

No: 22-1196

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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LARRY GOLDEN

*Petitioner*

v.

THE UNITED STATES

*Defendant*

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ON APPEAL FROM THE UNITED STATES COURT OF FEDERAL CLAIMS  
IN 1:13-cv-00307-EGB (13-307C)  
JUDGE ERIC G. BRUGGINK

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**INFORMAL PETITION FOR REHEARING *EN BANC***

LARRY GOLDEN  
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Appearing ProSe

September 19, 2022

## **THE CLAIMS COURT CLEAR ERRORS OF JUDGEMENT**

After waiting eight years for Plaintiff-Appellant to either make a mistake that justifies the dismissal of his case; for Plaintiff-Appellant to give up on his life's work; or, for Plaintiff-Appellant to just simply die, the Claims Court fabricated a series of lies to justify the dismissal of Plaintiff's case, while turning the blame for the dismissal back on the Plaintiff.

The only mistake Plaintiff-Appellant has made, is believing a Judicial system that once believed Blacks are only three-fifth a human being; that Blacks do not have the intelligence to invent; that Blacks cannot own intellectual property because Blacks are property themselves; and, that Blacks are out of their place when they raise issues of civil rights and civil liberties violations, has changed.

Plaintiff's goal after the 9/11 attacks was to help Government restore of Nation's economy and protect against future attacks. Not to fight Government over property rights.

### **The Claims Court Clear Error of Judgement: The Claims Court and Government's Deliberate Pattern of *Delay* Resulted in Multiple Amended Complaints for the Plaintiff**

The Claims Court stayed Plaintiff's case in 2014 to give the DOJ & DHS (federal agencies), who was not "persons" authorized to petition the Patent Trials and Appeals Board (PTAB) for *Inter Partes Review* (IPR), the opportunity to invalidate Plaintiff's patents. Plaintiff spent 15 months defending his patents against the unauthorized Government Agencies.

"Golden may argue that, in view of *Return Mail*, the cancellation of the patent claims in an *inter partes review* initiated by the government could be considered an unconstitutional taking under the Fifth Amendment". Court of Appeals (CAFC) Case No. 19-2134 Filed 07/12/2019: Dkt. No. 37; Pgs. 14-15, Filed: 04/10/2020

On 04/08/2016, the Government filed an answer to Plaintiff's complaint. The Government was allowed to come right back on 06/24/2016 and file a Motion to Dismiss under 12(b)(1) and 12(b)(6).

On 11/30/2016, the Claims Court dismissed the Government's Motion to Dismiss under 12(b)(1) and 12(b)(6), stating the modified cell phones, smartphones, tablets, and laptops was developed for the benefit of the Government.

On 12/02/2016, two days after the Claims Court denied the Government's Motion to Dismiss, the Court stated in a telephone conference, it was going to give the Government another chance at having Plaintiff's case dismissed. Delayed the Case another 14 months.

On 03/29/2018, the Claims Court dismissed 61 of the 72 alleged infringement claims. The same alleged infringement the Claims Court accepted as valid on 11/30/2016. This time the Claims Court stated the modified cell phones, smartphones, tablets, and laptops was the private property of the manufacturers and any use by the Government was purely incidental. The Claims Court prolonged the Case by leaving 11 of the 72 alleged infringement claims that included modified cell phones, smartphones, tablets, and laptops in the products' development.

The Claims Court Clear Error of Judgement is using the number of times the Claims Court was mercifully helping Plaintiff by allowing Plaintiff to amend his complaint, was made to justify clearing the Court's docket. The Claims Court should have dismissed the case in 2014 before allowing the unauthorized Government agencies to petition the PTAB for review.

**The Claims Court Clear Error of Judgement: Plaintiff "Improperly Attempted to Enlarge [Expand] the Scope of this Case"**

Plaintiff's CPU was not an expansion of the scope of Plaintiff's case, and the Claims Court erred when the Court viewed Plaintiff's identification of the CPU as an enlargement:

“Because we agree that the infringement contentions fail to meet the requirements of local patent rule 4 and improperly attempt to enlarge the scope of this case, we grant the motion to strike and to dismiss.” *Golden v. US*; Case 1:13-cv-00307-EGB Document 249 Filed 11/10/21 Page 2 of 13

“Defendant also argues that the late included CPUs and chipsets are an improper expansion of the case and, in any event, have no corresponding claim chart to identify where in those devices the patent is infringed.” *Golden v. US*; Case 1:13-cv-00307-EGB Document 249 Filed 11/10/21 Page 5 of 13

“Putting the propriety of that aside for the moment, the inclusion of these new chips as independent infringing devices is an improper attempt to again enlarge and materially change the infringement pled in the final amended complaint. We warned that the pleading stage had come to an end. See Order of February 21, 2021 at 7 (ECF No. 215) (“Plaintiff may file no further amended complaints.”).” Case 1:13-cv-00307-EGB Document 249 Filed 11/10/21 Page 5 of 13

Plaintiff-Appellant’s “Corrected Preliminary Infringement Contentions Claim Charts identifies 13 of the 25 asserted patent claims comprises the “CPU” as an *element* of the CMDC devices (claim 1 of the ‘497 patent; claim 10 of the ‘752 patent; claims 1, 2, & 3 of the ‘189 patent; claims 13, 14, 15, 22, & 23 of the ‘439 patent; claims 4, 5, & 6 of the ‘287 patent)

Claims 4, 5, & 6, of the ‘287 patent has a combined total of forty-two (42) limitations. Three (3) [*the claims preamble*] of the (42) limitations, describes the alleged infringing device that includes the “name and model number” [*local patent rule 4c*] of the central processing units (CPUs) and chipsets. Thirty-six (36) of the (42) limitations identify the central processing unit (CPU) as the element found within each accused product [*local patent rule 4c*]. Within the (36) claim limitations, Plaintiff-Appellant identify the element as the central processing unit.

In the “Amended Complaint for Reduced Pleadings”, DKT 195 CFC 13-307C *Larry Golden v. The United States*, Plaintiff-Appellant described the functional and operational specifications, requirements and conditions at: CPU: pgs. 3, 4, 100, 109, 118, & 127; CPU for CMDC device (diagrams): pgs. 140, 141, 142, 143, 144, 145, 147, 148, 149, 150, 151, 152, 154, 155, 156, 157, 158, & 159; CPU for detection device (diagrams): pgs. 142, 143, 149, 150, 156, & 157; and, CPU for smartwatch device (diagrams): pgs. 144, 145, 151, 152, 158, & 159. The CPU was not introduced as a new device.

**Central Processing Unit (CPU):** The Central Processing Unit (CPU) is the programmable device capable of general-purpose computation. It is the engine of logic, as with the brain, and the core piece of hardware in the Patent Owner’s CMDC device (i.e., communication devices, monitoring device; monitoring equipment). The Patent Owner’s CPU is capable of arithmetic operations such as add and divide and flow control operations such as conditionals. The Patent Owner’s central processing unit (CPU) is the electronic circuitry within the CMDC device that is vital and essential processes and executes program instructions.

The CPU, which controls all Programmable Logic Controllers (PLCs) consists of two basic sections: the central processing unit (CPU) and the input/output interface system. The input/output system is physically connected to field devices (e.g., sensors, etc.) and provides the interface between the CPU and the information providers (inputs) and controllable devices (outputs). To operate, the CPU “reads” input data from connected field devices through the use of its input interfaces, and then “executes”, or performs the control program that has been stored in its memory system. The CPU processes instructions in order to carry out certain functions that make the device operate properly. The CPUs are often described as the brain of computers, smartphones and tablets because of the central role they play in the functioning of your devices.

## **The Claims Court Clear Error of Judgement: “Plaintiff Fail to Identify Where the “Sensors” are Located in Each of the Accused Devices as Required Under the Claims Court Patent Rule 4”**

During the Cell-All Live Demonstration for Environmental Sensing (Webcast), September 28. (Accessed 17.09.12), the DHS made it very clear that the second phase of the *Cell-All* initiative will include sensors/detectors external the host device: “[d]uring the development of second-generation prototypes, chemical sensors were separated from the phones, allowing for initial market deployment of the sensors through third-party products, such as sleeves, that could be added to existing phones” (U.S. Department of Homeland Security, 2011a)

“This use of third-party accessory products is intended to speed up the technology’s commercial availability so that people can begin using the Cell-All applications with their current phones before integrated sensors are fully operational and readily available. At a September 2011 live test and demonstration of second-generation prototypes at the Los Angeles Fire Department’s Frank Hotchkin Memorial Training Center, Synkera’s prototype was already on the market and NASA’s sensor was awaiting clearance for public release.”

“DHS presentations at this event conveyed that next generation, sensor-embedded phones would roll out gradually over the next few years and, as with cameras in phones [Rhevision], would soon become standard” (U.S. Department of Homeland Security, 2011a).

In Rhevision’s solution [Rhevision is a third-party contractor for the *Cell-All* initiative], the company has replaced the camera lens in a cell phone with a microfluidic lens that still functions as a camera but uses a microscope to focus on the surface of a chemical sensor. Cell Phone Chemical Sensing Program Shows Progress, Official Says <https://www.defensedaily.com/cell-phone-chemical-sensing-program-shows-progress-official-says/homeland-security/>

A tiny silicon chip that... detect[s] dangerous airborne chemicals and alert emergency responders through the cell phone network. “Cell phones are everywhere people are,” said Michael Sailor, professor of chemistry and biochemistry at the University of California, San Diego who heads the research effort. [E]mbedded in many cell phones... the new type of sensor could map ... hazards like gas leaks or the deliberate release of a toxin.

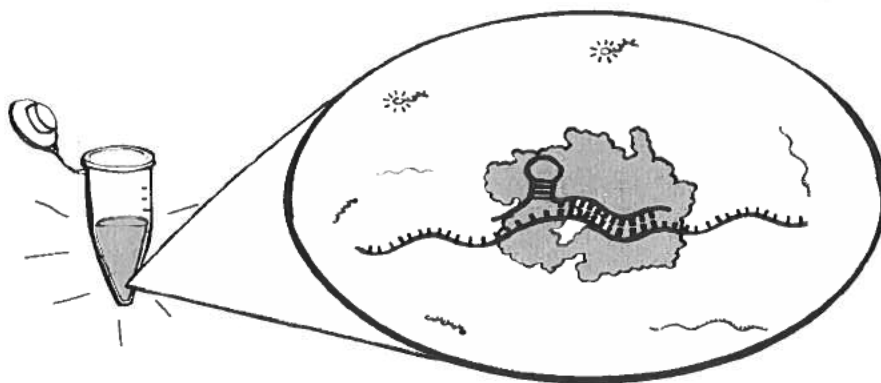
A *megapixel* camera smaller than the head of a pencil eraser captures the image from the array of nanopores in Sailor’s chip. The lens, developed by Rhevision, uses fluid rather than bulky moving parts to change its shape, and therefore focus.

“The beauty of this technology is that the number of sensors contained in one of our arrays is determined by the *pixel* resolution of the cell phone camera. With the *megapixel* resolution found in cell phone cameras today, we can easily probe a million different spots on our silicon sensor simultaneously. So, we don’t need to wire up a million individual sensors,” Sailor said. “We only need one.

Yu-Hwa Lo, professor of electrical and computer engineering at UC San Diego’s Jacobs School of Engineering and founder of Rhevision developed the lens. The project is funded by the Department of Homeland Security. *Cell Phone Sensors for Toxins Developed at UC San Diego: Tiny sensors tucked into cell phones could map airborne toxins in real time.* Source: <https://www.understandingnano.com/cell-phone-sensors-toxins.html>

Rhevision’s schematics for a cell phone camera is identified and described **243 times** for Apple, Samsung, and LG, in Plaintiff-Appellant’s Preliminary Infringement Contentions Charts.

**CMDC Device Camera Sensor for Biological Detection:** “In the diagnostic test (below), a patient sample is mixed with CRISPR Cas13 proteins (purple) and molecular probes (green) which fluoresce, or light up, when cut. When coronavirus RNA is present in the sample, it prompts the CRISPR proteins to snip the molecular probes, causing the whole sample to emit light. This fluorescence can be detected with a cell phone camera.” (*Image courtesy Science at Cal*). The COVID-19 virus is perceived as a biological weapon of mass destruction (BWMD).



Therefore, as reiterated below, the sensor for CBR detection is the *megapixel* camera sensor located inside each of the Defendants' allegedly infringing smartphones:

- ❖ Apple iPhone 12; Main camera: Dual - 12 MP [*Megapixel*], f/1.6, 26mm (wide), 1.4 $\mu$ m, dual pixel PDAF, OIS - 12 MP [*Megapixel*], f/2.4, 13mm, 120° (ultrawide), 1/3.6"
- ❖ Apple iPhone 11; Main camera: Dual - 12 MP [*Megapixel*], f/1.8, 26mm (wide), 1/2.55", 1.4 $\mu$ m, dual pixel PDAF, OIS - 12 MP [*Megapixel*], f/2.4, 120°, 13mm (ultrawide), 1/3.6"
- ❖ Apple iPhone XS; Main camera: Dual - 12 MP [*Megapixel*], f/1.8, 26mm (wide), 1/2.55", 1.4 $\mu$ m, dual pixel PDAF, OIS - 12 MP [*Megapixel*], f/2.4, 52mm (telephoto), 1/3.4", 1.0 $\mu$ m, PDAF, OIS, 2x optical zoom
- ❖ Apple iPhone SE; Main camera: 12 MP [*Megapixel*], f/2.2, 29mm (standard), 1/3", 1.22 $\mu$ m, PDAF. Selfie camera: 1.2 MP [*Megapixel*], f/2.4, 31mm (standard)
- ❖ Apple iPhone 8; Main camera: 12 MP [*Megapixel*], f/1.8, 28mm (wide), PDAF, OIS. Selfie camera: 7 MP [*Megapixel*], f/2.2
- ❖ Apple iPhone 7; Main camera: 12 MP [*Megapixel*], f/1.8, 28mm (wide), 1/3", PDAF, OIS. Selfie camera: 7 MP [*Megapixel*], f/2.2, 32mm (standard)
- ❖ Samsung Galaxy S21; Main Camera: Triple: 12 MP [*Megapixel*], f/1.8, 26mm (wide), 1/1.76", 1.8 $\mu$ m, Dual Pixel PDAF, OIS. 64 MP [*Megapixel*], f/2.0, 29mm (telephoto), 1/1.72", 0.8 $\mu$ m, PDAF, OIS, 1.1x optical zoom, 3x hybrid zoom. 12 MP [*Megapixel*], f/2.2, 13mm, 120° (ultrawide), 1/2.55" 1.4 $\mu$ m, Super Steady video.
- ❖ Samsung Galaxy S20; Main Camera: Triple: 12 MP [*Megapixel*], f/1.8, 26mm (wide), 1/1.76", 1.8 $\mu$ m, Dual Pixel PDAF, OIS. 64 MP [*Megapixel*], f/2.0, 29mm (telephoto),

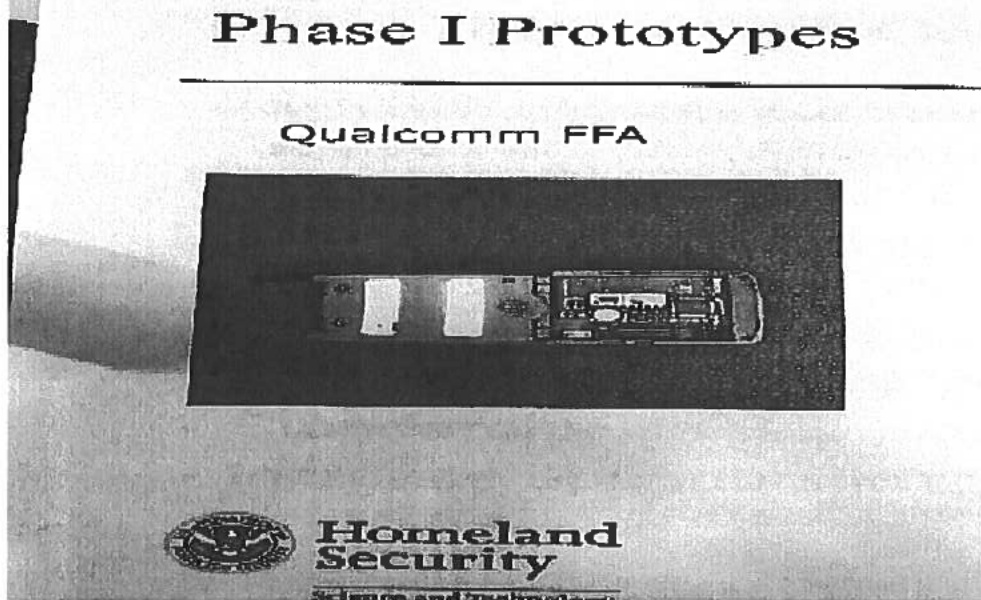


1/1.72", 0.8µm, PDAF, OIS, 1.1x optical zoom, 3x hybrid zoom. 12 MP [*Megapixel*], f/2.2, 13mm, 120° (ultrawide), 1/2.55" 1.4µm, Super Steady video

- ❖ Samsung Galaxy S10; Main Camera: Triple: 12 MP [*Megapixel*], f/1.5-2.4, 26mm (wide), 1/2.55", 1.4µm, Dual Pixel PDAF, OIS. 12 MP [*Megapixel*], f/2.4, 52mm (telephoto), 1/3.6", 1.0µm, AF, OIS, 2x optical zoom. 16 MP [*Megapixel*], f/2.2, 12mm (ultrawide), 1/3.1", 1.0µm, Super Steady video.
- ❖ Samsung Galaxy S9; Main Camera: 12 MP [*Megapixel*], f/1.5-2.4, 26mm (wide), 1/2.55", 1.4µm, dual pixel PDAF, OIS. Selfie camera: Dual - 8 MP [*Megapixel*], f/1.7, 25mm (wide), 1/3.6", 1.22µm, AF. 2 MP [*Megapixel*] (dedicated iris scanner camera).
- ❖ Samsung Galaxy S8; Main Camera: 12 MP [*Megapixel*], f/1.7, 26mm (wide), 1/2.55", 1.4µm, dual pixel PDAF, OIS. Selfie camera: Dual - 8 MP [*Megapixel*], f/1.7, 25mm (wide), 1/3.6", 1.22µm, AF. 2 MP [*Megapixel*] (dedicated iris scanner camera).
- ❖ Samsung Galaxy Note8; Main Camera: Dual - 12 MP [*Megapixel*], f/1.7, 26mm (wide), 1/2.55", 1.4µm, dual pixel PDAF, OIS. 12 MP [*Megapixel*], f/2.4, 52mm (telephoto), 1/3.6", 1.0µm, AF, OIS, 2x optical zoom. Selfie camera: Dual - 8 MP [*Megapixel*], f/1.7, 25mm (wide), 1/3.6", 1.22µm, AF. 2 MP [*Megapixel*] (dedicated iris scanner camera).
- ❖ LG V60; Main Camera: Triple: 64 MP [*Megapixel*], f/1.8, 27mm (standard), 1/1.72", 0.8µm, Dual pixel PDAF, OIS. 13 MP [*Megapixel*], f/1.9, 12mm (ultrawide), 1/3.4", 1.0µm. 0.3 MP [*Megapixel*], TOF 3D, f/1.4, (depth).
- ❖ LG V50; Main Camera: Triple: 12 MP [*Megapixel*], 27mm (wide), f/1.5, 1/2.55", 1.4µm, dual pixel PDAF, 3-axis OIS. 12 MP [*Megapixel*], 52mm (telephoto), f/2.4, 1/3.4", 1.0µm, 2x optical zoom, PDAF, OIS. 16 MP [*Megapixel*], 16mm (ultrawide), f/1.9, 1/3.1", 1.0µm, no AF.
- ❖ LG G8; Main Camera: Dual or Triple: 12 MP [*Megapixel*], f/1.5, 27mm (standard), 1/2.55", 1.4µm, dual pixel PDAF, OIS. 16 MP [*Megapixel*], f/1.9, 16mm (ultrawide), 1/3.1", 1.0µm, no AF. 12 MP [*Megapixel*], 52mm (telephoto), f/2.4, 1.0µm, 2x optical zoom, dual pixel PDAF, OIS
- ❖ LG G7; Main Camera: Dual: 16 MP [*Megapixel*], f/1.6, 30mm (standard), 1/3.1", 1.0µm, PDAF, Laser AF, OIS. 16 MP [*Megapixel*], f/1.9, 16mm (ultrawide), 1/3.1", no AF
- ❖ LG G6; Main Camera: Dual: 13 MP [*Megapixel*], f/1.8, 30mm (standard), 1/3.1", 1.12µm, PDAF, 3-axis OIS. 13 MP [*Megapixel*], f/2.4, 12mm (ultrawide), no AF
- ❖ LG V30; Main Camera: Dual: 16 MP [*Megapixel*], f/1.6, 30mm (standard), 1/3.1", 1.0µm, PDAF, Laser AF, 3-axis OIS. 13 MP [*Megapixel*], f/1.9, 12mm (ultrawide), no AF

Qualcomm's "Built-in Embedded", and NASA's "Nanosensor-Embedded Sleeve", are identified and described *324 times* for Apple, Samsung, and LG in Plaintiff-Appellant's Preliminary Infringement Contentions Charts

**DHS Cell-All Chemical Sensors:** Qualcomm first introduced a "built-in, embedded" chemical sensor for the smartphone (picture below). NASA creating a nanosensor-embedded "sleeve" for phones (picture below); that will detect chemicals ... and communicate those readings via Bluetooth, or other protocols, to phones (Li, 2011; Synkera Technologies, 2011)."



NASA's Subcontractor for the NODE+ is identified and described *135 times* for Apple, Samsung, and LG, in Plaintiff-Appellant's Preliminary Infringement Contentions Charts [The Claims Court erred when the Court said a subcontractor's work does not qualify under 28 U.S.C. § 1498(a), and that the NODE+ addition expanded the scope of Plaintiff's infringement claim, thus, violating the Court's order].

**Interchangeable Sensors:** Building on the system he developed with NASA for the DHS Cell-All project, George Yu of Genel Systems Inc., created his NODE+ platform — a cylinder not much bigger than a thumb that can transmit data from sensors to a smartphone or another smart device or store it to be uploaded to any computer. The NODE+ operates independently of the cell phone and transmits the data it gathers using Bluetooth wireless technology. Variable converted off-the-shelf sensors, such as infrared thermometers, color referencers, motion sensors and barcode readers, into *interchangeable modules* that can be snapped onto either end of smartphone or other smart device, so two modules can be used simultaneously. There is a module for carbon dioxide detection and another that senses carbon monoxide, nitric oxide and other gases. "Using a common platform for multiple sensor modules, you save a lot of money," Yu says. The NODE+ is compatible with Android and Apple smart devices.



The NODE+ platform... outfitted with an array of different sensor modules and can store data or transmit it to a smart device using Bluetooth technology. *Credits: Variable Inc.*

How is it possible the Claims Court can boldly state, without convection, "Mr. Golden failed to identify where at least two claimed elements were found in the accused devices as required under the Claims Court's patent rules: sensors for hazardous materials and locking mechanisms", when collectively the sensors were identified over seven hundred [702] times throughout Plaintiff's preliminary infringement contentions charts for Apple, Samsung, & LG.

**The Claims Court Clear Error of Judgement: Plaintiff Fail to Identify Where the “Locking Mechanism” is Located in Each of the Accused Devices as Required Under the Claims Court Patent Rule 4**

The Federal Circuit’s in *Kearns v. General Motors Corporation* 94 F.3d 1553 (Fed. Cir. 1996), noted that: “each patent is, as a matter of law, ‘directed to a separate invention’ and ‘two independent and distinct inventions cannot be claimed in the same patent.’ *Id.* (citing 35 U.S.C. §§ 101, 121.) ... *Kearns* takes the view that each patent creates a unique set of ‘transactional facts’” ... The Court continued:

“[e]ach patent establishes an independent and distinct property right ... Each patent asserted raises an independent and distinct cause of action ... In the case at bar, it is not possible to show that the identical issue was presented ...; for each patent, by law, covers an independent and distinct invention. Further, infringement must be separately proved as to each patent [claim] ...”

806.03 Single Embodiment, Claims Defining Same Essential Features [R-08.2012]:

“[w]here the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are not directed to distinct inventions; rather they are different definitions of the same disclosed subject matter, varying in breadth or scope of definition.”

Plaintiff-Appellant’s locking mechanism is a single disclosed embodiment of the Communicating, Monitoring, Detecting, and Controlling (CMDC) invention:

In the first instance, the locking function is activated when the “threat” is a detection of at least a chemical, biological, or radiological contamination.

In this first instance, the single embodiment of the invention only appears in the asserted claim 1 of the '497 patent, and claim 10 of the '752 patent; identified and described under the "doctrine of equivalents" in each of the six (6) allegedly infringing smartphones of Apple; the six (6) allegedly infringing smartphones of Samsung; and, the six (6) allegedly infringing smartphones of LG. This single embodiment of the invention varies in breadth and scope of definition to the single disclosed embodiment of the invention as described below in the second instance.

In the second instance, the locking function is activated when the "threat" is an unauthorized person who has made several unsuccessful attempts at unlocking the monitoring equipment; the communication device; the new and improved cell phone; or, the Defendants' allegedly infringing smartphones.

In this second instance, the single embodiment of the invention appears in claims 1, 2, 4, 7, & 8 of the '189 patent; claims 13, 14, 16, 19, 20, 22, & 23 of the '439 patent and, claims 4, 5, & 6 of the '287 patent; identified and described under the provisions of "direct infringement" in each of the six (6) allegedly infringing smartphones of Apple; the six (6) allegedly infringing smartphones of Samsung; and, the six (6) allegedly infringing smartphones of LG. This single embodiment of the invention varies in breadth and scope of definition to the single disclosed embodiment of the invention as described above in the first instance.

The Government identified claim 1 of the '497 patent, and claim 10 of the '752 patent [first instance] as being deficient, but applied that claim of deficiency over to claims 1, 2, 4, 7, & 8 of the '189 patent; claims 13, 14, 16, 19, 20, 22, & 23 of the '439 patent and, claims 4, 5, & 6 of the '287 patent [second instance], and even farther, to include the asserted claims 3, 5, 6, & 9 of the '189 patent; and, claims 15, 17, 18, & 21 of the '439 patent that does not include a

“locking mechanism” as a single disclosed embodiment of the invention. The two embodiments “are different definitions of the same disclosed subject matter, varying in breadth or scope of definition.” 806.03 *Single Embodiment, Claims Defining Same Essential Features [R-08.2012]*

The Claims Court Clear Error of Judgement is assuming, *without discovery*, that the integration of the alleged infringing products of the Defendants; integrated with the DHS T.R.U.S.T. CBR sensing brick, and the DHS MATTS integrator/gateway device [claim 1 of the ‘497 patent, and claim 10 of the ‘752 patent], does not directly infringe, or infringe under the “doctrine of equivalents”.

The Claims Court Clear Error of Judgement is relying on the Government’s interpretation of Plaintiff-Appellant’s single embodiment [locking mechanism] of the invention identified in at claim 1 of the ‘497 patent, and claim 10 of the ‘752 patent to describe the single embodiment locking mechanism in at claims 1, 2, 4, 7, & 8 of the ‘189 patent; claims 13, 14, 16, 19, 20, 22, & 23 of the ‘439 patent and, claims 4, 5, & 6 of the ‘287 patent. See 806.03, “different definitions of the same disclosed subject matter”.

The Claims Court Clear Error of Judgement is tying the asserted claims 3, 5, 6, & 9 of the ‘189 patent; and, claims 15, 17, 18, & 21 of the ‘439 patent, that does not include a “locking mechanism” as a single disclosed embodiment of the invention, to claim 1 of the ‘497 patent, and claim 10 of the ‘752 patent [first instance] and dismissing the claims for failure to meet the requirements of local patent rule 4. Plaintiff-Appellant’s patent claims were dismissed because he fails to identify locking mechanism that certain of his patent claims 3, 5, 6, & 9 of the ‘189 patent; and, claims 15, 17, 18, & 21 of the ‘439 patent does not call for.

The Claims Court Clear Error of Judgement is altering the requested DHS S&T BAA07-10; *Cell-All Ubiquitous Biological and Chemical Sensing* initiative to include a request for a

locking mechanism. The material components as outlined in the specifications is the integration of chemical and biological [second phase will include radiological and explosive] sensors with a host device such as a cell phone; to form a *ubiquitous* sensing communications network. All twenty-five (25) asserted patent claims; claim 1 of the '497 patent; claim 10 of the '752 patent; claims 1-9 of the '189 patent; claims 13-23 of the '439 patent and, claims 4-6 of the '287 patent, have the three basic requirements [host device; sensors/detectors; communications network] of the *Cell-All* initiative. It was the Claims Court that made Plaintiff's "locking mechanism" a vital component needed to prove direct infringement under 28 U.S.C. § 1498(a) only to falsely claim Plaintiff did not comply with the Court order of identifying the "locking mechanism".

The Claims Court Clear Error of Judgement is ordering Plaintiff to prove direct infringement of a component (i.e., locking mechanism) not requested in the *Cell-All* specs, and therefore does not fall under the jurisdiction of the Claims Court. The Claims Court erred when the Court ordered Plaintiff to prove direct infringement of Plaintiff's "locking mechanism" under 35 U.S.C. § 271(a) as a necessary predicate to proving direct infringement under 28 U.S.C. § 1498(a). *Zoltek III*, [overturned]

## CONCLUSION

Plaintiff-Appellant is not asking the Federal Circuit to do anything special for Plaintiff because Plaintiff is a *Pro Se* litigant. Plaintiff-Appellant is asking the Federal Circuit to not be complicit with the Claims Court in their efforts to destroy all possibilities of Plaintiff being compensated for his contribution toward building our Nation's economy and mitigating terrorism activity.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that an original version and three (3) copies of the foregoing “INFORMAL PETITION FOR REHEARING *EN BANC*: CASE NUMBER 22-1196” was sent on September 19, 2022 via U.S. Postal service “priority express mail”, to: CLERK’S OFFICE, UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, 717 MADISON PLACE, N.W., WASHINGTON, D.C. 20439

The petition complies with the 15 typewritten double-spaced pages requirement and an attached copy of the opinion / judgement Plaintiff-Appellant is petitioning the court to review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Larry Golden", is written over a horizontal line.

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**United States Court of Appeals  
for the Federal Circuit**

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**LARRY GOLDEN, DBA ATPG TECHNOLOGY,  
LLC,**  
*Plaintiff-Appellant*

v.

**UNITED STATES,**  
*Defendant-Appellee*

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2022-1196

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Appeal from the United States Court of Federal Claims  
in No. 1:13-cv-00307-EGB, Senior Judge Eric G. Bruggink.

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**JUDGMENT**

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THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

**AFFIRMED**

FOR THE COURT

September 8, 2022  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This disposition is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**LARRY GOLDEN, DBA ATPG TECHNOLOGY, LLC,**  
*Plaintiff-Appellant*

v.

**UNITED STATES,**  
*Defendant-Appellee*

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2022-1196

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Appeal from the United States Court of Federal Claims  
in No. 1:13-cv-00307-EGB, Senior Judge Eric G. Bruggink.

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Decided: September 8, 2022

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LARRY GOLDEN, Greenville, SC, pro se.

GRANT DREWS JOHNSON, Commercial Litigation  
Branch, Civil Division, United States Department of Jus-  
tice, Washington, DC, for defendant-appellee. Also repre-  
sented by BRIAN M. BOYNTON, GARY LEE HAUSKEN.

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Before DYK, TARANTO, and STOLL, *Circuit Judges*.

PER CURIAM

Larry Golden appeals an order of the United States Court of Federal Claims (“Claims Court”) dismissing his patent infringement claims against the United States (“government”). *We affirm.*

#### BACKGROUND

Mr. Golden owns a family of patents concerning a system for locking, unlocking, or disabling a lock upon the detection of chemical, radiological, and biological hazards.<sup>1</sup> In May 2013, Mr. Golden brought suit against the government under 28 U.S.C. § 1498(a), alleging that the Department of Homeland Security infringed his patents by soliciting proposals for the development of cellular devices through its “Cell-All” initiative. Mr. Golden claims that he responded to the solicitation along with cell phone manufacturers such as Apple and Samsung. The Claims Court interpreted Mr. Golden’s complaint to allege that the government “continues to fund development of these devices to this day,” and that through its efforts, it has “caused other manufacturers to develop, produce, and commercialize devices, such as cell phones, that infringe on [Mr. Golden’s] patents.” *Golden v. United States*, No. 13-307C, at 2 (Fed. Cl. Nov. 10, 2021). Over the next eight years, Mr. Golden repeatedly amended his complaint to include additional patent claims and to accuse additional devices manufactured by third parties, allegedly at the government’s behest.

On March 29, 2021, the Claims Court issued a scheduling order directing the parties to proceed with claim construction based on Mr. Goldin’s sixth amended complaint. The scheduling order directed Mr. Golden to “file [his]

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<sup>1</sup> The patents and claims now at issue in this case are U.S. Patent Nos. 7,385,497 (claim 1); 8,106,752 (claim 10); 9,096,189 (claim 1); 9,589,439 (claim 23); and 10,163,287 (claim 5).

preliminary disclosure of infringement contentions (via e-mail, not by filing with the court) (Patent Rule 4) on or before May 7, 2021.” Supp. App’x 1181. The Claims Court’s rules require:

(c) a chart identifying where each element of each asserted claim is found within each accused product, process, or method, including the name and model number, if known;

Fed. Cl. Pat. R. 4 (emphasis added).

Mr. Golden timely filed his preliminary infringement contentions. The government moved to strike these contentions as deficient and to dismiss the case in its entirety, arguing that Mr. Golden failed to identify where at least two claimed elements were found in the accused devices as required under the Claims Court’s patent rules: sensors for hazardous materials and locking mechanisms. The Claims Court agreed with the government that Mr. Golden’s contentions failed to identify where these claim limitations were found in the accused products. The Claims Court granted the government’s motion to strike but gave Mr. Golden an opportunity to resubmit infringement contentions that would comply with the court’s rules.

Mr. Golden filed revised contentions in August 2021. The government again moved to strike and dismiss, arguing that Mr. Golden failed to correct the previously-identified deficiencies. The Claims Court agreed and dismissed the complaint pursuant to Rule 41(b) of the Rules of the Claims Court (“RCFC”) for failure to comply with a court order. Mr. Golden appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(3).

#### DISCUSSION

We review the Claims Court’s dismissal of a case pursuant to RCFC 41(b) for an abuse of discretion. *Claude E. Atkins Enters., Inc. v. United States*, 899 F.2d 1180, 1183 (Fed. Cir. 1990). “[T]he trial court’s exercise of discretion

will not be disturbed on appeal unless upon a weighing of relevant factors we are left with a definite and firm conviction that the court below committed a clear error of judgment.” *Id.* (internal quotations and citations omitted).

The court’s scheduling order required Mr. Golden to file his preliminary disclosure of infringement contentions in compliance with Patent Rule 4 of the Claims Court. In turn, Patent Rule 4 required Mr. Golden to prepare “a chart identifying where each element of each asserted claim is found within each accused product, process, or method.” Supp. App’x 1004. Despite having eight years to develop his case and two chances to provide infringement contentions compliant with Patent Rule 4, Mr. Golden failed to identify in the accused products at least two key elements claimed in his patents: the sensor and locking limitations.<sup>2</sup>

On appeal, Mr. Golden does not argue that the accused Apple and Google devices themselves include the sensor and locking limitations. Instead, he argues that the Claims Court overlooked other devices—“the sensors and detectors of the Cell-All third-party contractors (NASA, Qualcomm, Seacoast, Rhevision, and Synkera)”—and that the Claims Court erred in “[f]ail[ing] to consider sensors and detectors

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<sup>2</sup> The Claims Court expressly identified deficiencies regarding both the sensor and locking limitations in Mr. Golden’s contentions for claim 1 of the ’497 patent, claim 10 of the ’752 patent, claim 23 of the ’439 patent, and claim 5 of the ’287 patent. *Golden v. United States*, No. 13-307C, at 7-11 (Fed. Cl. Nov. 10, 2021). The only other asserted claim remaining in the case is claim 1 of the ’189 patent. While the Claims Court did not address that claim expressly, the Claims Court identified deficiencies in the infringement contentions with respect to the locking limitation for claim 2 of the ’189 patent, *id.* at 9–10, and Mr. Golden has not argued to us that claim 1 is materially different from claim 2 regarding those deficiencies.

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that are not ‘native’ to the manufacture of Apple and Samsung products.” Appellant’s Br. 2. Mr. Golden failed to even mention some of these other devices in his infringement contentions, and more importantly, he does not allege that these devices have actually been combined by the government (or contractors acting on its behalf) with the accused devices into a device or system that would infringe his asserted patent claims. Thus, Mr. Golden has not shown that the Claims Court erred in its decision. We have considered Mr. Golden’s remaining arguments and find them unpersuasive.

**AFFIRMED**



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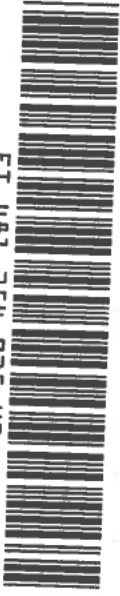
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