GOVERNMENT PATENT INFRINGEMENT

SECTION 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 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".

***Astornet Technologies Inc. v. BAE Systems, Inc*., — F.3d —- (Fed. Cir. 2015)**

> T]he statute protects government contractors against infringement liability and remedies where it applies. As indicated by the statute's use of the definite article in providing "the owner's remedy" and its statement that the remedy is for payment of the owner's "entire compensation," the statute, within its ambit, makes the remedy against the United States exclusive. . . .
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> The claim of use of the patented invention by the United States is squarely within the statutory terms. The language is not limited to claims that are filed against the United States or its government agencies.

Government appellate brief: Similarly, this Court need not resolve appellees' argument that because the United States does not "infringe" when it uses a patented invention without authorization, no party can be liable for inducing or contributing to that use. . . . [T]he plain language of Section 1498(a) encompasses use of a patented invention by the United States. Where a patent owner alleges such use, either directly or indirectly, Section 1498(a) applies by its express terms. There is, consequently, no need for the Court to decide whether the unauthorized use of a patented invention by the United States constitutes "direct infringement" in the sense that would be necessary to support liability for induced or contributory infringement in the absence of Section 1498(a).

Closing The Offshore Gov't Patent Infringement Loophole: Law360, New York (March 30, 2012, 1:50 PM ET) -- On March 14, 2012, the Federal Circuit issued its much-anticipated decision in *Zoltek v. United States and Lockheed Martin Corporation ("Zoltek V").*

> [1] Somewhat surprisingly, the court sua sponte en banc vacated its earlier holding in Zoltek v. United States ("Zoltek III").
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> [2] that direct infringement under 35 U.S.C. § 271(a) was a predicate for government liability under 28 § U.S.C. § 1498(a). The panel also found that Lockheed's actions created government liability under § 1498(a). Thus, the Federal Circuit closed the offshore loophole from its Zoltek III decision and allowed Zoltek to proceed with its § 1498(a) claim against the United States.