

No. 21-249

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

Dr. PROBIR KUMAR BONDYOPADHYAY --- PETITIONER

VS

UNITED STATES OF AMERICA --- RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

(Name of Court that last ruled on Merits of the Petitioner's case)

PETITION FOR WRIT OF CERTIORARI

Dr. Probir Kumar Bondyopadhyay August 15, 2021

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(U.S. Citizen, Independent Inventor & Owner, Pro Se)

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QUESTIONS PRESENTED

The question before the Honorable U.S. Supreme Court is on the recognition and affirmation of the Jeffersonian claim of an original creature of the U.S. Constitution against the United States under Article 1 Section 8 Clause 8 arising out of admittedly unauthorized and intentional use (over a continuous period of 12 years 7 months and 16 days) of a patented U.S. invention vital for U.S. National Defense on which the U.S. Court of Federal Claims (USCFC) and the U.S. Court of Appeals for the Federal Circuit (CAFC) issued no judgment (even under CAFC Rule 40 and CAFC Rule 35). [Appendix-A, Appendix-B and Appendix-C].

This petitioner, a U.S. Citizen sole independent inventor and sole owner of the patented (US 6,292,134) U.S. invention (of a very large Phased Array Antenna system architecture for modernization of Air Force Satellite Control Network) was accorded the status of the said original creature of the U.S. Constitution by the CAFC (0:2018cvus01674) with its mandate issued on September 7, 2018. The applicable exclusive constitutional law Title 28 USC Section 1498(a) was not applied to the admitted facts by the USCFC (Appendix-C) thus interrupting the progress of science and necessary improvements in U.S. National Defense capabilities.

LIST OF PARTIES

There is only one party in this case and this said party is recognized as the United States in Title 28 USC Section 1498(a), the applicable Constitutional Law.

The actual Defendant (respondent) in this case of Jeffersonian Claim, for which this petition for a writ of certiorari is filed, is the U.S. Air Force Research Laboratory (AFRL) which administers the Air Force Small Business Innovation Research (SBIR) program under the central control of the Office of the U.S. Secretary of Defense (OSD) where the Jeffersonian Claim has actually originated.

RELATED CASES

Bondyopadhyay v. U.S.A., No. 1:19-cv-01831-MBH, U.S. Court of Federal Claims (USCFC), Judgment entered June 23, 2020. (Appendix-C)

Bondyopadhyay v. U.S.A., No. 0:2020cvus02091, U.S. Court of Appeals for the Federal Circuit (CAFC), Judgment entered March 11, 2021 CAFC Rule 40, **timely rehearing** and CAFC Rule 35 **timely hearing** judgments entered **May 24, 2021**. (Appendix-A and Appendix-B)

[These two are the cases DIRECTLY related to the case in this court. Rule 14

(b) (iii).]

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APPENDIX – B	CAFC Opinion under CAFC Rules 40 and 35 (5/24/21)
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APPENDIX – D	Original U.S. District Court Order (10/23/2013)
	(<u>NOT</u> under review)

TABLE OF AUTHORITIES CITED

CASES

1. The U.S. District Court (SDTX, Houston) Order (case 4:13-cv-01914, Docket Document 43) of October 23, 2013 first established this U.S. citizen Petitioner as the sole Inventor and sole Owner of the U.S. Patent 6,292,134 entitled: *Geodesic Sphere Phased Array Antenna System*. The District Court order also established admitted unauthorized use of the U.S. patent for the continuous period of 12 years 7 months and 16 days. (Appemdix-D)

2. The U.S. Court of Appeals for the Federal Circuit (CAFC) mandate of September 7, 2018 [case 0:2018cvus01674] reaffirming that this U.S. Citizen Petitioner for this writ of certiorari is simultaneously the sole inventor and sole owner of the U.S. Patent 6,292,134 (a U.S. Constitutional creature) under Article 1, section 8 clause 8 and Title 28 U.S.C. Section 1498(a), the constitution law.

STATUTES AND RULES

1. **Article I Section 8 Clause 8 of the U.S. Constitution**

2. **Title 28 U.S. Code § 1498(a) the constitution law.**

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 judgment below.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States Court of Appeals for the Federal Circuits (CAFC) appears at Appendix-A and Appendix-B to the petition and is reported at [0:2020cvus02091, Docket Document 43, filed 03/11/2021 and Docket Document 46, filed **05/24/2021**];

The opinion of the United States Court of Federal Claims (USCFC) appears at Appendix-C to the petition and is reported at [1:19-cv-01831-MBH, Docket Document 17 filed 06/23/2020]

For cases from federal courts:

JURISDICTION

The date on which the United States Court of Appeals for the Federal Circuit (CAFC) decided my case was March 11, 2021. (Appendix-A)

A timely petition for rehearing was denied by the United States Court of Appeals for the Federal Circuit (CAFC) on the following date: May 24, 2021, and a copy of the order denying rehearing appears at Appendix -B.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article 1 Section 8 Clause 8 of the U.S. Constitution

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.

[The JEFFERSONIAN CLAIM **originates** from the words 'To promote progress of science', 'exclusive rights', 'for limited times' and 'inventors'] for a U.S. Citizen Inventor AND Owner of a US. patent.

2. U.S. Constitution Law: Title 28 USC Section 1498(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.

[The JEFFERSONIAN CLAIM **is governed by** the words: '*covered by a patent of the United States*', '*is used*, and '*for the United States without the license of the owner thereof*'].

in the CONSTITUTION LAW Title 28 USC Section 1498(a).

STATEMENT OF THE CASE

1. This petitioner, a U.S. Citizen is the sole inventor AND sole owner of the U.S. Patent (US 6,292,134): *Geodesic Sphere Phased Array Antenna System* – a very large system architecture patent for primary applications in U.S. national defense, that requires at least twenty three years of continuous effort to design, manufacture and make the system operational. This twenty-two years effort plan is pictorially described in Appendix-C.

2. The U.S. Air Force through its Small Business Innovation Research (SBIR) program, acquired *unauthorized*, this innovation (that soon became this U.S. Patent), in January 1999 and began immediately using it for modernization of the Air Force Satellite Control Network (AFSCN).

3. Nine separate U.S. Federal Court cases were successfully executed step by step, mostly under Title 28 USC Section 1338(a), during 2003 through 2019 to establish, confirm and reconfirm, this petitioner as a U.S. Constitutional creature under Article 1 Section 8 Clause 8 with the CAFC mandate of September 7, 2018 (case 0:2018cvus01674) that this U.S. Citizen petitioner is the sole inventor and sole owner of the said U.S. Patent 6,292,134 that was renewed three times to its full twenty (20) year life span.

4. Unauthorized conscious use of this very large system architecture patent for dedicated U.S. national defense applications **from the very beginning** by the U.S. Air Force that gives rise to the Jeffersonian Claim of this U.S.

constitutional creature, was judicially established first by the U.S. District Court (SDTX Houston) on October 23, 2013. [Case 4.13-cv-01914, Docket Document 43, in Appendix-D]

5. This Jeffersonian Claim (U.S. Constitutional Claim of this petitioner, a U.S. Constitutional Creature) for the continuous time period of 12 years 7 months and 16 days was filed *for the first time* in the U.S. Court of Federal Claims (USCFC) on November 27, 2019 under Title 28 USC Section 1498(a), the **exclusive constitutional law**. (Appendix-C, case 1:19-cv-01831-MBH)

6. The USCFC on June 23, 2020, admitted the Facts but did **NOT** apply the *exclusive constitutional law* to the facts that established the Jeffersonian Claim. (Appendix-C)

7. There is **NO specific accused device in the U.S. constitutional Jeffersonian Claim.**

8. The Jeffersonian Claim is constitutionally based on continuous unauthorized 'pregnancy' *during* the continuous time period of 12 years 7 months and 16 days and **NOT** on the 'status of the fetus' (the 'accused device') at the *end* of 12 years 7 months and 16 days.

9. The Honorable U.S. Court of Appeals for the Federal Circuit (CAFC) at all the three levels (Appendix-A and Appendix-B, case 0:2020cvus02091) failed to recognize and address this Jeffersonian Claim, the constitutional fundamental right of the constitutional creature under Article 1 Section 8

Clause 8.

10. The U.S. Air Force has correctly recognized that this invention, the electronic scanning *Geodesic Sphere Phased Array Antenna System (US Patent 6,292,134)* is THE right system solution for modernization of the Air Force Satellite Control Network (AFSCN) Systems but has failed to honor the Jeffersonian Claim of the true inventor knowing it from the very beginning who is the true inventor.

11. The 23-year project that started in the fiscal year 1999, stands halted as of July 1, 2013 as it requires design corrections for optimum performance. The reason, *in the first place*, being that no one in the Defense Pentagon could notice that the natural building blocks of a regular pentagon is not a smaller regular hexagon but an isosceles triangle with two equal angles being 54° .

12. The background of this case before the Jeffersonian Claim was filed for the first time on November 27, 2019 is briefly and precisely as follows.

Patent infringement claim against the United States of America (U.S. Air Force) was first established by the U.S. District Court Order of October 23, 2013. [Case 4:14-cv-01914, SDTX, Houston, Docket Document 43, in Appendix-D]. The Claim went to the U.S. Court of Federal Claims in February 2014 where, the Defendant in contempt of the said U.S. District Court Order filed a false affidavit to obstruct justice. [case 1:119-cv-01831-

MBH, in Docket Document 19, dated May 26, 2015] The Jeffersonian could not be addressed there and the U.S. Court of Appeals for the Federal Circuit was moved in 2018 to get the mandate that this Petitioner is the true original inventor and sole owner of the infringed active U.S. Patent. [case 0:2018cvus-01674, mandate issued September 7, 2018]. The U.S. District Court was moved again to reaffirm the U.S. Constitutional creature status of this Petitioner Plaintiff under Title 28 USC Section 1338(a) defeating again the obstruction of justice on the question of ownership of this live patent.

14. The end date of the Jeffersonian Claim is October 11, 2012 when the U.S. Air Force made the public announcement from San Antonio, Texas that it is developing the electronic scanning Geodesic Sphere Phased Array Antenna System for modernization of the Air Force Satellite Control Network (AFSCN) system. This date is NOT in dispute for this Jeffersonian Claim.

15. The 'outrage' of this Petitioner is the fact that the USCFC Opinion of June 23, 2020 says (Appendix-C) that CAFC confirmed applicable EXCLUSIVE law to the FACTS is Title 28 USC Section 1498(a). Yet the USCFC does NOT apply this Constitutional Law to the FACTS.

[see Page 19 of this Opinion line 2 and line 3 from above, Appendix-C]

16. **This must not stand.**

REASONS FOR GRANTING THE PETITION

The Jeffersonian Claim of a constitutional creature is a constitutional order *'To promote the Progress of Science'*.

This U.S. Constitution Order must have to be recognized and implemented.

The U.S. Court of Federal Claims (USCFC), a derivative creature of Article 1 Section 8 Clause 9 of the U.S Constitution has disobeyed this order of its Creator by consciously failing to apply the exclusive Constitutional Law [Title 28 USC Section 1498(a)] to the admitted facts. The USCFC in its very Opinion and Order of June 23, 2020 explicitly stated that Title 28 USC Section 1498(a) is the exclusive standing applicable law, directed and confirmed by earlier decisions of the U.S. Court of Appeals for the Federal Circuit (CAFC). Yet, the CAFC itself, in the Opinion of its first three Judge Panel (headed by the Chief Judge) failed to notice and correct this error. When pointed out in the rehearing request (CAFC Rule 40) and en banc hearing request (CAFC Rule 35), the Honorable Chief Judge vacated the position and both rehearing and en banc hearing were denied (Appendix-A).

To rectify this situation the writ of certiorari needs to be granted so that justice is served and the project of national defense interest could be restarted on the correct design path.

CONCLUSION

Once again, the Jeffersonian Claim of a U.S. Constitutional creature arising out of admitted unauthorized use of a patented U.S. invention for dedicated use in national defense under Article 1 Section 8 Clause 8 of the U.S. Constitution is a Constitutional Order.

The USCFC did not obey the order of its Creator. An order from the Honorable U.S. Supreme Court is needed directing the USCFC to apply the exclusive law [constitutional law Title 28 USC Section 1498(a)] to the established Facts.

Therefore, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Pro Boney Paduey, August 15, 2021

U.S. Citizen, Independent Inventor, Owner, Pro Se.

(An article 1 creature of the U.S. Constitution)

Date: **August 15, 2021**
