

PACKERCHRONICLE 7

John Swallow and the Super Light Bulb: *Did his defense backfire?*

By Lynn Packer

August 6, 2013 *Second of Two Parts*



**Did a Super Light Bulb exist or
was a fake shown investors?**

The stakes for embattled Utah Attorney General John E. Swallow were big. His involvement with the attempt to market a super light bulb had been well off the Utah Press's and FBI's radar screen, until yesterday when PACKERCHRONICLE reported on Swallow's fundraising for the On International, Inc. venture and indications he misled some inventors..

Swallow declined comment. But not his colleagues. Even before the story was published Swallow's former employees and co-workers mounted a defense on his behalf to clarify any misconception any fraud was involved. Five of them signed a letter. "We know that in your pursuit of a story you have sought an "angle" on how John conducted himself in the period of his career when he worked alongside us at On International," former On Inc. CEO wrote after consulting with Swallow.

During the course of several prepublication interviews and email exchanges Pelo had been told about conflicting statements made by former insiders and investors. For example, one investor saw an experimental device that put out the equivalence of 40 watts of illumination. But two scientists and another witness said the best they ever got was a very faint glow that illuminated at far less than the equivalence a single watt. And internal emails and a PowerPoint slideshow leaked by a skeptical investor indicated that Pelo's co-founder, John Swallow, may have misled potential investors about the rate of progress toward commercializing an LED light bulb to keep hopes alive and money flowing in when after two years of research little had moved

beyond the theoretical stage.

Pelo, though, wrote that Swallow "worked tirelessly" and "acted with professionalism and good faith in all of his dealings" involving the company. His July 9 letter co-signed by his four associates, however, may have muddied waters more than it clarified them.

For example, Richard Mackerel who signed the letter and signed checks for On, had said Swallow had worked for free and



**Signatories to the letter copied to John Swallow:
We're on the same page. Or are they?**

received no compensation from the company. Another letter signee, Richard Ferguson, also said, "John did not make a dime."

The letter, though, admitted "John's compensation was limited to a small equity stake and very limited and modest payments to his law firm for direct legal services."

Based on that statement in the letter Pelo to provide a year-by-year accounting of the payments made to Swallow. He emailed in reply saying they made a mistake in the letter, that Swallow had in fact not been paid.

But their position would change again. During a follow-up interview Pelo was asked how Swallow and his family survived financially when he never made a dime during his primary job for three or four years.

Pelo sent yet another email saying Swallow had indeed been paid primarily for legal services, in 2005, amounting to \$66,145.

In summary: Swallow was not paid, he was paid, he was not paid, he was paid.

The letter says Swallow was involved actively from 2003 until early 2006 then sporadically into 2009. In fact, Swallow was registered as an On Inc. lobbyist into 2010 even after he had joined the attorney general's office. And one of the emails sent by Swallow obtained by *PC* shows him playing an active role late in 2009

Sent: Friday, October 16, 2009 2:55 PM

Subject: Re: FW: On International update and proposal

Charles:

Nice to hear from you. I am in Houston until Monday. We have continued to meet patent deadlines. A few creditors and I have put up money as needed to keep those alive. As of late, vSpring has paid some patent work. We still see no interest out there beyond Phil Worland and perhaps vSpring. When last we spoke you seemed disinclined to move forward with your proposal of putting in \$30,000 in light of the fact that our patents are public and no one has expressed interest in the technology. Phil Worland continues to be interested in doing something to combine the On Technology with the Moxtronix technologies but until he is successful in raising money, that is not a viable option. The big challenge is that even if we shop the technology to a university, we still need a minimum threshold of funds to make it work and only vSpring seems willing and able to explore.

If your situation and interest level has changed, please let me know.

John

The letter said all company presentation materials prepared to show potential company partners "reflected the information known to us at the time and our expectations for the future." But, in fact, the leaked emails show serious question had been raised about the extent to which progress had been made. In fact the LED light bulb progress was nowhere near that reflected on the slides Swallow used.

The letter said the company never demonstrated a functioning device "or anything remotely akin to an LED based on Zinc-Oxide materials."

But Frank Madsen had said On Inc. had developed a device that put out the equivalence of 40 watts, a comment that had been shared with Pelo for his reaction.

Pelo, in response, asked Madsen to prepare a letter that retracted his statements.

In a July 11, 2013 letter Madsen said he may have unintentionally given he belief “that they were showing me a working 40 watt light bulb.” “This was not the case,” he wrote. “It is possible that the scientists may have been using 40 watts as a reference point as they discussed the hope of what they were building,” He wrote. “In summary I do recall the references to 40 watts but I did not see a 40 watt light bulb as my description to you may have inferred.”

Madsen, however, was very clear during his June 28 interview that he had seen an On LED device illuminate with the equivalence of 40 watts. .Interview excerpts:

They were attempting to take that technology and manufacturer, to see if they could extend the technology to get to 60 watt, 100 watt, 150 watt bulbs. Producing that much light. When I was there the scientist who was working on it showed me where they had now reached the equivalent of 40 watts in terms of incandescent light, it would be the equivalent of 40 watts of incandescence.

What they were working on is something that would be similar to a light bulb in appearance, a single entity that would produce that would produce that equivalent in my instance what we were looking at was producing 40 watts, the same incandescence a 40 watt bulb would produce. That’s what I saw. I really don’t know whether they were able to convince him more than it was. But it sure seemed real to me.

My understanding of the process was they were trying to produce a single bulb that would provide the same illumination as whatever bulb they were trying to duplicate. In my case it was a 40 watt bulb. And the idea was if you could do that the cost was infinitesimally small compared to the amount of electricity use to fire an incandescent bulb. It was less than a hundredth of the cost in terms of electricity. If we could perfect this kind of circumstance it would change the world because we would be utilizing less than one percent of the electricity currently used and yet produce the same amount of light.

Packer: What did it look like?

Madsen: It had much the appearance of a, as I recall, of an incandescent globe. It was different, it’s been so long I don’t remember, but as I recall it had the appearance, well not exactly, but somewhat the appearance of a light globe I would be familiar with. They showed me how it was developed what it did. And then we had a light meter there.

Question: Why didn’t they just market that? That’s better than what you have today with LEDs. With standard LEDs.

Answer: They were saying we’ve got to demonstrate that when this technology is developed we’ll provide greater illumination, greater amplification, than just this illuminating source that is producing the equivalent of a 40 watt bulb. The people that we’re talking to, to finance this, we’ve got to be able to prove to them that we can produce whatever level of illumination from a single source. We’ve got to prove to them, 40 watts, I mean it’s the equivalence of 40 watts, got them interested. We’ve got to show them we can take the technology and produce whatever level of illumination they want.

The letter said “The notion that some members of the team might have ‘pushed’ for premature commercialization of our discoveries and by inference may have influenced over-optimistic representations to investors is simply not true.”

In fact, however, some On insiders did believe their light bulb experiments were nowhere near ready for commercialization, that On should have charted a new course for another product, and that PowerPoint slide forecasts used by John Swallow were vastly overoptimistic about when a product might come to market.

Whether Swallow or anyone else at On International misrepresented the progress of commercializing an LED light bulb to investors or potential investors would had been at the heart of a criminal investigation had there ever been one. Utah's Communication Fraud Law makes it illegal for someone to someone to devise a scheme "to defraud another or to obtain from another money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions..."

Letter signee Richard Ferguson told me in an interview that maybe some bad decisions were made by Pelo and Swallow but nothing shady, nothing lacking in integrity was done at all." "This was not a situation where John was out there trying to hype, not some huckster trying to sell some blue sky.

SIDEBAR COMMENTARY

Inconsistencies Clarified...or Amplified? *Commentary by Lynn Packer*

As I was wrapping up research for this story I told former On International CEO Brad Pelo about conflicting statements made by former insiders and investors. For example, one investor saw an experimental device that put out the equivalence of 40 watts of illumination. But two scientists told me the best they ever got was a very faint glow. I also told Pelo the facts indicate his co-founder John Swallow may have misled potential investors about the rate of progress toward commercializing an LED light bulb.

In response Pelo spoke with Swallow and four of five key On employees to see if they were actually on the same page. A sixth person, he wrote, could not be located.

Pelo drafted a statement of facts that five of them signed, were copied to Swallow and submitted to *PACKERCHRONICLE*. He wrote that John Swallow "worked tirelessly" and "acted with professionalism and good faith in all of his dealings" involving the company.

That July 9 letter co-signed by his four associates, however, may have muddied waters more than it clarified them.

For example, Richard Mackerel who signed the letter and signed checks for On, told me in an interview Swallow had worked for free and received no compensation from the company. Another signee, Richard Ferguson, told me "John did not make a dime."

The letter, though, said "John's compensation was limited to a small equity stake and very limited and modest payments to his law firm for direct legal services."

When I asked Pelo to provide a year-by-year accounting of the payments made to Swallow he emailed back and said they made a mistake, that Swallow had in fact not been paid.

When we spoke again I wondered how Swallow and his family survived financially when he never made a dime for his main employment for three or four years.

Then I received yet another email saying Swallow had indeed been paid primarily for legal services, in 2005, amounting to \$66,145.

So Swallow was not paid, he was paid, he was not paid, he was paid.

The letter says Swallow was involved actively from 2003 until early 2006 then sporadically into 2009. That's likely not true. Swallow was registered as an On International lobbyist in 2010.

One of the emails sent by Swallow obtained by *PACKERCHRONICLE* shows him playing an active role late in 2009:

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The letter said "The notion that some members of the team might have 'pushed' for premature commercialization of our discoveries and by inference may have influenced over-optimistic representations to investors is simply not true."

The facts and opinions in the story show that some On insiders did believe their light bulb experiments were nowhere near ready for commercialization, that On should have charted a new course for another product, and that PowerPoint slide forecasts used by John Swallow were vastly overoptimistic about when a product might come to market.

Whether Swallow or anyone else at On International misrepresented the progress of commercializing an LED light bulb to investors or potential investors would have been at the heart of a criminal investigation had there ever been one. Utah's Communication Fraud Law makes it illegal for someone to someone to devise a scheme "to defraud another or to obtain from another money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions..."

Because there was not and likely will not be a criminal probe it will not be known whether a prosecutor could have found the evidence needed to prove beyond a reasonable doubt that any On principal misled any investor or potential investor.

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