

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

LARRY GOLDEN,

Plaintiff,

v.

UNITED STATES,

Defendant.

Chief Judge: Margaret M. Sweeney

March 13, 2019

PLAINTIFF'S REQUEST MADE TO CHIEF JUDGE MARGARET M. SWEENEY

IN CASE NUMBER 19-104 C

Pursuant to the United States Judicial Code 28 U.S.C. § 455, as amended June 26, 1948, that "requires any judge or justice to disqualify himself in any case in which his impartiality might reasonably be questioned... he is or has been a material witness." This applies to judges in the Federal courts.

The Plaintiff, Larry Golden, objects to the appointment of Senior Judge Eric G. Bruggink to this case (No. 19-104 C) and ask that Judge Bruggink disqualify himself. Plaintiff believes the Judge's impartiality is in question when the Judge is acting in two capacities; both as a material witness and the Judge presiding over this case. If the Judge does not volunteer to step down as the Judge presiding over this case, the Plaintiff is seeking a Court order from Chief Judge Margaret M. Sweeney directing Judge Bruggink to step down.

The United States Court of Federal Claims (CFC), Senior Judge Susan G. Braden and Senior Judge Eric G. Bruggink are named as material witnesses in this case (No. 19-104 C). Both are material witnesses because each have significant factual knowledge of the allegations filed by the Plaintiff in this case (No. 19-104 C). The testimonies of the material witnesses—Senior Judge Susan G. Braden and Senior Judge Eric G. Bruggink—are very important to determining the outcome of the case (No. 19-104 C) and the related case (No. 13-307 C). Because of this, the court must make every effort to allow the material witnesses to give their testimonies.

Plaintiff's complaint in this case (No. 19-104 C) was filed on January 17, 2019 under the statute: 28 U.S.C. § 1491(a) "Government Takings of a Patent under the Fifth Amendment Clause". Plaintiff's related complaint 28 U.S.C. § 1491(a) "Government Takings of a Patent under the Fifth Amendment Clause" was filed on May 1, 2013 (Case No. 13-307 C). The 28 U.S.C. § 1491(a) "Government Takings of a Patent under the Fifth Amendment Clause" alleged in this complaint (Case No. 19-104 C) that was filed on January 17, 2019, is POST the May 1, 2013 filing date of (Case No. 13-307 C) currently pending in the United States Federal Court of Claims (CFC) and the two related cases should not be combined for adjudication.

Plaintiff reserve the right to petition the Court and provide additional reasons why a subpoena is necessary for at least one of, or both material witnesses: Senior Judge Susan G. Braden and/or Senior Judge Eric G. Bruggink.

Precedence: Competency of a Judge as a Witness in Civil Trials

A. Over which he does not preside: No case has been found, and there is little reason to believe that any exist, declaring that a judge is not a competent witness merely because he is a judge. The general policy of the law, as mentioned previously, is that every person is under a duty to come forward and disclose the truth when called upon, and judges, as a class, are well

qualified and competent to perform this duty. The question of the propriety of a judge voluntarily offering his testimony is another matter which will be subsequently discussed.

B. Over which he presides: Supervening considerations arise in the case where a judge is called to testify in a trial over which he is presiding and the general rule in such a case is well established that under such circumstances a judge is not a competent witness. The basis for such a rule is that the office of the judge and witness are incompatible and not capable of reconciliation. Another major factor in such a situation is that when the judge takes the witness stand the court, regardless of intention in so doing, loses the air of impartiality.

In *Powers et al. v. Cook et al.*-3 the judge refused to disqualify himself and during the progress of the trial took the witness stand and gave material and damaging testimony against the plaintiff's case. On appeal an objection was taken to this and the court remonstrated the lower court in the following language:

The trial judge in this case acted in two capacities, as judge and witness, passed upon objections to certain portions of his testimony, and, after he had finished testifying, returned to the bench and continued to try the case. To our minds, this was prejudicial to the rights of the plaintiff and fundamentally wrong, and, as was stated by Justice Folger, in the case of *People v. Dohring*, "because such practice, if sanctioned, may lead to unseemly and embarrassing results to the hindering of justice, and to the scandal of the courts." It tends to lessen the dignity of the courts, and bring it into disrepute. It is well known to every practicing lawyer that the testimony of the trial judge, upon a material point, will outweigh the testimony of ordinary witnesses, and to permit him to testify gives an undue advantage to the party for whom he testifies. It is wrong both in principle and in morals.

“While it is not always reversible error for a judge to testify in a civil case over which he is presiding”, *Feinstein v. Politz*, 103 S.C. 238, 87 S.E. 1005 (1916), [and] “certainly not if no objection is made to it”, *In re Elam*, 357 Mo. 922, 211 S.W.2d 710 (1948) it has met with almost unanimous disapproval.

The United States Judicial Code 28 U.S.C. § 455, as amended June 26, 1948, “requires any judge or justice to disqualify himself in any case in which his impartiality might reasonably be questioned... he is or has been a material witness.” This, of course, only applies to judges in the Federal courts.

Example of Judges Braden and Bruggink’s *Lack of Impartiality*:

Procedural History

The Plaintiff in case no. 13-307C has submitted over 5000 pages of evidence that demonstrates the Government was given notice, in a number of various ways (i.e. discovery documents), of the Plaintiff’s intellectual property subject matter, to include 376 FOIA request (i.e. fact discovery request of the Plaintiff’s §1491(a) intellectual property subject matter “takings” and §1498 (a) intellectual property subject matter “infringement”) to the Claims Court and the Defendant (The United States of America).

The Claims Court ordered the Plaintiff to produce all of his discovery documents to the Defendant, but yet, the Claims Court refused, after several of Plaintiff’s motions, to order the Defendant to produce any of its discovery documents to the Plaintiff; refused to provide to the Plaintiff, after almost 36 months (3 years) and several attempts made by the Plaintiff, a list of the Plaintiff’s infringement claims that has the jurisdiction of this Court. For these reasons and the reasons defined in the “Documentary Outline” (Exhibits 1, 2, 3, 4, & 5) the Plaintiff is giving notice to the Governments’ third-party infringers (contractors) in this case no. 13-307C of the

Plaintiff's intent to file a complaint of infringement in the International Trade Commissions (ITC) Court to prevent certain infringing devices from being shipped into the United States.

For almost 72 months (6 years) the Claims Court under presiding Judges Susan G. Braden and Eric G. Bruggink, has intercept—tampered with mail addressed to the Chief Judge—and adjudicated in a way that shelters each Judges' incompetence, lack of impartiality, bias and prejudice, favoritism, and deliberate violations of several canons described in “[t]he Code of Conduct for United States Judges”, in ways that are most favorable to themselves and to the Defendant.

Judge Bruggink is actively showing his support of the vague inexplicit opinions and judgements of Judge Braden by denying the Plaintiff's motions; striking the Plaintiff's motions and returning Plaintiff's motions unfiled. For these reasons the Plaintiff filed a new Complaint (Case no. 19-104C) against the Judicial Branch of the Government under §1491(a) “Government Taking of a Patent(s) under the Fifth Amendment Clause”. This case differs from the current case no. 13-307C because case no. 13-307C; §1491(a) intellectual property subject matter “takings” is filed against the Executive and Legislative Branches of Government and does not include, list, or name the current presiding Judge (Bruggink); the previous presiding Judge (Braden); the Administrative Judge (Green) at the Patent Trials and Appeals Board (PTAB); and the United States (Defendant), as material witnesses.

“Pursuant to the United States Judicial Code 28 U.S.C. § 455, as amended June 26, 1948, that ‘requires any judge or justice to disqualify himself in any case in which his impartiality might reasonably be questioned... he is or has been a material witness.’ This applies to judges in the Federal courts.”

Judge Bruggink appointed himself presiding Judge over case no. 19-104C. A case where he is named as a material witness. Judge Bruggink intercepted mail (i.e. tampered with) that was addressed to the Chief Judge Margaret M. Sweeney on January 29, 2019, whereby the Plaintiff was seeking the removal of Judge Bruggink for the various reasons stated above.

Example of Judges Braden and Bruggink's *Incompetence*:

History of the Cell-All DHS S&T Project

I submitted documentation to the Government on the subject matter of a Cell-All type of project.

I responded to the Cell-All solicitation that was issued by the DHS S&T Directorate by submitting a proposal in year '2007.

I engaged in email correspondence with the Program Manager Stephen Dennis who ask for additional information in year '2008;

I submitted discovery documents supporting the subject matter of a Cell-All type of project to the Court of Federal Claims and the Defendant (The United States).

I submitted a copy of a '2010 DHS archives report to the Court of Federal Claims and the Defendant (The United States) as evidence of the Government themselves, admitting and confessing the following: "intended goal for the Cell-All project", "subject matter description, creation, and development", "authorization and consent", "research and development agreements", "third party contractors", "technology developed for the Government", and "Government use", involving the Cell-All project as outlined below.

Quotes taken from the Official website of the Department of Homeland Security 2010 Archives, "Cell-All: Super Smartphones Sniff out Suspicious Substances" include: "The Cell-All initiative may be one such savior. Spearheaded by the Department of Homeland Security's (DHS) Science and Technology Directorate (S&T), Cell-All aims

to equip your cell phone with a sensor capable of detecting deadly chemicals at minimal cost—to the manufacturer (a buck a sensor) and to your phone’s battery life. “Our goal is to *create* a lightweight, cost-effective, power-efficient solution,” says Stephen Dennis, Cell-All’s program manager... For years, the idea of a *handheld weapons of mass destruction detector* has engaged engineers. In 2007, S&T called upon the private sector to *develop* concepts of operations. Today, thanks to increasingly successful prototype demonstrations, the Directorate is *actively funding* the next step in R&D—a proof of principle—to see if the concept is workable... Similarly, S&T is pursuing what’s known as *cooperative research and development agreements* with four cell phone manufacturers: *Qualcomm, LG, Apple, and Samsung*. These written agreements, which bring together a private company and a government agency for a specific project, often accelerate the commercialization of *technology developed for government purposes*. As a result, Dennis hopes to have *40 prototypes* in about a year, the first of which will sniff out carbon monoxide and fire.”

I submitted a one hour, fifty minute video sponsored by the DHS of the Cell-All project to the Court of Federal Claims and the Defendant (The United States) as clear and convincing evidence of the Government’s “intended goal for the Cell-All project”, “subject matter description, creation, and development”, “authorization and consent”, “research and development agreements”, “third party contractors”, “technology developed for the Government”, and “Government use”, demonstrators, volunteers, testing of the devices, scholars, experts, etc. involving the Cell-All project.

I submitted a “Test Chart Mechanism” to the Court of Federal Claims and the Defendant (The United States) that supports the §1491(a) intellectual property subject matter “takings” claim made by the Plaintiff.

I submitted to the Court of Federal Claims and the Defendant (The United States) a Claim Chart that supports the §1498 (a) Government “infringement” claim made by the Plaintiff.

Before making a 360 degree you turn in the March 29, 2018 Memorandum Opinion of Judge Braden dismissing Plaintiff's Infringement Claims—Judge Braden never explained why she decided to give the Defendant (The United States) another shot at having Plaintiff's infringement claims dismissed—Judge Braden stated in the November 30, 2016 Memorandum Opinion denying Defendant's Motion to dismiss, the following:

"Infringing activity is "for the Government" under section 1498(a) if it is "for the benefit of the Government." *Advanced Software Design Corp. v. Federal Reserve Bank of St. Louis*, 583 F.3d 1371, 1378 (Fed. Cir. 2009); see also *Madey v. Duke University*, 413 F. Supp.2d, 601,607 (M.D.N.C. 2006) ("A use is 'for the Government' if it is 'in furtherance and fulfillment of a stated Government policy' which serves the Government's interests and which is 'for the Government's benefit.' (quoting *Riles v. Amerada Hess, Corp.*, 999 F. Supp. 938,940 (S.D. Tex. 1998)). In *Hughes Aircraft Co. v. United States*, 534 F.2d 889 (1976), for example, the court held that a satellite program to advance the military defense and security of the United States was "for the Government." *Id.* at 898... Moreover, "authorization or consent of the Government," does not need to be expressly stated. See *TVI Energy Corp. v. Blane*, 806 F.2d 1057, 1060 (Fed. Cir. 1986) ("[a]uthorization or consent by the Government can be express [or] [i]n proper circumstances, Government authorization can be implied."). Indeed, "authorization or consent . . . may be given in many ways other than by . . . direct form of communication--e.g., by contracting officer instructions, [or] by specifications . . . which impliedly sanction and necessitate infringement[.]" *Hughes Aircraft Co.*, 534 F.2d at 901... If a motion to dismiss for lack of subject-matter jurisdiction "challenges the court's subject matter jurisdiction based on the sufficiency of the pleading's allegations ... then those allegations are taken as true and construed in a light most favorable to the complainant." *Cedars-Sinai Med Ctr.*, 11 F.3d at 1583..."

After making a 360 degree you turn to the November 30, 2016 Memorandum Opinion of Judge Braden denying Defendant's Motion to dismiss—Judge Braden never explained why she decided to give the Defendant (The United States) another shot at having Plaintiff's infringement

claims dismissed—Judge Braden stated in the March 29, 2018 Memorandum Opinion dismissing the Plaintiff's infringement claims, the following on the Cell-All project and other mobile devices:

d. Patent Infringement Allegations Concerning The Government's Alleged Use Of "Smartphones And Other Consumer Devices" Must Be Dismissed Under RCFC 12(b)(1) and 12(b)(6)... "The Fifth Amended Complaint, however, does not allege that the Government's intent to "allow" or "approve" the use of "smartphones and other consumer devices" infringes Plaintiffs patents. Instead, the Fifth Amended Complaint alleges that the Government's use of these devices in combination with other "devices" or "programs," e.g., the "'Cell-All' initiative," infringes Plaintiffs patents. 8/10/17 Am. Comp! ¶¶ 96-97. No factual allegations, however, support assuming that the Government used or authorized the use of these other "devices" or "programs" to infringe Plaintiffs patents... For example, although the Fifth Amended Complaint alleges that the "LG Electronics GS Smartphone . . . can be used" by the Government, such an allegation does not support the conclusion that the Government used or authorized the use of these devices to run the "'Cell-All' initiative." 8/10/17 Am. Comp! ¶¶ 96-97. Nor do such allegations imply that the Government's use of the "LG Electronics GS Smartphone" infringes Plaintiffs patents, since the Government may simply use these devices to make calls. Without supporting factual allegations, however, the court cannot assume infringing use or manufacture by the Government. See Norton, 266 U.S. at 515 ("It is quite true that the jurisdiction of a federal court must affirmatively and distinctly appear and cannot be helped by presumptions or by argumentative inferences drawn from the pleadings.")... [A]rgumentative (as opposed to reasonable) inferences favorable to the pleader will not be drawn and conclusory allegations or conclusions of law will not be credited."). In sum, although the factual allegations of the Fifth Amended Complaint may support a conclusion that the Government "allowed" or "approved" the "use" of various "smartphones and other consumer devices," they do not support the conclusion that the Government used or authorized the use of these devices in an infringing manner. For these reasons, the court has determined that the patent infringement allegations contained in ¶¶ 96-97, 101-02, 106-07, 111-12, 116-17, 121-22, 126-27, 131-32, 136-37, 141-42,

146-47, and 151-52 of the August 10, 2017 Fifth Amended Complaint failed to satisfy Plaintiff's burden to establish jurisdiction under 28 U.S.C. § 1498(a). Accordingly, these paragraphs of the Fifth Amended Complaint must be dismissed under RCFC 12(b)(l).

The Government's position is correct, because the Fifth Amended Complaint does not contain factual allegations supporting that, "[a]s a result of contracts, agreements, and procurements with various Government Agencies ... the United States has used, authorized the use, and manufactured ... Plaintiffs inventions[.]"... The Fifth Amended Complaint fails to identify the "contracts, agreements, and procurements" at issue.

Without more, the Fifth Amended Complaint has not met the requirements... Nor does the Fifth Amended Complaint provide anything other than conclusory allegations that the Government used or authorized the use of "smartphones and other consumer devices" in a manner that infringes Plaintiff's patents. Such "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, [however,] do not suffice." Iqbal, 556 U.S. at 678; see also Sioux Honey Ass 'n, 672 F.3d at 1062 (holding that a complaint "require[s] more than labels and conclusions"). For these reasons, the court has determined that even if the August 10, 2017 Fifth Amended Complaint established jurisdiction as to the patent infringement allegations contained in ¶¶ 96-97,101-02, 106-07, 111-12, 116-17, 121-22, 126-27, 131-32, 136-37, 141-42, 146-47, and 151-52 of the Fifth Amended Complaint, the allegations contained therein failed to state a claim upon which relief may be granted and must be dismissed under RCFC 12(b)(6).

It is the belief of the Plaintiff that Judge Braden's incompetence resulted in the Plaintiff losing at least sixty-one (61) of the seventy-two (72) infringement claims asserted in case no. 13-307C that references smartphones or other mobile devices as being converted or adapted to function as a CBRNE-H detection device. Judge Bruggink has likewise taken up the position of Judge Braden. It is further the belief of the Plaintiff that the two Judges' actions in this case is an indication or signal that the Judges' have been threatened, bribed, blackmailed, or paid-off by the Justice Department. An investigation into these concerns should be conducted by the Chief Judge

of the United States Court of Federal Claims and any other regulatory body having jurisdiction over such matters.

Example of Judges Braden and Bruggink's *Incompetence*:

History of the Plaintiff's National Science Foundation (NSF) Claims

Before making a 360 degree you turn in the March 29, 2018 Memorandum Opinion of Judge Braden dismissing Plaintiff's Infringement Claims—Judge Braden never explained why she decided to give the Defendant (The United States) another shot at having Plaintiff's infringement claims dismissed—Judge Braden stated in the November 30, 2016 Memorandum Opinion denying Defendant's Motion to dismiss the following about the Plaintiff's National Science Foundation (NSF) Claims:

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 F.3d 206, 217 (1983), and the plaintiff is "within the class of plaintiffs entitled to recover under the statute if the elements of [the] cause of action are established," *Greenlee County, Arizona v. United States*, 487 F.3d 871, 876 (Fed. Cir. 2007). "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 Serv., Inc. v. Federal Aviation Agency*. 525 F.3d 1299, 1307 (Fed. Cir. 2008)... Here, the February 12, 2016 Amended Complaint's NSF claims are based on section §1498(a), a statute that is money-mandating on its face' See 28 U.S.C. §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.") (emphasis added). Furthermore, Plaintiff is the owner of the United States patents asserted in this case and is

therefore entitled to recover under section 1498(a). See 28 U.S.C. §1498(a)...

Accordingly, the court has jurisdiction to adjudicate the February 12, 2016 Amended Complaint's NSF claims. The Government's June 24, 2016 Motion To Dismiss, pursuant to 12(b)(1), is denied.

The 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 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.

For the reasons discussed herein, the Government's June 24, 2016 Motion To Dismiss Certain Devices, pursuant to RCFC 12(b)(1) and 12(b)(6), is denied.

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,"... "[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 effects of therapeutic interventions,"... "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,"... "a handheld instrument to help contain the spread of Ebola, HIV, Tuberculosis, and Malaria,"... "[a portable device for] real-time detection of explosives, toxicants, and radiation,"... "highly sensitive rapid medical diagnostic tests".

After making a 360 degree you turn to the November 30, 2016 Memorandum Opinion of Judge Braden denying Defendant's Motion to dismiss—Judge Braden never explained why she decided to give the Defendant (The United States) another shot at having Plaintiff's infringement claims dismissed—Judge Braden stated in the March 29, 2018 Memorandum Opinion dismissing the Plaintiff's infringement claims, the following on the Plaintiff's National Science Foundation (NSF) Claims:

The Fifth Amended Complaint contains patent infringement allegations arising from the award of the other NSF grants, each of which repeats the text of 28 U.S.C. § 1498(a) in conclusively alleging that, "[a]s a result of contracts with the [NSF] . . . the United States has used, authorized the use, and manufactured . . . Plaintiffs inventions" as "a current manufacturer, consumer, and/or user" of the "devices" or "programs" developed under the NSF grants. 8/10/17 Am. Comp! ¶¶ 184-85, 199-200, 235-36, 260-61, 265-66, 270-71, 275-76, 280-81, 285-86, 290-91, 295-96, 300-01, 305-06, 350-51.

The Fifth Amended Complaint, however, does not contain "the necessary supporting or primary facts sufficient" to support this conclusion. See *Hebern v. United States*, 132 Ct. Cl. 344, 348-49 (Ct. Cl. 1955). Instead, the Fifth Amended Complaint implies "direct" use or manufacture by the Government, based solely on the NSF's funding the development of allegedly infringing "devices" or "programs."... The Fifth Amended Complaint also fails to allege that "the accused use or manufacture was undertaken ... for the Government's benefit." See *Hughes Aircraft Co.*, 534 F.2d at 897. The Fifth Amended Complaint contains no factual allegations establishing anything more than "incidental benefit" to the NSF. See *Advanced Software Design Corp.*, 583 F.3d at 1379 (holding that "an interest in [a] program generally, or [where the Government] funds or reimburses all or part of [a program's] costs, is too remote to make the [G]overnment the program's beneficiary for the purposes underlying § 1498"... Nor does the Fifth Amended Complaint allege that "the Government gave its authorization or consent for the accused use or manufacture." See *Hughes Aircraft Co.*, 534 F.2d at 897. The Fifth Amended Complaint does not contain any factual allegations establishing that the NSF, at any time, authorized or consented to infringing use or manufacture. For example, the Fifth Amended Complaint does not cite any portions of the NSF grants or communications between the NSF and grant awardees "expressly" or "implicitly" authorizing infringing conduct. See *Larson*, 26 Cl. Ct. at 369-70 ("[A]uthorization or consent requires explicit acts or extrinsic evidence sufficient to prove the [G]overnment's intention to accept liability for a specific act of infringement."). Nor does the Fifth Amended Complaint include any factual allegations that could be construed as "express" or "implicit" authorization or consent by the NSF to infringe Plaintiff's patents. See *Hughes Aircraft Co.*, 534 F.2d at 901 (holding that implied authorization maybe presumed when the Government provides "instructions ... specifications [,] or drawings which impliedly sanction and necessitate infringement"); see also *IRIS Corp.*, 769 F.3d at 1362 (holding that "the [G]overnment ... clearly provided its authorization or consent [,] because [the contractor] ... cannot comply with its legal obligations without engaging in the allegedly infringing activities")....

For these reasons, the court has determined that the patent infringement allegations contained in ¶¶ 184-85, 199-200, 235-36, 260-61, 265-66, 270-71, 275-76,

280-81, 285-86, 290-91, 295-96, 300-01, 305-06, and 350-51 of the August 10, 2017 Fifth Amended Complaint failed to satisfy Plaintiff's burden to establish jurisdiction under 28 U.S.C. § 1498(a). Accordingly, these paragraphs of the Fifth Amended Complaint must be dismissed under RCFC 12(b)(l).

It is the belief of the Plaintiff that Judge Braden's incompetence resulted in the Plaintiff losing at least sixty-one (61) of the seventy-two (72) infringement claims asserted in case no. 13-307C that references smartphones or other mobile devices as being converted or adapted to function as a CBRNE-H detection device. Judge Bruggink has likewise taken up the position of Judge Braden. It is further the belief of the Plaintiff that the two Judges' actions in this case is an indication or signal that the Judges' have been threatened, bribed, blackmailed, or paid-off by the Justice Department. An investigation into these concerns should be conducted by the Chief Judge of the United States Court of Federal Claims and any other regulatory body having jurisdiction over such matters.

Question. What is the probability or likelihood that sitting Federal Judges with decades of experience adjudicating cases of infringement gets every law, statute, civil procedural, and precedence (referring to the Memorandum Opinion of Nov. 30, 2016) wrong? Answer. There's a greater likelihood that the Judges have been threatened, bribed, blackmailed, or paid-off.

Rule 605. Judge

The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

Notes

(Pub. L. 93-595, §1, Jan. 2, 1975, 88 Stat. 1934; Apr. 26, 2011, eff. Dec. 1, 2011.)

Notes of Advisory Committee on Proposed Rules

In view of the mandate of 28 U.S.C. §455 that a judge disqualify himself in “any case in which he * * * is or has been a material witness,” the likelihood that the presiding judge in a federal court might be called to testify in the trial over which he is presiding is slight. Nevertheless the possibility is not totally eliminated.

The solution here presented is a broad rule of incompetency, rather than such alternatives as incompetency only as to material matters, leaving the matter to the discretion of the judge, or recognizing no incompetency. The choice is the result of inability to evolve satisfactory answers to questions which arise when the judge abandons the bench for the witness stand. Who rules on objections? Who compels him to answer? Can he rule impartially on the weight and admissibility of his own testimony? Can he be impeached or cross-examined effectively? Can he, in a jury trial, avoid conferring his seal of approval on one side in the eyes of the jury? Can he, in a bench trial, avoid an involvement destructive of impartiality? The rule of general incompetency has substantial support. See Report of the Special Committee on the Propriety of Judges Appearing as Witnesses, 36 A.B.A.J. 630 (1950); cases collected in Annot. 157 A.L.R. 311; McCormick §68, p. 147; Uniform Rule 42; California Evidence Code §703; Kansas Code of Civil Procedure §60–442; New Jersey Evidence Rule 42. Cf. 6 Wigmore §1909, which advocates leaving the matter to the discretion of the judge... that effect collected in Annot. 157 A.L.R. 311.

The rule provides an “automatic” objection. To require an actual objection would confront the opponent with a choice between not objecting, resulting in allowing the testimony, and objecting, with the probable result of excluding the testimony but at the price of continuing the trial before a judge likely to feel that his integrity had been attacked by the objector.

A copy of Plaintiff’s Complaint, (Case no. 19-104C), is attached to this document for the reader’s convenience (Exhibit 6).

Respectfully submitted,

S/
Larry Golden

Plaintiff, Pro Se
740 Woodruff Rd., #1102
Greenville, South Carolina 29607
atpg-tech@charter.net

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing “Plaintiff’s Request Made to Chief Judge Margaret M. Sweeney in Case Number 19-104 C” was sent on March 13, 2019 via U.S. Postal service “priority express mail”, to:

U.S. House Committee on Financial Services Democrats
Attn: Chairwoman Maxine Waters
2129 Rayburn House Office Building
Washington, DC 20515
Phone: (202) 225-4247
Fax: (202) 225-6952

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing “Plaintiff’s Request Made to Chief Judge Margaret M. Sweeney in Case Number 19-104 C” was sent on March 13, 2019 via U.S. Postal service “priority express mail”, to:

House Permanent Select Committee on Intelligence
Attn: Chairman Adam Schiff
Capitol Visitor Center HVC-304
Washington, DC 20515
(202) 225-7690

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing “Plaintiff’s Request Made to Chief Judge Margaret M. Sweeney in Case Number 19-104 C” was sent on March 13, 2019 via U.S. Postal service “priority express mail”, to:

House Committee on Oversight and Reform
Attn: Chairman Elijah E. Cummings
2157 Rayburn House Office Building
Washington, D.C. 20515
Phone: (202) 225-5051
Fax: (202) 225-4784

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing “Plaintiff’s Request Made to Chief Judge Margaret M. Sweeney in Case Number 19-104 C” was sent on March 13, 2019 via U.S. Postal service “priority express mail”, to:

House Committee on the Judiciary
Attn: Chairman Jerrold “Jerry” Nadler
2138 Rayburn House Office Building
Washington, D.C. 20515
202-225-3951