

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-186326

DATE: May 4, 1976

MATTER OF: Nautel Maine, Inc.

DIGEST:

GAO will not consider protest concerning allegation that patent infringement will result from contract award as 28 U.S.C. § 1498 (1970) provides exclusive remedy for unauthorized Government patent infringement, i.e., suit against Government in Court of Claims.

By letter dated April 5, 1976, Nautel Maine, Inc. (Nautel), protests current, as well as expected future, procurement actions on the part of the United States Coast Guard with regard to possible patent infringement.

Nautel contends that the technical details of the equipment solicited under invitation for bids No. CG-62, 248-A, have been taken from similar equipment supplied to the Coast Guard by the firm's parent company (Nautical Electronic Laboratories Ltd.) which, allegedly, are protected by United States patents. Nautel alleges that an award to a bidder other than itself would inevitably lead to a suit for patent infringement.

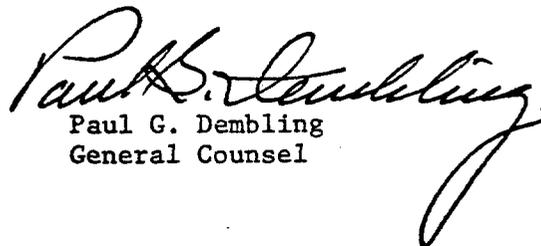
In regard to the possibility of patent infringement resulting from a contract awarded to other than the patent holder, we stated in Aeroquip Corporation, B-184598, September 25, 1975, 75-2 CPD 188:

"Under 28 U.S.C. § 1498 (1970), a patent holder's remedy for infringement with respect to items furnished under a contract with a Federal agency is by suit in the United States Court of Claims against the Government for money damages. The courts have recognized section 1498 as constituting, in effect, an eminent domain statute, which vests in the Government the right to use any patent granted by it upon payment of reasonable

compensation to the patent holder. Richmond Screw Anchor Co. v. United States, 275 U.S. 331 (1928); Stelma, Incorporated v. Bridge Electronics Co., 300 F.2d 761 (1962). The act was intended to give patent holders an adequate and effective remedy for infringement of their patents while saving the Government from having its procurement programs thwarted, delayed or obstructed pending litigation of patent disputes. Bereslavsky v. Esso Standard Oil Co., 175 F.2d 148 (1949).

"Considering the act and its purposes, our Office has concluded that Government contracts should not be restricted to patent holders and their licensees where patents are held. Instead, all potential sources should be permitted to compete for Government contracts regardless of possible patent infringement. 46 Comp. Gen. 205 (1966). Accordingly, Aeroquip's protest insofar as it is based on the ground that patent infringement would result from performance under a contract award to NUC is not for consideration. B-178124, March 9, 1973; Pressure Sensors, Inc., B-184269, July 31, 1975, 75-2 CPD 73."

Accordingly, we must decline to consider the merits of the protest.


Paul G. Dembling
General Counsel