

CFC Dismisses Suit with 31 Patent and Copyright Claims

In *Keehn v. United States* (March 1, 2013), a *pro se* claimant alleged that he was solely responsible for thirty-one defense-related products, databases, concepts, doctrines, and other intellectual property while working for various defense contractors and his own company from 1975 to 1992. The complaint further alleged that these efforts generated an estimated \$8.7 billion in corporate revenues and that, in addition to other theories, the Government was responsible for taking his intellectual property without just compensation under the Just Compensation Clause.

His alleged creations run the gamut from special demodulators for radar signal modulations, to a series of electronic warfare methods against adversary satellites, to the first briefing on strategic issues in space presented to President Reagan during his transition period.

But the substance and veracity of his alleged accomplishments were not addressed by the CFC's opinion. Instead, the opinion holds that the CFC lacked jurisdiction because all but one of the claims made by plaintiff were barred by the statute of limitations, and the final claim did not give rise to jurisdiction under the Fifth Amendment.

The property that the plaintiff alleged was taken is characterized in the complaint as copyrights and patents. But CFC jurisdiction over patent infringement claims against the government is conditioned on the issuance of a patent, and jurisdiction over copyright claims against the government is conditioned upon the issuance of a copyright registration.

Here, the plaintiff had not been issued any patents, nor had he registered any copyrights.

In addition, the CFC held that even if an issued patent or registered copyright existed, "plaintiff's Fifth Amendment takings theory is without merit" because:

It is 28 U.S.C. § 1498(a), not the Fifth Amendment to the United States Constitution, that provides the waiver of sovereign immunity that enables a plaintiff to file suit against the government for patent infringement.

Similarly, "[i]t is 28 U.S.C. § 1498(b), not the Fifth Amendment to the United States Constitution, that provides the waiver of sovereign immunity that enables a plaintiff to file suit against the government for copyright infringement in the United States Court of Federal Claims

Plaintiffs who have claims against the government for patent and copyright infringement may file suit in the CFC, but they need to get their legal theories straight. The plaintiff in *Keehn* did not and, as a result, the Government's motion to dismiss for lack of jurisdiction was granted.

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