APPENDIX A

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

AHMAD ALJINDI,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2023-1230

Appeal from the United States Court of Federal Claims in No. 1:21-cv-01295-SSS, Judge Stephen S. Schwartz.

Decided: April 5, 2023

AHMAD JAMALEDDIN ALJINDI, Irvine, CA, pro se.

IGOR HELMAN, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for defendant-appellee. Also represented by BRIAN M. BOYNTON, ERIC P. BRUSKIN, PATRICIA M. MCCARTHY.

PER CURIAM.

Dr. Ahmad Aljindi appeals the decision of the U.S. Court of Federal Claims denying his motion for summary judgment and granting the government's motion to dismiss. For the reasons set forth below, we affirm.

BACKGROUND

In 2021, Dr. Aljindi filed a complaint *pro se* at the Court of Federal Claims. The complaint alleged various claims, including employment discrimination; intellectual property theft; "negligence and tort," *Aljindi v. United States*, No. 2022-1117, 2022 WL 1464476, at *1 (Fed. Cir. May 10, 2022) (*Aljindi I*); and "ongoing judicial corruption, abuse, and torture in addition to the Government's abuse and torture," *id.* (cleaned up). The Government moved to dismiss Dr. Aljindi's complaint for failure to state a claim, and the Court of Federal Claims granted that motion.

Dr. Aljindi appealed that dismissal to this court. *See id.* We affirmed the Court of Federal Claims' dismissal of most of Dr. Aljindi's claims because that court lacked jurisdiction to consider them. *Id.* at *2–3. But we vacated-in-part the trial court's dismissal because Dr. Aljindi's complaint "mentioned copyrights law violations in the relief section," which could "be liberally construed as a copyright infringement claim over which the Court of Federal Claims would have jurisdiction." *Id.* at *3 (cleaned up). Accordingly, we remanded for the trial court "to consider the Government's position that Dr. Aljindi's complaint fails to state a claim for copyright infringement." *Id.*

On remand, the Government moved to dismiss Dr. Aljindi's copyright infringement claim for failure to state a claim. *See Aljindi v. United States*, No. 21-1295C, 2022 WL 17330006, at *1 (Fed. Cl. Nov. 28, 2022)

(*Aljindi II*); SAppx.[1] 1–4. The Government argued that Dr. Aljindi's complaint failed to state a copyright infringement claim because, even construed liberally, his complaint only alleged generally that the Government copied his ideas—and ideas cannot be copyrighted as a matter of law. *See Aljindi II*, 2022 WL 17330006, at *1. The Court of Federal Claims agreed and dismissed Dr. Aljindi's copyright infringement claim.

Dr. Aljindi appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(3).

DISCUSSION

We review de novo the Court of Federal Claims' dismissal of a complaint for failure to state a claim. *Turping v. United States*, 913 F.3d 1060, 1064 (Fed. Cir. 2019). "A motion to dismiss . . . for failure to state a claim upon which relief can be granted is appropriate when the facts asserted by the plaintiff do not entitle him to a legal remedy." *Boyle v. United States*, 200 F.3d 1369, 1372 (Fed. Cir. 2000). In reviewing such a dismissal, we "accept all well-pleaded factual allegations as true and draw all reasonable inferences in [the appellant's] favor." *Id.* But "regardless of whether the plaintiff is proceeding *pro se* or is represented by counsel, conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." *Scott v. United States*, 134 Fed. Cl. 755, 758 (2017) (quoting *McZeal v. Spring Nextel Corp.*, 501 F.3d 1354, 1356 (Fed. Cir. 2007)).

On appeal, Dr. Aljindi argues that the Court of Federal Claims erred in dismissing his claim for copyright

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[1] Citations to "SAppx." refer to the Appendix attached to the appellee's brief.

infringement. Appellant's Br.[2] 4. Specifically, Dr. Aljindi argues that the "Government used [his] property in ALL formal AI Strategies published by the federal government . . . as [he had] discovered this entire scientific field in its entirety." Appellant's Br. 13. In other words, Dr. Aljindi argues that he discovered the scientific field of "Information Security, Artificial Intelligence (AI), and Legacy Information Systems (LIS)," and thus that the government's subsequent use of technologies in that field infringed upon his copyright. Complaint at 2, *Aljindi v. United States*, No. 1:21-cv-01295-SSS (Fed. Cl.) (*Complaint*); *see also* Appellant's Br. 10 ("[H]ow did these federal agencies . . . know about the relationship between AI, Information Security, and LIS without reading and taking my property and building on its formal scientific findings!").[3]

As the Court of Federal Claims explained, the protections of copyright do not "extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described,

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[2] Because Dr. Aljindi's opening brief on appeal includes an attachment, we use the pagination provided in the header of his brief.

[3] Dr. Aljindi also argues that the trial court erred by dismissing his "Fifth Amendment Taking Claim." Appellant's Br. 4. In *Aljindi I*, however, we affirmed that court's dismissal of this claim and remanded only for consideration of his copyright infringement claim. 2022 WL 1464476, at *2–3; *see also Aljindi v. United States*, 143 S. Ct. 436 (2022) (Mem.) (denying Dr. Aljindi's petition for a writ of certiorari). Dr. Aljindi thus cannot re-raise this issue on appeal from that remand. *See, e.g.*, *Arizona v. California*, 460 U.S. 605, 618 (1983) ("[W]hen a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages of the same case."). Accordingly, we do not consider this issue further.

explained, illustrated, or embodied in such work." 17 U.S.C. § 102(b); *see Aljindi II*, 2022 WL 17330006, at *2. An individual can own a copyright on a literary form of their work, but not on "the facts and ideas" contained in that work. *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 547 (1985). Put simply, "[c]opyright protection does not extend to ideas expressed in a copyrighted work." *Boyle v. United States*, 200 F.3d 1369, 1373 (Fed. Cir. 2000).

Here, Dr. Aljindi's complaint identifies the intellectual property allegedly infringed by the government as his "scientific work about Information Security, Artificial Intelligence (AI), and Legacy Information Systems (LIS)." *Complaint* at 2. On appeal, as he did before the Court of Federal Claims, Dr. Aljindi references his doctoral dissertation. *See, e.g.*, Appellant's Br. 10. Dr. Aljindi clarifies in his briefing, however, that his copyright claim is not founded on any alleged infringement of the copyrightable aspects of his dissertation; rather, he explains that "[t]he scientific intellectual property" at issue is "the discovery of the entire Information Security, AI, and LIS scientific field in its entirety and establishing this scientific field from scratch." Appellant's Br. 9; *see also id.* at 10 (Dr. Aljindi arguing that "[e]verything is based on [his] scientific research and [his] own property"); *id.* at 13 (Dr. Aljindi arguing that the "Government used [his] property in ALL formal AI Strategies published by the federal government."). Dr. Aljindi does not identify any specific expression of these ideas and concepts that the government allegedly copied; instead, he repeatedly contends generally that "everything built on top of [his] property is [his] property." *Id.* at 10.

Accordingly, even giving Dr. Aljindi's pleadings the leniency afforded to *pro se* plaintiffs, *Ledford v. United States*, 297 F.3d 1378, 1381 (Fed. Cir. 2002), Dr. Aljindi has alleged only that the government infringed certain of his "idea[s], . . . concept[s], principle[s], or discover[ies],"

17 U.S.C. § 102(b), which by definition cannot be copyrighted. The Court of Federal Claims thus did not err in dismissing Dr. Aljindi's copyright infringement claim.

We have considered each of Dr. Aljindi's remaining arguments and find them unpersuasive.

CONCLUSION

For the above reasons, we affirm the Court of Federal Claims' dismissal of Dr. Aljindi's complaint.

AFFIRMED

COSTS

No costs.

United States Court of Appeals for the Federal Circuit

AHMAD ALJINDI,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2023-1230

Appeal from the United States Court of Federal Claims in No. 1:21-cv-01295-SSS, Judge Stephen S. Schwartz.

JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

AFFIRMED

FOR THE COURT

April 5, 2023
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

AHMAD ALJINDI,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2023-1230

Appeal from the United States Court of Federal Claims in No. 1:21-cv-01295-SSS, Judge Stephen S. Schwartz.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

PER CURIAM.

ORDER

Ahmad Aljindi filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that heard the appeal, and thereafter the petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue June 15, 2023.

FOR THE COURT

June 8, 2023
Date

/s/ Jarrett B. Perlow
Jarrett B. Perlow
Acting Clerk of Court

United States Court of Appeals for the Federal Circuit

AHMAD ALJINDI,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2023-1230

Appeal from the United States Court of Federal Claims in No. 1:21-cv-01295-SSS, Judge Stephen S. Schwartz.

MANDATE

In accordance with the judgment of this Court, entered April 5, 2023, and pursuant to Rule 41 of the Federal Rules of Appellate Procedure, the formal mandate is hereby issued.

FOR THE COURT

June 15, 2023
Date

/s/ Jarrett B. Perlow
Jarrett B. Perlow
Acting Clerk of Court

APPENDIX B

In the United States Court of Federal Claims

No. 21-1295C
(Filed: November 28, 2022)
NOT FOR PUBLICATION

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AHMAD ALJINDI, *
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Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *
*

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OPINION AND ORDER

Plaintiff Ahmad Aljindi, proceeding *pro se*, claimed that the federal government has harmed him in various ways. After his complaint was dismissed, *see* Opinion & Order (ECF 13), Plaintiff appealed. The Federal Circuit affirmed in part, vacated in part, and remanded for this Court to "consider whether Dr. Aljindi's complaint contains the minimum required factual allegations to support a claim of copyright infringement[.]" *Aljindi v. United States*, No. 22-1117, 2022 WL 1464476, at *4 (Fed. Cir. May 10, 2022). The government has moved to dismiss under RCFC 12(b)(6), and Plaintiff has opposed.[1] Plaintiff has moved for summary judgment under RCFC 56, and the government has opposed.[2] The motion to dismiss is **GRANTED** and the motion for summary judgment is **DENIED**.

This Court has jurisdiction over claims for infringement of intellectual property by the government. *See* 28 U.S.C. § 1498(b). For Plaintiff to plead his claim adequately, this Court's Rules provide that he must set out a "short and plain statement of the claim showing that [he] is entitled to relief." RCFC 8(a)(2). By the same token, "[t]o survive a motion submitted under RCFC 12(b)(6), the complaint must 'contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Scott v. United States*, 134 Fed. Cl. 755, 758 (2017) (quoting

[1] *See* Mot. to Dismiss (ECF 31); Resp. to Mot. to Dismiss (ECF 38); Reply in Supp. Mot. to Dismiss (ECF 41).

[2] *See* Mot. for Summ. J. (ECF 26); Resp. to Mot. for Summ. J. (ECF 34); Reply in Supp. Mot. for Summ. J. (ECF 39).

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (itself quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)) (quotes omitted).

The Court "must presume that the facts are as alleged in the complaint, and make all reasonable inferences in favor of the Plaintiff." *Plaintiff No. 1 v. United States*, 154 Fed. Cl. 95, 99 (2021) (quoting *Cary v. United States*, 552 F.3d 1373, 1376 (Fed. Cir. 2009)). In addition, *pro se* plaintiffs are "entitled to a liberal construction of their pleadings." *Ogburn v. United States*, No. 21-1864C, 2022 WL 3210214, at *2 (Fed. Cl. Aug. 9, 2022) (quoting *Howard-Pinson v. United States*, 74 Fed. Cl. 551, 553 (2006) (alteration omitted). But "regardless of whether the plaintiff is proceeding *pro se* or is represented by counsel, conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." *Scott*, 134 Fed. Cl. at 758 (quoting *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1356 (Fed. Cir. 2007)).

As this Court's original dismissal order noted, even assuming Plaintiff meant to allege a taking of his intellectual property — a theory he seemed to disclaim, *see* Opinion & Order at 3 — his allegations were not facially plausible without factual allegations in the complaint about what the property consisted of, how it was taken, and what the government did with it. *See Scott*, 134 Fed. Cl. at 764. Much the same considerations require dismissal of any claim for copyright infringement.

In addition, it does not appear that Plaintiff alleges government use of anything that was copyrightable in the first place. Copyright protections do not "extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." 17 U.S.C. § 102(b).[3] Individuals can own a copyright to the "literary form" of their work, but not "the ideas and information" their work contains. *See Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 581 (1985); *Boyle v. United States*, 200 F.3d 1369, 1373 (Fed. Cir. 2000); *Shipkovitz v. United States*, 1 Cl. Ct. 400, 403 (1983). Even making allowances for Plaintiff as a *pro se* litigant, the material that he alleges the government used was not copyrightable. He has therefore failed to state a claim upon which relief can be granted.

Plaintiff claims that his intellectual property consisted of "scientific work about Information Security, Artificial Intelligence (AI), and Legacy Information Systems (LIS)[.]" Compl. at 2. Plaintiff concedes in response to the motion to dismiss that he

[3] There are two elements of copyright infringement: "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Gaylord v. United States*, 595 F.3d 1364, 1372 (Fed. Cir. 2010).

is claiming copyright to a scientific "topic" or "field," *see* Resp. to Mot. to Dismiss at 4–5, which by definition cannot be copyrighted.

Plaintiff's motion for summary judgment underscores the point. Plaintiff asserts that the allegedly infringed work was his doctoral dissertation, which he provides as an exhibit along with its certificate of copyright registration. *See* Mot. for Summ. J. at Exhs. C & E. "The scientific intellectual property" at issue, he claims, "is the discovery of the entire Information Security, AI, and LIS scientific field in its entirety and establishing this scientific field from scratch[.]" *Id.* at 5. Because he believes that "[p]rior to my scientific research this field did not exist," he claims the right to all subsequent work on the subject: "[E]verything built on top of my property is my property." *Id.*; *see also id.* at 7 ("[A]s I have discovered this entire scientific field in its entirety, ... all facts, findings, knowledge that falls under it and based on my scientific generic qualitative study and its formal findings are subsequent knowledge[.]"). He considers the "formal AI Strategies published by the federal government" to have infringed his work, *id.* at 7, because he does not think the government could have "know[n] about the relationship between AI, Information Security, and LIS without reading and taking my property and building on its formal scientific findings," *id.* at 5. And although Plaintiff attaches several government publications on artificial intelligence to his motion, he does not identify any part of their "literary form" that derived from his dissertation. *Harper & Row*, 471 U.S. at 581. All of this confirms that Plaintiff is erroneously seeking copyright protections not for the dissertation's copyrightable aspects, but for "idea[s], ... concept[s], principle[s], or discover[ies]" it contains. 17 U.S.C. § 102(b).

When this Court dismisses complaints for failure to state a claim, it has discretion to allow leave to amend. This Court denies leave, however, when amendment would be futile. *See Foman v. Davis*, 371 U.S. 178, 183 (1962); *Steffen v. United States*, 995 F.3d 1377, 1380 (Fed. Cir. 2021); *Chapman v. United States*, 130 Fed. Cl. 216, 219 (2017). Because Plaintiff has made clear in multiple documents that the infringement he alleges relates to uncopyrightable ideas, leave to amend would be futile here.

For the foregoing reasons, Defendant's Motion to Dismiss (ECF 31) is **GRANTED** and the case is **DISMISSED** for failure to state a claim. Plaintiff's motion for summary judgment (ECF 26) is **DENIED**.

The Clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

s/ Stephen S. Schwartz
STEPHEN S. SCHWARTZ
Judge

In the United States Court of Federal Claims

No. 21-1295 C
Filed: November 30, 2022

DR. AHMAD ALJINDI
Plaintiff

v.

JUDGMENT

THE UNITED STATES
Defendant

Pursuant to the court's Opinion and Order, filed November 28, 2022, granting defendant's motion to dismiss and denying plaintiff's motion for summary judgment,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that plaintiff's complaint is dismissed for failure to state a claim.

Lisa L. Reyes
Clerk of Court

By: *Debra L. Samler*

Deputy Clerk

NOTE: As to appeal to the United States Court of Appeals for the Federal Circuit, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is $505.00.