No: 20-5532

In The

Supreme Court of the United States

LARRY GOLDEN,

Petitioner,

v.

APPLE, INC. ET AL

Defendant

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Federal Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.2, Larry Golden respectfully petitions for rehearing of the Court's decision issued on December 7, 2020. *Larry Golden v. United States*, No. 20-5532; [On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit, Case No. 19-2134]. Petitioner moves this Court to grant this petition for rehearing and consider Petitioner's case with merits briefing. Pursuant to Supreme Court Rule 44.2, this petition for rehearing was filed within 25 days of this Court's decision in this case. Petitioner received notice from this Court on March 5, 2021 for the need to resubmit this Petition in its corrected form.

REASONS FOR GRANTING THE PETITION

Intervening Circumstance Warrant Rehearing of the Denial of Petitioner Larry Golden's Petition for a Writ of Certiorari.

Definition: *Intervening Circumstance* means any event that affects, or would reasonably be expected to affect, the cause of action; the pleadings of the Petitioner; the intellectual property assets of the Petitioner; or, the private property [patents] that has protection from a 28 U.S.C. § 1491(a) Government "Takings" without paying just compensation.

The Defendant (the Government) notification of a petition for *Inter Partes Review* (IPR) to the Court of Claims in Case No. 13-307C that was unknown and was not reasonably foreseeable of the Defendant's authorization to petition the Patent Trials and Appeals Board (PTAB) to institute a trial which occurs between the original improper 28 U.S.C. § 1491(a) Government "Takings" and the damage itself. Thus, the "causal connection" between the wrong and damages is broken by the intervening cause. This is a "but for" situation, in which the intervention becomes the real reason harm resulted.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Pre-Intervening Circumstance (Case No. 13-307C)

The Fifth Amendment of the U.S. Constitution provides, "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." "While the federal government has a constitutional right to "take" Petitioner's private property for public use, the Fifth Amendment's Just Compensation Clause requires the government to pay just compensation, interpreted as market value, to the owner of the property, valued at the time of the takings.

The Tucker Act, 28 U.S.C. § 1491, grants jurisdiction to this court as follows: "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…"

Chief Justice Roberts, writing for the Court, *In Horne v. Department of Agriculture,* "[a] patented invention stands the same as other types of property, and it taking by the government without adequate compensation is unconstitutionally unjust."

Intervening Circumstance (Case No. 13-307C)

The U.S. Supreme Court (June, 2019) issued its decision in *Return Mail, Inc. v. United States Postal Service* that the U.S. government doesn't qualify as a "person" for purposes of petitioning the PTAB to institute patent validity. The Supreme Court did not establish as new precedence of "government agencies not being "persons" authorized to petition the PTAB for *inter partes review* (IPR), the Court only reiterated and clarified the statutory provision of the American Invent Act of 2012.

28 U.S.C. § 1491(a) claim of "Government Takings of Property under the Fifth Amendment Clause" *In Stop the Beach Renourishment v. Florida Department of Environmental Protection*, 130 S. Ct. 2592 (2010). Justice Scalia, writing for Chief Justice Roberts, Justice Thomas, and Justice Alito, wrote that the Constitution does protect property owners (i.e., patent owners) against takings effectuated by the judiciary, in the same way that it protects them against takings perpetrated by legislatures or executives. In the plurality's view, "it would be absurd to allow a State to do by judicial decree what the Takings Clause forbids it to do by legislative fiat."

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…" "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."

The Federal Circuit's decision in *ATI Technologies ULC v. Iancu* (April 11, 2019) highlights the proper standard to use in evaluating whether a claimed invention was reduced to practice before the effective date of a prior art reference. This evaluation is important because under 37 CFR 1.131 (Rule 131) for patents and patent applications being evaluated under pre-AIA (America Invents Act) guidelines, a reference that would otherwise qualify as prior art under 35 U.S.C. § 102(e) can be eliminated as prior art ("antedated") if the claimed invention is shown to have been invented before the reference's effective date. Establishing invention for

antedating purposes involves showing that the invention was conceived or was reduced to practice before the reference's effective date.

2131 Anticipation 35 U.S.C. 102 "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a *single* prior art reference." *Verdegaal Bros. v. Union Oil Co. of California,* (Fed. Cir. 1987)

Post-Intervening Circumstance (Case No. 13-307C)

"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)."

"Inverse condemnation is a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant. *United States v. Clarke*, 445 U. S. 253, 257 (1980).

The Supreme Court has explained that as long as a private property owner can resort to the Tucker Act to seek compensation for the taking, a constitutional challenge to the underlying statute based on the Takings Clause is not ripe until and unless such a claim under the Tucker Act is brought and compensation denied. *Ruckelshaus v. Monsanto*, 467 U.S. 986, 1019, (1984); *Preseault v. ICC*, 494 U.S. 1, 11 (1990). Therefore, the Taking Clause was not ripe for the Petitioner Golden until the PTAB's final ruling—where the Takings Clause is not ripe until and unless such a claim under the Tucker Act is brought and compensation denied.

PRE & POST HISTORY OF INTERVENING CIRCUMSTANCE

Pre-Intervening Circumstance—Government "Taking" (Case No. 13-307C)

Petitioner has stated from the very first day of filing in 2013; Case No. 13-307C, seven plus years ago, the Government has "taken" Petitioner's intellectual property subject matter under the Fifth Amendment Clause of the Constitution, used Petitioner's intellectual property subject matter for the benefit of the public "*to mitigate the risk of terrorist attacks*" without paying the Petitioner just compensation.

Before the DHS *Cell-All* solicitation was released in year 2007 for a cell phone equipped with hazardous-materials sensors, Petitioner sent intellectual property subject matter of a hand-held scanner capable of CBRN-E detection, between the years 2003-2005, to the Office of the President (Bush); the Office of the Vice-President (Cheney); and, three U.S. Senators from the State of South Carolina (Holland, Graham, DeMint).

Petitioner received response letters from the Office of the President (Bush); the Office of the Vice-President (Cheney); and, the three U.S. Senators from the State of South Carolina (Holland, Graham, DeMint), all stating the information was sent over to the Department of Homeland Security and that Petitioner should contact the department directly. The response letters are proof the DHS was in possession of Petitioner's intellectual property subject matter of a hand-held scanner capable of CBRN-E detection, four years before the Cell-*All* solicitation was released in year 2007.

In January, 2008, Petitioner received via email, an invitation to visit the DHS to discuss with the DHS/S&T Program Manager Edward Turner, Petitioner's multi-sensor detection devices for maritime cargo containers and Petitioner's hand-held scanner capable of CBRN-E detection. A read-ahead document was sent ahead that covered the Petitioner's claimed

inventions. Petitioner and the Petitioner's lead engineer traveled to DHS where we discussed at least that of a hand-held scanner capable of CBRN-E detection. The read-ahead document and the meeting held with the DHS/S&T Program Manager, Edward Turner, is proof the DHS was in possession of Petitioner's intellectual property subject matter of a hand-held scanner capable of CBRN-E detection before the award was made to the third-party contractors i.e., Apple, Samsung, Qualcomm and LG in mid-2008.

Petitioner submitted a proposal in response to the Department of Homeland Security's Science & Technology Directorate; DHS/S&T; BAA07-10; *"Cell-All Ubiquitous Chemical and Biological Sensing"* solicitation for a cell phone equipped with hazardous-materials sensors in order to mitigate the risk of terrorist attacks for the Program Manager, Stephen Dennis review. DHS target market for the *Cell-All* detection devices was to equip 241 million citizens with a device to detect for CBRN&E agents and/or compounds.

Petitioner entered into email correspondence with the Program Manager, Stephen Dennis where the Petitioner was asked to send additional information about the *Cell-All* proposal. The proposal and the follow-up email correspondence are proof the DHS *Cell-All* Program Manager, Stephen Dennis and the DHS were in possession of Petitioner's intellectual property subject matter of a hand-held scanner capable of CBRN-E detection before the award was made to the third-party contractors i.e., Apple, Samsung, Qualcomm and LG in mid-2008.

The Department of Homeland Security (DHS) and the third-party contractors i.e., Apple, Samsung, and LG conspired to avoid being sued for patent infringement by the Petitioner. When DHS and Apple, Samsung, Qualcomm and LG entered into contracts for the development and commercialization of the *Cell-All* device, Apple, Samsung, Qualcomm and LG avoided being sued in District Court because as third-party government contractors, an action of infringement

could only be brought against the DHS (government). While under contract for the Government, it was useless to bring an action against the Government because under 28 U.S.C. § 1498(a), if the third-party contractors i.e., Apple, Samsung, and LG "makes at least one part of the process abroad, there's no infringement" See *Zoltek v. United States* (2006). [Overturned in 2012]

The Government deliberately and intentionally entered into a contract with the CEO of Apple, to steal the ideas of the Petitioner. Steve Jobs who famously said in 1996: "Picasso had a saying – 'good artists' copy; great artists steal' -- and we have always been shameless about stealing great ideas." Jobs openly admitted he has no shame when it comes to stealing someone's great idea. The Government entered into a contract with Jobs, and it was implied upon Jobs to steal the Petitioner's great ideas.

Petitioner believes the "takings" began with the breach of implied-in-fact contracts the Petitioner entered into with various members of the Executive and Legislative branches of government. Petitioner also believes the "takings" continued with the breach implied-in-fact contracts the Petitioner entered into with various members of the Government agencies.

Intervening Circumstance—Government "Taking" (Case No. 13-307C)

The DOJ and DHS, who has never been "persons" to challenge a patent's validity at the Patent Trails and Appeals Board (PTAB), *see Return Mail Inc. v. United States Postal Service*, in 2014 filed a petition for *Inter Partes Review* (IPR) to invalidate certain claims of Petitioner's RE43,990 patent.

In *Return Mail*, [June 10, 2019], JUSTICE SOTOMAYOR delivered the opinion of the Court. Cite as: 587 U. S. ____ (2019); Opinion of the Court:

> "[f]inally, excluding federal agencies from the AIA review proceedings avoids the awkward situation that might result from forcing a civilian patent owner (such as Return Mail) to defend the patentability of her invention in an adversarial, adjudicatory

> proceeding initiated by one federal agency (such as the Postal Service) and overseen by a different federal agency (the Patent Office). We are therefore unpersuaded that the Government's exclusion from the AIA review proceedings is sufficiently anomalous to overcome the presumption that the Government is not a "person" under the Act."

The U.S. Supreme Court (June, 2019) issued its decision in *Return Mail, Inc. v. United States Postal Service* that the U.S. government doesn't qualify as a "person" for purposes of petitioning the PTAB to institute patent validity. The DOJ and DHS knew, or should have known they were not "persons" authorized to petition the PTAB to institute a trial to determine the validity of Petitioner's patents.

Therefore, any actions Petitioner took in defending a frivolous, unauthorized, illegally instituted *inter partes review* (IPR), that resulted in the Petitioner losing his property, can be categorized as a Government "Taking" of Petitioner's property under the Fifth Amendment Clause of the Constitution, but without paying "just compensation".

It is the belief of the Petitioner that the Claims Court ("Government") fail to adhere to the proper or accepted standard of proceedings when the Claims Court ("Government") stayed the Petitioner's 28 U.S.C. § 1491(a), "Government 'Takings'" claims to allow the DOJ ("Government"), and the DHS ("Government") to litigate in the PTAB Court ("Government"), in Case No. IPR2014-00714, on three references (Astrin, Breed, and Mostov) that the DOJ ("Government"), the DHS ("Government"), the Claims Court ("Government"), and the PTAB Court ("Government") knew, or should have known, did not antedate the priority filings (Disclosure Document; November 17, 2004) of the Petitioner's inventions.

The Petitioner believes the Government's action to institute a IPR trial on unqualified patent references is one of several ways the "Government" has "taken" the Petitioner's property.

The Government is prohibited from taking "property . . . for public use, without just compensation." U.S. Const. Amend. V.

The issuance of a patent to Petitioner recognized a property right in each of the inventions embodied in the relevant claims, and those property rights were presumed valid, and when issued those property rights vested in Petitioner. See, e.g., *Florida Prepaid Postsecondary Ed. Expense Bd. v. College Savings Bank*, 527 U. S. 627, 642 (1999) (patents as property right); *James v. Campbell*, 104 U. S. 356, 358 (1882) (same).

Post-Intervening Circumstance—Government "Taking" (Case No. 13-307C)

"[T]he Federal Circuit rejected the government's argument that the Court of Federal Claims lacked jurisdiction over the IPR-based takings claim (more on that in a minute). On the merits of the IPR-based takings claim, however the Golden panel did not address the question of whether patents are private property for Takings Clause purposes… [t]he Federal Circuit's holding that the Court of Federal Claims had jurisdiction over Golden's IPR-based takings claim… the Takings Clause does not prohibit the government from taking private property for public use—it simply requires just compensation in the event such a taking occurs. The Supreme Court has explained that as long as a private property owner can resort to the Tucker Act to seek compensation for the taking, a constitutional challenge to the underlying statute based on the Takings Clause is not ripe until and unless such a claim under the Tucker Act is brought and compensation denied. *Ruckelshaus v. Monsanto*, 467 U.S. 986, 1019, (1984) … the Golden panel expressly and unequivocally addressed this question—and rejected government's argument that the AIA displaces Tucker Act jurisdiction over a PTAB-related takings claim. In particular, the Federal Circuit explained that Tucker Act jurisdiction is displaced "when a law assertedly imposing monetary liability on the United States contains its own judicial remedies," and that the

AIA does not provide for any claims against the United States… [t]he upshot is that the only way a court may properly rule on the merits of a PTAB-related takings claim is through a Tucker Act claim brought in the Court of Federal Claims, one filed after the relevant PTAB proceedings have concluded—the type of claim raised by Golden, as well as in the currently pending appeal in Christy v. United States, No. 19-1738. As the Supreme Court put it in *Monterey v. Del Monte Dunes*, 526 U.S. 687, 718 (1999), "there is no constitutional or tortious injury until the [property owner] is denied just compensation." *Rizzolo, M. & Thornton, K. (2020, April 14). Golden v. United States Shows That the Federal Circuit Overstepped Its Bounds in Celgene. Retrieved from: https://www.ipwatchdog.com/2020/04/14/golden-v-united-states-shows-federal-circuit-overstepped-bounds-celgene/id=120630/*

It is the belief of the Petitioner that the "Government" was given adequate notice, made aware of, and told or signaled that the private and personal property subject matter as outlined in the Petitioner's communications, patent(s) specifications and patent claims that was "taken" by the "Government" are significantly the same or equivalent to the claimed inventions of the Petitioner.

Petitioner believes the "Government" has taken and used for the benefit of the public, the private and personal property subject matter as outlined in the Petitioner's communications, patent(s) specifications and patent claims that are significantly the same or equivalent to the claimed inventions of the Petitioner; resulting in the Government's release of solicitations calling for the manufacture and development of products, devices, methods, and systems that are significantly the same or equivalent to the claimed inventions of the Petitioner's intellectual property subject matter.

Petitioner has presented evidence that the lower Courts (by omission and avoidance), has violated Petitioner's independent substantive rights enforceable against the United States for money damages. Petitioner has presented evidence the Government has breach the implied-in-fact contracts between the Petitioner and the Government; and, evidence of the Government's violation of certain constitutional provisions, statues and regulations.

DAMAGES

It is the belief of the Petitioner that the Claims Court ("Government"), has allowed the DOJ ("Government"), the DHS ("Government"), and the PTAB Court ("Government") to improperly "take" three independent patent claims (11, 74, and 81) of the '990 patent. The character of the Government's action was triggered when the "takings" caused a permanent invasion of the Petitioner's property and eliminated all economically beneficial uses of such property by way of the Government's "takings" of Petitioner's property.

It is the belief of the Petitioner that the Claims Court ("Government"), has allowed the DOJ & DHS ("Government"), to improperly "take" nine independent patent claims (1-9) of the '189 patent, eleven independent claims (13-23) of the '439 patent, and thirty-eight dependent claims (12, 15, 16, 17, 18, 20, 21, 22, 23, 25, 26, 28, 29, 30, 31, 32, 35, 39, 41, 44, 55, 78, 79, 92, 97, 99, 104, 108, 113, 118, 119, 122, 124, 126, 132, 134, 135, 148) of the '990 patent on what was flagged "jurisdictional discovery". The character of the Government's action was triggered when the "takings" caused a permanent invasion of the Petitioner's property and eliminated all economically beneficial uses of such property by way of the Government's "takings" of Petitioner's '990 patent.

It is the belief of the Petitioner that the resulting economic impact of the "Takings" is a reduction in value of the Petitioner's property and by virtue of the access, disclosure, manufacture, development or use, by or for the Government and its third-party awardees, has destroyed the Patent Owner's competitive edge.

Through the use, disposal, and right of a government to take private or personal property for public use, the "Takings" has had a substantial adverse impact (means unfavorable or harmful), thereby preventing success or development on "the reasonable investment-backed expectations" of the Petitioner.

It is the belief of the Petitioner that the character of the Government's action was triggered when the "Takings" caused a permanent invasion of the Petitioner's property and eliminated all economically beneficial uses of such property; without authorization and consent from the Patent Owner and without just compensation to the Petitioner.

"INTELLECTUAL PROPERTY THEFT"

Divya Narendra and the Winklevoss brothers sued Mark Zuckerberg for "stealing their idea". The lawsuit, which accused Mark Zuckerberg of "*intellectual property theft*", said he "illegally used source code intended for the website he was hired to create." The case went on for four long years, during which Facebook expanded aggressively, and established presence not just in universities across America, but across six continents.

Mark Zuckerberg, who said he hadn't used a single code meant for Harvard Connection in Facebook, finally had to agree to an out of court settlement. He paid Divya Narendra and the Winklevoss brothers $65 million. Divya Narendra was also made part owner of Facebook with a small percentage of the company's shares as part of the settlement.

Divya Narendra and the Winklevoss brothers didn't file a lawsuit for patent, copyright, or trade secret infringement. They filed the lawsuit based on the fact that Mark Zuckerberg had taken their intellectual property in the form of *source codes* and illegally used the IP to generate a profit for himself. Divya Narendra and the Winklevoss brothers relied on the Judicial system to administer justice, and so it did.

CONCLUSION

The question here is, "why can't the Supreme Court *'Justices'*, the ones appointed to interpret law and administer justice, for the first time in American history, do so for at least one African-American who have been exploited, time and time again for almost two decades, by the Government for the use of his intellectual property, but without paying just compensation?"

s/ Larry Golden

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March 19, 2021

CERTIFICATE OF INTERVENING CIRCUMSTANCES

I hereby certify that this petition for rehearing, stating that the grounds are limited to intervening circumstances of substantial and controlling effect, and other substantial grounds not previously presented. Signed by Petitioner on this 19th day of March, 2021.

s/ Larry Golden

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CERTIFICATE OF PRO SE PETITIONER

I hereby certify that this petition for rehearing is presented in good faith and not for delay. Signed by Petitioner on this 19th day of March, 2021.

s/ Larry Golden

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