

Supreme Court, U.S.
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No. 23-190

In The
Supreme Court of the United States

DR. PROBIR KUMAR BONDYOPADHYAY, *Pro Se*,
Petitioner

v.

U.S.A.
Respondent

On petition for a Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A serious legal conflict has developed between the USCFC and U.S. District Court involving Title 28 U.S.C. Section 1338(a) and Title 28 U.S.C. Section 1498(a) that the CAFC has not and will not resolve.

QUESTION-1

Can the USCFC, the Federal trial court, dismiss as a Fifth amendment property claim, the claim arising out of *admitted* unauthorized use of a patented U.S. invention by the Defendant U.S.A., already established by the U.S District Court (SDTX, Houston) under Title 28 USC Section 1338(a)?

QUESTION-2

The U. S. Court of Federal Claims (USCFC) is a Federal trial court with nation-wide jurisdiction on patent related claims against the Defendant U.S.A., which has sovereign immunity against U.S. patent

infringements. Does the USCFC have the power to vacate by summary judgment, *based on a proven false affidavit*, a prior U.S. District Court order that established, under Title 28 USC Section 1338(a), existence of the claim based on *admitted* unauthorized use of a patented U.S. invention by the Defendant U.S.A.?

QUESTION 3

Penalty of perjury committed on behalf of the Defendant U.S.A. *by false affidavit*, under Title 28 U.S.C. Section 1498(a) at the USCFC resulted in vacating, by summary judgment, the *admitted* claim established by U.S. District Court under Title 28 USC Section 1338(a). Whereas, subsequent penalty of perjury at the same U.S. District Court has been prompt removal of the responsible U.S.A officials! The CAFC does not address this issue. What is the Truth?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

RELATED CASES

1. U.S. District Court Case

Bondyopadhyay vs. U.S. Secretary of Defense et

al., Case 4:13-cv-01914

Judgment entered Oct. 23, 2013

2. U.S. Court of Federal Claims (USCFC) Case

Bondyopadhyay vs. U.S.A. Case 1:14-cv-00147-

MCW

Judgment entered Feb. 09, 2018

3. U.S. Court of Appeals for the Federal Circuit

(CAFC) Case

Bondyopadhyay vs. U.S.A. Case 0:2018cvus01674

Judgment entered Sept. 07, 2018

4. U.S. District Court Case

Bondyopadhyay vs. U.S. Secretary of Defense.,

Case 4:18-cv-03822 (Document 30)

Judgment entered July. 09, 2019

5. U.S. Court of Federal Claims (USCFC) Case

Bondyopadhyay vs. U.S.A. Case 1:19-cv-01831-

MBH, Judgment entered June 23, 2020

6. U.S. Court of Appeals for the Federal Circuit

(CAFC) Case

Bondyopadhyay vs. U.S.A. Case 0:2020cvus02091

Judgment entered May 24, 2021

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- APPENDIX D Order of U.S District Court
Originally establishing
existence of the claim
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- APPENDIX E Opinion and Order of USCFC
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APPENDIX H USCFC in 2020 declares

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TABLE OF AUTHORITIES CITED

Bondyopadhyay vs. U.S. Secretary of Defense et al.

U.S. District Court, SDTX, Houston,

Case 4:13-cv-01914

Bondyopadhyay vs. U.S.A, U.S. Court of Federal

Claims (USCFC) **Case 1:14-cv-00147-MCW**

Bondyopadhyay vs. U.S.A, U.S. Court of Appeals for

the Federal Circuit (CAFC)

Case 0:2018cvus01674

Bondyopadhyay vs. U.S. Secretary of Defense

U.S. District Court, SDTX, Houston,

Case 4:18-cv-03822

Bondyopadhyay vs. U.S.A, U.S. Court of Federal

Claims (USCFC) Case 1:19-cv-01831-MBH

STATUTES AND RULES

Title 28 USC Section 1338(a)

vs.

Title 28 USC Section 1498(a)

OTHER

**[submitted under U.S. Supreme Court Rule
14.1(i)(vi)]**

JEFFERSONIAN CLAIM (defined)

Simultaneously originating from Article 1 Section 8 Clause 8 of the U.S. Constitution (authored by Thomas Jefferson) and the Sovereign Immunity of the Defendant U.S.A, the Jeffersonian Claim is the U.S. Inventor Owner's Claim that arises out of *admitted unauthorized use* of a U.S patent and whose legal remedy is under Title 28 USC section 1498(a).

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari

issue to review the judgments below

OPINIONS BELOW

For cases from **federal courts:**

The opinion of the United States court of appeals

appears at Appendix A & B to the petition and is

reported at **Case 0:2022cvus02155,**

Docket Documents 34 and 27

filed 04/25/2023 and 02/22/2023 respectively

The opinions of the United States district court

Appears at Appendix C to the petition and is

reported at Case 4:22-cv-02204, Docket Document 13, filed 08/15/2022
[to be read in conjunction with Case 1:19-cv-01831-MBH, Docket Document 17, filed 06/23/2020 that appears at Appendix-H, Relevant excerpts filed under Supreme Court Rule 14.1(i)(vi)]

JURISDICTION

For cases from federal courts

The date on which the United States Court of Appeals decided my case was February 22, 2023.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 25, 2023, and a

copy of the order denying rehearing appears at Appendix A.

[X] A second extension of time to file the petition for a writ of certiorari was granted to and including sixty (60) days beyond July 25, 2023 on initial submissions received at the office of the Clerk of the Supreme Court on May 24, 2023 and July 25, 2023.

The jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1)

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

28 U.S. Code § 1338 - Patents

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks.

28 U.S. Code § 1498 - Patent**(a)**

Whenever 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 of the owner thereof or lawful right to use or manufacture the same, the owner's remedy shall be by action against the United States in the United States Court of Federal Claims for the recovery of his reasonable and entire compensation for such use and manufacture. Reasonable and entire compensation shall include the owner's reasonable costs, including reasonable fees for expert witnesses and attorneys, in pursuing the action if the owner is an independent inventor, a nonprofit organization, or an entity that had no more than 500 employees at any time during.

the 5-year period preceding the use or manufacture of
the patented invention by or for the United States

U.S. CONSTITUTION: Article I, Section 8,

Clause 8:

[The Congress shall have Power . . .] To promote the
Progress of Science and useful Arts, by securing for
limited Times to Authors and Inventors the exclusive
Right to their respective Writings and Discoveries.

STATEMENT OF THE CASE

1. This petitioner-plaintiff, a U.S. Citizen is the sole inventor and sole owner of the patented invention (US 6,292,134) entitled: Geodesic Sphere Phased Array Antenna System - a very large system architecture patent for U.S. National Defense applications.

2.The U.S. Air Force had used this patented invention *unauthorized* to modernize the Air Force Satellite Control Network System (AFSCN) during the continuous time period February 25, 2000 through October 11, 2012.

3. Upon admission by the Honorable U.S. Secretary of Defense of *unauthorized* use of this patented invention, the U.S. District Court, SDTX, Houston established the existence of this petitioner-plaintiff's financial claim on October 23, 2013 (Appendix-D, Case 4:13-cv-01914, Docket Document 43, see page

App-18).

4. The nature of this case was civil fraud and was prosecuted under Title 28 U.S.C. Section 1338(a).

5. This established claim was brought to US Court of Federal Claims (USCFC) for adjudication under Title 28 USC Section 1498(a) on February 24, 2014 (see Appendix-E, pages App-20 -App-28).

6. The Honorable U.S. Secretary of Defense admitted in the U.S. District Court that a bogus inventor was honored in early 2013. He resigned on November 24, 2014 and left office on February 17, 2015. Public record confirms this.

7. On May 26, 2015 the U.S. Air Force Patent Attorney who represented the U.S. Secretary of Defense in the said U.S. District Court case, *filed a false affidavit under penalty of perjury* (Appendix-E, see pages App-23 – App-28) knowing that it is false,

to disrupt the settlement of the established Claim.

8. Over the long period of 2 years, 8 months and 14 days (May 26, 2015 through February 9, 2018) the Defendant U.S (Air Force) could not produce (needless to say) any evidence to support and affirm the (false) affidavit and submitted a motion for summary judgment. The USCFC granted a summary judgment disregarding the penalty of perjury issue and being in violation of Title 28 USC Section 1498(a) which needed to be applied to the prior finding of unauthorized use of the patented invention established by the said prior U.S. District Court order made under Title 28 USC Section 1338(a).

9. *Integrity First* being the first motto of the U.S. Air Force, the *penalty of perjury* matter created in the USCFC of the Williams Court (pages App-23-App-28), became the immediate issue that needed to be

addressed first.

10. Since this sole Inventor-Owner's patent claim for *admitted unauthorized* use originated in the U.S. District Court, the case was referred back to the U.S. District Court on November 12, 2018 (Appendix-G, see pages App-31-App-32) after the CAFC on September 9, 2018 reconfirmed (Appendix-F, see pages App-29, App-30) that this Petitioner -plaintiff is the sole inventor-owner of the patent with a subsequent mandate.

11. The U.S. District Court acting (Appendix-G, pages App-31-App-32) on the *false affidavit* issue (Appendix-E) removed the person responsible for the *false affidavit* -- the Honorable U.S. Secretary of the Air Force) on March 8, 2019 exactly thirty days (almost to the minute) after the U.S. District Court held its first and only hearing on February 8, 2019.

12. This raised the third question posed in the beginning of this Writ petition.

13. After the '*under penalty for perjury*' issue generated in the USCFC (Appendix-E) was addressed (Appendix-G) in the U.S. District Court (SDTX, Houston), the case went back to the USCFC (Appendix-H) as a purely civil matter. In an outrageous miscarriage of justice, the USCFC on the second time (Appendix-H) viewed the unauthorized use of the patented invention (the Jeffersonian Claim) as a Fifth Amendment property taking claim, *failing to recognize the difference between intellectual property and real property.*

14. The CAFC (Appendix-B, see pages App-3-App-9) failed to recognize that the Honorable U.S. Supreme Court has established a gold standard on what is not

res Judicata. 347 US 483 is NOT *res judicata* of 163 US 537. As a result, progress of science is suffering on a matter of grave importance for U.S. National Defense. The patent as stated earlier, is for modernization of Air Force Satellite Control Network and other vital Defense applications.

15. This is exactly where the situation now stands.

16. The Honorable Supreme Court is respectfully requested to declare that *admitted* unauthorized patent use Claim is NOT a Fifth Amendment Claim, setting aside the USCFC Opinion shown in Appendix-H (see pages App-33 -- App-35).

REASONS FOR GRANTING THE PETITION

1. The main reason for granting the petition is that the U.S. Court of Federal Claims (USCFC) in an outrageous miscarriage of justice, judicially designated this Petitioner's Title 28 USC Section 1498(a) Claim as a Fifth Amendment Taking Claim and dismissed the Claim on June 23, 2020 (Case 1:19-cv-01831-MBH, Document 17, see pages App-33 -- App- 35). The Claim was first established by the U.S. District Court under Title 28 USC Section 1338(a) on October 23, 2013 (Case 4:13-cv-01914, Document 43, see page App-18, 19). The U.S. Court of Appeals for the Federal Circuit (CAFC) being a purely Civil Court has been of no use in curing this serious problem for reasons detailed below:

2. There is a clash of a fundamental nature that has arisen between Title 28 USC Section 1338(a) and

Title 28 USC Section 1498(a) involving two Federal trial Courts with exclusive jurisdictions that the Court of Appeals for the Federal Circuit (CAFC) in its present reincarnation can not deal with. Honorable U.S. Supreme Court's attention is absolutely necessary as it is affecting adversely, the progress of science involving a very large system architecture U.S. Patent for applications in U.S. National Defense.

3. The fundamental problem that manifested itself is the legal issue of penalty of perjury and how it is viewed and acted upon by the U.S. Court of Federal Claims (USCFC) which is purely a civil Court and the U.S. District Court (USDC, in this case TXSD, Houston) which is **not** just a Federal Civil Court. The CAFC which is a purely Federal Civil Appeals Court has no power and is of no use in resolving the matter (perjury) as it attracted provisions of Title 18 USC

Section 1621 in the USDC resulting in removal of the U.S. Secretary of the Air Force on March 8, 2019 (public record, Case 4:18-cv-03822, Bondyopadhyay v. The U.S. Secretary of Defense, (see pages App-31, 32).

4. The penalty for perjury issue was not addressed by the CAFC, the first time (Case 0:2018cvus1674, Document 32-1 filed 09/07/2018, see page App-29, 30).

Since this Petitioner's Claim originated at the U.S. District Court, the petitioner then went to the same District Court the second time to reconfirm the original Claim and adjudicate the penalty for perjury issue and went back to the USCFC, the second time (Case 1:19-cv-01831-MBH stated above) and faced the mischaracterization of the said reconfirmed patent

Claim as a Fifth Amendment Taking Claim (see pages App-33 -- App-35). The CAFC for the second time (Case 0:2020cvus02091, filed April 21, 2021) and for the third time (present case) failed to cure the said mischaracterization of the patent Claim made under Title 28 USC Section 1498(a).

CONCLUSION

U.S.A. is a constitutional republic governed by the Rule of Law. The CAFC in its present reincarnation being a purely civil court cannot correctly resolve the dispute between the USCFC and the USDC (District Court) over the penalty of perjury issue, that has resulted in serious miscarriage of justice.

The claim for admitted unauthorized use of a patented invention over a substantial amount of time established and reaffirmed by the U.S. District Court (which is not a purely civil court) cannot be dismissed as a real estate property taking claim by the USCFC and CAFC.

Title 28 USC Section 1498(a) must now have to be correctly enforced by the Honorable Supreme Court of the United States on the legal findings of the

Claim by U.S. District Courts, confirmed by Title 28
USC Section 1338(a).

**The petition for a writ of certiorari
should be granted.**

Respectfully submitted,

Dr. Probir Kumar Bondyopadhyay August 15, 2023

DR. PROBIR KUMAR BONDYOPADHYAY, Pro Se.