

## **Court Shoots Down Section 1500 Motion to Dismiss**

Ensign-Bickford Aerospace and Defense Company, the owner of two patents used in ordnance firing systems, filed a lawsuit in the U.S. Court of Federal Claims alleging that a Government subcontractor—Pacific Scientific Energetics Company—supplied products to the federal government that infringed Ensign-Bickford’s patents. Seeking \$3 million in damages, the complaint alleged that the infringement occurred with the authorization and consent of the United States.

The Government filed a motion to dismiss the lawsuit, claiming that the lawsuit was barred by 28 U.S.C. § 1500. In 2010, Pacific Scientific had challenged the validity of the Ensign-Bickford’s claimed patents in a federal district court in Arizona. Ensign-Bickford counterclaimed, alleging that its patents had been infringed with the authorization and consent of the United States. The district court dismissed Ensign-Bickford’s counterclaim, explaining that the claim belonged in the CFC.

The CFC agreed with the district court, holding that Ensign-Bickford’s counterclaim in the Arizona litigation was neither against the Government nor pending when the CFC case was filed. Therefore, Section 1500 did not deprive the CFC of jurisdiction to hear the patent claim.

The CFC also rejected the Government’s argument that because all of the infringement had occurred during performance of a Government contract, the suit was against a Governmental proxy and Section 1500 applied: “On the contrary, Ensign-Bickford explicitly limited its counterclaims to alleged infringements of its patents by Pacific Scientific that were neither for nor with the consent and authorization of the United States.” Second, the Court held that even if Section 1500 did apply, the claims against the Government had already been dismissed by the time Ensign-Bickford filed suit in the CFC.

Read the full opinion [here](#).