

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 (REHEARING)**

PETITION FOR A WRIT OF CERTIORARI

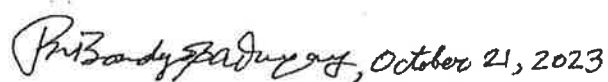
Probir Kumar Bondyopadhyay
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October 21, 2023

**PLAINTIFF-PETITIONER'S CERTIFICATE
FOR REHEARING
UNDER SUPREME COURT RULE 44**

The Plaintiff-Petitioner appearing Pro Se, hereby certifies that this petition for rehearing under Supreme Court Rule 44 is filed in good faith and NOT for delay.

This Plaintiff-petitioner is an original Article 1 creature of the U.S. Constitution (section 8 Clause 8) and very serious fundamental constitutional right of the Plaintiff-petitioner is involved. Two very precise questions are presented requiring only yes or no answers to grant the Writ of Certiorari.

Respectfully,

 *Dr. Probir Kumar Bondyopadhyay, October 21, 2023*

(Dr. Probir Kumar Bondyopadhyay), **Pro Se.**

[U.S. Citizen, Independent sole-Inventor and
sole-owner of U.S. Patent 6,292,134]

QUESTIONS PRESENTED FOR REHEARING

QUESTION-1

Does the judicial admission of unauthorized use of a patented U.S. invention by the Honorable U.S. Secretary of Defense in the U.S. District Court under Title 28 USC Section 1338(a) over a 11 year 23 days time period constitute patent infringement under Title 28 USC section 1498(a)?

QUESTION-2 Title 28 USC Section 1498(a) originates directly from Article 1 Section 8 Clause 8 of the U.S. Constitution and has the full paramount power to legally address established unauthorized use of a patented U.S. invention of a U.S. citizen inventor-owner. Does Title 28 USC Section 2501 have the power to impose time restrictions on the application of Title 28 USC Section 1498(a) during the

maximum twenty-year active life span of an active
live U.S. patent?

LIST OF PARTIES

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

RELATED CASES FOR REHEARING

1. U.S. District Court Case

Bondyopadhyay vs. U.S. Secretary of Defense et al., Case 4:13-cv-01914 (Document 43)

Judgment entered Oct. 23, 2013

2. U.S. District Court Case

Bondyopadhyay vs. U.S. Secretary of Defense., Case 4:18-cv-03822 (Document 30)

Judgment entered July. 09, 2019

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APPENDIX A CAFC Panel Rehearing
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The following are submitted under Supreme Court

Rule 14.1(i)(vi). *Relevant excerpts*

APPENDIX D (*Original*) Order of U.S District Court

Originally establishing

v

existence of the claim

Oct. 23, 2013 App-3

APPENDIX G (*Original*) U.S. District Court again

Reaffirms existence of

Claims on July 9, 2019 App-5

**TABLE OF AUTHORITIES CITED
(REHEARING)**

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

U.S. District Court, SDTX, Houston,

Case 4:13-cv-01914

Bondyopadhyay vs. U.S. Secretary of Defense

U.S. District Court, SDTX, Houston,

Case 4:18-cv-03822

STATUTES AND RULES (REHEARING)

Title 28 USC Section 1338(a)

vs.

Title 28 USC Section 1498(a)

28 U.S. Code § 2501 - Time for filing suit

Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI
REHEARING

Petitioner respectfully prays that a writ of certiorari
issue to review the judgments below

OPINIONS BELOW FOR REHEARING

For cases from **federal courts:**

The opinion of the United States court of appeals

appeared at Appendix A to the petition and is

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

The opinions of the United States district court

Case 4:13-cv-01914 Document 43 filed in TXSD on

10/2/2013 and appears at Appendix D to the

petition and the relevant excerpts filed under

Supreme Court Rule 14.1(i)(vi)]

[X] The opinions of the United States district court
Case 4:18-cv-03822 Document 30 filed in TXSD on
07/09/2019 and appears at Appendix G to the
petition and the relevant excerpts filed under
Supreme Court Rule 14.1(i)(vi)]

JURISDICTION (REHEARING)

[X] This timely petition **for rehearing** is filed
under the U.S. Supreme Court Rule 44
within 25 days of initial denial of the
Writ of Certiorari dated October 10, 2023

The jurisdiction of this Court is invoked
under 28 U.S.C. section 1254(1) and U.S.
Supreme Court Rule 44.2.

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED (REHEARING)**

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.

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.

28 U.S. Code § 2501 - Time for filing suit

Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.

STATEMENT OF THE CASE FOR REHEARING

1. The petitioner-plaintiff in this case is an original creature of the U.S. Constitution under Article 1 Section 8 Clause 8.

2. By admission of the Honorable U.S. Secretary of Defense, the U.S. District Court judicially established on October 23, 2013, under Title 28 USC Section 1338(a), unauthorized use of the U.S. Patent 6,292,134 for the continuous period of time February 25, 2000 through 11th October 2012. [see pages App-3-App-4]

3. **This judicial fact was reconfirmed** by the U.S. District Court on July 19, 2018 under Title 28, USC Section 1338(a). [see pages App-5-App--6]

4. Therefore, the Defendant infringed the said U.S. Patent for the substantial amount of time stated, (which is over 62% of the maximum life time of a U.S. utility patent) under Title 28 USC Section 1498(a).

5. This rehearing petition for writ of certiorari is for the Honorable U.S. Supreme Court confirming this established judicial fact.

6. Title 28 USC Section 1498(a) is a constitutional law in this case. **During its active operating term for a live U.S. Patent which is maximum twenty years,** Title 28 USC Section 2501 can not restrict the meaning of the word “entire” in Title 28 USC Section 1498(a).

REASONS FOR GRANTING THE REHEARING

1. The main reason for granting the rehearing petition is that fundamental constitutional right of a U.S. Citizen-inventor-owner is involved under Article 1 Section 8 Clause 8 of the U.S. Constitution in this case. The Plaintiff-petitioner is not just the sole owner of the U.S. Patent 6,292,134 but a U.S. Citizen-sole inventor as well.

2. The two **new questions** presented are framed such that they require yes or no answers only.

4. Judicially established facts of *admitted* unauthorized **continuous** use of the patented invention for 12 years and 7 months and 16 days in the past progress can not be denied by the temporary delay in the subsequent progress due to lack of funds. This is the main reason for granting this rehearing with the answers sought.


CONCLUSION

The two questions presented in this petition for rehearing under the U.S. Supreme Court Rule 44.2 have not been addressed by the U.S. Court of Appeals for the Federal Circuit. These two questions require yes or no answers.

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). 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 needs to be recognized.

This rehearing petition for a writ of certiorari should be granted.

Respectfully submitted,

 *Dr. Probir Kumar Bondyopadhyay, October 21, 2023*

DR. PROBIR KUMAR BONDYOPADHYAY, Pro Se.

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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

App-2

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

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

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BONDYOPADHYAY v. US

PER CURIAM.

O R D E R

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.

April 25, 2023

Date

FOR THE COURT

/s/ Jarrett B. Perlow

Jarrett B. Perlow

Chief Deputy Clerk

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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

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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

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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”**

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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 9th day of July, 2019

s/ Frances H. Stacy

FRANCES H. STACY

UNITED STATES MAGISTRATE JUDGE

U.S. Supreme Court

Case No. 23-190

REHEARING PETITION FOR WRIT OF CERTIORARI
SUPREME COURT OF THE UNITED STATES

RE: Bondyopadhyay v. United States

USCA Fed. 22-2155

CERTIFICATE OF COMPLIANCE WITH THE WORD LIMITATION

[under Rule 33.1(h)]

The word counts are as follows:

(i). Questions presented	129 words
(ii). Statement of the Case	206 words
(iii). Reasons for Granting the Petition	132 words
(iv) Total pages excluding the Appendices	1,318 words

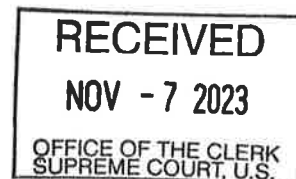
Date: October 21, 2023



(Signature)

REHEARING PETITIONER

WRIT OF CERTIORARI



FROM,

Dr. Probir K. Bondyopadhyay, Pro Se.

U.S. Citizen Inventor **Petitioner**

15059 Caseta Drive, Apt. 3313

Houston, Texas 77082

Tel: 1-832-758-6514

E-Mail: dr.bondy@mail.com

TO

The Honorable Solicitor General of the U.S.A.

Room 5616, U.S. Department of Justice

950 Pennsylvania Ave. N.W.

Washington, D.C. 20530-0001

October 21, 2023

Subject : **Rehearing** petition for Writ of Certiorari
Service Under Rule 29.4(a)

Ref. U.S. Supreme Court Case 23-190

Honorable Solicitor General,

1. I am submitting herewith three copies of the *Rehearing* petition for Writ of Certiorari that has just been sent to the Honorable Clerk of the U.S. Supreme Court.

2. If there is any additional information required, kindly let me know. I will attend to it very promptly.

Thank you.

 *Oct 21, 2023*
Dr. Probir K. Bondyopadhyay

Petitioner for *rehearing* the Writ of Certiorari, Pro Se.

Encl: Three copies (August 15, 2023) of the *rehearing* Petition as required by the Rules of the U.S. Supreme Court