UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROWLAND J. MARTIN, JR.)
)
)
VS.)
)
)
UNITED STATES)

Case: 1:23-cv-02758 JURY DEMAND
Assigned To : Kelly, Timothy J.
Assign. Date : 9/18/2023
Description: Pro Se Gen. Civ. (F-DECK)

COMPLAINT

Comes now Rowland J. Martin, plaintiff in the above styled case, on his claims (1) for declaratory relief as authorized in the Federal Declaratory Judgment Act (FDJA) in 28 U.S.C.A. §2201, (2) for monetary damages pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b) and the Little Tucker Act, 28 USC 1346 (a) (2); and (3) for a transfer of jurisdiction pursuant to 28 USC 1631 any Big Tucker Act claims exceeding the jurisdiction of the district court to the U.S. Court of Federal Claims for further proceedings pursuant to.28 U.S. Code § 1491, in support of which the following is shown:

INTRODUCTION

This is a case for declaratory relief, for damages against the United States, and for a transfer of jurisdiction to the U.S. Court of Federal Claims for injuries arising from torts and takings of property without compensation in excess of all jurisdiction by court personnel employed by the government through the U.S. District Court for the Western District of Texas. The case is similarly situated with, and arises against the background of other litigation in this court by plaintiffs including the United States and various private

parties which seeks to vindicate the jus cogens norm of equal justice under the law which holds that non one is above the law, nor is anyone beneath its protection.

JURISDICTION

The Court has federal question and patent related jurisdiction under the 28 USC 1331 and 1338, respectively.

VENUE

Venue is proper in the District of Columbia where the seat of government for the defendant, and the claims processing agent, the Administrative Office of the United States Courts, are located. 28 USC 1391.

PARTIES

The plaintiff party is Rowland J. Martin whose address is 951 Lombrano St. San Antonio, Tx 78207.

The defendant party is the United States of America whose legal representative, the U.S. Department of Justice, is located at 950 Pennsylvania Avenue, NW Washington, DC 20530-0001.

STANDING

The exhaustion of administrative remedies which is required as a condition precedent to a FTCA suit for monetary damages was discharged by the issuance of a right to sue letter by the Administrative Office of the United States Courts on March 15, 2023. Equitable tolling of the period for filing suit applies by virtue of the presentation of a claim on or about September 13, 2023 arising a common nucleus of operative facts. The statute of limitations for Tucker Act claims was equitably tolled by the judgment of

dismissal without prejudice issued by the U.S. Court of Federal Claims in *Martin v. U.S.*, Case 21-1987 (C.F.C., April 2022). Categorical judicial branch immunity is expressly disclaimed. Cf. 42 USC 1988(b).

STATEMENT OF THE FACTS

A. Transactional Overview

In 2021, Martin brought a Tucker Act claim against the government in the U.S. Court of Federal Claims in *Martin v. US* seeking compensation for an injury to property rights, including certain patent related property rights, caused by an order of a U.S. District Judge that was later vacated by the U.S. Court of Appeals for the Fifth Circuit in 2015. The CFC issued a judgment of dismissal without prejudice for want of jurisdiction from which an appeal was taken in 2022 to the U.S. Court of Appeals for the Federal Circuit.

One of the grounds for dismissal was a supposed lack of jurisdiction over patent related subject matter. During the pendency of the Federal Circuit appeal, Martin removed to federal court two state court actions with a common nucleus of operative fact with the Tucker Act claim brought in the CFC. See, 28 USC 1443 and 1454.

Subsequently, in two related proceedings, court personnel employed by the Western District of Texas, including a district judge and the clerk of the court, caused the removal action to be remanded to state court, and then caused the notice of appeal for one of the removal actions to be transmitted to the Fifth Circuit rather than to the Federal Circuit as indicated in the notice. But see, 28 USC 1454.

Later, court personnel including a district judge and the clerk of the court, caused the other removal action, *Bravenec v. Martin*, Case No. 22-522, to be remanded to state court after the docketing of an appeal to the Federal Circuit had already taken place. But see, 28 USC 1443.

Martin filed a timely notice of claims for compensation under authority of the FTCA to the Administrative Office of the United States Courts on September 16, 2022 and on September 13, 2023, respectively. The AO issued a right to sue letter on March 15, 2023.

Martin maintains that the actions of court personnel are not only compensable under the FTCA as torts and under the Tucker as takings without compensation, but that they offend the fundamental principle that no one is above the law because the orders of remand in question were committed facially in excess of all jurisdiction.

Further, it is shown that behavior of the court personnel in excess of all jurisdiction by court personnel had the effect of instituting a system of judicial prior restraints, and that the transactional and financial chilling effects of the resulting prior restraints are themselves putatively compensable under the FTCA and the Tucker Act.

For reasons explained below in Parts B, C D and E, the case is an appropriate vehicle with which to vindicate the rule of law that no one is above the law. The major difference between the principles that undergird this case and those that undergird the government's case in *U.S. v. Trump*, Case I:23-cr-00257-TSC (D.C.D.C., filed August 1, 2023) is that the actions in question here were committed by judicial branch employees of the defendant.

Ordinarily, damages claims against judicial branch personnel are eligible for qualified immunity based on the judicial nature defense applied by the Supreme Court in *Mireles v. Waco*. An intervening decision by this court in *National Veterans Legal Services Program, et al. v. United States*, 235 F. Supp. 3d 32, 37-38 (D.D.C. 2017) aff'd No. 19-1081 (Fed. Cir. 2020), and its affirmance by the Federal Circuit, teach that categorical immunity is not necessarily available where sovereign immunity has been waived. The same is true apparently where a principal officer has acted outside the outer perimeter of his or her authority.

B. The "Spectrum Curtain" Problem

Here, the *National Veterans* supplies persuasive authority for avoidance of constitutional error, and for compensating the financial chilling effects of a de facto system of prior restraints in excess of all jurisdiction, based on protected petitioning speech and expressive conduct. for problem solving related to a critical aspect of the digital divide relating to spectrum. In short, Martin's conduct and subjective motivation at all times relevant to the litigation was directed to the discovery of solutions for what can be described as the "Spectrum Curtain" problem and towards transformative innovation to implement those solutions.

"Spectrum Curtain" is the terminology that Martin devised to model the legacy of scientific, regulatory and transactional barriers that inhibit the use of wireless technologies to promote the free flow of digital public goods to and from under-connected "digital divide" communities. As revealed by the COVID 19 pandemic, the problem is global in scale and poses a direct threat to the lives of affected

populations, to sustainable development in communities they occupy and to their long term capacity to secure environmental justice.

Martin acquired skills and subject matter expertise relevant to the bridging of the digital divide through a combination of academic preparation, and a professional career in government, broadcasting, cable television and academia. Cf., Federal Rules of Evidence, Rule 702. He first completed his studies at the Princeton University's School of Public And International Affairs, and the University of Texas School of Law.

At the U.S. Federal Communications Commission (FCC), he served as a legal adviser to the FCC's Small Business Advisory Committee from 1992 - 1994, coinciding with the enactment by Congress of the Budget Reconciliation Act of 1993. The 1993 Act authorized the FCC to implement competition bidding for spectrum licenses with measures to encourage small business participation. In that capacity, he served as a member of the team that launched the first spectrum auction in the world.

Martin later worked in television broadcasting at NBC-4 in New York, N.Y. from 1994 - 1996, and in cable television after the passage of the Telecommunications Act of 1996 from 1996 - 2004. The 1996 Act authorized cable operators to offer telephone services in competition with the regional bell operating companies. From 2006 - 2010, he worked as an entertainment law instructor for the Music Business Program of San Antonio College Radio, TV and Film Department, during the height of the *Napster* era when the use of peer-to-peer networks led to massive copyright infringement problems. Through these experiences, Martin gained an in depth knowledge and insight into the nation's broadband infrastructure for cybermedia commerce.

C. Transformative Innovation Applications

Relying on specialized experience in telecommunications, broadcasting and cable, Martin applied for patent protection the method specified in USPTO #13/026, 245, "A System for Wireless Cybermedia Services." The specification describes a multichannel multimedia distribution apparatus for voice, video and data services, similar to the "triple pay" offered by cable system operators, but at a dramatically reduced deployment and overhead costs. Application '246 went involuntarily abandoned in January 2021 but remains eligible for pro forma revival based on a petition for revival and payment of the filing fee. More recently, in an application accepted by the Patent and Trademark office for filing on April 16, 2023, he described the article of manufacture described in USPTO #63/577, 251 as an "Isotropic Loop Array Antenna" for experimentation with chiral wave propagation and omnidirectional broadcasting in the THz band.

In one embodiment, the wireless cybermedia platform has five core elements that improve upon IEEE 802.11 and 802.16 protocols so as to disrupt the "Spectrum Curtain" by the empowering community stakeholders to participate as vendors in the supply chains that serve their communities:

- A "Group Shared Access" platform for utilizing shared spectrum resources in the Citizens Broadband Radio Services and other frequency bands designated for shared spectrum usage.
- Software defined radio (SDR) implementations to support multi-modal voice, video and data services delivery with speeds in the GBPS - TBPS range.
- A Cloud-Based Computing Platform for virtual headend and dynamic switching functions.
- A "Co-Existential Intelligence Algorithm to implement task auctions to mitigate access disparities as well as to enable "commodity exchange" uses by network subscribers.

- Quantum Communication Devices to support advanced "first mile" connectivity - e.g. a THz transceiver device for far field transmissions and multi-hop mesh network capabilities to support small cell connectivity with adjacent middle mile infrastructures.

The fundamental working assumption is that WICI-tech can be packaged and deployed for small cell implementations in the form of a modular micro-data center or micro-base station. In the latter scenario, WICI technology could also be licensed for manufacturing and distribution in 10' x 20' shipping containers on terms that improve competition in the prevailing modular micro data center market.

The anticipated value-adding benefit of these inventions is to enable experimentation with optimized deployment of shared spectrum networks in the U.S. and abroad. In short, the transformative aspect of these innovations is the introduction of a platform for "Cap and Trade Spectrum Commerce" in the global broadband marketplace on terms that replicate the known capping, trading and multiplier effect benefits of the global market for carbon emissions.

In conjunction with his filing for patent protection, Martin also secured a non-exclusive spectrum license for the so-called innovation band in the 3650- 3700 MHz band, prior to the refarming of that band as part of the Citizens Broadband Radio Service that is currently authorized for the 3550 - 3700 MHz band. In the FCC's proceeding to authorize the CBRS operations, Martin objected to the FCC's implementation plan on the ground that the enlargement of the then-proposed service area from census tracts to the metropolitan statistical areas implicated protected interests of new market entrants seeking priority access licenses through spectrum auctions.

The less restrictive alternative was to include provisions for priority access vouchers to afford community based providers with the opportunity to purchase priority spectrum rights on demand from Spectrum Access System administrators for the CBRS band. The comment was dismissed without consideration on the merits due to a technicality coinciding with the government shutdown of 2019 under authority of an internal directive that was unsupported by any formal notice and comment rulemaking proceeding.

Given recent experience during the COVID 19 pandemic, the wireless cybermedia platform has foreseeable GDP multiplier benefits for under-connected communities, while also enabling "Sustainability Cybernetics" to manage social costs from environmental degradation and disaster events. In 2021, he founded the MIle ONe Broadband Consortium, Inc., to serve as a spectrum rights and intellectual property trust for technological innovation. In this regard, Martin has bona fide patent related investment expectations. For reasons explained below, his patent related investment expectations at this stage consist of the opportunity to monetize claims against the government as a means to fund patent prosecution and proof of concept market trials for the inventions discussed above.

D. Governmental Prior Restraints

The alleged system of governmental prior restraints that has hindered the reduction of the system for wireless cybermedia services to practice and its introduction into the stream of domestic and international commerce is documented in *Martin v. Bravenec*, 627 F. App'x 310 (5th Cir. 2015), cert denied, 137 S. Ct. 1137 (2016) (*Martin v. Bravenec I*), and from strategic litigation against public participation on his part that

was described in the interlocutory judgment of the Texas Fourth District Court of Appeals in *Martin v. Bravenec*, 2015 WL 2255139, (Tex. 4th Dist. 2015) (*Martin v. Bravenec II*).

As explained before, Petitioner commenced a Tucker Act suit in 2021 in the U.S. Court of Federal Claims to secure compensation for financial injuries that the government allegedly caused in connection with the breach of duty adjudicated in *Martin v. Bravenec I*. See, *Martin v. US*, Case No. 1987 2022 WL 793142 (Fed. Cl. Mar. 15, 2022), aff'd in Case 22-1810 (Fed. Cir., Feb. 10, 2023). The original complaint alleged injury to patent related investment expectations ancillary to the Fifth Circuits 2015 decree. An appeal was taken to the Federal Circuit and that court affirmed the Claims Court judgment of dismissal without prejudice of various Tucker Act claims.

In 2022, coinciding with the appeals process in Martin v. US, Martin executed the removal to federal court that forms the basis of this appeal from the district court's order of remand. Martin also took steps to place the district court on notice of his claim of patent related investment expectations:

> Defendant can show that his specification for the 'System For Wireless CyberMedia Services' is calculated in good faith to meet the need that [teh American Rescue Plan Act] identified. Considering the compelling need for a pro-competitive market economy in communications commerce, it is reasonable to recognize ARPA's recognition of operational need for information service supply chain diversity as a covered matter under the "Information Service" covenants in Article 7 of the CERD Treaty Convention..[1]

---

[1] Article 7 reads as follows: States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups. International Convention to Eliminate All Forms Of Racial Discrimination, State Dept., Treaties in Force 422-423 (June 1996).

Defendant's Consolidated Motion To Dismiss, at p. 49, filed in *County of Bexar v. Martin*, Case 5:22-cv-00374-XR, ECF 18, June 28, 2022. At the time of these events, Martin held a micro entity designation as codified by 35 USC 123, and had patent related expectation of judicial notice of patent related subject matter in a qualifying proceeding under 28 USC 1454.

On September 29, 2022, after the filing of Petitioner's consolidated motion to dismiss in *County of Bexar v. Martin*, Case 5:22-cv-00374-XR (ECF 18) on patent related grounds, the Hon. Jason Pulliam, U.S. District Court Judge, issued an order remanding *Bravenec v. Martin*, Case No. 522-JKP (remanded Sept. 29, 2022) (ECF 13) to the 285th Texas District Court, noting that the state court case "appeared to be closed" at the time of its removal.

Martin is aggrieved by the fact that Judge Pulliam acted in that case in federal court despite prior state government employment during which time he participated as a state appellate court judge in the same case, and therefore had reason to know that the case was still open. See, *Martin v. Bravenec*, No. 04-14-00483-CV (Tex. 4th Dist. COA, Order of Hon. Jason Pulliam, dated Mar. 26, 2015). This action on his part caused injury to a pending appeal on the Federal Circuit docket, *Bravenec v. Martin*, Case No. 22-2192 (Fed. Cir., dismissed Feb. 23, 2023, pet. for cert. noticed on July 13, 2023), when in fact and by rule he had not capacity to act in the first place. See, *Holland v. Florida*, Case 22-6206 (2023) (citing the Code of Conduct for U.S. Judges, Canon 3C(1)(e) (regulating conflicts of interest due to prior government employment in connection with denial of petition for rehearing noting that Justice Kagan took no part in the consideration or decision of this petition due to prior government employment).

E. Domestic Policy Considerations

The Federal Circuit in *In re Queen's University At Kingston*, 820 F.3d 1287 (Fed. Cir. 2018) (citing *Sperry v Florida*) adopted a test for attributing patent related privileges in a case such as this. Under authority of *Queen's University*, a court may inquire (1) whether there is an important patent related issue of first impression, (2) whether the privilege would be lost if review were denied until final judgment, and (3) whether immediate resolution would avoid the development of doctrine that would undermine the privilege. Id.

The issue of first impression here is whether the financial chilling effects, on patent related investment expectations, of governmental prior restraints are compensable. There is good cause to resolve that inquiry in the affirmative based on the legislative history of congressional actions in 1982, 2011, and 2018.

In 1982, the Congress used the word "Improvements" in the caption of the 1982 statute granting patent related jurisdiction in 28 USC 1925(a) to signal its intent to foreclose departures from the authorized legislative scheme as counterproductive to the implementation of "Progress Clause" objectives that it authorized. In 2011, the Congress took steps to improve the patent franchise by enacting the Leahy-Smith America Invents Act, Pub. L. No. 112-29 (2011), to adopt a "First to File" system of patent rights, and to recognize a subclass of small business entities with the "micro-entity" classification codified in 35 U.S.C. 123.

In 2018, Congress solicited improvements for the patent franchise by enacting the "Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018." Public Law No: 115-273 (2018). The SUCCESS Act legislation cis notable for

a bipartisan finding "that the United States has the responsibility to work with the private sector to close the gap in the number of patents applied for and obtained by women and minorities to harness the maximum innovative potential and continue to promote United States leadership in the global economy." Id. Public Law No. 115-273, Sec. 1(b). As a contributor to the SUCCESS Act report, Martin endorsed that finding in his comments.

The second prong of the test for privilege inquires whether the privilege would be lost if review were denied until a final judgment. Petitioner submits that the adverse effects from the loss of privilege accrued at the point of the remand to state court, and that the adverse effects will become final if review is denied until a final judgment, and both will have collateral consequences for the Petitioner's patent-related investment expectations as well as for the patent franchise.

One of several questions that policy analysts have considered in attempting to assess patent application abandonment is the "whether the inventor ran out of funds necessary to continue patent prosecution ..." See, Christopher A. Cotropia & David L. Schwartz, The Hidden Value of Abandoned Applications to the Patent System, 61 B.C. L. Rev. 2809 (2020). In this case, working with a micro entity inventor means extending privilege based on a quiet title claim that will enable a vulnerable inventor to resume patent prosecution.

The third prong of the test for privilege inquires into avoidance of disfavored doctrinal developments. In *Students for Fair Admissions v. Harvard*, the Court said "Eliminating racial discrimination means eliminating all of it." If the rule of law for the post-*Gruttner* paradigm announced in *Fair Admissions* means what the Court said it did - in "[e]eliminating racial discrimination means eliminating all of it" - the district court can

and should be held accountable for the disparity of treatment it caused between Martin as the removing party of a civil rights claims and Bravenec as the plaintiff party of an abandoned SLAPP suit. *Gulf Oil Co. v. Bernard*, 452 U.S. 89 (1981) and *Harris v. Harvey*, 605 F.2d 330 (7th Cir. 1979).

A legitimate Progress Clause rationale for avoiding constitutional error is found in the legislative history of the U.S. Senate in what might fairly be described as the Design Patent Compromise of 1993. In 1993, after a century of renewing design patent rights held by a non-assignee, the Daughters of the Confederacy, the Senate voted the renewal down. the remarks of Sen. Carol Mosely-Braun of Illinois and Sen. Howard Heflin of Alabama cited to the Declaration of Independence, and to the undesirability of conferring preferential treatment on the non-assignee party. The following year, the Senate went beyond the Design Patent Compromise of 1993 by enacting the CERD Treaty and its information services covenant.

In summary, the Design Patent Compromise of 1993, and the patent laws of 1982, 2011 and 2018, establish a legitimate nexus between entertaining quiet title relief on equal protection grounds and the Progress Clause goal of transformative innovation. Viewed from that perspective, an extension of patent related privilege is defensible on the ground that patent related issue here is "governed by Federal Circuit law [because] the issue pertains to patent law, [because] it bears an essential relationship to matters committed to the exclusive control of the Court of Appeals for the Federal Circuit by statute, [and because] it implicates the jurisprudential responsibilities of the Federal Circuit in a field within its exclusive jurisdiction." *Queen's University*, Id.

CLAIMS FOR RELIEF

First Claim for Relief:
Declaratory Relief

Martin requests relief pursuant to the Federal Declaratory Judgments Act that (a) he is the owner of a protected property interest in a purchase money lien claim encumbering the subject property of *Martin v. U.S*; (b) that he was a micro entity inventor of an abandoned but revivable patent interest in application '246, and of pending patent interest in application '255; and (c) that a taking without reasonable compensation of his spectrum license occurred in 2019, due to the dismissal of his comment in the FCC's CBRS proceeding, for which the process due is the opportunity to be heard by the FCC on the restatement of the canceled spectrum license.

Second Claim for Relief:
Monetary Damages

Martin requests a judgment against the defendant with monetary damages (a) for negligence by the government on September 29. 2022 due to actions taken unreasonably in breach of a legal duty of care; (b) for trespass on the case by the government stemming from the infringement of the right to be heard in the appeal styled as in *Bravenec v. Martin*, Case No. 22-2191 (Fed. Cir. dismissed February 23, 2023); and (c) for the governmental taking by exaction of monies paid filing fees for removal action and appeal associated with the remand on September 29, 2022.

Third Claim for Relief:
Transfer of Jurisdiction To The CFC

Martin requests a transfer of jurisdiction for further proceedings on Tucker Act claims for for actions of governmental personnel that affected the taking of purchase money lien claims in 2016 on remand from *Martin v Bravenec I*.

PRAYER FOR RELIEF

Wherefore, Plaintiff Rowland J. Martin prays for (1) declaratory judgment on his first claims for relief; (2) an award of monetary damages in the amount of $18 million or according to proof at trial on his FTCA tort claims; (3) damages in the amount for $402 on his Little Tucker Act claim for exaction of removal filing fees in *Bravenec v. Martin*, Case 22-522 (W.D.Tex, remanded Sept. 29. 2022); (4) transfer of jurisdiction to the U.S. Court of Federal Claims for review of Big Tucker Act claims; (5) reasonable attorney's fees; (6) costs of suit; and (7) such other and further relief as the court deems proper.

Dated: September 13, 2023

Rowland J. Martin
Plaintiff
951 Lombrano St.
San Antonio, Tx. 78207
(210) 861-6231