

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

DEEPGULF, INC. and
TOKE OIL AND GAS, S.A.

Plaintiffs,

vs.

MARC M. MOSZKOWSKI

Defendant.

Case No.: 2018 CA 000543

Division: "E

MOTION FOR RECONSIDERATION

COMES NOW, Defendant Marc Moszkowski, Pro-Se, and respectfully moves this Court to reconsider its Order filed on March 12th, 2025, which granted Summary Judgment as to Count I of Plaintiff's Complaint.

Defendant submits for the Court's consideration a substantial number of critical inconsistencies in said Count I.

Paragraph 1. of the order reads as follows:

"Plaintiffs' Motion for Summary Judgment as to Count I is hereby GRANTED. The Defendant admitted in his deposition that the patents described in Paragraph 16(b) through 16(e) of the Complaint are

owned by Plaintiff DeepGulf, Inc. In addition, at the hearing on Plaintiffs' Motion for Summary Judgment, Defendant conceded that all patents referenced in Count I are owned by Plaintiff DeepGulf, Inc., and did not have a legal basis to oppose the relief requested."

Since as early as a full year before this case was remanded to this Court from the U.S. Court of Appeals for the Eleventh Circuit, before which Plaintiff was the Appellant, Defendant has never contended that he owned any of the patents.

Moreover, the issue was moot at the time of the proceedings due to Defendant having formally and unequivocally assigned his patent interests to Plaintiff on September 15th, 2005, nearly two decades before this day, as confirmed verbatim in the very body of Plaintiff's Count I.

As regards the depositions mentioned in the Order, Defendant remarks that these go back nearly 6 years and Defendant has uncovered since quite a high volume of serious inconsistencies, which he has described profusely throughout his pleadings.

However, Defendant does not recall having conceded during the hearing on Plaintiffs' Motion for Summary Judgment that all patents referenced in

Count I are "owned" by Plaintiff, since they cannot, for the multiple reasons developed below.

He apologizes if he gave a different impression.

Defendant stresses (and has stressed consistently since July 2020) that improper wording in the Order would be detrimental to both parties and has the potential of exposing Plaintiff to claims from third parties, an issue which is not indifferent to Defendant since he owns nearly 50% of Plaintiff's stock.

Extensive evidence relative to the issue can be found throughout Defendant's pleadings, and in particular in section C, paragraph I of his Motion for Summary Judgment filed on January 1st, 2025, with further evidence itemized in **Exhibit "N"** of said Motion.

I. RECITAL

Over the years, Defendant applied for 6 patents with the United States Patent and Trademark Office (USPTO):

- Defendant filed his first patent application on June 13th, 2002;
- He filed the last on June 3rd, 2015.

Of the 6 applications, 3 patents were granted and 3 were not.

Additionally, as stated throughout Defendant's defenses, DeepGulf, Inc. is not in any position to "own" any of the patents, since there exists for each one of the patents a co-inventor, unrelated to Plaintiff Deepgulf, Inc., whose identity clearly appears on each of the patents. Said co-inventor has not assigned his interests to Plaintiff, and it is unreasonable to believe that he would.

Plaintiff can claim only Defendant's interest, which Defendant already formally assigned to Plaintiff Deepgulf, Inc. nearly 20 years ago and has not contested since long before this case was remanded to this Court on June 3rd, 2021.

Furthermore, such interest can only relate to whichever patents are still valid.

II. STATUS OF THE SIX PATENTS AND PATENT APPLICATIONS

1. Flex J-Lay tower

- Patent number: 6,776,560;
- Patent **lapsed** in 2016 due to failure by Plaintiff to pay the maintenance fee;
- Anticipated expiration was 2022-06-13;

- Invention is therefore in the public domain since 2016. No one can own it. Anyone can use, make, sell, or distribute the previously patented invention.

2. Other patents and patent applications as listed by Plaintiff:

a. Method of fully expelling compressed gas from a tank.

- Patent number: 9,644,792;
- Patent is **valid**, although Plaintiff neglected to pay the maintenance fee, which was paid by the third party co-inventor, plus a penalty;
- Adjusted expiration is 2035-06-24;
- Patent cannot be "*owned by Plaintiff DeepGulf, Inc.*", since there exists another co-inventor. Only Defendant's interest can be **assigned** to Plaintiff. Such assignment was formally granted by Defendant to Plaintiff nearly 20 years ago and has not been contested since long before this case was remanded to this Court.

b. Dual gradient pipeline evacuation method.

- Patent number: 8,146,667;

- Patent **lapsed** in 2016 due to failure by Plaintiff to pay the maintenance fee;
- Anticipated expiration was 2030-07-19;
- Invention is therefore in the public domain since 2016. No one can own it. Anyone can use, make, sell, or distribute the previously patented invention.

c. Method of providing an outlet on a subsea pipeline.

- Publication number: 20120014751;
- Patent **not granted**;
- Application and description are therefore in the public domain.
No one can own it. Anyone can use, make, sell, or distribute the disclosed information.

d. Method of filling CNG tanks.

- Publication number: 20120012225;
- Patent **not granted**;
- Application and description are therefore in the public domain.
No one can own it. Anyone can use, make, sell, or distribute the disclosed information

e. Dynamic positioning connection

- Publication number: 20060130729;
- Patent **not granted**;
- Application and description are therefore in the public domain.

No one can own it. Anyone can use, make, sell, or distribute the disclosed information.

To summarize, of the 6 patents and patent applications, 3 were granted, 2 lapsed because of Plaintiff's failures to maintain them, and **only one is still valid**, thanks only to the co-inventor's diligence.

3. Regarding "*other inventions and/or patentable methods*"

Those are cited in Count I of Plaintiff's Complaint's, in Paragraph 16(f), which Plaintiff declared, quite inaccurately, in page 12 of his Motion for Summary Judgment of December 5th, 2024, "***have not been disclosed yet to DeepGulf***". One may refer to Defendant's Response to Plaintiff's Statement of Undisputed Facts, filed on January 21st, 2025, paragraph 23:

"As stated in said pages of the Deposition, all information regarding natural gas technologies (which would have

been those addressed in the deposition), had been profusely communicated to the Plaintiff.

*Irrespective of the Plaintiff's interpretation of Defendant's words during the heated July 2019 deposition, the acronym "**CNG**", for "Compressed Natural Gas", appears in **801** emails sent or copied to Plaintiff before 2017, and in **533** emails received or copied from Plaintiff during the same period.*

*As for the acronym "**LNG**", for "Liquefied Natural Gas", it appears in **1,088** emails sent or copied to Plaintiff before 2017, and in **753** emails received or copied from Plaintiff during the same period.*

Plaintiff does not specify the number of exchanged messages with such information that would qualify as a threshold for such information to be considered disclosed, or undisclosed. "

III. STATUS OF THE "*BUSINESS RELATIONSHIP*"

The existence of an extant "*business relationship*" between Plaintiff and Defendant, whether actual or alleged, is pivotal for Plaintiff's argumentation in Count I of his Complaint, and as such must be discussed here.

1. As regards the status of Director

Counsel for the Plaintiff wrote in his Motion for Summary Judgment, Count I, that:

*"During all times pertinent to this case Defendant has been **and still is a director and has thus maintained** this Business Relationship keeping the agreement in force."* [emphasis added].

However, paragraph 9. of Plaintiff's Amended Complaint of June 3rd, 2021 reads as follows:

- *"9. During all times pertinent to the allegations in this Complaint, Moszkowski was a Director of DeepGulf until Defendant was **removed completely** from the Board of Directors **on July 7, 2020.**"* [emphasis added]

while in paragraph 5 of the *"Affidavit of Rustin Howard in Support of Plaintiffs' Motion for Summary Judgment"* of September 6, 2024, Mr. Howard's sworn statement reads as follows:

- *"5. Since the formation of DeepGulf, Inc. to the present date, Marc M. Moszkowski has been a director of Deep Gulf, Inc."*

Plaintiff's use of the adverb "***thus***" implies without a doubt that the "*Business Relationship*" is a **consequence** of Defendant being "*still*" a director, and, conversely, the implication of Defendant not being a director any more is that, since July 7, 2020, he is neither in a Business Relationship with Plaintiff.

It appears that although Plaintiff did remove Defendant from the Board of Directors in July 2020, a few days before Plaintiff appealed the District Court judgment before the U.S. Court of Appeals for the Eleventh Circuit, he somehow pretended for the sake of this action to have surreptitiously, albeit conveniently, reinstated him as a Director, although without ever notifying him of the elevation, nor ever apprising him of any of the Board of Director's activities for the past five years and counting.

However, even if Defendant were somehow and confusedly still a Director, other considerations would strongly suggest that there is in fact no actual *bone fide* business relationship, as will be shown below.

2. As regards stock ownership

- a. Although stock ownership does not constitute business relationship per se, Defendant owns a little under 50% of the corporation, the exact figure being impossible to confirm given the disarray of the

- financial documents he obtained from Plaintiff under threat of subpoena in July 2019, and the repeated refusal by Plaintiff in the past six years to make subsequent financial documents available remotely to Defendant who, despite being a major shareholder, is illegally kept in the dark by Plaintiff;
- b. The situation represents a substantial conflict of interest, with regard to Defendant being in effect exposed as a significant shareholder to Plaintiff's expenses for Plaintiff's attorney and legal fees in his legal actions against Defendant;
 - c. Since 2018, Plaintiff has consistently refused to apprise Defendant of the sources of funding for Plaintiff's representation, despite:
 - i. Defendant's repeated demands;
 - ii. Defendant owning nearly 50% of Plaintiff's stock, which creates a definite conflict of interest;
 - iii. Plaintiff's own By-Laws mandating Plaintiff to pay for Defendant's legal costs;
 - iv. Plaintiff having refused to pay for Defendant's legal costs;
 - v. Attorneys having an ethical obligation to be transparent about funding arrangements.

3. As regards Defendant's status as either a Director, or not a Director

- a. Being still one of the three Directors, Defendant would technically have a say in corporate governance;
- b. However, he has not been invited to any board meeting in the past five and a half years, nor has he been informed of the corporation's business, or lack thereof, so either:
 - i. Board meetings have been held without him and, if he has been denied participation as a Director, then there has been a breach of corporate governance laws, or
 - ii. There has been no Board meetings and the corporation is in fact inactive from a business standpoint, or
 - iii. He is not a Director, and therefore he is not in a "*Business Relationship*" with Plaintiff.

4. As regards unpaid wages

- a. As reiterated throughout Defendant's more than 4,000 pages of pleadings and correspondence since 2017, Plaintiff owes Defendant well in excess of \$1 million for unpaid wages and reimbursement of past expenses;

- b. The corporation's failure to pay is a breach of contract and a breach of Federal obligations, and fraud was involved, such as false promises of payment made and personally guaranteed to the Government of the United States, which will support fraudulent inducement claims;
- c. As for the documentation produced by Plaintiff to the effect that no salaries were or are due to Defendant, such documentation is clear fabrication or forgery, as repeatedly evidenced by Defendant throughout his defenses;
- d. Regarding any possible statute of limitations, Defendant never ceased to consistently demand payment over the years;
- e. Moreover, Plaintiff has reneged on his contractual obligation to pay for Defendant's attorney and legal fees, as per Plaintiff's own By-Laws.

5. As regards the lack of business activity for 8 years at least

- a. It is suggested that there has been strictly no business activity for the past eight years, and the corporation is functionally inactive

- since Defendant was forced penniless out of the country for lack of the visa which Plaintiff had ceased to sponsor ¹;
- b. If the corporation is not generating revenue but continues legal action, it suggests the lawsuit is strategic harassment rather than a legitimate dispute and Defendant demands to be apprised of the source of funds and status of the corresponding debt;
 - c. If the corporation is generating revenue, Defendant is entitled to be apprised thereof, as he is both the largest shareholder and, according to some of the Plaintiff's contradictory statements, still one of the three Directors.

6. As regards the frivolous lawsuit against Defendant

- a. Plaintiff has been suing Defendant for eight years without ever producing even a scintilla of valid evidence whatsoever, which would indicate either:
 - i. Harassment litigation intended to wear him down, and/or
 - ii. A strategy to avoid paying the debt owed to him, and/or
 - iii. A maneuver aimed at deflecting blame from the Plaintiff to the Defendant.

¹ To add insult to injury, Attorney for the Plaintiff later accused Defendant quite scandalously of having "*absconded*".

- b. All three may constitute abuse of process and be grounds for sanctions under Florida law.

IV. GROUNDS FOR THIS MOTION

Defendant states as follows:

1. The injunction is no longer legally justifiable

- a. Except for only one, the patents have lapsed and entered the public domain due to Plaintiff's failure to maintain them and pay the required maintenance fees, while the fees were paid by a third party for the only patent still valid;
- b. Once a patent lapses and enters the public domain, it is no longer enforceable, and the former patent holder has no exclusive rights over the invention and is therefore not in a position to own it;
- c. Since well before this case was remanded to this Court, Defendant has not contested Plaintiff's claim in Count I regarding the only valid Patent, number 9,644,792, as the matter was not in dispute at the time. Moreover, the subject was moot at the time of the proceedings due to Defendant having formally and unequivocally assigned his patent interests to Plaintiff on September 15th, 2005.

2. Plaintiff has abandoned any right to the lapsed patents

- a. Plaintiff had a legal obligation to maintain the patents if he wished to enforce exclusive rights over them;
- b. By allowing the patent to lapse, Plaintiff forfeited any proprietary interest, and the inventions are now free for public use, including by Defendant;
- c. As a result, the injunction serves no valid legal purpose and must be dissolved or modified.

3. Regarding patent applications which were not granted

- a. Inventions relating to patent applications which are not granted are typically in the public domain, meaning anyone can use them unless some other form of intellectual property (such as trade secrets or copyrights) would apply, which is not the case here;
- b. The original author does not have enforceable patent rights unless a new application is filed with modifications.

4. The injunction is unenforceable under law

- a. Under 35 U.S.C. § 271(a), patent rights exist only "*during the term of the patent*", when a patent is valid and active, and maintenance

- fees are paid;
- b. The injunction would effectively prohibit Defendant from engaging in lawful activity (i.e., using public-domain knowledge);
 - c. The injunction constitutes an improper restriction on Defendant's legal rights, warranting its dissolution or modification.

5. Plaintiff's actions constitute laches and waiver

- a. Plaintiff failed to preserve its alleged rights, and any claims of exclusivity have been abandoned;
- b. Equity does not support an injunction benefiting a party that neglected its own obligations while harming Defendant's right to use public-domain technology.

6. Business Relationship

Defendant contends that there can hardly exist an actual "*Business Relationship*" since:

- a. There is no business that Defendant knows of;
- b. Plaintiff has failed on all his obligations;
- c. Serious, but also absurd conflicts of interest exist, and
- d. According to Plaintiff's Rustin Howard' sworn statement Defendant

is not a Director since July 7th, 2020.

7. Request for relief

WHEREFORE, Defendant respectfully requests that this Court:

- a. Dissolve or modify the injunction issued on March 12th, 2025, since:
 - i. One only of the six patents and patent applications is still valid;
 - ii. Plaintiff cannot own the patent, although he can be assigned an interest in the patent;
 - iii. Interest in said patent was formally assigned by Defendant to Plaintiff two decades before this day;
 - iv. Defendant acknowledged the assignment since before this lawsuit was remanded to this Court on June 3rd, 2021, so the Count regarding the only extant patent is in effect moot, and
 - v. The balance five patents and patent applications are all in the public domain.
- b. Confirm that there exists no actual Business Relationship between the parties;
- c. Grant any further relief this Court deems just and proper.

Respectfully submitted this 13th day of March, 2025

Marc Moszkowski, Pro Se
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A handwritten signature in blue ink, reading "M. Moszkowski". The signature is written in a cursive, flowing style.

CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of March, 2025, a copy of this motion has been furnished to Braden K. Ball, Jr., attorney for the plaintiffs, through the Florida Courts E-Filing Portal.

A handwritten signature in blue ink, reading "M. Moszkowski". The signature is written in a cursive, flowing style.