

No. 20-5532

Supreme Court, U.S.  
FILED  
AUG 13 2020  
OFFICE OF THE CLERK

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In The  
**Supreme Court of the United States**

.....

LARRY GOLDEN,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Defendant*

.....

**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Federal Circuit**

.....

**PETITION FOR WRIT OF CERTIORARI**

.....

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**ORIGINAL**

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## QUESTION PRESENTED

If the Government: on the Executive level accepts a person's intellectual property, passes it on to a government agency to be used with the public without paying just compensation; on the Legislative level accepts a person's intellectual property, passes it on to a government agency to be used with the public without paying just compensation; on the Executive level breaches an implied-in-fact contract to pay just compensation for the use of a person's intellectual property with the public without paying just compensation; on the Legislative level breaches an implied-in-fact contract to pay just compensation for the use of a person's intellectual property with the public without paying just compensation; after inviting the intellectual property owner to several events (i.e. "SBIR Tour" in Colorado where several government agencies discussed and accepted the intellectual property; "TRUST" Industry Day in California where a government agency discussed and accepted the intellectual property; Oakridge National Laboratory (ORNL) in Tennessee where a collaborative agreement was formed for use of the intellectual property; collaborative agreements was formed with Federally Funded Research Laboratories (i.e. Army Research Laboratory (ARL), Navy Research Laboratory (NRL)) for the use of the intellectual property with the public without paying just compensation; and, two trips to the Department of Homeland Security (DHS) where the agency discussed and accepted the intellectual property, etc.) and used the intellectual property with the public in the form of soliciting request for information (RFI), request for proposals (RFP), grant applications, without paying just compensation; agency project managers and contracting officers for at least that of Department of Homeland Security breached implied-in-fact contracts to pay just compensation; government agency (DHS) not authorized to challenged intellectual property rights through a petition for

*Intra Partes Review* (IPR) causes a “taking” of the intellectual property without paying just compensation; administrative court initiates a petition for *Intra Partes Review* (IPR) from an unauthorized governmental agency (DHS) that causes a “taking” of the intellectual property without paying just compensation; administrative court initiates a “frivolous” petition for *Intra Partes Review* (IPR) that violates statute and procedure (initiating the review with unauthorized prior art that does not antedate the challenged patent and claims) causes a “taking” of the intellectual property without paying just compensation; frames all of the government “intentional” use with the public (described above) as government “incidental” use with the public of the intellectual property, causes a “taking” of the intellectual property without paying just compensation; “takes” the intellectual property in any or all the ways described in this question; has the Government “taken” private property under the Fifth Amendment Clause of the U.S. Constitution for the benefit of the public without paying just compensation?

**PARTIES TO THE PROCEEDING**

The parties to the proceeding in the United States Court of Appeals for the Federal Circuit were Petitioner Larry Golden and Respondent United States of America.

## TABLE OF CONTENTS

	<b>Page</b>
QUESTIONS PRESENTED Sought .....	ii
PARTIES TO THE PROCEEDINGS .....	iv
TABLE OF AUTHORITIES .....	viii
OPINIONS BELOW .....	1
JURISDICTION .....	1
STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED .....	1
INTRODUCTION .....	2
STATEMENT OF THE CASE .....	3
REASONS FOR GRANTING THE WRIT .....	9
I. The “SafeRack” Project .....	11
II. The “ATPG” Project .....	12
III. The “V-Tection Project .....	13
IV. Patent Infringement is not a Prerequisite for a Government “Takings’ Under the Fifth Amendment Clause.....	16
V. Potential Liability for Infringement was never	

an Option when the Government’s Use of the CMDC Device was “Incidental” .....	21
VI. <i>Inter Partes Review</i> (IPR) Final Decision “Ripeness” and “Statute of Limitations”: Fifth Amendment “Takings” Claim for Just Compensation.....	27
VII. The “Taking” of Dependent Claims.....	32
CONCLUSION .....	38

## INDEX OF APPENDICES

	<b>Page</b>
APPENDIX A - Court of Appeals Rehearing <i>En Banc</i> Decision (05/26/20) .....	1
APPENDIX B - Court of Appeals Decision (04/10/20) .....	3
APPENDIX C - Court of Federal Claims Order Granting Gov't Motion (05/18/19) .....	18
APPENDIX D - Court of Federal Claims Order Granting Gov't Motion (03/29/18) .....	23
APPENDIX E - Court of Federal Claims Order Deny Gov't Motion (11/30/16) .....	62
APPENDIX F - PTAB: IPR "Final Written Decision" (10/01/15) .....	76
APPENDIX G - CD: Nancy Pelosi, "Steve Jobs didn't invent the iPhone" .....	109
APPENDIX H - CD: Golden invented the CMDC device (i.e. smartphone) .....	110
APPENDIX I - CD: DHS, duplicated the CMDC device (i.e. smartphone) .....	111
APPENDIX J - Executive and Legislative Members Response Letters .....	112
APPENDIX K - DHS <i>Cell-All</i> solicitation .....	119
APPENDIX L - Golden's proposal in response to the <i>Cell-All</i> solicitation .....	143
APPENDIX M - DHS <i>Cell-All</i> third-party Government Contractors .....	162
APPENDIX N - Government "use" is not "incidental" .....	181
APPENDIX O - <i>Cell-All</i> charts, diagrams and drawings .....	195

## TABLE OF AUTHORITIES

<i>United States v. Am. Bell Tel. Co.</i> , 128 U.S. 315, 358-59 (1888) .....	2
<i>James v. Campbell</i> , 104 U.S. 356, 358 (1882) .....	2, 20
<i>McCormick Harvesting Mach. Co. v. Aultman-Miller Co.</i> , 169 U.S. 606 (1898) .....	2
<i>Horne v. Department of Agriculture</i> , 569 U.S. 513 (2013); 576 U.S. ___, 135 S. Ct. 2419 (2015) .....	2, 20
<i>United States v. Testan</i> , 424 U.S. 392, 398 (1976) .....	2, 29
<i>Loveladies Harbor, Inc. v. United States</i> , 27 F.3d 1545, 1554 (Fed. Cir. 1994) ( <i>en banc</i> ) .....	3
<i>Return Mail Inc. v. United States Postal Service</i> .....	5, 20, 22, 29
<i>Golden v. United States</i> , 129 Fed. Cl. 630 (2016) .....	5, 6
<i>Baltimore &amp; Ohio R. Co. v. United States</i> , 261 U.S. 592 (1923) .....	10, 19
<i>Haws &amp; Garrett General Contractors, Inc. v. Gorbett Bros. Welding Co.</i> , 480 S.W.2d 607, 609 (Tex. 1972) .....	10
<i>Library of Congress v. Shaw</i> , 478 U.S. 310, 315 (1986) .....	14
<i>United States v. Mitchell</i> , 463 U.S. 206, 211 (1983) .....	14
<i>Perry v. United States</i> , 294 U.S. 330, 352 (1935) .....	14
<i>United States Trust Co. v. New Jersey</i> , 431 U.S. 1, 19 n.16 (1977) .....	15
<i>Lynch v. United States</i> , 292 U.S. 571, 579 (1934) .....	15, 20
<i>Zoltek Corporation v. The United States</i> , No. 96-166 C.	



Filed: Dec. 9, 2003 .....	16
<i>Richmond Screw Anchor</i> 275 U.S. at 345, 48 S.Ct. 194 .....	16
<i>Zoltek</i> , 672 F.3d at 1327 .....	17
<i>Zoltek v. United States</i> , 442 F.3d 1345, 1350-53 (Fed. Cir. 2006) .....	17
<i>Zoltek v. United States</i> , 672 F.3d 1309, 1326 (Fed. Cir. 2012) (en bane) .....	17
<i>Zoltek II</i> , 672 F.3d at 1326–27 .....	18
<i>Kohl v. United States</i> , 91 U.S. 367 (1875) .....	20, 22
<i>Advanced Software</i> , 583 F.3d at 1378 .....	23
<i>Linda Rosenberg, v. The United States</i> ; Memorandum Opinion and Final Order; Case No. No. 05-1272T; filed Aug 3, 2006 .....	27
<i>Rith Energy, Inc. v. United States.</i> , 247 F.3d 1355, 1365 (Fed. Cir. 2001) .....	27
<i>Del-Rio Drilling Programs, Inc. v. United States</i> , 146 F.3d 1358, 1346 (Fed. Cir. 1998) .....	28
<i>Knick v. Township of Scott</i> , Supreme Court of the United States: Case No. 17-647; Decided June 21, 2019 .....	28
<i>XP VEHICLES, INC. and LIMNIA, INC. V. The United States.</i> Case No. 12-774C .....	29
<i>Eli Lilly</i> , 119 F.3d at 1568, 43 USPQ2d at 1406 .....	37

## **PETITION FOR A WRIT OF CERTIORARI**

Larry Golden petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Federal Circuit in this case.

### **OPINIONS BELOW**

The Court of Appeals opinions addressing the question (App. 1-2) and (App. 3-17) are unreported. The Court of Claims opinions addressing the question (App. 18-22), (App. 23-61), and (App. 62-75) are unreported. The PTAB opinion addressing the question (App. 76-108) is unreported.

### **JURISDICTION**

The Court of Appeals entered judgement on April 10, 2020 (App. B). The Court denied a timely petition for rehearing en banc on May 26, 2020 (App. A). This Court has jurisdiction under 28 U.S.C. § 1254(1)

### **STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED**

28 U.S.C. § 1491(a) claim of “Government Takings of Property under the Fifth Amendment Clause” and 28 U.S.C. § 1498(a) claim of “Government Infringement”).

## INTRODUCTION

The U.S. Supreme Court has for over 100 years recognized patents property rights as having an equivalency with real estate property rights. On at least several occasions during the nineteenth century the Supreme Court unambiguously said that a patent for either invention or land, once issued, is private property. See *United States v. Am. Bell Tel. Co.*, 128 U.S. 315, 358-59 (1888); *James v. Campbell*, 104 U.S. 356, 358 (1882); *McCormick Harvesting Mach. Co. v. Aultman-Miller Co.*, 169 U.S. 606 (1898). Indeed, the right to private property is something explicitly protected by the U.S. Constitution. The Supreme Court explicitly recognized that patents are property secured by the Fifth Amendment Takings Clause. In *Horne v. Department of Agriculture*, 569 U.S. 513 (2013); 576 U.S. \_\_\_, 135 S. Ct. 2419 (2015), were a pair of United States Supreme Court cases in which the Court established that the takings clause of the Fifth Amendment to the United States Constitution applies to personal property. The Court held that the Takings Clause imposes a “categorical duty” on the government to pay just compensation whether it takes personal or real property. Chief Justice Roberts, writing for the Court, reiterates what the Supreme Court said over a century ago: “Nothing in this history suggests that personal property was any less protected against physical appropriation than real property. As this Court summed up in *James v. Campbell*, 104 U.S. 356, 358 (1882), a case concerning the alleged appropriation of a patent by the Government: ‘*[A patent] confers upon the patentee an exclusive property in the patented invention which cannot be appropriated or used by the government itself, without just compensation, any more than it can appropriate or use without compensation land which has been patented to a private purchaser*’.”

“The Tucker Act is merely a jurisdictional statute and ‘does not create any substantive right enforceable against the United States for money damages.’ *United States v. Testan*, 424

U.S. 392, 398 (1976). Instead, the substantive right must appear in another source of law, such as a ‘money-mandating constitutional provision, statute or regulation that has been violated, or an express or implied contract with the United States.’ *Loveladies Harbor, Inc. v. United States*, 27 F.3d 1545, 1554 (Fed. Cir. 1994) (en banc).”

## STATEMENT OF THE CASE

I invented the communicating, monitoring, detecting, and controlling (CMDC) device at the same time I invented my multi-sensor detection devices, my disabling locking mechanisms, and my stall, stop, and vehicle slow-down systems. Steve Jobs did not invent the CMDC device (smartphone) (**App. 109—Pelosi’s C-SPAN**) <https://www.youtube.com/watch?v=h2ZpH7eVRro>. I shared information with the Government about the need for a CMDC device that could stimulate the economy and prevent or deter terrorist acts (**App. 110—Golden’s CD**). The Government entered into contracts with Steve Jobs and Apple, as well as Samsung, LG, and Qualcomm for the development and commercialization of the CMDC device (**App. 111—DHS CD**). I sued the Government for “Taking” my property under the Fifth Amendment Clause without paying just compensation. The Government and the lower Court(s) refuse to consider the evidence and litigate my case on the merits. The lower Courts dismissed my cases for a Government “taking” because it sounds like there might be some liability for Government “infringement”. The lower Courts dismissed the Government “infringement” because any restoring of the economy as a result of implementing my strategies that included the CMDC device is “purely incidental”. Also, the use of my CMDC device that was developed, commercialize, and used for the benefit of the public by the Government was determined to be “purely incidental”. Therefore, the Government decided to enter into a campaign of lying, avoiding and denying, for which the

lower Courts has become complicit, to make all of this disappear and to “take” my property without paying just compensation.

My argument for a [just compensation] remedy looks at the course of the “takings” of my property under the Fifth Amendment Clause as a whole, not just the individual incidents (i.e. breach of implied-in-fact contracts, money-mandating violation of constitutional provisions, or money-mandating violation of statute or regulation). My case is synonymous to the philosophy or viewpoint of, “death by a thousand cuts.” It is one thing to be threatened with the loss of intellectual property subject matter [taken] without paying ‘just compensation’, or to have entered into several ‘implied-in-fact’ contracts only to have each one breached, or to have intellectual property subject matter petitioned by a government agency (DHS) that doesn’t qualify as a ‘person’ for purposes of petitioning the PTAB to institute a review for patent validity, or to have patent claims dismissed with unqualified prior art references that does not antedate the patent(s) of record, or to have one’s infringement claims dismissed through jurisdictional discovery because of ‘incidental use by the government’, which clearly violates the statute; 28 U.S. Code § 1498(a), “[w]henever an invention described in and covered by a patent of the United States is used or manufactured by or for the United States without license...”, but, it is something else to be subjected to these types of injustices in combination over a period of seventeen (17) years. . . The stress of having to defend myself against the Government “takings” of my property under the Fifth Amendment Clause without paying just compensation has resulted in a heart attack for me.

The 9/11 attacks were a series of four coordinated terrorist attacks by the Islamic terrorist group al-Qaeda against the United States on the morning of Tuesday, September 11, 2001. What happened next on that day, God placed it in my heart to want to do something to

help our Nation heal from such a tragedy. God also placed in my head the strategies and technological rational needed to stimulate our economy in the form of three “Economic Stimulus and Terrorist Prevention Packages”. I have devoted nineteen (19) years of my life to inventing products, systems, devices, and mechanisms needed to monitor, detect, prevent, mitigate and deter terrorist attacks (I have ten patents and one patent application pending). I was hurt to learn the Justices of the Supreme Court weighed in on my actions against the Department of Homeland Security (DHS), without fully knowing and understanding the history, and tagged me as someone who has threatened to interfere with the DHS “initiative to equip cell phones with hazardous-materials sensors in order to mitigate the risk of terrorist attacks”. As a “Black Inventor”, I don’t want to be disgraced in the history books as someone who spent nineteen (19) years of my life trying to destroy the efforts made by the Government to protect the American people from terrorist attacks.

Please take up this petition and correct the record because my infringement claims (originally 64 claims) in *Larry Golden v. United States*, Case No. 13-307C against the Government for equipping cell phones with sensors to mitigate terrorist attacks, that JUSTICE BREYER commented on, are still pending.

“SUPREME COURT OF THE UNITED STATES; No. 17–1594; *RETURN MAIL, INC., PETITIONER v. UNITED STATES POSTAL SERVICE, ET AL.* ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT [June 10, 2019]. JUSTICE BREYER, with whom JUSTICE GINSBURG and JUSTICE KAGAN join, dissenting: “[w]hen, for example, the Department of Homeland Security recently instituted a research initiative to equip cell phones with hazardous-materials sensors in order to mitigate the

risk of terrorist attacks, it faced an infringement lawsuit that threatened to interfere with the project. See *Golden v. United States*, 129 Fed. Cl. 630 (2016)”.

I am the one who instituted the research initiative. I started my initiative to equip communication devices with CBRNE sensors in order to mitigate the risk of terrorist attacks in 2003 with members of Congress and members of the Department of Homeland Security (DHS). DHS started its Department of Homeland Security *Cell-All* initiative to equip communication devices, (i.e. cell phones), with hazardous-materials sensors, (i.e. CBRNE sensors), in order to mitigate the risk of terrorist attacks in 2007. I own ten (10) patents covering the intellectual property subject matter of equipping communication devices with CBRNE sensors in order to mitigate the risk of terrorist attacks, while the DHS does not own any patents the agency has presented into evidence as defense against my 28 U.S.C. § 1491(a) claim of “Government Takings of Property under the Fifth Amendment Clause”; or my 28 U.S.C. § 1498(a) claim of “Government Infringement”).

It is my belief, that without adjudicating the history and merits of my case(s), *Larry Golden v. United States*; JUSTICE BREYER’s (i.e. the Government) dissenting comments of “[w]hen, for example, the Department of Homeland Security recently instituted a research initiative to equip cell phones with hazardous-materials sensors in order to mitigate the risk of terrorist attacks, it faced an infringement lawsuit that threatened to interfere with the project. See *Golden v. United States*, 129 Fed. Cl. 630 (2016)”: has contributed to the “taking” of my property under the Fifth Amendment Clause; has caused a reduction in value of my property by virtue of the disclosure with the public; has destroyed my competitive edge; has created a substantial adverse impact (means unfavorable or harmful); and, is preventing the success or development of my communication device in accordance with my “reasonable investment-

backed expectations”; the character of JUSTICE BREYER’s (i.e. the Government) action was triggered when the “takings” caused an invasion into my property and eliminated all economically beneficial uses of such property; and, all of the “takings” of my property was done without the Government paying just compensation to me. The Government has the right to take my property, but only with paying me just compensation.

The Government’s “taking” of my property and using it with the public, “to mitigate the risk of terrorist attacks”, under the Fifth Amendment Clause, also benefits the government’s third-party contractors of the *Cell-All* initiative (i.e. Apple, Samsung, LG, and Qualcomm) who has been freely generating hundreds of billions of dollars annually for the commercialization of my communication device, while I struggle and live in government housing. I like all three of the dissenting JUSTICES of BREYER, GINSBURG and KAGAN, but I don’t feel they had to destroy my reputation as a black inventor; my honest and sincere efforts to help protect American citizens; and, my “*property*” in order to make the point that the Government should be considered a “person”. Taken as is, I believe this Court has place a target on my back and my family’s back, stemming from those who feel “I don’t deserve to live because I am trying to make it easy for terrorist to kill American citizens”.

I am conceding the Government has the authority to take my intellectual property subject matter. The Government has the right to test by way of intellectual property subject matter prosecution at the USPTO; re-test by way of intellectual property subject matter re-issue prosecution; institute post-grant reexamination; institute a petition for *Inter Partes Review* (IPR); or, through litigation in the District Courts. Once a patent is issued, the Government has the right to “take” for the benefit of the public, my intellectual property subject matter by way of a Patent; Patent rights; Patent franchise; Patent private property; or, Patent personal property. My Patents



are only the results of various testing mechanisms used to verify and validate my intellectual property subject matter. The Supreme Court (i.e. Government) has the right to take my property, be it rights, franchise, private or personal, to “be used with, and for the benefit of the public”.

*Defamation Per Se* refers to defamatory statements that are so vicious and the harm is so obvious, that malice is assumed, and proof of intent is not required for general damages (i.e. falsely accusing someone of committing a crime involving immorality...

*Slander of title* refers to a remark regarding property ownership which maligns the owner and his/her ability to transfer the property, and results in a monetary loss.

I only know of one group of people who would interfere with our government’s efforts to deter and/or prevent terrorist activity. There’s only one group of people I know of who would like to see the Government fail at developing technology “to equip cell phones with hazardous-materials sensors in order to mitigate the risk of terrorist attacks”. That group(s) of people are the terrorist groups themselves. This Court has identified me to all the world as an enabler or support person for terrorist groups; someone who is willing to interfere with my government’s efforts and to put a stop to their cause. I can’t understand for the life of me why this Court would do something like that.

I am a Veteran-owned, Minority-owned, Black-owned, small business owner who has devoted nineteen years of my life trying to work with Government to restore our Nation’s economy from the 9/11 terrorist attacks, and to better prepare us by offering technology to deter and/or prevent something like 9/11 from ever happening again. Instead of helping citizens like myself, the Government, as well as this Court, find it easier to take from me just to hide and make all of my contributions just disappear. This Court has taken away my liberty.

“According to the 1776 United States Declaration of Independence, all men have a natural right to "life, liberty, and the pursuit of happiness". But this declaration of

liberty was troubled from the outset by the institutionalization of legalized Black slavery. Slave owners argued that their liberty was paramount since it involved property, their slaves, and that Blacks had no rights that any White man was obliged to recognize. The Supreme Court, in the *Dred Scott* decision, upheld this principle.”

Researchers point to the Supreme Court’s infamous 1857 *Dred Scott* ruling that Americans of African descent, whether free or enslaved, were not U.S. citizens. The decision essentially precluded Black people from patenting their inventions. “That practice, in and of itself, said this process is not for you,” said Shontavia Johnson, an attorney and entrepreneur who also serves as associate vice president for entrepreneurship and innovation at Clemson University.

#### QUESTION:

1. Does the Supreme Court, acting on behalf of the Government, have the right to “take” my intellectual property and use it with the public under the Fifth Amendment Clause of the Constitution when the “takings” causes a reduction in value of my property by virtue of a negative disclosure made with the public; destroying my competitive edge; creating a substantial adverse impact (means unfavorable or harmful); or, preventing the success or development of my communication device in accordance with my “reasonable investment-backed expectations”, without paying me just compensation?

#### **REASONS FOR GRANTING THE WRIT**

I was devastated when I watched airplanes fly into the towers on September 11, 2001. I watched as thousands of innocent people were killed by the terrorist attacks. I was devastated to the point that I knew from that very moment, I had to do something about it. After the events of 9/11, I introduced to the United States (“government”) three economic stimulus and terrorism

prevention packages titled: the “SafeRack” project; the “ATPG” project; and the “V-Tection” project.

It’s important for me to demonstrate here *all* the strategies and technology I am alleging the Government has “taken” from me under the Fifth Amendment Clause of the Constitution. I have included a documentary CD. The documentary can also be viewed at Larry Golden on Facebook; and, at Larry Golden CMDC at Google.

I submitted the packages to President Bush and his administration; and, beginning in year 2003. I submitted the packages to all the U.S. Senators and the majority U.S. Congresspersons that was in office during the Bush administration. Beginning in year 2004, the Government began enforcing and administering my intellectual property subject matter strategies. The packages outlined how the Government could stimulate the economy following the 9/11 attacks and provide protection against future terrorist activities.

*Implied-in-Fact Contracts:*

“Williston (1920) moved away from contracts implied by law, saying: “Contracts are express when their terms are stated by the parties. Contracts are implied when their terms are not so stated.” This implied-in-fact idea was recognized in *Baltimore & Ohio R. Co. v. United States*, 261 U.S. 592 (1923), where, in interpreting a Federal statute, the court defined an “implied contract” under the statute to mean “an agreement ‘implied in fact’ founded upon a meeting of minds, which, although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding.” Justice Steakley, of the Texas Supreme Court, wrote that “[o]ur courts have recognized that the real difference between expressed contracts and those implied in fact is in the character and manner of proof required to establish them.” *Haws & Garrett General Contractors, Inc. v. Gorbett Bros. Welding Co.*, 480 S.W.2d 607, 609 (Tex. 1972). <http://www.orsinger.com/PDFFiles/the-Rise-of-American-Contract-Law.pdf>

## I. The “SafeRack” Project:

My “dual-use technology” strategies described in my intellectual property subject matter, offer dual economies in the war on terrorism. The strategies are designed to reduce costs by increasing production volume. But just as important, they expand the base of researchers, developers, designers, testers and users, thus greatly expanding the number of smart people evaluating and improving them. Cheaper products and more brainpower—a powerful one-two punch. Saving lives, saving money and saving the environment in one program is the purpose of my strategies outlined in the “SafeRack” project.

The roll of Congress and the various government agencies (i.e. DHS, DoD, ARL, NRL, DARPA, FEMA, etc.) in my coordinated campaign, introduced as my intellectual property subject matter, was to create a national and world demand for the research, development, and commercialization of the various antiterrorist technologies introduced as the my intellectual property subject matter.

I gave the Government notice and established implied-in-fact contract(s) with the Government for the use of my intellectual property subject matter and just compensation: Six months after the DHS was established on November 25, 2002; and, after I had given the Government notice, I began receiving response letters as from members of the Executive and Legislative branches of Government. **(App. XX-XX—Response Letters)**

On May 21, 2003 from the Honorable Senator Fritz Hollings stating, “I have contacted the Department of Justice and the Department of Homeland Security to try to be of assistance”;

On June 3, 2003 from the Office of the Vice President, Dick Cheney stating, “[y]our correspondence has been forwarded to the Department of Homeland Security for review. You will hear back directly from the Department”;

On October 1, 2003 from the Honorable Senator Fritz Hollings stating, “[t]hank you for contacting me regarding your difficulty with receiving a response from the Department of Homeland Security”;

On October 21, 2003 from the Honorable Senator Lindsey Graham stating, “I have contacted the Department of Homeland Security on your behalf. I have asked that they review your request and respond directly to you”;

On January 24, 2005 the Honorable Senator Jim DeMint introduced my intellectual property subject matter in a Bill. “S. 3 (109th Congress); January 24, 2005. 1st Session 1. Short Title ‘Protecting Americans in the War on Terror Act of 2005’ was a bill in the United States Congress”.

On June 20, 2005 from the Office of the President, George Bush stating, “[t]hank you for your letter regarding homeland security technology procurement. Please know I have forwarded it to the Department of Homeland Security for review and response”.

## **II. The “ATPG” Project:**

Significant advancements in mobile technology have occurred since September 11, 2001, both in the advancement of my claimed Communicating, Monitoring, Detecting, and Controlling (CMDC) devices and the infrastructures that support them.

My planned strategy for the CMDC device was to: have a device capable of communicating, monitoring, detecting, and controlling; have a device capable of interconnecting with other computing devices, products, methods, and systems from various governmental agencies, industries, and private companies; have a device capable of detecting for chemical, biological, radiological, nuclear, explosives, and humans; have a device capable of monitoring and reporting over cellular networks, government mobile networks, satellite networks, Wi-Fi

networks, and capable of viewing the environment in real time; and, for example, CMDC mobile devices that can operate equally and seamlessly via traditional cellular networks, as well as with infrastructure/ad hoc wireless networks. My Communicating, Monitoring, Detecting, and Controlling (CMDC) devices are equivalent to smartphones; new and improved personal digital assistances (PDA), new and improved personal computers (PC), new and improved laptops, new and improved cell phones, new and improved tablets; and, other new and improved wearables (i.e. pagers, watches, etc.), as they all are grouped together by common features of design similarities. My CMDC devices can be interconnected to, and placed in, on, upon, or adjacent; vehicles, locks, medical equipment, detection devices, stall/stop systems.

The Department of Homeland Security (DHS) entered into cooperative agreements with Apple, Samsung, LG, and Qualcomm in year 2008, under the DHS Cell-All solicitation for the development of my CMDC device described as my intellectual property subject matter.

“Verto Analytics looked at the numbers of Apple, Samsung, and LG (CMDC devices) smartphones currently owned by U.S. consumers, and the equivalent market share. January 2018, Apple leads the pack, with 45% market share (representing nearly 84 million smartphones), while Samsung claims 33% of the market (61.5 million smartphones). These two manufacturers dominate the U.S. smartphone market; LG, the third-place contender, has 10% market share, while all other brands combined account for 12% of the devices on the U.S. smartphone market. The Government later entered into contracts with Panasonic and Motorola for the use of their versions of my CMDC devices (i.e. smartphones, laptops, tablets, etc.)

### **III. The “V-Tection” Project:**

Under the vehicle protection (‘V-Tection’) project it was the Government’s responsibility to institute mandates for my intellectual subject matter “stall, stop, and vehicle slow-down

systems (SSVSS)” for private and consumer vehicles. If a plane deviated away from the perimeters established within the flight pattern, the control tower would receive an alert. If the pre-programmed systems do not control the plane away from a crashing, the personnel in the control tower has the ability to take control of the plane and steer it to a safe landing (i.e. remote air satellite or cellular). Some of my intellectual subject matter pre-programmed stall, stop, and vehicle slow-down systems include: lane departure stall, stop, and vehicle slow-down systems; unintended acceleration stall, stop, and vehicle slow-down systems; adapted cruise control stall, stop, and vehicle slow-down systems; reverse acceleration stall, stop, and vehicle slow-down systems; pre-crash stall, stop, and vehicle slow-down systems; and/or, a crowd sourcing stall, stop, and vehicle slow-down systems.

The operators (i.e. drivers, pilots, conductors, consumers, etc.) are equipped with my intellectual subject matter CMDC devices (new and improved desktop computers, new and improved PDAs, PCs, laptops, cell phones, tablets, smartphones, and/or other wearables such as smartwatches, etc.) that are interconnected to vehicles’ operating systems for initiating a stall, stop, and vehicle slow-down.

*Breach of Implied-in-Fact Contracts:*

“To sue the United States for congressional interference with a contract right (public or private), the United States must have waived its sovereign immunity: the United States is immune from suit except as it consents to be sued; *Library of Congress v. Shaw*, 478 U.S. 310, 315 (1986); *United States v. Mitchell*, 463 U.S. 206, 211 (1983). This waiver/consent precondition applies to both breach of contract claims and takings claims; *See, e.g., Perry v. United States*, 294 U.S. 330, 352 (1935) (breach of contract claims). The consent to suit has been given, in both cases, in the form of the Tucker Act; 28 U.S.C. § 1491(a)(1). The Tucker Act gives the U.S. Court of Federal Claims jurisdiction over “claims” against the United States “founded either upon the Constitution... or upon any express or implied contract with the United States ....” The

phrase “upon the Constitution” plainly includes takings claims against the United States—important not only for jurisdictional reasons, but because the Takings Clause of the Fifth Amendment is not construed to contain its own waiver of sovereign immunity. The waiver comes only from the Tucker Act. As for breach of contract actions, the phrase “upon any express or implied contract” states the Tucker Act’s coverage of such actions explicitly. However, the phrase “implied contract” has been limited by case law to contracts implied in fact, excluding contracts implied in law.

As mentioned, plaintiffs filing breach of contract complaints against the United States often add a taking claim under the Fifth Amendment Takings Clause. The Takings Clause is relevant because contract rights generally are deemed to constitute “property” as that term is used in the Takings Clause. *See, e.g., United States Trust Co. v. New Jersey*, 431 U.S. 1, 19 n.16 (1977) (“Contract rights are a form of property and as such may be taken ... provided that just compensation is paid.”), and *Lynch v. United States*, 292 U.S. 571, 579 (1934) (“Valid contracts are property, whether the obligor be a private individual, a municipality, a State, or the United States.”) A breach by the United States, therefore, can be argued to constitute a taking of one’s property in a contract right. <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R42635.pdf>

The Government has the right to take my property, but only with paying me just compensation.

#### QUESTIONS:

1. Is intellectual property subject matter considered “property” as the term is used in the Takings Clause of the Fifth Amendment?
2. If intellectual property subject matter is “taken” under the Fifth Amendment Clause of the Constitution by the Government, is the Government obligated to pay “just compensation”
3. Are contract rights considered “property” as the term is used in the Takings Clause of the Fifth Amendment? If so, can a litigant sue the Government for breach of an implied-in-



fact contract under the Fifth Amendment Clause of the Constitution for “just compensation”?

#### **IV. Patent Infringement is not a Prerequisite for a Government “Takings’ Under the Fifth Amendment Clause**

In the Opinion of COFC Chief Judge, Damich, *ZOLTEK CORPORATION v. The UNITED STATES*, No. 96-166 C. Filed: Dec. 9, 2003 “The thrust of these issues was whether Plaintiff had a cause of action outside of § 1498 for a taking of its patent rights under the Fifth Amendment to the U.S. Constitution, over which this Court has jurisdiction by virtue of the Tucker Act. For the reasons stated herein, this Court holds that Plaintiff may assert in this Court a claim outside of § 1498 for a taking of its patent rights under the Fifth Amendment”... “[t]hus, regarding rights created by the Patent Act other than use or manufacture, the Tucker Act can provide jurisdiction to this Court without conflicting with § 1498... Although the scope of § 1498 is narrower than the Tucker Act and although § 1498 was enacted after the Tucker Act, this Court is not convinced that, in enacting the predecessor of § 1498, Congress intended to so limit the Tucker Act. It would be odd indeed for this Court in 2003 to turn the 1910 Act on its head by holding that the Act which was intended to expand the then Court of Claims' jurisdiction had the effect of limiting it instead... Here, in contrast to *Richmond Screw Anchor* 275 U.S. at 345, 48 S.Ct. 194, it is not necessary to void application of either § 1498 or the Tucker Act to achieve a just outcome. When read together, they both confer jurisdiction on this court to hear *Zoltek's* claim, albeit for different rights. Therefore, there is no conflict in this case between the Tucker Act and § 1498. As there is no conflict, this Court has jurisdiction under the Tucker Act to hear an argument from the Plaintiff that the U.S. has taken other patent rights...”

In view of Chief Judge Damich opinion granting *Zoltek* the right to “assert in the Court of Federal Claims a claim outside of § 1498 for a taking”, I plead on several occasions, as indicated below to file a claim outside of § 1498 for 28 U.S.C. § 1491(a) only to have the Courts reiterate that patent infringement is a prerequisite for a Government “Takings” under the Fifth Amendment Clause. Four (4) times the Government mistakenly relied on *Zoltek* to dismiss my 28 U.S.C. § 1491(a) “takings” claim.

- ❖ **Case 1:13-cv-00307-EGB Document 38 Filed 03/31/14.** “Plaintiff’s takings claim should be stayed pending determination of liability for the Gov’t’s alleged patent infringement. See *Zoltek*, 672 F.3d at 1327 (“Since the Government’s potential liability under § 1498(a) is established, we need not and do not reach the issue of the Gov’t’s possible liability under the Constitution for a taking.”).
- ❖ **Case 1:13-cv-00307-EGB Document 171 Filed 05/08/19.** “The Federal Circuit and this court have confirmed that a Fifth Amendment claim under the Tucker Act is not an alternative to suing for patent infringement under the now-existing § 1498(a)... see also *Zoltek v. United States*, 442 F.3d 1345, 1350-53 (Fed. Cir. 2006), vacated on other grounds, 672 F.3d 1309, 1326 (Fed. Cir. 2012) (en bane). Simply labeling the same government action a "taking" rather than patent infringement does not transform the claim into one justiciable under the Tucker Act as a violation of the Takings Clause of the Fifth Amendment. We thus dismiss plaintiffs purported takings claims for lack of subject matter jurisdiction.
- ❖ **Case 1:19-cv-00104-EGB Document 12 Filed 05/14/19.** “As discussed in our order granting defendant’s motion to dismiss the taking claims in Golden, No. 13-307C, plaintiff cannot label what amounts to patent infringement claim a “taking” in order to proceed under this court’s Tucker Act Jurisdiction. Since then, patent infringement claims are pursued exclusively under § 1498(a). *Zoltek v. United States*, 422 F.3d 1345, 1350-53 (Fed, Cir. 2006). This court does not have jurisdiction to decide claims for patent infringement under the Tucker Act.
- ❖ **Case: 19-2134 Document: 37 Filed: 04/10/2020.** “There, on remand, the Claims Court granted the patent owner’s motion to amend its complaint and to transfer the case, and

certified that decision to us for an interlocutory appeal. We then voted en banc to vacate [render void] the *Zoltek I* holding that *Zoltek's* § 1498(a) infringement claims were barred. *Zoltek II*, 672 F.3d at 1326–27. And, we held that, “[s]ince the Government’s potential liability under § 1498(a) is established, we need not and do not reach the issue of the Government’s possible liability under the Constitution for a taking. The trial court’s determinations on that issue are vacated.” *Id.* at 1327. The *Zoltek I* takings analysis, is therefore, persuasive authority, but not binding on us.

Seven years ago, I tried to file a complaint for 28 U.S.C. § 1491(a) Government “Takings” under the Fifth Amendment Clause. I was asked if there was any infringement. I said yes. I was told by the Clerk at the Court of Federal Claims to file it under infringement. I file under both “Government “Takings” and “Infringement”.

I don’t know if that’s the normal practice of things, I do know the Government informed me on filing away from what I originally wanted to file for, which was a Government “Takings” of my property under the Fifth Amendment Clause. The Government informed me on what to file, and since that time has used the infringement filing against me. Repeatedly stating, “plaintiff cannot label what amounts to patent infringement claim a “taking” in order to proceed under this court’s Tucker Act Jurisdiction”.

I am demonstrating in the following chart, how the Government created liability for itself at least six (6) times for 28 U.S.C. § 1491(a) Government “Takings” under the Fifth Amendment Clause and how the Government has managed to by-pass my claims at § 1491(a). The chart outlines how the Government created liability for itself in breaching implied-in-fact contracts; non-payment of just compensation for the taking of my property; the filing of an IPR by an unauthorized government agency; and, the institution of the IPR with unqualified prior art.

<p align="center"><b>Government “takings” under the Fifth Amendment Clause of the U. S. Constitution: Intellectual Property Subject Matter</b></p>	<p align="center"><b>Patent Infringement against the United States and Third-Party Government Contractors: Intellectual Property (i.e. Patent)</b></p>
<p align="center"><b>28 U.S. Code § 1491(a)(1)</b></p> <p>The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the [added: Executive Branch] Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.</p>	<p align="center"><b>28 U.S. Code § 1491(a)(1)</b></p> <p>The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the [added: Executive Branch] Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.</p>
<p>Contracts are implied when their terms are not so stated. “This implied-in-fact idea was recognized in <i>Baltimore &amp; Ohio R. Co. v. United States</i>, 261 U.S. 592 (1923), where, in interpreting a Federal statute, the court defined an “implied contract” under the statute to mean “an agreement ‘implied in fact’ founded upon a meeting of minds, which, although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding.”</p>	<p>Contracts are implied when their terms are not so stated. “This implied-in-fact idea was recognized in <i>Baltimore &amp; Ohio R. Co. v. United States</i>, 261 U.S. 592 (1923), where, in interpreting a Federal statute, the court defined an “implied contract” under the statute to mean “an agreement ‘implied in fact’ founded upon a meeting of minds, which, although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding.”</p>
<p align="center"><b>IMPLIED-IN-FACT CONTRACTS</b></p> <p>Executive Branch of Government (i.e. President Bush and Vice-President Cheney). Legislative Branch of Government (i.e. Senator Fritz Holland, Senator Lindsay Graham and Senator Jim DeMint). Their engagement in the contract included the members sending my intellectual property subject matter over to the DHS for payment of just compensation.</p>	<p align="center"><b>IMPLIED-IN-FACT CONTRACTS</b></p> <p>Executive Branch of Government (i.e. Department of Homeland Security (DHS)); at least four (4) Program Managers at the DHS (Elissa (Lisa) Sobolewski, Edward “Ed” Turner, Stephen Dennis, and Dave Masters); and, at least two (2) Contracting Officers at the DHS (Margaret “Margo” Graves, and Doug Lane)</p>

<p><b>[LIABILITY] - BREACH OF IMPLIED-IN-FACT CONTRACTS</b>  <i>Lynch v. United States</i>, 292 U.S. 571, 579 (1934)      (“Valid contracts are property, whether the obligor be a private individual, a municipality, a State, or the United States.”) A breach by the United States, therefore, can be argued to constitute a taking of one’s property in a contract right”.</p>	<p><b>[LIABILITY] - BREACH OF IMPLIED-IN-FACT CONTRACTS</b>  <i>Lynch v. United States</i>, 292 U.S. 571, 579 (1934)      (“Valid contracts are property, whether the obligor be a private individual, a municipality, a State, or the United States.”) A breach by the United States, therefore, can be argued to constitute a taking of one’s property in a contract right”.</p>
<p><b>[LIABILITY] - NON-PAYMENT OF ‘JUST COMPENSATION</b>      Fifth Amendment: “No person shall be... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” Liability is triggered when there’s nonpayment of just compensation. In <i>Kohl v. United States</i>, 91 U.S. 367 (1875), “the Supreme Court held that the government may seize property through the use of eminent domain.</p>	<p><b>[LIABILITY] - NON-PAYMENT OF ‘JUST COMPENSATION</b>      As the Supreme Court, <i>In Horne v Department of Agriculture</i>, held that the Takings Clause also applies to personal property; and relied on <i>James v. Campbell</i>, 104 U.S. 356, 358 (1882): ‘[A patent] confers upon the patentee an exclusive property in the patented invention which cannot be appropriated or used by the government itself, without just compensation, any more than it can appropriate or use without compensation land which has been patented to a private purchaser’.”</p>
<p><b>[LIABILITY] – VIOLATION OF STATUE</b>      “The Supreme Court, [i]n <i>Return Mail Inc. v. United States Postal Service</i>, on June 10, 2019, determined that U. S. government agencies cannot challenge a U.S. patent in an administrative trial conducted before the PTAB of the USPTO”--“PTAB instituted trial for the DHS with three patents that did not antedate the challenged patent” (frivolous petition)</p>	<p><b>[LIABILITY] – VIOLATION OF STATUE</b>      “The Supreme Court, [i]n <i>Return Mail Inc. v. United States Postal Service</i>, on June 10, 2019, determined that U. S. government agencies cannot challenge a U.S. patent in an administrative trial conducted before the PTAB of the USPTO”--“PTAB instituted trial for the DHS with three patents that did not antedate the challenged patent” (frivolous petition)</p>
	<p><b>[LIABILITY] - 28 U.S. Code § 1491(a) INFRINGEMENT</b>      In <i>Zoltek V</i>, the appellate court emphasized that § 1498(a) is “its own independent cause of action” with three elements to trigger government liability: (1) the invention must be claimed in a patent; (2) it must be “used or manufactured by or for the United States,” meaning each limitation of the claims must be present in the accused product or process; and (3) the “use or manufacture” of the patented invention must be done without license or lawful right...</p>

## QUESTIONS

1. Does § 1498 limit the Court's jurisdiction under the Tucker Act by negative implication to just the patent infringements delimited in § 1498?
2. Does the fact that the 1910 Act only gave limited jurisdiction over patent infringements... mean that it withdrew the broader jurisdiction that it had under the Tucker Act?
3. Do the members of the Executive and Legislative branches of Government create liability for Government when they breached implied-in-fact contracts?
4. Do the members of the Executive and Legislative branches of Government create liability for Government when they take private property without paying just compensation?
5. Do the U.S. Government Agencies create liability for Government when they challenge a U.S. Patent by way of an Inter Partes Review (IPR) at the Patent Trials and Appeals Board (PTAB)?
6. Do the Patent Trials and Appeals Board (PTAB) create liability for Government when they knowingly institute a frivolous IPR review on the grounds of 102 anticipation when the patents asserted as prior art does not antedate the challenged patent?

**V. Potential Liability for Infringement was never an Option when the Government's Use of the CMDC Device was "Incidental"**

Please take up this petition and correct the record because my infringement claims (originally 64 claims) in *Larry Golden v. United States*, Case No. 13-307C against the Government for equipping cell phones with sensors to mitigate terrorist attacks, that JUSTICE

BREYER commented on in No. 17–1594; *RETURN MAIL, INC., PETITIONER v. UNITED STATES POSTAL SERVICE, ET AL.*, is still pending.

Moving forward I am narrowing my pleadings to the “takings” of my property under the Fifth Amendment Clause, as it relates to the Department of Homeland Security (DHS), beginning in year 2003. I acknowledge, the Government is well within its rights to take my property and use it for the benefit of the public. In *Kohl v. United States*, 91 U.S. 367 (1875), “the Supreme Court held that the government may seize property through the use of eminent domain, as long as it appropriates just compensation the owner of the property”.

My communicating, monitoring, detecting, and controlling (CMDC) device is commercialized in the form of an improved cell phone, smartphone, smartwatch, laptop, or tablet. The specifications and capabilities of my CMDC device that was taken by the Government and given to third-party government contractors, Apple, Samsung, and LG, for development and commercialization, are significantly the same as my CMDC device(s) as illustrated below:

- Communication: at least one of a satellite connection, Bluetooth connection, WiFi connection, internet connection, cellular connection, long and/or short-range radio frequency (RF) connection, or GPS connection.
- Monitoring: at least one of a viewing screen for monitoring in real time, viewing screen monitoring for CBRNE-H signal alerts, viewing screen monitoring for CBRNE-H color coded indicator lights, or viewing screen monitoring for tracking, alerts, and heart rate.
- Detecting: at least one of a chemical sensor, a biological sensor, an explosive sensor, a human sensor, a contraband sensor, or a radiological sensor; that is wired or wireless, capable of being disposed within, on, upon or adjacent the CMDC device.
- Controlling: at least a fixed, portable or mobile communication device interconnected to a fixed, portable or mobile product, capable of wired or wireless communication therebetween, for sending signals to at least lock or unlock doors, stall, stop, or slowdown

vehicles, activate or deactivate security systems, activate or deactivate multi-sensor detection systems, or to activate or deactivate cell phone detection systems.

- Central Processing Unit (CPU): is the programmable device capable of general-purpose computation. It is the engine of logic, as with the brain, and the core piece of hardware in my CMDC device (i.e. communication devices, monitoring device; monitoring equipment). The CPU is capable of arithmetic operations such as add and divide and flow control operations such as conditionals. The CPU is the electronic circuitry within the CMDC device that executes instructions that make up a computer program.
- Biometrics: that incorporates at least one of a fingerprint recognition, voice recognition, face recognition, hand geometry, retina scan, iris scan and or signature or a face recognition to at least gain access to the CMDC device or to prevent unauthorized use of the CMDC device.
- Lock, Unlock, Disabling Lock: the CMDC device being equipped to receive signals from or send signals to engage (lock), disengage (unlock), or disable (make unavailable) locks after a certain number of failed attempts to unlock.
- Near-Field Communication: Near Field Communication in a CMDC device can be used as part of a two-factor access control system for unlocking a door. Biometric Fingerprint recognition is used for authentication and NFC is used to transmit authentication information to a computer controlling the door. NFC is preferred over RFID because RFID has a frequency vulnerable for detonating bombs.
- Location and Tracking: The CMDC tracking is a process for identifying the location of the device. Localization may be affected by using multi iteration of radio signals between (several) cell towers of the network and the device, or simply using GPS. Some CMDC devices use wireless-assisted GPS to determine the user's location. In wireless-assisted systems, the device uses the orbiting GPS satellites in conjunction with information about the device's signal. Sometimes called enhanced GPS.

Use “for” the government can be present even where the “primary” beneficiary is a private party. *See Advanced Software*, 583 F.3d at 1378 (finding government use, despite the fact



that the primary benefits accrued to private banks, because the use also served national interests (i.e. Apple, Samsung, and LG's CMDC devices that monitors and detects for CBRN&Es).

Mr. Stephen Dennis, Program Manager for the Broad Agency Announcement (BAA); BAA07-10; *CELL-ALL* Ubiquitous Biological and Chemical Sensing; Published: 10/30/2007 by the Department of Homeland Security (DHS); Science and Technology (S&T) Directorate, Washington DC, 20528 and Ms. Margaret L. "Margo" Graves, Office of Procurement Operations / Science & Technology Acquisitions Division; Team Lead / Contracting Officer for the Broad Agency Announcement (BAA); BAA07-10; *CELL-ALL* Ubiquitous Biological and Chemical Sensing; Published: 10/30/2007 by the Department of Homeland Security (DHS); Science and Technology (S&T) Directorate, Washington DC, 20528; both having prior knowledge of my intellectual property (i.e. patent(s)) that covered the specifications of the technology DHS requested in the *Cell-All* solicitation, entered into implied-in-fact contracts with me for just compensation.

The DHS S&T "*Cell-All*" project goal is to develop sensors that can detect life-threatening gases to be incorporated into cell phones. The monitoring equipment for this "*Cell-All*" project is at least a Samsung Galaxy smartphone that has an Android operating system (O/S). Jing Li, a physical scientist at NASA's Ames Research Center, developed new technology that would bring compact, low-cost, low-power, high-speed nanosensor-based chemical sensing chip which consists of 64 nanosensors and plugs into an Apple iTouch 30-pin dock connector.

Mr. Stephen Dennis and Ms. Margaret L. "Margo" Graves breached the implied-in-fact contracts when they contracted with third-party Government contractors (i.e. Apple, Samsung, Qualcomm, LG) for the development of my claimed CMDC invention that has now been issued

in at least 10 patents, and without the Government paying just compensation for the “taking” of my intellectual property.

**Chart of CMDC Ind. claims asserted in the pending COFC Case No.: 13-307C**

<b>Defendants CMDC Devices</b>	<b>Patent #: 10,163,287; Independent Claim 4, 5 &amp; 6</b>	<b>Patent #: 9,589,439; Independent Claim 22 &amp; 23</b>	<b>Patent #: 9,096,189; Independent Claim 1</b>	<b>Patent #: 8,106,752; Independent Claim 10</b>	<b>Patent #: 7,385,497; Independent Claim 1</b>
DHS; S&T "Cell-All" initiative. Develop CMDC device to detect deadly chemicals". Stephen Dennis; PM: Contracts to Qualcomm, LG, Apple, and Samsung. Sensors will integrate with 261 million CMDC devices (i.e. smartphones)	Claim 4: A communication device, comprising:  Claim 5: A monitoring device, comprising:  Claim 6: Monitoring equipment, comprising:	Claim 22: A communication device of at least one of a cell phone, a smart phone, a desktop, a handheld, a personal digital assistant (PDA), a laptop, or a computer terminal, comprising:  Claim 23: A cell phone comprising:	Claim 1: A communication device of at least one of a cell phone, a smart phone, a desktop, a handheld, a PDA, a laptop, or a computer terminal for monitoring products, interconnected to a product for communication therebetween, comprising:	Claim 10: A multi-sensor detection and lock disabling system for monitoring products and for detecting explosive, nuclear, contraband, chemical, biological, and radiological agents and compounds so that terrorist activity can be prevented, comprising:	Claim 1: A multi sensor detection and lock disabling system for monitoring products and for detecting chemical, biological, and radiological agents and compounds so that terrorist activity can be prevented, comprising:

**Chart of all my CMDC Ind. claims for the ‘497, ‘752, ‘189, ‘439, ‘287 & ‘683 patents**

<b>Pat. # 7,385,497</b>	<b>Pat. # 8,106,752</b>	<b>Pat. # 9,096,189</b>	<b>Pat. # 9,589,439</b>	<b>Pat. # 10,163,287</b>	<b>App. # 16/350,683</b>	<b>Reissue App. # 16/350,874</b>
Claim 1 of the ‘497 Patent	Claim 10 of the ‘752 Patent	Claims 1, 2, 3, 4, 5, 6, 7, 8, & 9 of the ‘189 Patent	Claims 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, & 23 of the ‘439 Patent	Claims 1, 2, 3, 4, 5, & 6 of the ‘287 Patent	Claims 1 & 11 of the [683] Patent Application	Claims 13, 14, 15, 22, 23, 64, 74, 75, & 76 of the [874] Reissue Patent Appl.

Therefore, it is lawful for the Government to “take” my intellectual property CMDC devices and “incidentally use” them for the benefit of the public, but unconstitutional for the Government to take my property for incidental use without paying just compensation.

“Opinion Granting the Government’s Motion to dismiss [added: [a]fter 22 months of discovery to determine jurisdiction, the Trial Court dismissed 64 of my allegations of Government infringing my claimed invention of a CMDC device]. Case No.: 1:13-cv-00307-SGB; Document 130; Filed 03/29/18), for the following reasons: “Regarding the “first requirement,” private conduct incidentally benefitting the Government does not constitute use “for the benefit of the Government” ... “The court does not have jurisdiction under 28 U.S.C. § 1498(a) to adjudicate patent infringement allegations concerning NSF and NIH grants and cooperative agreements, because any benefit to the Government, at best, would be incidental”... “determining that the alleged benefit to the Government of economic “stimulus, jobs, and revenue” was “merely an incidental effect of private conduct”... “Complaint contains no factual allegations establishing anything more than “incidental benefit” to the NSF”... “Incidental benefit to the [G]overnment is insufficient” to satisfy the requirements of 28 U.S.C. § 1498(a)”...

Even after the Government accepted information describing the CMDC device from me; after the Government appropriated funding for a CMDC device to the DHS and other government agencies; after the DHS and other government agencies issued solicitations (i.e. request for proposals) for the development of the CMDC device (**App. 119-142—DHS *Cell-All* solicitation**); (**App. 143-161—Petitioner’s proposal in response to the *Cell-All* solicitation**); after the Government awards and funds third-party government contractors for research and development, manufacture, and commercialization of my CMDC devices (**App. 162-180—DHS *Cell-All* third-party government contractors**); and, because the Government continues to appropriated funding, issue solicitations, award and fund third-party government contractors for

research and development, manufacture, and commercialization of my CMDC devices through various government agencies, the Government has “taken” private property under the Fifth Amendment Clause and use it for the benefit of the public without paying just compensation. **(App. 181-194—Government “use” is not “incidental”); (App. 195-259—Cell-All charts, diagrams and drawings).**

#### QUESTION

1. Is it “incidental use” with and for the benefit of the public, when the Government accepts information describing the CMDC device from me; appropriate funding for the CMDC device to the DHS and other government agencies; issue solicitations (i.e. request for proposals) for the development of the CMDC device; and award plus fund third-party government contractors for the development and commercialization of my CMDC?

#### **VI. *Inter Partes Review (IPR) Final Decision “Ripeness” and “Statute of Limitations”: Fifth Amendment “Takings” Claim for Just Compensation***

The lower Courts erred when they determined my action was limited to filing an appeal in the allotted time to have certain claims that was dismissed during the Inter Partes Review (IPR); PTAB Case No.: IPR2014-00714 reinstated. My claim is for just compensation under the Fifth Amendment Clause for the “taking” of my property. I relied on Judge Susan G. Braden; in *Linda Rosenberg, v. The United States*; Memorandum Opinion and Final Order; Case No. No. 05-1272T; filed Aug 3, 2006: “To invoke the court's jurisdiction over a takings claim, however, the plaintiff must admit that the Government had authority to take the property. See *Rith Energy, Inc. v. United States.*, 247 F.3d 1355, 1365 (Fed. Cir. 2001) (explaining that “an uncompensated

[taking and an unlawful government action constitute ‘two separate wrongs [that] give rise to two separate causes of action,’ and that a property owner is free either to sue in district court for asserted improprieties committed in the course of the challenged action or to sue for an uncompensated [taking in the [United States] Court of Federal Claims" (quoting *Del-Rio Drilling Programs, Inc. v. United States*, 146 F.3d 1358, 1346 (Fed. Cir. 1998)).

I also relied on *Knick v. Township of Scott*, Supreme Court of the United States: Case No. 17-647; Decided June 21, 2019; “(b) [t]his Court has long recognized that property owners may bring Fifth Amendment claims for compensation as soon as their property has been taken, regardless of any other post-taking remedies that may be available to the property owner...” “a claim for just compensation brought under the Tucker Act is not a prerequisite to a Fifth Amendment takings claim—it is a Fifth Amendment takings claim...” “[t]he majority declares... that a government taking private property for public purposes must pay compensation at that moment or in advance. See ante, at 6–7. If the government fails to do so, a constitutional violation has occurred, regardless of whether “reasonable, certain and adequate” compensatory mechanisms exist.”

I further relied on the Supreme Court’s criteria on the “ripeness” of a takings claim as well as the six-year statute of limitation for taking actions against the United States. The ripeness occurred when the Patent Trial and Appeals Board (PTAB) entered its *FINAL WRITTEN DECISION* in Case No.: IPR2014-00714, on October 1, 2015. I filed a “takings” claim on 01/17/2019 with the Court of Federal Claims Case No.: 1:19-cv-00104-EGB that included the alleged “takings” claim made as a result of the IPR.

The AIA of 2011 created... post-grant patent review proceedings... available to any “person” who is not the patent owner... if the U.S is sued in a patent dispute; can it bring one of

these AIA challenges? On June 10, 2019, the Supreme Court in *Return Mail Inc. v. United States Postal Service*, holding that the answer is no—the U.S. Government is not a “person” with standing to bring petitions for AIA post-grant review proceedings.”

Three years after the AIA of 2011 the Government filed on April 30, 2014, a Petition for *Inter Partes Review (IPR): UNITED STATES DEPARTMENT OF HOMELAND SECURITY / Petitioner, v. LARRY GOLDEN / Patent Owner*. Case IPR2014-00714 U.S. Patent No. RE043,990; filed by Lavanya Ratnam, Department of Homeland Security (DHS), and joined by Kirby Wing-Kay Lee, Department of Justice. The Government knew, or should have known, it was not a “person” for purposes of petitioning the PTAB to institute patent validity. Therefore, the timing and decision of *Return Mail* did not change the “Law” that was established in year 2011. The decision in *Return Mail* only upheld a law already in existence at the time of the Government’s filing in year 2014. Everything that happened during the eighteen months of the review process should have been nullified.

For recognizing a violation of “stature or procedure, I relied on Judge Margaret Sweeney; Court of Federal Claims: *XP VEHICLES, INC. and LIMNIA, INC. V. The United States*. Case No. 12-774C; Contract Claims against the United States Arising Under the Tucker Act. “The Tucker Act is merely a jurisdictional statute and does not create any substantive right enforceable against the United States for money damages.” *United States V. Testan*, 424 U.S. 392, 398 (1976). Instead, the substantive right must appear in another source of law, such as a “money-mandating constitutional provision, statute or regulation that has been violated” ...

The PTAB was given notice that the prior art references of Astrin, Breed, and Mostov, asserted in the IPR, does not antedate my RE43990 patent. The notice can be found at Case 1:13-cv-00307-EGB Document 48 Filed 07/30/14 Page 4 of 15. PATENT OWNER’S

PRELIMINARY RESPONSE. "Pursuant to 35 U.S.C. § 313 and 37 C.F.R. § 42.107, the Patent Owner hereby provides a Preliminary Response to the April 30, 2014 Petition for Inter Partes Review ("Pet.")... I. Inter Partes Review should not be instituted based on anticipation by Astrin, Mostov and Breed because neither antedate or anticipates any of the challenged claims 11, 74 and 81 of Golden's '990 patent :

**Submitted with my PTAB 'IPR' Preliminary Response**

Reference	Filing Date	Publication Date	Basis for anticipation
U.S. Patent Application Publication No. 2006/0250235 ("Astrin")		11/09/2006	102(b)
U.S. Patent Application Publication No. 2006/0181413 ("Mostov")		08/17/2006	102(b)
U.S. Patent No. 7,961,094 ("Breed")	11/29/2007		102(e)
<i>Petitioner's First patent application No. 11/397,118 was filed with the USPTO</i>	<i>04/05/2006</i>		

The second notice was during the entire IPR review. The last notice I submitted to the PTAB as proof the prior art references of Astrin, Breed, and Mostov, asserted in the IPR, does not antedate my RE43990 patent was in my "Request for Rehearing" filed on October 24, 2015 with the PTAB Case IPR2014-00714 Patent RE43,990. "Mostov's patent provisional filing date is January 28, 2005. The Patent Owner's "Disclosure Document" filing date is November 26, 2004. Therefore, any subject matter Mostov has outlined in his claims, according to the Federal Circuit decision above, is anticipated by the Patent Owner because the Patent Owner's "Disclosure Document" antedates Mostov's patent provisional filing date. (Attached is a copy of the "Disclosure Document" submitted to the USPTO for the benefit of the Patent Owner that displays a USPTO stamped filing date of November 26, 2004 and a stamped document no. of 565732 used for reference".

**Submitted with my PTAB Request for Rehearing**

<b>Reference</b>	<b>Filing Date</b>	<b>Publication Date</b>	<b>Basis for anticipation</b>
U.S. Patent Application Publication No. 2006/0250235 (“Astrin”)		11/09/2006	102(b)
U.S. Patent Application Publication No. 2006/0181413 (“Mostov”)		08/17/2006	102(b)
U.S. Patent No. 7,961,094 (“Breed”)	11/29/2007		102(e)
<i>Petitioner’s First patent application No. 11/397,118 was filed with the USPTO</i>	<i>04/05/2006</i>		
U.S. Patent provisional filing date is 01/28/2005. Application No. 11/343,560; Patent No. 7,990,270 (“Mostov”)	01/28/2005		102(e)
<i>Petitioner’s Disclosure Document filed with USPTO. Disclosure Doc. No. 565732</i>	<i>11/26/2004</i>		

Everything that happened during the eighteen months of the review process should have been nullified. The Government was given multiple opportunities to correct the wrongs stated above. Because of the Government’s failure to act, I filed a claim for the Government “Takings” of my private property under the Fifth Amendment Clause without paying just compensation.

The Government has the right to take my property for the benefit of the public, and if the Government “takes” my property by submitting a frivolous petition alone with follow-up frivolous pleadings, and litigating with unqualified prior art references, the Government is still liable to pay me just compensation for the “takings”.

QUESTION



1. Is the Government liable to pay just compensation under the when the Fifth Amendment Clause when the Government “takes” private property by way of submitting a frivolous petition and litigating with unqualified prior art references?

## VII. The “Taking” of Dependent Claims

Invalidity of my dependent claims, like infringement of my dependent claims, must be analyzed on a per-claim basis; some of my patent claims could be invalid without rendering all claims invalid. In fact, my dependent claim 32 of the RE43,990 patent asserted in *Larry Golden v. United States*, COFC Case No.: 13-307C, may still be valid, even if its underlying independent claim 11 is invalid. For example, if dependent claim 32 has at least one additional limitation C, not found in independent claim 11 containing A+B, infringement requires doing all three A+B+C. Therefore, the combination A+B+C in claim 32 could still be novel (not anticipated in the prior art asserted in the IPR), even if A+B in claim 11 wasn't novel. For this reason, the Trial Court Judge erred in dismissing all of my dependent claims depending on independent claim 11 asserted in COFC Case No. 13-307C.

The Trial Court dismissed all of my dependent claims that depend on independent claim 11 without going through a “Markman hearing (i.e. claim construction) to determine if any of my dependent claims could stand on its own. The “takings” prevents the success or development of my communication device in accordance with my “reasonable investment-backed expectations. Having a range of claims, from broader/riskier to narrower/safer, gives me, the patent owner, options in how to steer between the dangers of invalidity on the one hand, and DOJ's non-infringement defense on the other hand (see the claims below).

**Patent RE43,990, Independent Claim 11:** A communication device of at least one of a cell phone, a smart phone, a desktop, a handheld, a PDA, a laptop, or a computer

terminal at a monitoring site for monitoring products, interconnected to a product for communication therebetween, comprising: at least one of a central processing unit (CPU) for executing and carrying out the instructions of a computer program, a network processor which is specifically targeted at the networking application domain, or a front end processor for communication between a host computer and other devices; a transmitter for transmitting signals and messages to at least one of plurality product groups based on the categories of a multi-sensor detection device, a maritime cargo container, a cell phone detection device, a locking device, a device for stalling and stopping a vehicle, or a building monitoring device; a receiver for receiving signals, data or messages from at least one of plurality product groups based on the categories of a multi-sensor detection device, a maritime cargo container, a cell phone detection device, a locking device, a device for stalling and stopping a vehicle, or a building monitoring device; at least one satellite connection, Bluetooth connection, WiFi connection, internet connection, radio frequency (RF) connection, cellular connection, broadband connection, long and short range radio frequency (RF) connection, or GPS connection; the communication device is at least a fixed, portable or mobile communication device interconnected to a fixed, portable or mobile product, capable of wired or wireless communication therebetween; and whereupon the communication device, is interconnected to a product equipped to receive signals from or send signals to lock or unlock doors, stall, stop, or slowdown vehicles, activate or deactivate security systems, activate or deactivate multi-sensor detection systems, or to activate or deactivate cell phone detection systems, wherein the communication device receives a signal via any of one or more products listed in any of the plurality of product grouping categories; wherein at least one satellite connection, Bluetooth connection, WiFi connection, internet connection, radio frequency (RF) connection, cellular connection, broadband connection, long and short range radio frequency (RF) connection is capable of signal communication with the transmitter and the receiver of the communication device and transceivers...

**Patent RE43,990, Dependent Claim 32:** The communication device of claim 11 wherein the communication device having products to be monitored, the devices that are monitoring, communication devices, communication equipment can be grouped into anti-terrorist product groupings based on the categories of similarities of design of at least one

of; sensors, software, interfaces, detector cases, locks, mobile communication devices, handheld communication devices, vehicle slowing and stopping devices, specification, development and implementation; similarities in material composition of at least one of: steel, stainless steel, composites, brass, copper, aluminum, fiber, silicon, plastic, combining of materials parts or elements to form a whole; similarities in security problems of at least one of; theft, detection for chemical, biological, radiological, nuclear, explosive compounds and agents, detection for weapons of mass destruction, biometrics for identifying terrorist, scanning to identify a terrorist threat; grouping security devices to form a network of ubiquitous sensing and detecting.

Below is a chart illustrating the A+B combination of both the cancelled independent claim 11 of the RE43,990 patent and the dismissed dependent claim 32 of the RE43,990 patent, whereupon both comprise a mobile/consumer device capable of CBRNE detection. Before the Trail Court unjustly and improperly “took” under the Fifth Amendment Clause of the Constitution (i.e. my money-mandating substantive right is a violation of the “statue or regulation”), my property for the benefit of the public without paying just compensation. The DOJ (Government) needed to prove on the heightened standard of “clear and convincing evidence” that the accused infringing device did not infringe the combination A+B+C+D+E+F of the dependent claim 32 of the RE43,990 patent.

	<b>Cancelled Independent Claim 11 of the RE43,990 Patent</b>	<b>Dismissed Dependent Claim 32 of the RE43,990 Patent</b>
<b>A</b>	A communication device of at least one of a cell phone, a smart phone, a desktop, a handheld, a PDA, a laptop, or a computer terminal at a monitoring site for monitoring products,	The communication device of claim 11 wherein the communication device having products to be monitored, the devices that are monitoring, communication devices, communication equipment

<b>B</b>	... based on the categories of a multi-sensor detection device... a cell phone detection device... a device for stalling and stopping a vehicle... whereupon the communication device, is interconnected to a product equipped to receive signals from or send signals to... activate or deactivate multi-sensor detection systems, or to activate or deactivate cell phone detection systems...	vehicle slowing and stopping devices... detection for chemical, biological, radiological, nuclear, explosive compounds and agents, detection for weapons of mass destruction
<b>C</b>	X	<i>biometrics</i> for identifying terrorist
<b>D</b>	X	similarities in security problems of at least one of; <i>theft... scanning to identify a terrorist threat</i>
<b>E</b>	X	<i>similarities of design</i> of at least one of; sensors, software, interfaces... specification, development...
<b>F</b>	X	<i>similarities in material composition</i> of at least one of: steel, stainless steel ... combining of materials parts or elements to form a whole

Below are charts illustrating the A+B combination (left column) of the alleged CMDC infringing devices I asserted in COFC Case No. 13-307C. The charts also illustrate the A+B+C+D+E+F combination (right column) that forms the dependent claim 32 of the RE43,990 patent. The Trail Court unjustly and improperly “took” under the Fifth Amendment Clause of the Constitution (i.e. my money-mandating substantive right is a violation of a “constitutional provision”) my property by not independently construing the dependent claims limitations before invalidating all of the dependent claims asserted in COFC Case No. 13-307C that covers a mobile/consumer device capable of CBRNE detection. “Each claim of a patent (whether in independent, dependent, or multiple dependent form) shall be presumed valid independently of

the validity of other claims; dependent or multiple dependent claims shall be presumed valid even though dependent upon an invalid claim.” 35 U.S.C. § 282 (1994). Connotational provision:

The Fifth Amendment requires that “due process of law” be part of any proceeding that denies a citizen “life, liberty or property” and requires the government to compensate citizens when it takes private property for public use. The clause promises that before depriving a citizen of life, liberty or property, government must follow fair procedures...”

**Page 68 Claim Chart; Page 59 Amended Complaint**

"TOUGHBOOK 31" Laptop K-Max Self-flying Helicopter	Patent #: 9,589,439; Independent Claim 13 (i.e. <b>communication device</b> )	Patent #: RE 43,990; Dependent Claims (18, 118, 12, 28, 25, 20, <b>32</b> , 30)
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**Page 74 Claim Chart; Page 61 Amended Complaint**

"TOUGHBOOK 31" Laptop Passport Systems Inc. Base Control Unit (BCU)	Patent #: 9,589,439; Independent Claim 13 (i.e. <b>communication device</b> )	Patent #: RE 43,990; Dependent Claims (18, 118, 12, 28, 25, 20, <b>32</b> , 30)
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**Page 79 Claim Chart; Page 65 Amended Complaint**

Apple iPad Tablet Boeing MH-6 Little Bird Helicopter	Patent #: 9,589,439; Independent Claim 13 (i.e. <b>communication device</b> )	Patent #: RE 43,990; Dependent Claims (18, 118, 12, 28, 25, 20, <b>32</b> , 30)
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**Page 84 Claim Chart; Page 67 Amended Complaint**

Navy Marine Corps Intranet (NMCI) Network - Apple iPad	Patent #: 9,589,439; Independent Claim 13 (i.e. <b>communication device</b> )	Patent #: RE 43,990; Dependent Claims (18, 118, 12, 28, 25, 20, <b>32</b> , 30)
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**Page 89 Claim Chart; Page 70 Amended Complaint**

Smartphone-Based Rapid Diagnostic Tests	Patent #: 9,589,439; Independent Claim 13 (i.e. <b>communication device</b> )	Patent #: RE 43,990; Dependent Claims (18, 118, 12, 28, 25, 20, <b>32</b> , 30)
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**Page 94 Claim Chart; Page 72 Amended Complaint**

Variable's "NODE+Oxa" for the Apple (iPhone) Smartphone	Patent #: 9,589,439; Independent Claim 13 (i.e. <b>communication device</b> )	Patent #: RE 43,990; Dependent Claims (18, 118, 12, 28, 25, 20, <b>32</b> , 30)
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**Page 99 Claim Chart; Page 75 Amended Complaint**

"COINS" Nano-Embedded Sensors for Smartphones	Patent #: 9,589,439; Independent Claim 13 (i.e. <b>communication device</b> )	Patent #: RE 43,990; Dependent Claims (18, 118, 12, 28, 25, 20, <b>32</b> , 30)
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**Page 104 Claim Chart; Page 77 Amended Complaint**

Samsung Galaxy s6 "BioPhone" Smartphone	Patent #: 9,589,439; Independent Claim 13 (i.e. <b>communication device</b> )	Patent #: RE 43,990; Dependent Claims (18, 118, 12, 28, 25, 20, <b>32</b> , 30)
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**Page 109 Claim Chart; Page 79 Amended Complaint**

"Biotouch" Samsung Galaxy s6 Smartphone	Patent #: 9,589,439; Independent Claim 13 (i.e. <b>communication device</b> )	Patent #: RE 43,990; Dependent Claims (18, 118, 12, 28, 25, 20, <b>32</b> , 30)
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**Page 114 Claim Chart; Page 82 Amended Complaint**

PositiveID / "Firefly DX" Samsung Galaxy s6 Smartphone	Patent #: 9,589,439; Independent Claim 13 (i.e. <b>communication device</b> )	Patent #: RE 43,990; Dependent Claims (18, 118, 12, 28, 25, 20, <b>32</b> , 30)
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Factors to be considered in determining whether I have provided sufficient evidence of possession include the level of skill and knowledge I have demonstrated in the art. Partial structure or functional characteristics alone or coupled with a known or disclosed correlation between structure and function is sufficient evidence. The method of making the claimed inventions from the disclosed subject matter is sufficient evidence. "Disclosure of any combination of such identifying characteristics that distinguish the claimed [added: subject matter] invention from other materials and would lead one of skill in the art to the conclusion that the applicant was in possession of the claimed species is sufficient. See *Eli Lilly*, 119 F.3d at 1568, 43 USPQ2d at 1406.

**QUESTION**

1. If the Government "takes" a portion of my property under the Fifth Amendment Clause without paying just compensation, and the "takings" has a direct negative impact on the rest of my property, is the Government liable under the Fifth Amendment Clause to pay just compensation for the remaining portion of my property?

(Example: John has a river that runs north to south on his property. The Government takes the northern portion of the property, builds a damn that causes the remaining southern side of John's property to become useless without the river flow. (Dependent claims left without an Independent claim(s) to depend on)).

## CONCLUSION

When I began sharing information with the Government with the expectation of getting paid for my work, I was buying a new home and a car. I was saving for my kids' college education and had a checking account for emergency use. Since I started this project, I have had to file for bankruptcy, I lost my car to repossession, I lost my home to foreclosure, I've spent all of my retirement savings and children savings for college. I have borrowed money from family and friends that I can't pay back, and right now I am living in government housing and receiving social security.

Since I started this project, employers won't hire me. I have four business associate degrees (i.e. management, accounting, marketing, and industrial management). I have a bachelor of business administration degree—finance; a master of science degree—business leadership; a master of business administration degree; and, is currently studying for a doctor of business administration (DBA) degree but cannot find a job. The only job I have been able to maintain pays 100% commission. I believe I have been blackballed by the Government because I was turned down by an investment firm because I have pending litigation against the government. I don't drink or smoke. I don't do drugs and have never been incarcerated. I don't have violations on my driver records and I don't have disabilities that would prevent me from working. My credit score stays around 730 and I don't steal.

I do however, now have heart complications due to the stress of having to defend myself in Court against the federal Government. I was told by the doctors that I have, at some point suffered a heart attack. Over the past two and a half years of testing (i.e. four EKGs that all return an abnormal reading; a stress test; an ECG that showed an enlarged heart valve; a CAT scan; and, a sleep study) and the doctors' diagnosis is that I have had at least one heart attack due to stress. Today, I carry nitroglycerin pills for chest pain. There's nothing the doctors can do about my enlarge heart value. I have an appointment with the VA cardiologist on August 12, at 12 noon.

I now have to deal with the stress of believing some patriot(s) is going to come alone and hurt me and my family because they believe what JUSTICE BREYER stated in his dissent in *Return Mail*; that I was interfering with the Government's efforts to mitigate terrorist attacks. All that was needed to avoid all of the litigation was for the DHS, when negotiating contracts with Apple, Samsung, LG, and Qualcomm, to inform the third-party government contractors that as a condition of the award, they are to enter into a licensing agreement with me.

I know and believe this Court can fix the wrongs that has been placed upon me. No man in a free Nation should ever have to defend trying to help save lives. All of my inventions are designed to save lives. We are all depending on this Court to establish criteria, for what exactly constitutes a Government "Takings" of Private Property under the Fifth Amendment Clause. I am asking this Court to take up my petition.

### **RELATED CASES OF GOVERNMENT "TAKINGS"**

I have a case pending in the United States Court of Federal Claims (COFC); Larry Golden v. United States; Case No.: 1:13-cv-00307-EGB (13-307C). There are ten (10) alleged



claims pending in the case. In an effort to expedite the proceedings and to reduce the cost to litigate the case for the Government and myself, I submitted a motion to lift the “stay” and to reduce the ten pending alleged claims pending down to only one. Over a month later, my motion has not been entered on the docket. (Gov’t “taking”: delay; unnecessary cost and time)

I have a case pending at the U.S. Court of Appeals; Case No.: 20-1508. The case was dismissed by the U.S. District-District of South Carolina (Greenville Division); Case No.: 6:19-cv-2557-DCC. The case was dismissed from the lower court’s magistrate stated my case was frivolous (to fantastic and is unbelievable). In other words, “a Black man is incapable of inventing a CMDC (i.e. smartphone) device because I am only three-fifth human and lack the brain capacity to do so). (Gov’t “taking”: violating my seventh amendment right to a jury trial)

I have a case pending at the U.S. District-District of South Carolina (Greenville Division); Case No.: 6:20-cv-2270-BHH-KFM. The magistrate judge denied my objection to the Court labeling my Antitrust complaint as a Patent Infringement complaint. (Gov’t “taking”: making it easy for the Court to grant a Defendant’s motion to dismiss under 12(b)(6); failure to state a claim under 35 U.S. Code § 271—Patent Infringement)

Respectfully submitted,

SI 

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Date: 8/22/20