APPENDIX-A

Case: 22-2155 Document: 34 Page: 1 Filed: 04/25/2023

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

PROBIR KUMAR BONDYOPADHYAY,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2022-2155

Appeal from the United States District Court for the Southern District of Texas in No. 4:22-cv-02204, Judge Keith P. Ellison.

ON MOTION AND ON PETITION FOR PANEL REHEARING

Before MOORE, Chief Judge, LOURIE and DYK Circuit Judges.

Case: 22-2155 Document: 34 Page: 1 Filed: 04/25/2023

2

BONDYOPADHYAY v. US

PER CURIAM.

ORDER

Probir Kumar Bondyopadhyay files a petition for panel rehearing out-of-time which the court construes as including a motion for leave to file a petition for rehearing out-of-time.

> Upon consideration thereof, IT IS ORDERED THAT:

- (1) The motion for leave to file a petition for rehearing out-of-time is granted. The petition for panel rehearing is accepted for filing.
 - (2) The petition for panel rehearing is denied.
- (3) The mandate of the court will issue May 2, 2023.

FOR THE COURT

April 25, 2023 Date /s/ Jarrett B. Perlow Jarrett B. Perlow Chief Deputy Clerk

APPENDIX-B

Case: 22-2155 Document: 27 Page: 1 Filed: 02/22/2023

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

 $\begin{array}{c} \textbf{PROBIR KUMAR BONDYOPADHYAY,} \\ \textbf{Plaintiff-Appellant} \end{array}$

v.

UNITED STATES,
Defendant-Appellee

2022-2155

Appeal from the United States District Court for the Southern District of Texas in No. 4:22-cv-02204, Judge Keith P. Ellison.

Decided: February 22, 2023

PROBIR KUMAR BONDYOPADHYAY, Houston, TX, pro se.

NELSON KUAN, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for defendant-appellee. Also represented by SCOTT DAVID BOLDEN, BRIAN M. BOYNTON, GARY LEE HAUSKEN.

Case: 22-2155 Document: 27 Page: 2 Filed: 02/22/2023

2 BONDYOPADHYAY v. US

Before MOORE, Chief Judge, LOURIE and DYK, Circuit Judges

PER CURIUM

Dr. Probir K. Bondyopadhyay appeals a decision of the United States District Court for the Southern District of Texas dismissing his complaint for failure to state a claim upon which relief can be granted. For the following reasons, we affirm.

BACKGROUND

Dr. Bondyopadhyay owns U.S. Patent No. 6,292,134 This is his third appeal regarding the '134 patent. Relevant here, on November 27, 2019, Bondyopadhyay filed a complaint against the United States in the Court of Federal Claims, which the court construed as alleged infringement of the '134 patent, fraudulent o false conduct by the government, and a patent-based Takings Clause claim. Bondyopadhyay v. United States, 149 Fed. Cl. 176,178 (20200 (Bondyopadhyay III), aff'd. 850 F. App'x 761 (Fed. Cir. 2021) (Bondyopadhyay IV). The United States moved to dismiss the complaint as barred by the doctrine of and for lack of subject-matter res judicata jurisdiction. Bondyopadhyay III, 149 Fed. Cl. At 183. The Court of Federal Claims determined Dr. Bondyopadhyay's infringement claims were barred under res judicata because of a non-infringement judgement entered against him in 2014. See Bondyopadhyay IV, 850 F. App'x at 762-63 (citing Bondyopadhyay v. United States, 136 Fed. Cl. 114, 116 (2018) (Bondyopadhyay 10, aff'd 848F. App'x 301 (Fed. Cir. 2018) (Bondyopadhyay II). Regarding his takings claim and fraud claim, the Court

of federal Claims dismissed for lack of jurisdiction. Id. At 763. We affirmed the Court of Federal Claims' dismissal of Dr. Bondyopadhyay's claims. Id. At. 764-65.

On July 5, 2022, Dr. Bondyopadhyay files a complaint in the Southern District of Texas, alleging Bondyopadhyay III "failed to differentiate between" Article1's grant of power to Congress to promote the progress of science and the useful arts and the Fifth Amendment's Takings Clause. See S. App'x 16. Specifically, he alleges he is entitled to "enforcement of a U.S. Constitutional Order. . . arising out of unauthorized use of a patented invention" by the Air Force, which he refers to as a 'Jeffersonian Claim." S. App'x 15. He also argues that when the Air Force updates the system that system will then infringe his U.S. patent No. 11,296,408. S. App'x 15. The United States moved to dismiss under Rules 12(b)(1) and Rules 12(b)(6). The district court granted the motion under Rule 12(b)(6). S. App'x 1-3. Dr. Bondyopadhyay appeals. We have jurisdiction over the claims regarding the '134 patent under 28 U.S.C. Section 1295(a)(1).

DISCUSSION

We review the district court's dismissal under regional circuit law, here the Fifth Circuit. In re TLI Commc'ns LLC Pat. Litig., 823 F.3d 607, 610 (Fed. Cir. 2016). The Fifth Circuit reviews "motions to dismiss pursuant to Rule 12(b)(6) do novo accepting all well-pleaded facts as true and viewing those facts in the light most favorable to the plaintiff." Balle v. Nueces Cnty., 952 F. 3d 552, 556 (5th Cir. 2017) (internal citation and quotation marks omitted). We may affirm a dismissal under Rule 12(b)(6) on any ground supported by the record, including for lack of standing, Hosein v. Gonzales, 452 F. 3d 401, 403 (5th Cir. 2006). Res judicata may be applied on a Rule 12(b)(6) motion where its application "is apparent from the complaint and judicially noticed facts and the plaintiff fails to challenge the defendant's failure to plead it as an affirmative defense." Anderson v. Wells Fargo Bank, N.A. 953 F.3d 311,314 (5th Cir. 2020). Dr. Bondyopadhyay argues his "Jeffersonian Claim" is not a Takings Clause claim. Appellant's informal Opening Br. At 7. He argues that the district court failed to assess infringement of the '134

patent "against the offending" Air Force Program. Id at 7-8. Whether this claim is brought under the Fifth Patent under $_{
m the}$ Act. Dr. Amendment or Bondyopadhyay has already litigated these claims several times without success. See Bondyopadhyay I, 850 F. App'x at 762-765 ("But regardless how Dr. characterized his claims, Bondyopadhyay as unauthorized us of the patent or depriving him of a constitutional right to make a living, his claims boil down to patent infringement, claims that were previously adjudicated against him, and he has failed to allege sufficient additional facts to indicate otherwise."). We affirm the district court's dismissal To the extent based resiudicata. onBondyopadhyay alleges he is entitled to relief due to the Air Force's future infringement of the '408 patent by implementing any "design corrections" taught by the '408 patent's "simpler, cheaper[,] and faster" design, that alleged future injury is "conjectural or hypothetical." See Lujan v. Defs, Of Wildlife, 504 US 555, 560 (1992) (internal citations and quotation marks omitted). We therefore affirm the district

$$\operatorname{App-9}$$ court's dismissal of that claim for lack of jurisdiction.

AFFIRMED

Appendix-C

Case 4:22-cv-02204 Document 13
Filed on 08/15/22 in TXSD Page 1 of 3

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

PROBIR BONDYOPADHYAY	§	
Plaintiff	§	
vs.	_	Civil Action No.
	§	4:22-ev-02204
UNITED STATES OF AMERICA	§	
Defendant	§	

ORDER

Before the Court is the Motion to Dismiss filed by Defendant ECF No.7. The Court held a hearing on the Motion on August 15, 2022. At that hearing, the Court took the Motion under advisement. For the reasons set forth below, the Court now GRANTS Defendant's

Motion to Dismiss and DISMISSES Plaintiff's claims
WITH PREJUDICE.

I. BACKGROUND

Plaintiff alleges that he is the inventor and owner of Patent 6,292,134, which is a patent for a "Geodesic Sphere Phased Array Antenna System (GSPAAS)." ECF No. 1 at 4. Plaintiff states that his case arises 'under Title 28 Section 1338(a) and because of its important broad significance, as a Writ of mandamus as well, for immediate implementation of a U.S. Constitutional Order (the Jefferson financial Claim) [.]" Id. at 1. Plaintiff alleges that "Judge Marian Blank Horn of the U.S. Court of Federal Claims in her OPINION of June 23, 2020 has failed to differentiate between LIMITED TIME (Article 1 Section 8 Clause 8 of the U.S. Constitution) and PROPERTY (Fifth Amendment to the U.S. Constitution)". Id. at 7.

Plaintiff therefore requests that the Court "immediately apply the Constitutional Law on the qualified FACT approved by the U.S. Court

CASE 4:22-cv-02204 Document 13 Filed on 08/15/22 in TXSD Page 2 of 3

of Federal Claims on June 23, 2020 ---- and direct the Honorable U.S. Attorney of the Southern District of Texas to enforce the Constitutional Order and fulfill the U.S. Constitutional obligation of promoting Progress of Science." Id. at 8.

Plaintiff has brought several lawsuits related to this patent. ECF No. 7 at 1-2. To wit Plaintiff has sued in this district on several different occasions "for violating his rights under Article 1 Section 8 Clause 8 by making a false claim of ownership against his invention." 4:13-cv-01914, ECF No. 43 at 1. At various points over the last few years, other judges have

dismissed Plaintiff's claims for lack of subject-matter jurisdiction, inadequate standing, and failure to state a claim. Id. At 9; 4:20-cv-2536, ECF No. 14; 4:18-cv - 3822, ECF No.'s 30 and 35.

Plaintiff also filed a related suit in the Court of Federal Claims, which was dismissed for failure to state a claim. 1:14-cv-00147, ECF No.'s 1, 232, and 233. Now, Defendant moves to dismiss Plaintiff's claims for lack of standing and failure to state a claim. ECF No. 7.

II. ANALYSIS

Here, Plaintiff fails to state a plausible claim for relief. See Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009) ("[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss."). Plaintiff's complaint amounts to a vague request for declaratory relief without any meaningful facts or

law in support. For example, Plaintiff writes: "The laser-sharp issue in this case is the Plaintiff's position for a U.S District Court Order for enforcement of a U.S Constitutional order to settle a quantified Constitutional claim arising out of unauthorized use of a patented invention[.]" ECF No. 1 at 5. Plaintiff goes on to say that, "[r]eferring to the time line of the development and manufacturing activities the involves constitutional issue laser-sharp 'UNAUTHORIZED PREGNANCY' for the continuous time period of 11 years and 23 days and NOT the 'STATUS OF THE FETUS' after 12 years and 23 days." Id. And in Plaintiff's Objections to Defendant's Motion,

CASE 4:22-cv-02204 Document 13 Filed on 08/15/22 in TXSD Page 3 of 3

he writes: "Response from U.S. Secretary of the Air Force therefore [has] to be sought before this U.S. Citizen Inventor considers putting this new U.S. Patent on sale in the international market." ECF No No. 9 at 4.

Courts must "give pro se briefs a liberal construction." Brown v. Sudduth, 675 F.3d. 472, 477 (5th Cir. 2012). But a pro se party "still must actually argue something that is susceptible of liberal construction." Toole v. Peak, 361 F. App'x 621 (5th Cir. 2010) (citing Grant v. Cuellar, 59 F.3d 523, 524 (5th Cir. 1995)). Plaintiff's filing do not do so. He provides the Court with no basis to conclude that he raises plausible claims. Accordingly, the Court GRANTS Defendant's Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6).

A dismissal for failure to state a claim can be rendered with prejudice where leave to amend "would cause undue delay, be the result of bad faith, represent the repeated failure to cure previous amendments, create undue prejudice, or be futile." Morgan v. Chapman, 969 F.3d 238, 248 (5th Cir. 2020) (citing FED. R. CIV. P. 15(a)(2)). Here, in light of the of Plaintiff's Complaint, Plaintiff's content representation at the hearing, and Plaintiff's repeated and unsuccessful efforts to bring similar claims elsewhere, the Court concludes that further amendments would be futile and result in the needless waste of resources. The Court therefore DISMISSES Plaintiff's claims WITH PREJUDICE.

IT IS SO ORDERED

SIGNED at Houston, Texas, on this the 15th day of August, 2022.

Appendix-C

Case 4:22-cv-02204 Document 13
Filed on 08/15/22 in TXSD Page 3 of 3

s./ Keith P. Ellison

KEITH P. ELLISON

UNITED STATES DISTRICT JUDGE

App-18 Appendix- D

Under Supreme Court Rule 14.1(i)(vi)

Relevant Excerpts

Case 4:13-cv-01914 Document 43 Filed in TXSD

on 10/23/13 Page 1 of 9

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

PROBIR BONDYOPADHYAY	§	
Plaintiff	§	
v.	§ §	Civil Action
	§	No. H-13-1914
THE UNITED STATES	§ §	
SECRETARY OF DEFENSE, et al.,	§	
Defendants		

ORDER

Case 4:13-cv-01914 Document 43 Filed in TXSD on 10/23/13 Page 7 of 9

... Defendants agree Plaintiff is the original

Appendix- D

Under Supreme Court Rule 14.1(i)(vi)

Relevant Excerpts

Case 4:13-cv-01914 Document 43 Filed in TXSD on 10/23/13 Page 7 of 9

inventor, do not dispute Plaintiff's rights to the patent, and do not threaten future infringement of the patent.

> SIGNED at Houston, Texas, on this 23 day of October, 2013

> > s/David Hittner

DAVID HITTNER

United States District Judge

Appendix- E

Under Supreme Court Rule 14.1(i)(vi) Relevant Excerpts

Case 1:14-cv-00147-MCW Document 232 Filed

02/09/18 Page 1 of 11

ORIGINAL

In the United States Court of Federal Claims

No. 14-147C

(Filed February 9, 2018)

PROBIR K. BONDYOPADHYAY, *

Plaintiff,

* Patent Infringement

v.

* 28 U.S.C. § 1498; Direct

THE UNITED STATES

* Infringement; Doctrine of

Defendant.

* Equivalents; Insubstantial

* Differences; Triple Identity

* Test.

Probir K. Bondyopadhyay, Ph.D.

Houston, TX, pro se.

App-21 Appendix- E Under Supreme Court Rule 14.1(i)(vi) Relevant Excerpts

Case 1:14-cv-00147-MCW Document 232 Filed 02/09/18 Page 1 of 11

OPINION AND ORDER

WILLIAMS, Judge.

In this action, Plaintiff pro se Dr. Probir K. Bondyopadhyay, 1 the inventor of United States Patent No. 6,292,134 ("the '134 Patent") for a "Geodesic Sphere Phased Array Antenna System," claims that the United States Air Force ("Air Force") infringed Claims 14, 25, and 26 of his patent

^{1.} Dr. Bondyopadhyay received a Ph.D. in electrical engineering from Polytechnic University of Brooklyn in 1983, and taught electrical engineering and computer science at both New York Institute of Technology and Maritime College. Tr. 7, 11.

App-22 Appendix- E Under Supreme Court Rule 14.1(i)(vi) Relevant Excerpts

Case 1:14-cv-00147-MCW Document 232 Filed 02/09/18 Page 11 of 11

Conclusion

In sum, because the Ball Advanced Technology Demonstration antenna was incapable of providing hemispheric or greater coverage, it did not literally infringe the '134 patent. Accordingly, Defendant's motion for summary judgment is GRANTED, and Plaintiff's "Motion of the Infringement Phase" (ECF No. 216) is DENIED. The Clerk is directed to enter judgment for Defendant. No costs.

s./ Mary Ellen Coster Williams

MARY ELLEN COSTER WILLIAMS

Judge

App 23

Appendix- E

Under Supreme Court Rule 14.1(i)(vi) Relevant Excerpts FALSE AFFIDAVIT BY THE DEFENDANT

Case 1:14-cv-00147-MCW Document 69

Filed 07/30/15 Page 6 of 11

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

PROBIR K. BONDYOPADHYAY)

Plaintiff)	No. 14-147C
v.)	Judge Mary Eller
)	Coster Williams
THE U)NITED STATES,)	
Defendant)	

THE UNITED STATES' OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES (NOS. 1-12)

App 24

Appendix- E

Under Supreme Court Rule 14.1(i)(vi) Relevant Excerpts

FALSE AFFIDAVIT BY THE DEFENDANT

Case 1:14-cv-00147-MCW Document 69 Filed 07/30/15 Page 6 of 11

On April 24, 2015, Plaintiff Probir K.
Bondyopadhyay filed his Motion for Discovery (Dkt.
#55) asking Defendant's responses to twelve
"Discovery Questions."

INTERROGATORY NO. 3:

"DQ-3 Did the said Boris Tomasic of the United States
Air Force Research Laboratory (AFRL) invent the
Geodesic Dome (Sphere) Phased Array Antenna
System that the U.S. Air Force is developing under
contract with the Ball Aerospace Corporation?"
RESPONSE TO INTERROGATORY NO. 3:

Appendix- E Under Supreme Court Rule 14.1(i)(vi) Relevant Excerpts

FALSE AFFIDAVIT BY THE DEFENDANT

Case 1:14-cv-00147-MCW Document 69 Filed 07/30/15 Page 6 of 11

The United States responds as follows:

On current information and belief, the United States contends that Boris Tomasic invented the Geodesic Dome Phased Array Antenna.

> Case 1:14-cv-00147-MCW Document 69 Filed 07/30/15 Page 7 of 11

Signature and Oath of United States Air Force {Interrogatory Nos. 1-8}

I declare under penalty of perjury that the factual matter contained in the response to Plaintiff's Interrogatory Nos. 1-8 deemed served on April 24,

Appendix- E Under Supreme Court Rule 14.1(i)(vi)

Relevant Excerpts

FALSE AFFIDAVIT BY THE DEFENDANT

Case 1:14-cv-00147-MCW Document 69 Filed 07/30/15 Page 7 of 11

2015 through Plaintiff's motion for Discovery {Dkt. #55}, in Bondyopadhyay v. United States Court of Federal Claims No. 14-147C, is based upon the information available to and deemed reliable by the United States Air Force through its employees and is true and accurate to the best of my knowledge, information and belief.

s./Chun-I Chiang

CHUN-I-CHIANG

Patent Attorney

Commercial Law & Litigation Directorate

Appendix- E Under Supreme Court Rule 14.1(i)(vi) Relevant Excerpts

FALSE AFFIDAVIT BY THE DEFENDANT

Case 1:14-cv-00147-MCW Document 69 Filed 07/30/15 Page 7 of 11

> Air Force Legal Operations Agency 1500 West Perimeter Road, Suite 1780 Joint Base Andrews, MD 20762 (240) 612-6641

Respectfully submitted,
BENJAMIN C. MIZER

Principal Deputy Assistant Attorney

General

JOHN FARGO

Director

Appendix- E Under Supreme Court Rule 14.1(i)(vi) Relevant Excerpts

FALSE AFFIDAVIT BY THE DEFENDANT

Case 1:14-cv-00147-MCW Document 69 Filed 07/30/15 Page 7 of 11

s./ Alice Suh Jou

ALICE SUH JOU

Commercial Litigation Branch

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May 26, 2015

COUNSEL FOR THE

UNITED STATES

Appendix-F

Under Supreme Court Rule 14.1(i)(vi)

Relevant Excerpts

Case: 18-1674 Document: 32-1 Page: 1

Filed: 09/07/2018

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

PROBIR KUMAR BONDYOPADHYAY,

Plaintiff-Appellant

v.

UNITED STATES, Defendant-Appellee

2018-1674

Appeal from the United States Court of Federal Claims in No. 1:14-cv-00147-MCW, Judge Mary Ellen Coster Williams.

Appendix-F

Under Supreme Court Rule 14.1(i)(vi)

Relevant Excerpts

Case: 18-1674 Document: 32-1 Page: 2

Filed: 09/07/2018

Decided: September 7, 2018

PROBIR KUMAR BONDYOPADHYAY,

Houston, TX, pro se.

Before NEWMAN, O'MALLEY, and CHEN, Circuit Judges,

PER CURIUM

I. BACKGROUND

A. The '134 Patent

Dr. Bondyopadhyay is the owner and named inventor of the '134 patent, titled "geodesic sphere phased array antenna system."

Appendix- G

Under Supreme Court Rule 14.1(i)(vi)

Relevant Excerpts

Case 4:18-cv-03822 Document 30 Filed on

07/09/19 in TXSD Page 1 of 11

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

PROBIR BONDYOPADHYAY		
Plaintiff.	§	
v.	§	CIVIL ACTION
	§	NO. H-18-3822
THE U.S. SECRETARY OF	§	
DEFENSE	§	
Defendant.	§	

MEMORANDUM AND RECOMMENDATION

Case 4:18-cv-03822 Document 30 Filed on 07/09/19 in TXSD Page 6 of 11

Defendant further concedes, in pertinent part, that Plaintiff "is the original inventor"

Appendix- G

Under Supreme Court Rule 14.1(i)(vi) Relevant Excerpts

Case 4:18-cv-03822 Document 30 Filed on 07/09/19 in TXSD Page 6 of 11

who "has rights to the patent" and there are no allegations that Defendant is "threatening any future infringement of the patent" (Document No. 10, p.4).

Case 4:18-cv-03822 Document 30 Filed on 07/09/19 in TXSD Page 11 of 11

Signed at Houston, Texas, this $9^{\rm th}$ day of July, 2019

s/ Frances H. Stacy
FRANCES H. STACY
UNITED STATES MAGISTRATE JUDGE

Appendix- H

Under Supreme Court Rule 14.1(i)(vi)

Relevant Excerpts

Case 1:19-cv-01831-MBH Document 17

Filed 06/23/20 Page 1 of 22

In the United States Court of Federal Claims

No. 19-1831C

Filed June 23, 2020

Plaintiff,

Pro Se; Patent

* Infringement;

* Res Judicata;

* Fifth Amendment

* Taking; Fraud;

* Statute of

* Limitations

UNITED STATES,

v.

*

Defendant.

OPINION

HORN, J.

FINDINGS OF FACT

Appendix- H

Under Supreme Court Rule 14.1(i)(vi) Relevant Excerpts

Case 1;19-cv-01831-MBH Document 17

Filed 06/23/20 Page 6 of 22

The constitutional financial claim has already been recorded with the U.S. Court of Appeals for the Federal Circuit [Exhibit-6]. It is \$100 per hour for 1500 hours per year for 11 years and 23 days, plus administrative and office cost of \$1000 per month for 60 months. The total amount of Constitutional Financial Claim is \$1,719,000.

Case 1;19-cv-01831-MBH Document 17 Filed 06/23/20 Page 7 of 22

Plaintiff's complaint in the above-captioned case, once again, appears to allege a Fifth

Appendix- H

Under Supreme Court Rule 14.1(i)(vi) Relevant Excerpts

Case 1;19-cv-01831-MBH Document 17

Filed 06/23/20 Page 7 of 22

Amendment taking claim, stating that the "Defendant has taken the livelihood of this Independent Inventor for a prolonged period of eleven years and 23 days and continues to remain indifferent towards this Constitutional Order for a long time."

<u>s/Marian Blank Horn</u> MARIAN BLANK HORN Judge