

## If Considered Material, False Statements Made to Federal Regulatory Bodies Create Exposure to Criminal Liability

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The U.S. Court of Appeals for the Tenth Circuit reversed a conviction for making a false statement to the U.S. Patent and Trademark Office (USPTO), holding that a false statement is not material if it could not influence the relevant USPTO decision. The Court also reversed several other convictions against the defendant but affirmed his obstruction-of-justice conviction. Judge Kelly dissented in part because he would have reversed all of the convictions against the defendant. *United States v. Camick*, Case No. 14-3089 (10th Cir., July 31, 2015) (McHugh, J. (Kelly, J., dissenting)).

Leslie Camick sought to leave his life in Canada—including his obligations to pay back taxes and child support—behind. Accordingly, in July 2000, Mr. Camick assumed the identity of Wayne Camick, his deceased brother, and entered the United States. Mr. Camick lived in the United States as “Wayne Camick” for 11 years before federal immigration authorities uncovered the truth. During that period, Mr. Camick used his false identity in a number of ways, one of which was to file a provisional patent application. Importantly, Mr. Camick abandoned his provisional application.

The United States prosecuted Mr. Camick for several acts of fraud under a variety of criminal statutes. With respect to the provisional patent application, the government claimed Mr. Camick made a “materially false, fictitious, or fraudulent statement” to the USPTO. 18 U.S.C. § 1001(a)(3) (2012). The jury convicted Mr. Camick of the offense, and Mr. Camick appealed to the 10th Circuit that the evidence did not support the conviction.

The 10th Circuit agreed and reversed the conviction. Mr. Camick’s statement to the USPTO that he was “Wayne Camick” was obviously false and intended to mislead the USPTO into thinking he was “Wayne Camick,” but the statement was not material. As the court explained, the purpose of a provisional patent application is to set the priority date *if* the applicant converts the provisional application into a non-provisional application. Moreover, the USPTO does not examine provisional applications for patentability. Because he took no further action on his provisional application, effectively abandoning it, Mr. Camick insured that the USPTO would never review the statements in the provisional application, much less take action based on them. Accordingly, the use of a false identity in the provisional application was not material and could not support a false-statement conviction.

**Practice Note:** Mr. Camick escaped criminal liability because he made his false statement in a

provisional application that he abandoned. Nevertheless, the case serves as an effective reminder of the importance of avoiding false statements when dealing with the USPTO (or any government agency), because the consequences can include criminal liability.

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