

The Sinking of FastShip

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The U.S. Court of Federal Claims recently dismissed claims that the U.S. Navy had infringed plaintiff's patent for a waterjet propulsion system when it ordered construction of the Freedom class of littoral combat ships. In *FastShip LLC v. United States*, FastShip had patented a design for a semi-planning monohull vessel with waterjet propulsion. The Government moved for partial summary judgment, arguing that the patent had expired by the time all but one ship had been built.

The Navy had ordered construction of the USS Fort Worth in 2006, and the keel was laid in 2009, marking the start of the construction process. Another four ships of the same class are on order. The primary propulsion system for the Freedom class of littoral combat ships is a waterjet that pumps in water, passes it through an impeller, and discharges the water at high speed to move the ship. In 2008, shortly before the lead ship USS Freedom was launched, FastShip informed the Government that the propulsion system infringed on FastShip's patents. The Government denied FastShip's claims, and in 2012, the company filed its patent infringement suit in the U.S. Court of Federal Claims.

The Government moved to dismiss the claims alleging that the Fort Worth and later, on-order ships infringed on FastShip's patents, arguing that the patent had expired before these ships were built. FastShip responded that the Fort Worth's waterjet impellers were already at the construction site before the patents expired, and only needed to be bolted on, citing a case where the alleged infringer had purposefully delayed final assembly of a product until a patent covering that product had expired. The Court rejected this argument, holding that because there was no evidence the Government purposefully delayed construction, the case was not excepted from the general rule that only a substantially finished product can infringe on a patent:

The court is not persuaded by FastShip's arguments. Unlike in Paper Converting, where [the infringer] intended to manufacture a patented machine and attempted to circumvent infringement by purposefully selling the machine in non-infringing components to be combined after the patent had expired, FastShip has offered no sound evidence to show that the Navy intentionally delayed installation of waterjet impeller assemblies on [the Fort Worth] for the similar purpose of avoiding infringement. . . . In sum, based on general tenets of patent law and in light of the distinct facts presented in this case, the court finds that the alleged infringement [ship] was not 'manufactured' for purposes of [the infringement statute] by the date the pertinent patents expired.

Read the full opinion [here](#).