden II and Wyden III on August 31, 1981. In Wyden II, Judge Parker found, for a variety of jurisdictional and procedural reasons, that he lacked authority to entertain Wyden's claims against RLO. Memorandum Order filed August 31, 1981. Exhibit 10 (CA-91-92). Judge Parker found that Wyden's claims against the Commissioner were precluded by the decision in Wyden I and the pendency of Wyden III:

> The only party before the Court is the Commissioner. His actions concerning the plaintiff have already been the subject of two lawsuits, and his determination to suspend the plaintiff is res judicata. Plaintiff can receive no relief in this Court.

Id. (CA-92, footnote omitted).

13. In Wyden III, Judge Parker found that "[m]any of the issues raised by Wyden in his present complaint were resolved in Civil Action No. 80-2581 and are therefore res judicata." Memorandum filed August 31, 1981 at 2. Exhibit 11 (CA-96). Specifically, Judge Parker found that Wyden's request to set aside his suspension was barred by Judge Gasch's ruling in Wyden I (CA-96). Judge Parker also found that he lacked jurisdiction over Wyden's FOIA and Privacy Act

claims and that he had no authority to order the Commissioner to undertake any action with respect to the RLO.[5]

14. By orders filed March 23, 1982, Judge Parker denied Wyden's post-judgment motions in Wyden III and directed the Clerk of this Court not to accept further papers from Wyden, save for a notice of appeal. Exhibit 12 (CA-99, 100).

15. In May 1982, Wyden initiated in the United States Court of Appeals for the District of Columbia Circuit a proceeding styled "Petition for Review Including a Notice of Appeal." Exhibit 13 (CA-101). The action again challenged Wyden's 1978 suspension. Id. On the Commissioner's motion, the Court of Appeals dismissed that proceeding by order filed December 15, 1982. Exhibit 14 (CA-105). Subsequently, the Court of Appeals denied rehearing both before the motions panel, and en banc. Exhibit 15 (CA-106, 107).

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5 Judge Parker noted that other federal agencies already had acted against RLO:

> The Raymond Lee Organization was an "idea promotion" firm which held assignments of patents from a number of individuals who were also plaintiff's clients. Now defunct, it was found to have violated section 5 of the Federal Trade Commission Action 15 U.S.C. §45, by engaging in "false and deceptive" practices. Lee v. Federal Trade Commission, No. 79-1286 (D.C. Cir. June 6, 1980.)***

Exhibit 11 at 3 n.*. See also In re The Raymond Lee Organization, 92 FTC 489 (1978).

16. In July 1983, Wyden applied for registration to practice again as a patent agent before the PTO. Exhibit 16 (CA-108). His application sought permission to take the prerequisite written examination. Id.; see supra ¶5.

17. Wyden failed the examination, which was given in October 1983. Exhibit 17 (CA-110). Out of a possible 100 point score on each of the morning and afternoon sessions of the examination, Wyden received 56 and 50 points, respectively. A score of 70 for each session was the minimum passing grade. Id.

18. After obtaining model answers from the PTO, Wyden sought reconsideration of his examination grade. Exhibit 18 (CA-111). In March 1984, the PTO informed Wyden that his score on the morning session had been reconsidered and raised to 58, but that no further credit would be given for his answers on the afternoon session. Exhibit 19 (CA-141).

19. Wyden sought further reconsideration of his grade and was informed of his right to petition the Commissioner for review, pursuant to 37 CFR §1.181(a). Exhibits 20-21 (CA-150, 180). Wyden asked that his prior correspondence be treated as a petition to the Commissioner. Exhibit 22 (CA-181).

20. By decision dated November 13, 1984, Wyden's petition to the Commissioner was denied. Exhibit 23 (CA-188).

21. Wyden commenced the civil action leading to this appeal by filing a complaint on or about January 14, 1985 (CA-5).

Proceedings in the District Court

In his complaint, Wyden indicated (CA-8-9) that the immediate cause of action was the denial of his petition to the Commissioner (presumably the denial set forth in the decision dated November 13, 1984, CA-188). Wyden further raised a host of contentions all relating back to his prior suspension from practice.

The Commissioner filed a motion for summary judgment, together with a statement of material facts (CA-40).

Upon consideration of the Commissioner's motion, Wyden's response thereto and the entire record before it, the District Court found that Wyden's claims were either untimely under Local Rule 1-26 of that Court[6] or were barred by res judicata because Wyden had litigated the same matters[7] in three prior lawsuits in that Court (CA-193). Accordingly, the Court dismissed the action. Wyden subsequently filed a motion for new trial (CA-194) which was denied by an order dated August 5, 1985 (CA-195).

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6 The claims based on the Commissioner's decision of November 13, 1984.

7 The various contentions and claims relating back to Wyden's suspension from practice in 1978.

SUMMARY OF ARGUMENT

The Commissioner believes there are serious doubts concerning this Court's jurisdiction to hear this appeal. Transfer of the appeal pursuant to 28 U.S.C. §1631 would appear to be appropriate in the event this Court concludes that it lacks jurisdiction.

On the merits, the decision of the District Court holding the claims raised by appellant Wyden to have been either untimely or barred by res judicata is free from error and should be affirmed.

ARGUMENT

Jurisdiction Over this Appeal is Dubious

As already noted,[8] the Commissioner believes there are serious doubts concerning this Court's jurisdiction to hear this appeal. Wyden has asserted (Br-2) that this Court is the "proper forum" for resolving the "antitrust questions" and "patent matters" he purports to have raised.

However, as this Court stated in Atari, Inc. v. J.S. & A Group, Inc., 747 F.2d 1422, 1429, 223 USPQ 1074, 1078 (Fed. Cir. 1984):

> our jurisdiction of appeals from district courts depends on that of the district court, and a mere allegation that patent law is involved will not give this court jurisdiction when that of the district court did not rest at least in part on a continuing claim arising under the patent or plant variety protection laws. 28 U.S.C. §1338.

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8 Supra, page 2 n.4.

Accordingly, the jurisdictional issue cannot be resolved simply on the basis of Wyden's assertions of "antitrust questions" and "patent matters."

This Court recently had occasion to examine its jurisdiction over another appeal from a decision of the District Court for the District of Columbia involving a decision of the Commissioner. See Dubost v. U.S. Patent and Trademark Office, 777 F.2d 1561, 227 USPQ 977 (Fed. Cir. 1985). In Dubost, it was stated that (777 F.2d at 1564, 227 USPQ at 978):

> 28 U.S.C. §1295(a)(1) vests this court with jurisdiction over any appeal from a final decision of a district court, if the district court's jurisdiction was based in whole or in part on 28 U.S.C. §1338, with some exceptions not here applicable. 28 U.S.C. §1338(a) vests the district court with jurisdiction over "any civil action arising under any Act of Congress" relating to, among other matters, patents.

The Court in Dubost went on to note that for jurisdiction of the District Court to have been founded on §1338(a), the plaintiff must have asserted some right or interest under the patent laws, or at least some right or privilege that would be defeated by one or sustained by an opposite construction of those laws. Further, the Court found that the fact that Dubost's claim did "not appear to be created by the patent laws in the same sense as the bulk of §1338 cases" was not

controlling. Finally, jurisdiction was determined to exist in Dubost because the Court concluded that Dubost's complaint clearly stated a right or interest that would be defeated or sustained by the construction given to the patent laws.

Wyden's claims in this case may be said to arise under 35 U.S.C. §32 which provides, in pertinent part, that:

> The Commissioner may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent and Trademark Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 31 of this title, ...
>
> * * *
>
> The United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its rules determines, may review the action of the Commissioner upon the petition of the person so refused recognition or so suspended or excluded. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949).

While it might be argued that since §32 is part of Title 35, U.S.C., entitled "Patents", and since it relates to practice before the PTO, that it is an Act of Congress relating to patents. That overly simplistic approach, however, has been rejected in analyzing whether or not a civil action assumed to

arise under §33[9] gave rise to §1338 jurisdiction. See Enders v. American Patent Search Co., 535 F.2d 1085, 189 USPQ 569 (9th Cir. 1976), cert. denied, 429 U.S. 888 (1976). In concluding that §33 was not closely enough related to patents to give it §1338 jurisdiction, the Enders Court observed, inter alia, "that there is a substantial difference between statutes directly relating to patents and those concerning merely collateral aspects of practice before the [PTO]" (535 F.2d at 1090, 189 USPQ at 573). But, cf. Le Blanc v. Spector, 378 F. Supp. 301, 308, 183 USPQ 408, 411 (D. Conn. 1973) and Arnesen v. Raymond Lee Organization, 333 F. Supp. 116, 117, 172 USPQ 1, 2 (C.D. Cal. 1971).

No case has been found on the question of whether 35 U.S.C. §32 is sufficiently related to patents to give rise to §1338 jurisdiction. While the Enders case, supra, would suggest that the relation is too tenuous, it could be argued that §32 stands on a different footing, particularly where claims might involve substantive patent law questions, e.g.,

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9 35 U.S.C. §33, which provides as follows:

> Whoever, not being recognized to practice before the Patent and Trademark office, holds himself out or permits himself to be held out as so recognized, or as being qualified to prepare or prosecute applications for patent, shall be fined not more than $1,000 for each offense. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

in connection with a review on the merits of a candidate's failure to receive a passing grade on the written examination required of those seeking permission to practice before the PTO. Such questions, however, are not believed to be involved in this case since Wyden's claims relating to his failure to receive a passing grade on the examination were found to be untimely.[10]

Under the circumstances of this case, it is believed unlikely that it could be said that Wyden's complaint stated any right or interest that would be defeated or sustained by the construction given to the patent laws. Under the test ultimately found controlling in Dubost, supra, then, it appears unlikely that this Court has jurisdiction to consider this appeal.

Of course, if this Court concludes that it lacks jurisdiction, then jurisdiction would lie in the U.S. Court of Appeals for the D.C. Circuit. See Dorsey v. Kingsland, 173 F.2d 405, 80 USPQ 186 (D.C. Cir. 1949), rev'd on other grounds, 338 U.S. 318 (1949). Accordingly, this Court could transfer the case there pursuant to 28 U.S.C. §1631.

In any event, for reasons discussed in the following section of this argument, the decision of the District Court is believed clearly free of error.

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10 Moreover, it is not clear from Wyden's brief whether he is pressing those claims in this appeal (Br-4).

The Decision of the District Court is Free of Error

With one exception, Wyden's contentions before the District Court echoed, if they did not directly mirror, those of his four prior proceedings against the Commissioner. The one exception pertains to Wyden's failure to pass the examination required of those seeking to practice before the PTO in patent cases. His claims on that score, while new, were correctly found to be untimely under Local Rule 1-26 of the District Court. All of his remaining claims were correctly found to be barred by the doctrine of res judicata.

1. The Claims based on Wyden's Failure of the Examination were Untimely.

The Commissioner is authorized to prescribe requirements that must be met by those seeking to practice before the PTO in patent cases.[11] 35 U.S.C. §31. He is similarly empowered to exclude from practice before the PTO those who fail to meet those requirements. 35 U.S.C. §32. One prerequisite adopted by the Commissioner is an examination. 37 CFR §1.341(c)(1984).

By statute, a decision by the Commissioner to deny a right to practice before the PTO, because of an applicant's failure to meet the Commissioner's requirements, is reviewable

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11 Practice before the PTO in trademark cases is governed by 5 U.S.C. §500(b) and (e).

in the "United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its rules determines." 35 U.S.C. §32. The District Court has adopted Local Rule 1-26 to provide for such review. In pertinent part, Local Rule 1-26 provides:

> A person refused recognition to practice ... before the Patent Office may file a petition in this court against the Commissioner of Patents for review of such action within thirty days after the date of the order recording the Commissioner's action. ***

The final order recording the Commissioner's action on Wyden's examination failure was dated November 13, 1984 ((CA-188)). Wyden did not commence his civil action challenging the Commissioner's decision until January 14, 1985, more than two months later ((CA-5)). Wyden's failure to comply with the time limit of Local Rule 1-26 barred so much of his action as sought review of his exclusion from practice before the PTO based on his failure of the October 1983 examination. See Wyden v. Diamond, CA No. 80-2581 ((D.D.C.)), Mem. filed December 10, 1980 at 4 ((CA-7)). Without question, Wyden was familiar with this time limit, having had it invoked against him successfully in his first civil action against the Commissioner. Moreover, Wyden's efforts subsequent to the Commissioner's final decision of November 13, 1984, to obtain further reconsideration by the Commissioner ((Br-3)) could not

have made his otherwise untimely petition for review of the final agency action timely. Impro Products, Inc. v. Block, 722 F.2d 845, 850-51 (D.C. Cir. 1983).

2. Wyden's Remaining Claims are Barred by Res Judicata.

All of the other claims set forth in Wyden's prolix complaint simply rehash the allegations that he advanced in his three prior lawsuits in the District Court, and in his proceeding in the U.S. Court of Appeals for the District of Columbia Circuit. Consequently, those claims were correctly found to be precluded by res judicata.

Specifically, Wyden revived his assertions that he should not have been suspended in July 1978, or required to undergo examination as a predicate to resuming practice as a patent agent. Complaint, ¶¶8-23 (CA-24-39). He also complained about the PTO's supposed authority to oversee the Raymond Lee Organization and Lawrence Peska Associates, about the article relating to that oversight published in the Bulletin of the American Patent Law Association, and about the PTO's alleged correspondence with his former clients. Complaint, ¶¶1-7 (CA-14-24).

These same contentions were raised, and resolved against Wyden, in his first three civil actions against the Commissioner in the District Court, and in his Court of Appeals proceeding. (See ¶¶6-7, 10-13 and 15 of the statement

of facts, supra, pages 4-8.) Indeed, as early as Wyden's second civil action, Judge Parker already had recognized that res judicata barred his relitigation of claims relating to his 1978 suspension from practice (CA-92).

Under the doctrine of res judicata:

> the parties to a suit and their privies are bound by a final judgment and may not relitigate any ground for relief which they already have had an opportunity to litigate -- even if they chose not to exploit that opportunity -- whether the initial judgment was erroneous or not. The appeal process is available to correct error; subsequent litigation is not.

Hardison v. Alexander, 655 F.2d 1281, 1288 (D.C. Cir. 1981) (footnote omitted); accord Page v. United States, 729 F.2d 818, 820 (D.C. Cir. 1984). Every matter about which Wyden complained below, except for his examination failure, was raised and litigated by him previously.

Without question, Wyden draped those rehashed claims in somewhat different legal window-dressing. But what matters for res judicata purposes "'is the facts surrounding the transaction or occurrence which operate to constitute the cause of action, not the legal theory upon which a litigant relies.'" Page v. United States, supra, 729 F.2d at 820, quoting Expert Electric Inc. v. Levine, 554 F.2d 1227, 1234 (2d Cir.), cert. denied, 434 U.S. 903 (1977). Indisputably, the

facts underlying all claims here, other than Wyden's examination failure (review of which was correctly found to be untimely), are the same as those Wyden broached on four prior occasions both to the District Court and to the U.S. Court of Appeals for the District of Columbia Circuit.

CONCLUSION

It is submitted that the decision of the District Court granting summary judgment for the Commissioner and dismissing Wyden's civil action was correct. Wyden's various arguments and contentions, to the extent they can be understood, are largely irrelevant to the issues properly raised by this appeal and are, in any event, clearly unpersuasive of any error on the part of the District Court.

Respectfully submitted,

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February 7, 1986

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