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26-248

No. _____

FILED

JUL 27 2026

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SUPREME COURT, U.S.

IN THE
Supreme Court of the United States

LARRY GOLDEN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Federal Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the United States Court of Federal Claims have jurisdiction to adjudicate the following money-mandating constitutional provisions?

1. Funding under the Bayh-Dole Act;
2. Fifth Amendment "Takings" Clause of the United States Constitution;
3. Reasonable and Entire Compensation under 28 U.S.C. § 1498(a); and,
4. Government Infringement under 28 U.S.C. § 1498(a)

The United States Court of Appeals for the Federal Circuit has mutually excluded each of the above money-mandating constitutional provisions by grouping all the provisions under the sub-category of "patent-infringement-based-takings" claims to unlawfully justify dismissal for "lack of jurisdiction".

PARTIES TO THE PROCEEDING

The parties to the proceeding in the United States Court of Appeals for the Federal Circuit were Petitioner Larry Golden and Respondent United States of America.

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PETITION FOR A WRIT OF CERTIORARI

Larry Golden petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Federal Circuit in this case.

OPINIONS BELOW

The Court of Appeals opinions addressing the questions (Pet. App. 1a-6a) and (Pet. App. 7a) are unreported. The Court of Federal Claims opinions addressing the questions (Pet. App. 10a-14a), and (Pet. App. 15a) are unreported.

JURISDICTION

The Court of Appeals entered judgment on March 10, 2026. Pet. App. B. The court denied a timely petition for rehearing en banc on April 29, 2026. Pet App. C. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Funding under the Bayh-Dole Act; Fifth Amendment "Takings" Clause of the United States Constitution; Reasonable and Entire Compensation under 28 U.S.C. § 1498(a); and, Government Infringement under 28 U.S.C. § 1498(a)

INTRODUCTION AND STATEMENT OF THE CASE

After the 9/11 attacks Petitioner spent the next five years working with various Government agencies discussing the need for new and innovative technology designed to mitigate terrorist attacks and activity; disclosed in three economic stimulus packages that was shared with various members of

Congress on how the strategies and technology rationale can restore our Nation's economy.

The Government promised Petitioner many times over to fund the development of Petitioner's various inventions. The Government breached the implied and expressed contracts and begin a massive crusade to fund third-party contractors to develop and commercialize Petitioner's patented inventions.

Judge Susan Braden, formal Chief Judge at the United States Court of Federal Claims (USCFC), stated: "Government funding of research that will lead to the development and testing of an accused device supports a reasonable inference that the Government impliedly sanctioned infringing activity."

Petitioner relies on the publication, *"Intellectual Property Suits in the United States Court of Federal Claims"* for interpretation. This guide was written by Judge Mary Ellen Coster Williams and Attorney Diane E. Ghrist and posted on the USCFC's website on October 4, 2017; and also published on the American Bar Association's website. Pet. App. F, 16a-35a.

Petitioner relied on the publication for each of the four following pleadings: Funding under the Bayh-Dole Act; Fifth Amendment "Takings" Clause of the United States Constitution; Reasonable and Entire Compensation under 28 U.S.C. § 1498(a); and, Government Infringement under 28 U.S.C. § 1498(a).

Following the cover page of the original complaint, Petitioner placed a comparison chart to help the court understand what are *not* "patent-infringement-based-takings claims. See chart:

< Comparison Chart >

Government “takings”	Gov’t “infringement”
United States Court of Federal Claims jurisdiction under the “Tucker Act” [28 U.S.C. § 1491]	United States Court of Federal Claims jurisdiction under 28 U.S.C. § 1498. § 1498 is its own “cause of action”
The Government “takings” is the appropriation and use of private property— [patented inventions]	The Government “takings” is of a compulsory non-exclusive license to the patented invention
The Government “takings” is <i>LAWFUL</i>	The Government “takings” is <i>UNLAWFUL</i>
The Government “takings” [of a patented invention] is Constitutional	The Government “takings” [of a compulsory, non-exclusive license] is Unconstitutional
<i>Fifth Amendment Takings Clause:</i> “No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. ”	28 U.S.C. § 1498: “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... recovery of his reasonable and entire compensation for such use and manufacture”

No authorization or consent [expressed or implied] for the Government's "appropriation or use" of the patented invention	Authorization or consent [expressed or implied] is granted to third-party contractors; subcontractors, etc. to infringe the patented inventions
The Government must have knowledge of the "private property" and its intended use or benefit for the public	Under "implied authorization", the third-party contractors; subcontractors, interested parties, etc. must have some knowledge of the specifications requested by the Government
Do not have to prove infringement under 28 U.S.C. § 1498 as a necessary predicate to proving a government "takings" under the Fifth Amendment Clause of the U.S. Constitution	Must prove the "takings" of a compulsory non-exclusive license by identifying where each element of the patented invention is found in the accused device
Violation: The Government's appropriation or use of a patented invention without paying "just compensation"	Violation: The Government's use or manufacture of a patented invention without paying "reasonable and entire compensation"

Funding under the Bayh-Dole Act

Not understanding the full scope and meaning of the term "patent-infringement based takings claims"; the term or phrase the United States referred too for years to dismiss any of Petitioner's money-mandating claims for damages against the United States, con-

fers by the Constitution, or by law, jurisdiction on the United States Court of Federal Claims (USCFC). Petitioner relies on the United States Court of Federal Claims *“Intellectual Property Suits in the United States Court of Federal Claims”* for interpretation. This guide was written by Judge Mary Ellen Coster Williams and Attorney Diane E. Ghrist and posted on the USCFC’s website on October 4, 2017; and also published on the American Bar Association’s website. Pet. App. F, 16a-35a.

As § 1498(a) infringement actions are grounded in eminent domain and not defined by statute, the scope of what constitutes the unlawful taking of a license to use a patent is a creature of case law. As such, the basis for the USCFC’s jurisdiction over infringement actions must be linked to the government’s taking of a patent license through its “use or manufacture” of the patented invention “without license of the owner thereof or lawful right.” Pet. App. F, 17a. *Decca Ltd. v. United States*, 640 F.2d 1156, 1166-67 (Ct. Cl. 1980).

Congress styled the 1910 Act under the theory of eminent domain, as the government’s taking of a license to use a patented invention would be for the benefit of the public. Pet. App. F, 17a.

Crozier, 224 U.S. at 305 (“[I]n view of the public nature of the subjects with which the patents in question are concerned and the undoubted authority of the United States as to such subjects to exert the power of eminent domain, the statute, looking at the substance of things, provides for the appropriation of a license to use the invention, the appropriation thus made being sanctioned “by the means of compensation for which the statute provides.”).

As stated in *Calhoun v. United States*, “when a patented device or invention is made or used by or for the United States, [the government] ipso facto takes by eminent domain a compulsory compensable license in the patent; the patentee obtains his Fifth Amendment just compensation for that taking through his action [in the USCFC] under § 1498.” Pet. App. F, 18a. 453 F.2d 1385, 1391 (Ct. Cl. 1972). The takings clause of the Fifth Amendment states that “private property [shall not] be taken for public use, without just compensation.” U.S. Const. amend. V.

The Bayh-Dole Act (35 U.S.C. §§ 200-212) and its implementing regulations (37 C.F.R. Part 401) allow contractors — including grant recipients — to retain title to inventions developed with federal funding, but only if they comply with a series of disclosure, election, filing, and reporting obligations.

An invention is subject to the Bayh-Dole Act if it is “conceived or first actually reduced to practice in the performance of work under a funding agreement” with a federal agency. 35 U.S.C. § 201(e). The “or” in that definition is worth noting, as it allows the language to capture an invention that was conceived before the grant but first actually reduced to practice under the funding agreement. See <https://www.nist.gov/tpo/policy-coordination/bayh-dole-act/2018-faqs>

The Bayh-Dole Act applies to a “subject invention,” defined as “any invention of the contractor conceived or first actually reduced to practice in the performance of work under a funding agreement.” 35 U.S.C. § 201(e). However, an invention which had been conceived but not actually reduced to practice by a contractor prior to commencement of a funding agreement, and which was first actually reduced to

practice under that agreement, would be a “subject invention,” even if a provisional application had been filed prior to commencement.

With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world. The Contractor agrees to submit reports. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the agency may reasonably specify.

In takings jurisprudence, “[t]he proper measure in eminent domain is what the owner has lost, not what the taker has gained,” and in § 1498(a) what is taken from the patent owner is a compulsory nonexclusive license to use or manufacture the patented invention. Pet. App. F, 29a. *Id.* at 969 (citing *United States v. Chandler-Dunbar Co.*, 299 U.S. 53, 76 (1913)).

As such, in § 1498 actions, “reasonable and entire compensation” is the exclusive remedy for patent infringement under § 1498(a) and is akin to just compensation under the Fifth Amendment of the Constitution.

The Tucker Act is merely a jurisdictional statute and “does not create any substantive right enforceable against the United States for money damages.” *United States v. Testan*, 424 U.S. 392, 398 (1976). Instead, the substantive right must appear in another source of law, such as a “money-mandating constitutional provision, statute or regulation that has been violated, or an express or implied contract with the

United States.” *Loveladies Harbor, Inc. v. United States*, 27 F.3d 1545, 1554 (Fed. Cir. 1994) (en banc).

The United States has waived its sovereign immunity with respect to constitutional claims, including government takings “claims arising under the Fifth Amendment. See 28 U.S.C. § 1346(a)(2) “[f]or the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space [NASA] Administration shall be considered an express or implied contract with the United States”. See 28 U.S.C. § 1491(a)(1) “[t]he United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States ...”

Petitioner submitted 425 synopses as *[Ex. DJ]* in the complaint to show the Government’s “appropriation” of Petitioner’s patented “subject inventions” under the Bayh-Dole Act. Information for each “subject invention” synopsis was made in an FOIA request. Example below:

3(e) DHS; S&T Directorate Broad Agency Announcement (BAA) 09-17 “Time Recorded Ubiquitous Sensor Technologies”; (TRUST) Posted: September 23, 2009	3(g) DHS; S&T Directorate Broad Agency Announcement (BAA) 09-17 “Time Recorded Ubiquitous Sensor Technologies”; (TRUST) Posted: September 23, 2009
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FOIA Request: DHS/S&T Synopsis: The TRUST “system” Communication Requirements. Geo-fence technology is technology that defines a virtual boundary around a real-world geographical area. The TRUST system critical function for geo-fencing is route monitoring and alerting. It is available where a combined GPS coverage and wireless connectivity is available.	FOIA Request: DHS/S&T Synopsis: The TRUST “system” Communication Requirements. Chain of Custody/Ownership Transfer. Chain of Custody wireless mobile devices (e.g. smartphones, handhelds, PDAs) require specialized interface, storage media and hardware. Chain of Custody is available where wireless connectivity is available.
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“Petitioner turned over the 425 synopses and informed the United States that Petitioner had made the FOIA request for information on the “subject inventions”. Petitioner also informed the United States that none of the Agencies responded back to Petitioner with the information, and that Petitioner expects the United States to provide Petitioner with a list of the “subject inventions” made as a result of the various Government contracts. The United States never provided Petitioner with a list of the “subject inventions”.

Stanford v. Roche, 563 U.S. 776 (2011) was a case decided by the Supreme Court that held that title in a patented invention vests first in the inventor, even if the inventor is a researcher at a federally funded lab subject to the Bayh—Dole Act. *Board of Trustees of Leland Stanford Junior Univ. v. Roche Molecular Systems, Inc.*, 131 S.Ct. 2188 (2011).

The “subject inventions” which had been conceived by the Petitioner but not actually reduced to practice

by the third-party contractors prior to commencement of funding agreements, and which was first actually reduced to practice under said agreements, would be “subject inventions,” even if a provisional application had been filed prior to commencement.

Therefore, what the United States phase or term “patent-infringement based takings claims” does have jurisdiction in the US Court of Federal Claims. The USCFC primary grant of jurisdiction appears in the Tucker Act, which provides that the USCFC court: “shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States...

Patent-infringement based takings claims, “can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.” *Testan*, 424 U.S. at 400.

“In *Golden v. United States*, CFC Case No. 13-307C, Doc. No. 94; filed 11/30/16; pgs. 13-14, Judge Susan Braden describes how Government funding of Petitioner’s patented inventions impliedly sanctioned infringing activity.

“[T]he February 12, 2016 Amended Complaint’s NSF claims allege sufficient facts to support a reasonable inference that the manufacture and use of the accused devices was “for the Government.” See *Iqbal*, 556 U.S. at 678. The NSF claims allege that the Government awarded research grants to develop portable devices that can: (1) identify dangerous chemical, radiological, and bacterial agents; and (2) track the spread of disease. Based on the alleged

facts, it is plausible that the accused devices were used to further the military defense, national security, and public health interests of the United States: policies that the Government has a fundamental interest in advancing. Accordingly, the court can reasonably infer that the use of the NSF-funded devices was “for the Government.” *See, e.g., Hughes Aircraft Co.*, 534 F.2d at 898 (finding that the government’s participation in a satellite program was “for the Government,” because the program was vital to the military defense and security of the United States); *see also Madey*, 413 F. Supp. 2d at 607 (M.D.N.C. 2006) (explaining that a use is “for the Government” if it is in furtherance and fulfillment of a stated Government policy and for the Government’s benefit).”

“The relevant NSF grants are being used to develop: “a portable smartphone attachment that can be used to perform sophisticated field testing to detect viruses and bacteria,” 2/12/16 Am. Compl. ¶78; “[a device] that derives biological signals from your smartphone’s accelerometer ... [and] [t]his information is useful to base medical diagnoses in real-life conditions and to help track chronic health conditions and efforts of “therapeutic interventions,” 2/12/16 Am. Compl. ¶80; “a cradle and app for the iPhone to make a handheld biosensor that uses the phone’s own camera and processing power to detect any kind of biological molecules or cells,” 2/12/16 Am. Compl. ¶92; a handheld instrument to help contain the spread of Ebola, HIV, Tuberculosis, and Malaria, 2/12/16 Am. Compl. ¶102; “[a portable device for] real-time detection of explosives, toxicants, and radiation,” 2/12/16 Am. Compl.

¶122; “highly sensitive rapid medical diagnostic test,” ¶ 1126.”

“The February 12, 2016 Amended Complaint’s NSF claims also allege sufficient facts to plausibly establish that the use of the accused devices was “with the authorization or consent of the Government.” Authorization or consent can be implied from the circumstances—“e.g., by contracting officer instructions, [or] specifications or drawings which impliedly sanction and necessitate infringement.” *Hughes Aircraft Co.*, 534 F.2d at 901. For example, in *TVI Energy Corp.*, the United States Court of Appeals for the Federal Circuit held that the Government impliedly sanctioned the use of a patented invention when it issued a solicitation that required bidders to submit for inspection, and perform live demonstrations of, the accused device. *See TVI Energy Corp.*, 806 F.2d at 1060.”

“In this case, the relevant NSF grants anticipate that the awardees will develop and test the devices proposed in their applications. *See, e.g.*, NSF Award No. 1444240 (“Annual and Final project reports, as required in the NSF Grant Conditions, should document all efforts and outcomes, whether or not they are successful.”). Government funding of research that will lead to the development and testing of an accused device supports a reasonable inference that the Government impliedly sanctioned infringing activity.”

“The Fifth Amendment “Takings” Clause of the United States Constitution

Not understanding the full scope and meaning of the term “patent-infringement based takings claims”; the term or phrase the United States referred too for

years to dismiss any of Petitioner's money-mandating claims for damages against the United States, confers by the Constitution, or by law, jurisdiction on the United States Court of Federal Claims (USCFC). Petitioner relies on the United States Court of Federal Claims *"Intellectual Property Suits in the United States Court of Federal Claims"* for interpretation. This guide was written by Judge Mary Ellen Coster Williams and Attorney Diane E. Ghrist and posted on the USCFC's website on October 4, 2017; and also published on the American Bar Association's website. Pet. App. F, 16a-35a.

The Federal Circuit affirmed the USCFC's judgment that Petitioner's "Fifth Amendment Takings Claims" [55 counts] should be dismissed because the USCFC lack jurisdiction to adjudicate the claims. The Federal Circuit literally reverse hundreds of years of jurisprudence in a decision to dismiss for lack of jurisdiction.

The Federal Circuit has already settled the United States jurisdictional challenge in *Golden v. US*, CAFC Case No.: 19-2134 Document 37, Filed: 04/10/2020: "The government alleges that, "upon further consideration," it has identified a jurisdictional problem ... judicial review before this court, creates a "self-executing remedial scheme' that 'supersedes the gap-filling role of the Tucker Act.'" *Id.* at 41 (quoting *United States v. Bormes*, 568 U.S. 6, 13 (2012)). According to the government, the [] statutory scheme displaces Tucker Act jurisdiction ... The government's argument is without merit. In *Bormes*, the Supreme Court explained that Tucker Act jurisdiction is displaced "when a law assertedly imposing monetary liability on the United States contains its own "judicial remedies." 568 U.S. at 12

(emphasis added). Thus, when there is a precisely defined statutory framework for a claim that could be brought against the United States, the Tucker Act gives way to the more specific statutory scheme ...”

Known as “the People’s Court,” the US Court of Federal Claims (USCFC) was created by Congress as a forum for suits against the government for monetary damages. The USCFC consists of 16 judges appointed by the president and confirmed by the US Senate for terms of 15 years. Appeals from the USCFC are resolved by the US Court of Appeals for the Federal Circuit. The USCFC is unique in the federal trial court system in that it has nationwide jurisdiction, and hears a variety of claims against the US government for money damages, including patent and copyright infringement, government contract disputes, Fifth Amendment takings, tax refund claims, tribal claims, military and civilian personnel cases, and Vaccine Act appeals. Pet. App. F, 16a.

For years Petitioner have tried unsuccessfully to bring a Fifth Amendment Takings claim against the United States. In 2014 the USCFC stayed Petitioner’s Fifth Amendment Takings claims until 2019 (five years). In 2019 the United States challenged the USCFC’s jurisdiction and the Federal Circuit stated “the government’s argument is without merit. In *Bormes*, the Supreme Court explained that Tucker Act jurisdiction is displaced “when a law assertedly imposing monetary liability on the United States contains its own judicial remedies.” 568 U.S. at 12 (emphasis added). The USCFC closed the lead case *Golden v. U.S.*, CFC Case No. 13-307C in 2021 without adjudicating Petitioner’s Fifth Amendment Takings claims.

Congress has placed the United States Court of Federal Claims, a court with national jurisdiction, in a unique position as the definitive arbiter of the Constitution's promise that private property "not be taken for public use, without just compensation." U.S. CONST. amend. V. The Tucker Act, 28 U.S.C. § 1491, is the jurisdictional statute for the Court, and vests exclusive jurisdiction to hear all monetary damages claims against the United States for specific categories of claims, including claims arising under the Fifth Amendment.

The question before this Court is "what constitutes a "takings" claim under the Fifth Amendment "Takings" Clause of the United States Constitution. Following is how the Petitioner made the "Fifth Amendment Takings Claims" for 55 inventions named in the original complaint filed at the U.S. Court of Federal Claims.:

"Upon information and belief, the Government has in the past, and continues to take Golden's "personal property" [name of the invention] without paying just compensation. The Supreme Court explicitly recognize that patents are property secured by the Fifth Amendment Takings Clause. In *Horne v. Department of Agriculture*, "the Court held that the Takings Clause imposes a 'categorical duty' on the government to pay just compensation whether it takes personal or real property." The Supreme Court reiterate what it said over a century ago: "A patented invention stands the same as other types of property, and its taking by the government without adequate compensation is unconstitutionally unjust."

“Upon information and belief, the Government has in the past, and continues to “appropriated or used” [name of the invention] without paying just compensation. “In *James v. Campbell*, 104 U.S. 356, 357-58 (1882), the Supreme Court explained that when the government grants a patent, it “confers upon the patentee an exclusive property in the patented invention which “cannot be appropriated or used by the government itself, without just compensation.”

“Upon information and belief, the Government has in the past, and continues to “deprive” Golden of his property [name of the invention] without paying just compensation. “[N]o person shall be deprived of [] property without due process of law, [] and just compensation”. *Fifth Amendment “Takings” Clause of the United States Constitution*

“Upon information and belief, the Government has in the past, and continues to force Golden into relinquishing his property [name of the invention], for the benefit of the public, without paying just compensation. “[N]o person shall be deprived of [] property without due process of law, nor be obliged to relinquish his property, where it may be necessary for public use, without just compensation”. *Fifth Amendment “Takings” Clause of the United States Constitution*

The Just Compensation Clause of the Fifth Amendment is a money-mandating source under the Tucker Act, see *Jan’s Helicopter Serv., Inc. v. F.A.A.*, 525 F.3d 1299, 1309 (Fed. Cir. 2008), to maintain a takings claim, a claimant must also make a “nonfrivolous allegation” that he is within the class of plaintiffs [property owner] entitled to recover under

that clause, *id.* and he “must concede the validity of the Government action which is the basis of the ... claim,” *Tabb Lakes*, 10 F.3d at 802-03.

The U.S. Court of Federal Claims improperly dismissed 55 inventions Petitioner claims the United States has taken under the Fifth Amendment Takings Clause of the U.S. Constitution without paying “just compensation”; while renaming the claims as “patent-infringement-based-takings claims” and dismissing Petitioner’s taking claims for lack of jurisdiction.

The Recovery of Petitioner’s “Reasonable and Entire” Compensation

Not understanding the full scope and meaning of the term “patent-infringement based takings claims”; the term or phrase the United States referred too for years to dismiss any of Petitioner’s money-mandating claims for damages against the United States, confers by the Constitution, or by law, jurisdiction on the United States Court of Federal Claims (USCFC). Petitioner relies on the United States Court of Federal Claims *“Intellectual Property Suits in the United States Court of Federal Claims”* for interpretation. This guide was written by Judge Mary Ellen Coster Williams and Attorney Diane E. Ghrist and posted on the USCFC’s website on October 4, 2017; and also published on the American Bar Association’s website. Pet. App. F, 16a-35a.

On June 25, 1910, Congress passed “An Act to provide additional protection for owners of patents of the United States” (1910 Act), stating in pertinent part:

“That whenever an invention described in and covered by a patent of the United States shall

hereafter be used by the United States without license of the owner thereof or lawful right to use the same, such owner may recover reasonable compensation for such use by suit in the Court of Claims." Pet. App. F, 17a 36. Stat. 851 (1910).

Section 1498(a) took its present form in 1949, and retains the bedrock principles established in 1910 and 1918 of (1) defining the government's unlawful use or manufacture of patented articles as a Fifth Amendment taking of a license to use a patented invention, (2) providing government contractor immunity from patent infringement litigation, and (3) limiting available remedies to "monetary damages. Pet. App. F, 19a. Act of May 24, 1949, Pub. L. No. 81-72, § 87, 63 Stat. 89, 102. Section 1498(a) provides in pertinent part:

"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 USCFC and the CAFC failed to order "reasonable or entire compensation" in fourteen counts (56-69) of the original complaint, for the United States "use" or "manufacture" of Petitioner's patented new, improved upon, and useful cell phone that is integrated with, or interconnected to, a CBRNE-H detection capability. The USCFC and the CAFC courts never addressed counts 56-69 of the

original complaint that calls for payment of a “reasonable or entire compensation”.

The USCFC reclassified Petitioner’s plea for “reasonable or entire compensation” as a plea for “patent-infringement based takings claims”, and dismissed Petitioner’s case for lack of jurisdiction.

Under § 1498(a), a patent owner who successfully proves infringement is entitled to “reasonable and entire” compensation. Like the definition of infringement, the remedies available to a patentee are limited by § 1498(a)’s roots in eminent domain, not tort. Pet. App. F, 19a. *Leesona Corp. v. United States*, 599 F.2d 958, 964 (Ct. Cl. 1979) (“When the government has infringed, it is deemed to have ‘taken’ the patent license under an eminent domain theory, and compensation is the just compensation required by the Fifth Amendment.”).

“In takings jurisprudence, “[t]he proper measure in eminent domain is what the owner has lost, not what the taker has gained,” and in § 1498(a) what is taken from the patent owner is a compulsory nonexclusive license to use or manufacture the patented invention. Pet. App. F, 19a. *Id.* at 969 (citing *United States v. Chandler-Dunbar Co.*, 299 U.S. 53, 76 (1913)).

As such, in § 1498 actions, “reasonable and entire compensation” is the exclusive remedy for patent infringement under § 1498(a) and is akin to just compensation under the Fifth Amendment of the Constitution. In contrast, under the Patent Act, damages are measured as either lost profits or a reasonable royalty... Pet. App. F, 19a.

Judge Braden, in the United States Court of Federal Claims, *Golden v. United States*, Case No. 13-307C “Memorandum Opinion and Order

Denying the Government's Motion to Dismiss", Dkt. 94, filed 11/30/16, fully describes how infringement of Petitioner's patented CMDC device occurs when a mobile, consumer, or cellular device is integrated with, or interconnected to, a CBRNE-H detection capability.

"The February 12, 2016 Amended complaint identifies over thirty devices that were developed or procured, as a result of Government solicitations, Government contracts, or National Science Foundation ("NSF") grants. 2/12/16 Am. Compl. at I 68-127. The relevant devices are: Smartphone Microscope; Smartphone Biosensor Cradle; iPhone Biodetector Smartphone; Smartphone-Based Rapid Diagnostic Tests; Samsung Galaxy s6 Microscope Smartphone; Cell-All Synkera MikroKera Ultra; iPhone Biodetector Smartphone; ...

"The February 12, 2016 Amended Complaint's NFC claims also allege sufficient facts to plausibly establish that the use of the accused devices was "with the authorization or consent of the Government." Authorization or consent can be implied from the circumstances... *Hughes Aircraft Co.*, 534 F.2d at 901."

"The relevant [awards] are being used to develop: "a portable smartphone attachment [] to detect viruses and bacteria," ... "[a device] that derives biological signals from your smartphone's accelerometer ... "a cradle and app for the iPhone to make a handheld biosensor that uses the phone's own camera [] to detect any kind of biological molecules or cells," ... a handheld instrument to help contain the spread of Ebola, HIV, Tuberculosis, and Malaia, ... "[a portable

device for] real-time detection of explosives, toxicants, and radiation,” ...

“Viewed in the light most favorable to Plaintiff, the February 12, 2016 Amended complaint alleges sufficient facts to raise a plausible right of relief under section 1498(a).” *See Iqbal*’ 556 U.S. at 677. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678

Judge Braden confirmed in at least the DHS S&T *Cell-All* initiative that the CBRNE detection capability under § 1498(a) is both internal and external the phone.

When Judge Susan Braden stated in her opinion, “[v]iewed in the light most favorable to Plaintiff, the February 12, 2016 Amended complaint alleges sufficient facts to raise a plausible right of relief under section 1498(a)”, the Judge “infer to say”, which “means the Judge use reasoning or the factual evidence to derive or conclude that, infringement of Petitioner’s patented CMDC devices occurs when a CBRNE-H detection capability (internal or external) is “in, on, upon, adjacent, built-in, embedded, included within, incorporated into, disposed within, affixed to, connected to, or mounted to another device”, *United States Department of Homeland Security v. Larry Golden* “Final Written Decision” Case IPR2014-00714, Entered: October 1, 2015 [claim construction for “built-in, embedded] such that it is an integral part of Petitioner’s patented communicating, monitoring, detecting, or controlling, (CMDC) device (i.e., new, improved upon, and useful cell phone; smartphone).

The rulings of twelve Federal Judges repeatedly confirmed arguments that the integration of a CBRNE-H detection capability with a mobile device; allegedly infringes Petitioner's patented CMDC invention.

First Rulings is on 09/08/2022; Last Rulings is on 06/25/2025				
Judge(s)	Case No.	Case Title	Court	Dates
3 Fed Cir Judges	22-1267	Golden v. Google LLC	USCAFC	12/16/2021-09/08/2022
1 District Judge	23-0048	Golden v. Samsung	NDC	01/05/2023-06/08/2023
3 Fed Cir Judges	23-2120	Golden v. Samsung	USCAFC	07/07/2023-02/12/2024
1 District Judge	22-5246	Golden v. Google LLC	NDC	09/14/2022-04/03/2024
1 District Judge	22-5246	Golden v. Google LLC	NDC	09/14/2022-04/03/2024
3 Fed Cir Judges	24-2024	Golden v. Google LLC	USCAFC	07/01/2024-06/25/2025

The United States Court of Appeals for the Federal Circuit Judges in *Golden v. Google, LLC*, Case No. 22-1267; determined direct infringement arises when there's a combined ATAK software; CBRN plugins; CPU; and a Smartphone. "We conclude that the district court's decision in the Google case is not correct with respect to at least the three claims mapped out in the claim chart. Mr. Golden has made efforts to identify exactly how the accused products meet the limitations of his claims in this chart." The Federal Circuit determined Golden has described

how the Google “smartphone”, that include the ATAK software and CBRN plugin sensors literally infringes at least claim 5 of Golden’s ‘287 Patent; claim 23 of Golden’s ‘439 Patent; and claim 1 of Golden’s ‘189 Patent.

The United States Court of Appeals for the Federal Circuit Judges in *Golden v. Samsung* Case No. 23-2120; agreed with the Northern District of California Court Judge in *Golden v. Samsung* Case No. 23-0048 that direct infringement arises when there’s a combined ATAK software; CBRN plugins; CPU; and a Smartphone. In *Golden v. Samsung Electronics America, Inc.* Case: 23-2120, Document 28; *OPINION* filed for the court by Prost, Circuit Judge; Taranto, Circuit Judge and Chen, Circuit Judge. Filed: 02/12/2024. “Mr. Golden’s complaint alleged, in part, that Samsung’s smartphones possess that claimed detector/sensor functionality [] (3) through nine “standard sensors” which “can be used as ‘biosensors,’” Appx126.”

“In *Larry Golden v. Google, LLC* NDC Case 3:22-cv-05246-RFL “Order Granting Motion to Dismiss with Leave to Amend” Document 41 Filed 08/10/23; the then presiding Judge Haywood S. Gilliam, Jr. agreed with the Defendant [Google] that the Google Pixel devices could only infringe Golden’s asserted patents if a user were to add the additional ATAK app and CBRN plugins.”

“In *Larry Golden v. Google, LLC* NDC Case 3:22-cv-05246-RFL “Order Granting Motion to Dismiss and Denying leave to File a Surreply” Document 68 Filed 04/03/24; the current presiding Judge Rita F. Lin agreed with the Defendant [Google] that the Google Pixel devices could only infringe Golden’s

asserted patents if a user were to add the additional ATAK application and CBRN plugins.

The United States Court of Appeals; Federal Circuit Judges in *Golden v. Google, LLC*, Case No. 24-2024; determined infringement occurs when a [Google] mobile, consumer, or cellular device is integrated with, or interconnected to, Draper's CBRNE detection capability.

In *Golden v. Google LLC.*, Case No. 24-2024, Dkt. 41; filed 06/25/2025, three Federal Circuit judges again confirm, infringement of Plaintiff's patented CMDC device occurs when a mobile, consumer, or cellular device, is integrated with, or interconnected to a CBRNE detection capability. The Circuit's opinion includes the following: "We conclude that the district court did not err in finding that Mr. Golden's five infringement "theories all require that the accused products be modified in some way for them to infringe on the patents-in-suit." Decision at *1.

The Court of Claims explained that "reasonable and entire compensation" has two components related to a takings analysis: the first is to determine the value of the license at the time it was taken by the government, and the second involves compensating for the government's delay in paying for that license. Pet. App. F, 21a. *Decca Ltd. v. United States*, 640 F.2d 1156, 1167 (Ct. Cl. 1980).

To calculate the damages related to these two components, the Court of Claims has recognized three methods of valuation of the first component, license value: (1) determination of a reasonable royalty for the license; (2) awarding a percentage of government cost savings arising from governmental

use of the patented invention; or (3) awarding lost profits. Pet. App. F, 29a.

“In *Decca*, the Court of Claims recognized that the determination of a reasonable royalty is the preferred method of valuation, applying the same case law as in district court patent infringement actions. Indeed, where the patent owner has commercially licensed its patent on terms that are the “same or substantially similar to the rights taken by the Government,” the USCFC uses “virtually, without exception, the reasonable royalty method to value the license taken by the Government.” Pet. App. F, 30a.

Under the “Little Tucker Act” the district courts lost jurisdiction after defining the infringement theory [infringement of Petitioner’s patented CMDC devices occurs when the mobile, cellular, or consumer is “modified” to include a CBRNE-H detection capability] because the estimated damages exceed the \$10,000 dollar maximum allowed to maintain jurisdiction.

“[T]he United States Court of Federal Claims has exclusive jurisdiction over Tucker Act claims exceeding \$10,000. For claims of \$10,000 or less, the “Little Tucker Act” allows such claims to be heard concurrently by the Court of Federal Claims and federal district courts (see 28 U.S.C. §§ 1346(a)).”

Therefore, under § 1498(a), a patent owner who successfully proves infringement is entitled to “reasonable and entire” compensation. When Petitioner’s claims for “reasonable and entire” compensation was brought back to the USCFC, the court erred in dismissing Petitioner’s claims for lack of jurisdiction.

The United States [Court of Federal Claims] shall have jurisdiction to render judgment upon any claim

against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages not sounding in tort.

“Petitioner’s remedy shall be by action against the United States in the United States Court of Federal Claims

Not understanding the full scope and meaning of the term “patent-infringement based takings claims”; the term or phrase the United States referred too for years to dismiss any of Petitioner’s money-mandating claims for damages against the United States, confers by the Constitution, or by law, jurisdiction on the United States Court of Federal Claims (USCFC). Petitioner relies on the United States Court of Federal Claims *“Intellectual Property Suits in the United States Court of Federal Claims”* for interpretation. This guide was written by Judge Mary Ellen Coster Williams and Attorney Diane E. Ghrist and posted on the USCFC’s website on October 4, 2017; and also published on the American Bar Association’s website. Pet. App. F, 16a-35a.

As § 1498(a) infringement actions are grounded in eminent domain and not defined by statute, the scope of what constitutes the unlawful taking of a license to use a patent is a creature of case law. As such, the basis for the USCFC’s jurisdiction over infringement actions must be linked to the government’s taking of a patent license through its “use or manufacture” of the patented invention “without license of the owner thereof or lawful right. Pet. App. F, 17a.

§ 1498(a) only references patented inventions “used or manufactured by or for the United States” as potentially infringing acts. The relationship between infringement as a tort under the Patent Act and infringement as a Fifth Amendment taking under § 1498(a) remains a hotly litigated topic before the USCFC. Pet. App. F, 21a.

If these two elements—acting “for the government” with its “authorization or consent”—are met, then a contractor who infringes a patent in the course of its performance of work for the government, under any definition of infringement in § 271 of the Patent Act, is shielded from liability. In this respect, § 1498(a) serves “as an affirmative defense available to government contractors in patent infringement actions in district court. Pet. App. F, 27a. *Advanced Software Design Corp. v. Fed. Reserve Bank of St. Louis*, 583 F.3d 1371, 1375 (Fed. Cir. 2009); *Toxgon Corp. v. BNFL, Inc.*, 312 F.3d 1379, 1381-82 (Fed. Cir. 2002).

“Correlatively, where the government has assumed a contractor’s liability, a patent owner can seek judicial relief by filing suit against the government in the USCFC.” Pet. App. F, 27a. *IRIS Corp. V. Japan Airlines Corp.*, 769 F.3d 1359, 1363 (Fed. Cir. 2014).

Elon Musk has reportedly collected at least \$38 billion in funding through government contracts, loans, subsidies, and tax credits that go as far back as 20 years, according to a recent Washington Post analysis. His electric-car maker Tesla has collected \$11.4 billion in regulatory credits, per the Washington Post, but most of the funds (via government contracts from NASA and the Department of Defense) are to his rocket maker, SpaceX. A separate ABC News analysis found SpaceX and Tesla were granted at least \$18 billion in federal contracts in the past decade.

According to The Post, nearly two-thirds of the funds Musk's businesses received came in just the last five years. In 2024 alone, \$6.3 billion in federal and state funds were committed to his ventures, marking a record high.

The money primarily came from contracts with NASA and the Department of Defense... Tesla, on the other hand, has collected \$11.4 billion in regulatory credits designed to encourage electric vehicle production.

Tesla, which struggled financially in its early years, secured a \$465 million low-interest loan from the U.S. Energy Department in 2010. This helped the company launch the Model S and expand production.

"Musk later repaid the loan ahead of schedule, but government support continued in other ways. Tesla's ability to sell emissions credits to other automakers played a huge role in making the company profitable. Without these credits, Tesla would have lost \$700 million in 2020 instead of reporting an \$862 million profit, according to The Post's analysis of Securities and Exchange Commission filings. <https://finance.yahoo.com/news/report-says-elon-musks-businesses-150042117.html?fr=sycsrpcatchall>

Tesla's Cybertrucks are designed for CBRN (Chemical, Biological, Radiological, and Nuclear) reconnaissance. These specialized vehicles are equipped to detect and analyze hazardous materials in various environments. Key Features:

Detection Systems: These trucks typically include advanced sensors for detecting chemical

agents, biological pathogens, and radiological threats.

Mobile Laboratories: Many models feature onboard laboratories for real-time analysis of samples collected in the field.

Robust Design: They are built to withstand harsh conditions and provide protection for personnel against CBRN threats.

Communication Equipment: Equipped with secure communication systems to relay data back to command centers.

Petitioner alleged in the complaint at counts 71-75, that the United States Department of Defense (DoD); the United States Energy Department (DoE); the National Aeronautics and Space Administration (NASA); Elon Musk; and at least the affiliated companies of Elon Musk that include Tesla, SpaceX, Starlink, and Tesla Vision, are literally, and/or under the doctrine of equivalents infringing claims 5-9 of Golden's 8,334,761 patent; claims 23-35 of Golden's RE43,891 patent; claims 44-57 of Golden's RE43,891 patent; and claims 1-2 of Golden's 11,645,898 patent.

A decision of infringement or non-infringement was never reached in the case because the USCFC and the USCAFC believed the Petitioner's alleged Government infringement claims under § 1498(a), was in fact "patent-infringement based takings claims", and that the USCFC do not have jurisdiction to adjudicate "patent-infringement based takings claims".

Section 1498(a) took its present form in 1949, and retains the bedrock principles established in 1910 and 1918 of (1) defining the government's unlawful

use or manufacture of patented articles as a Fifth Amendment taking of a license to use a patented invention, (2) providing government contractor immunity from patent infringement litigation, and (3) limiting available remedies to monetary damages. Pet. App. F, 19a.

Under the Tucker Act, the United States Court of Federal Claims has jurisdiction to adjudicate a claim if the statute, regulation, or constitutional provision that is the basis for that claim “can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained,” *United States v. Mitchell*, 463 U.S. 206, 217 (1983). “There is no further jurisdictional requirement that plaintiff make [] additional nonfrivolous allegation[s] that [he] is entitled to relief under the relevant money-mandating source.” *Jan’s Helicopter Sere, Inc. v. Federal Aviation Agency*. 525 F.3d 1299, 1307 (Fed. Cir. 2008).

Petitioner’s claims are based on section 1498(a), a statute that is money-mandating on its face. *See* 28 U.S.C. § 1498(a). The USCFC has jurisdiction to adjudicate Petitioner’s money-mandating claims of infringement against the United States.

REASONS FOR GRANTING THE WRIT

The Court should grant the Writ to decide the issues of the United States Court of Federal Claims jurisdiction for patent owner’s inventions reduced to practice after a third-party government contractor receives fundings under the Bayh-Dole Act; the Fifth Amendment “Takings” Clause of the United States Constitution; Reasonable and Entire Compensation under 28 U.S.C. § 1498(a); and, Government Infringement under 28 U.S.C. § 1498(a).

The Court needs to also decide if the published law guide that was written by the formal USCFC Judge Mary Ellen Coster Williams and Attorney Diane E. Ghrist, *“Intellectual Property Suits in the United States Court of Federal Claims”*, that was posted on the USCFC’s website on October 4, 2017; and was also published on the American Bar Association’s website Pet. App. F, 16a-35a, is good law, because as noted, the *pro se* Petitioner followed the law guide almost to the letter in the original complaint and prior complaints:

Judge Braden, formal Chief Judge in the United States Court of Federal Claims, in *Golden v. United States*, Case No. 13-307C “Memorandum Opinion and Order Denying the Government’s Motion to Dismiss”, Dkt. 94, filed 11/30/16, stated:

“On February 12, 2016, Plaintiff filed a Fourth Amended Complaint (“2/12/16 Am. Compl.”) alleging that, the Government: (1) was liable for the infringement of Plaintiffs ‘497, ‘752, ‘891, ‘990, and ‘189 Patents under 28 U.S.C. § 1498(a); and (2) violated the Fifth Amendment of the United States Constitution by taking Plaintiffs ‘497, ‘033, ‘752, ‘761, ‘280, ‘891, ‘990, ‘189 Patents and related ‘273 Application, without just compensation. 2/12/16 Am. Compl. at ¶¶ 68-127.”

“Petitioner tried to get the Federal Circuit to correct the Federal Claims court in, the United States Court of Appeals for the Federal Circuit, *Golden v. United States*, Docket Number: 19-2135, (Fed. Cir. Aug 07, 2019) ECF No. 6 *“Informal Brief”*:

“Incorrectly decided my case: My case was decided based on the standards set forth under 28 U.S.C. § 1498(a) infringement. Should have

been decided under 28 U.S.C. § 1491(a) [jurisdiction] (takings under the Fifth Amendment Clause) ... The Plaintiff-Appellant's substantive rights enforceable against the United States for money damages; (a) money-mandating constitutional provision; (b) certain violations of statutes and regulations; and certain breach of express and implied contracts [the Bayh-Dole Act] made by the United States ... Adjudicate my case on the standards and requirements of 28 U.S.C. § 1491(a) [jurisdiction] government "takings" under the Fifth Amendment Clause ... Instruct the trial court that the Plaintiff-Appellant is entitled to "just compensation" for the "takings".

Petitioner pled his case in accordance with the law guide *"Intellectual Property Suits in the United States Court of Federal Claims"* posted on the USCFC and ABA's websites. Pet. App. F, 16a-35a.

Therefore, if Petitioner's pleading standards lack jurisdiction for the United States Court of Federal Claims; the USCFC court should be held responsible for publishing "bad law" and misleading the public, especially *pro se* litigants like the Petitioner. Petitioner relied on the USCFC and ABA's published law guide for pleading cases for money damages, Further, if the lower courts knew the law guide was bad law, they should have provided instructions on filings.

CONCLUSION

Jurisdiction

The Tucker Act, 28 U.S.C. § 1491(a)(1), provides the Court of Federal Claims with jurisdiction over takings claims against the Government. The United States Court of Appeals for the Federal Circuit

improperly accepted jurisdiction on issues that never received a “final judgement” on the merits: “funding a third-party contractor to reduce to practice Petitioner’s inventions under the Bayh-Dole Act; the Fifth Amendment “Takings” of Petitioner’s inventions without paying “just compensation”; failure to pay “reasonable and entire” compensation under 28 U.S.C. § 1498(a) after twelve federal judges confirmed the infringement theory of integrating a mobile device with a CBRNE-H detection capability; and, funding Elon Musk to reduce to practice Petitioner’s inventions under the Bayh-Dole Act, and for authorizing and consenting to Elon Musk infringing Petitioner’s patented inventions under 28 U.S.C. § 1498(a)”.

In counts 1-55; “[t]he Fifth Amendment prohibits the federal government from taking private property for public use without paying just compensation. U.S. Const. Amend. V. “It is undisputed that the Takings Clause of the Fifth Amendment is a money-mandating source [of law] for purposes of Tucker Act jurisdiction” in the Court of Federal Claims. *Jan’s Helicopter Serv., Inc. v. FAA*, 525 F.3d 1299, 1309 (Fed. Cir. 2008).

Reasonable and Entire Compensation

“Accordingly, in counts 56-69, the United States Court of Federal Claims (USCFC) also have jurisdiction to adjudicate patent infringement allegations against the Government “arising upon either ... of ... two grounds: (1) unlicensed use or manufacture of a patented invention by the [Government] directly; and/or (2) unlicensed use or manufacture of a patented invention for the [Government] and with [the Government’s] authorization or consent.” *Hughes Aircraft Co.*, 534 F. 2d at 897.” The United States

never responded to counts 56-69 for a reasonable royalty.

When the government has infringed, it is deemed to have ‘taken’ the patent license under an eminent domain theory, and compensation is the just compensation required by the Fifth Amendment.”). *Leesona Corp. v. United States*, 599 F.2d 958, 964 (Ct. Cl. 1979). Under § 1498(a), a patent owner who successfully proves infringement is entitled to “reasonable and entire” compensation. Like the definition of infringement, the remedies available to a patentee are limited by § 1498(a)’s roots in eminent domain ...

In the lead case *Golden v US CFC* No. 13-307C; filed in 2013; in 2014 the USCFC stayed petitioner’s Fifth Amendment “takings” claims for five (5) years [2014-2019], and also stayed petitioner’s patent infringement claims for eighteen (18) months to allow a petition made by two government agencies [DOJ & DHS] not authorized to do so, for an *inter partes* review (IPR) at the PTAB.

When the USCFC lifted the stay in 2016, the USCFC reverted to the Federal Circuit pre-*Zoltek III* position that a § 1498 action is parallel to a title 35 action and not predicated on the statutory definitions of infringement listed in § 271 of the Patent Act. The USCFC dismissed the case with knowledge of the 2012 en banc decision in *Zoltek V*; whereby, the Federal Circuit abrogated *Zoltek III*, holding that establishing conduct falling within the definition of direct infringement codified in 35 U.S.C. § 271(a) is not a predicate to finding infringement under § 1498(a).

Since 09/08/2022 [within the statute of limitation period], twelve federal judges have corrected the

USCFC and inferred to say: “infringement of [petitioner’s] CMDC device occurs when a mobile or consumer device is integrated with a CBRNE-H detection capability.”

Twelve years, the USCFC and the USCAFC have found ways to deprive Petitioner of “just compensation” under the Fifth Amendment Takings Clause; and a “reasonable and entire compensation” under 28 U.S.C. § 1498(a).

Infringement under 28 U.S.C. § 1498(a)

Section 1498(a) provides in pertinent part:

“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”

...

In counts 71-75 the Federal Circuit is being complicit with the lower court judge and the attorney for the Government in avoiding addressing Petitioner’s claim of alleged patent infringement against the United States under 28 U.S.C. § 1498(a) for authorizing or consenting to Elon Musk developing Petitioner’s patented CMDC device interconnected to a vehicle; CPU for a vehicle; stall-stop-vehicle-slow-down system; and detection systems, only to force Petitioner to refile, thereby giving the lower court the opportunity to improperly dismiss another claim the court decided to ignore, on grounds

of preclusion, *Kessler*, and a violation of the statute of limitations.

Petitioner became aware of Elon Musk federal funding, authorization and consents, and government contracts in January 2024 [within the statute of limitation period] when Elon Musk became advisor to the president.

Eminent Domain and Taking Patent Licenses

The Supreme Court in *Return Mail, Inc., v. Petitioner, United States Postal Service and United States*, Respondents. On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit: BRIEF OF SEVEN LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER. No. 17-1594 December 17, 2018, describes eminent domain and taking patent licenses:

QUESTION PRESENTED: “Whether the United States []—which, as a federal agency, is immune from liability for patent infringement and has the eminent domain power to appropriate a patent license—” SUMMARY OF ARGUMENT: “The United States [] wants to be a sovereign power. It also wants not to be a sovereign power. It exercises the right of sovereignty to take patent rights by the power of eminent domain. But it wants to stray beyond the inherent limitations on sovereign power and avoid the duty to pay just compensation for a license it appropriates.” “In jurisprudential terms, the [United States] claims the powers and immunities of the legislative sovereign, who possesses the inherent power of eminent domain and is immune from liability for infringement.

At the same time, the [United States] tries to claim the powers of an accused infringer and so disavow the legal disadvantages of the sovereign. It cannot have both.” ... “Vested patents are property for Fifth Amendment purposes, and the Government must pay for licenses taken from them” ... “An official who acts within the boundaries of the power of eminent domain is not acting contrary to the patent owner’s right, as long as the government pays just compensation. It is not legally wrong for a government agency to do what it has a legal right to do.” ... “The Federal Circuit majority’s expansion of “infringement” to include the [United States] lawful taking of a license by eminent domain also seems to rest in a conflation of the phrase “without ... lawful right to use or manufacture” in 28 U.S.C. § 1498 with the phrase “without authority” in 35 U.S.C. § 271(a). But the right to use or manufacture—a pre-political liberty—is a different right than the authority—the legal power belonging to a political sovereign and its agents—to appropriate a license by eminent domain.” ...

An inherent limitation on the power of eminent domain is the Government’s duty to pay just compensation. Richard Epstein, *Takings: Private Property and the Power of Eminent Domain* 331–50 (1985). When the Government appropriates rights secured by a patent, the sovereign must pay just compensation as it would for any other property. *McKeever v. United States*, 14 Ct. Cl. 396, 421 (1878); *James v. Campbell*, 104

U.S. 356, 357–58 (1881). The [United States] seeks to avoid its duty to pay compensation for the license(s) it appropriated.

The Tucker Act confers jurisdiction. This jurisdictional provision operates to waive the sovereign immunity of the United States for claims premised on other sources of law, such as a [money-mandating constitutional provision] or statute. *United States v. Navajo Nation*, 556 U.S. 287, 290 (2009).

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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