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Small businesses claim US government stealing their ideas



By Eric Shawn

Published December 17, 2013

FoxNews.com

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"They stole all my stuff and used taxpayer money to do it," John Hnatio, a Maryland small business owner, says of the U.S. government.

Hnatio claims the government has put his company, FoodquestTQ, nearly out of business by stealing his firm's software that was designed to be licensed to the Food and Drug Administration to monitor food safety.

The FDA "took our ideas, plagiarized my doctoral dissertation on which a patent was based, and then they infringed on our patent. The result was that it decimated our business," he adds.

Hnatio says his company has been left hanging by a thread. He has had to fire employees and says that the remaining three, including himself, are receiving no salary and have been forced to go on unemployment insurance.

"I have never seen anything like it," says Hnatio, who is a retired federal government official.

He says the FDA "duplicated exactly what we were selling to industry and they were giving it away for free...instead of

helping small business commercialize their product, what we are seeing is a dragon, in the name of the U.S. government that is eating their own young."

FoodquestTTQ is only one of numerous small businesses that accuse the government of stealing their intellectual property or trade secrets when they enter into contracts or research agreements with federal agencies.

"The government interceded, stole the technology and attempted to use this in classified programs," says Jim O'Keefe, the president of the small New Jersey technology company Demodulation. He has filed a \$50 million lawsuit against the U.S. government, accusing it of taking his firm's research.

Demodulation developed an advanced technology involving fiber coated wire, called microwire, which is thinner than a human hair. The company says its microwire can be used for a variety of national security applications, such as tracking drones, keeping tabs on soldiers on battlefields, transmitting information without a power source, and that it even has the ability "to render objects invisible to radar."

"It sounds incredible and impossible that the U.S. government is taking things from people," says Demodulation lawyer Sean Callagy. "We believe this is the greatest country in the world with the greatest justice system in the world but the U.S. government is not an eagle or a flag, but human beings. And human beings make mistakes."

The lawsuit accuses the Department of Energy and the National Nuclear Security Administration, among others, of illegally swiping the firm's information by "using microwire and Demodulation's trade secrets in its mission to gather intelligence."

It also says that the U.S. has even built "a secure facility for the production of microwire" on its own.

"There are classified reports showing the technology," declares Demodulation attorney Ben Light, who says that after the company "shared the secret sauce" about microwire with federal officials, they simply "took (the) wire."

The Department of Energy referred Fox News requests for comment to the National Nuclear Security Administration, which did not respond to repeated requests for a comment about the company's allegations.

The Department of Justice denies Demodulation's charges in court filings.

Stuart Delery, an Acting Assistant Attorney General, wrote that while "the United States admits that it continues to conduct research regarding what is generally known as 'microwire,'" he says that the government did not act improperly.

The Department of Justice claims the government did not take any proprietary information or develop the microwire technology based on Demodulation's work, and that "none of the asserted patents have been infringed on by the United States."

Delery also pointed out that some of Demodulation's patents had expired.

"The only reason the patents expired is because Demodulation was driven out of business," responds the firm's lawyer, Light. "It doesn't affect the entire case because any infringement during the period when the patents were enforced is still compensable."

O'Keefe says the government denials are "an impossibility based on the evidence I have."

He is calling for "reform and legislation to protect us. I hope through our litigation we will be able to expose some of the problems."

It turns out that the government is routinely accused of similar wrongdoing and sometimes has to pony up.

The U.S. Army settled a case in November by paying \$50 million to a Texas company, Aptricity, which claimed the government took some of its software, which tracks military equipment from MRE's to troops, without paying for it.

The company's court papers said that the government "willfully infringed" on its copyrights, "failed to provide information" about what it did and was engaged in "actively concealing the Army's misappropriation of Aptricity software."

The complaint said the Army paid for using the software on five servers and 150 devices, but actually "copied and installed Aptricity software on at least 98 servers and at least 9,063 devices" without telling the company.

"I don't think there was malicious intent," Aptricity's founder and president Tim Garcia tells Fox News in the aftermath of the settlement. He says his company pursued its case by the "standard process through the Court of Claims."

There are numerous other companies that have filed similar actions at the Washington, D.C.-based court, which is the venue for legal claims against the federal government. Among them:

Liberty Ammunition, which is suing the government for allegedly infringing on its copyright for developing a lead-free "green bullet" after it worked on the invention with the Department of Defense.

Net Results, which claims that the Army infringed on its patent for a "mine detecting device" by giving out its design to six other government contractors.

In 2009, NASA was ordered to pay \$28.3 million to Boeing after the court found that the government infringed on the company's aluminum alloy patent.

In a noted case in 1999, the U.S. government paid then Hughes Electronics \$154 million in damages after a 30-year long legal battle found that the government illegally appropriated the company's satellite technology.

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The U.S. Court of Federal Claims calls itself "the people's court," and says it is considered "the keeper of the nation's conscience." It is situated right across Lafayette Park from the White House.

"There is no reason to think it can't happen," observes New York University law Professor Jeanne Fromer, an intellectual property and copyright law specialist.

"The government can take patent rights, as long as they compensate for it. It is not dissimilar, in that sense, to notions of eminent domain."

"The government is a big sprawling place and there are lots of people acting in it. I think some of them act very nobly...but it's hard to say that everyone always does."

"We are hearing more frequently from companies about intellectual property theft by the government," notes John Palatiello, head of the Washington, D.C.-area lobbying group, the Business Coalition for Fair Competition, which is studying the issue.

"Companies are becoming more vocal about it."

Hnatio believes there is a troubling explanation for alleged government flinching.

"What we are seeing is a direct competition between the private sector and the U.S. government. The problem for small businesses is that they are simply being destroyed by their own government in spite of the fact that we hear politicians say all the time, that small business is important...it's extremely disturbing because it means we lose jobs, and it means we lose our competitive edge in the world. It creates a very dangerous situation for our national security."

Fox News repeatedly requested comment from the FDA regarding Hnatio's allegations about FoodquestTQ, but the agency did not issue a statement.

While the Demodulation case is expected to go to trial next year, Hnatio says he has been left without any money to hire a lawyer to go to court.

"From the time I was a little kid I dreamed of starting a business. But I do have to tell you that there is a grave danger to the American dream," he says.

Follow Eric Shawn on Twitter: [@EricShawnonFox](https://twitter.com/EricShawnonFox)

Becky Diamond contributed to this report.

Eric Shawn, a New York-based anchor and senior correspondent for FOX News Channel (FNC), joined the network when it launched in 1996. He anchors "America's News Headquarters" on Sunday mornings from 10 a.m.-11 a.m. and 12 p.m. to 1 p.m. ET. Shawn also regularly reports from the United Nations. Most recently, he was live from Boston to report on the Boston Marathon bombing. He also reports on politics and terrorism, and provided live coverage from both the Republican and Democratic National Conventions during the 1992, 1996, 2004 and 2008 elections. He also uncovered new evidence in the murder of Teamsters leader Jimmy Hoffa, based on the claims of hit-man Frank Sheeran, who admitted to Shawn, and in his biography, that he shot Hoffa in a house in Detroit where Shawn found a blood pattern that supports Sheeran's story.

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