

Montgomery Petition

Summary of Petition:

"The claimants (are) Regina Cleary Montgomery ... and Richard J. Montgomery, Mary C. Montgomery, Margaret H. Montgomery and Jane E. Montgomery, assignees of Ellen Montgomery, mother ... of John J. Montgomery, deceased." The defendant is the United States. The Petition was filed on September 22, 1917 "under the Act of Congress of June 25, 1910, entitled "An Act To provide additional protection for owners of patents of the United States and for other purposes" (36 Stat. L., 851)."

"(On) April 26, 1905, John J. Montgomery ... was the sole, original and first inventor of a certain new and useful invention in aeroplanes, not known or used by others ... (and was awarded) on September 18, 1906, Letters Patent of the United States No. 831,173. ... (T)he invention ... is and has been recognized to be a great utility and value in the construction and operation of aeroplanes ... (and) constitutes a fundamentally essential and indispensable structural feature of all successful flying machines, without which successful flight would not have been accomplished."

" (The United States) has used the invention ... without license of the owners ... and has neglected and refused to pay royalty ... although requested so to do, all in violation of the rights granted under said Letters Patent, No. 831,173 ... to the number of more than fifty-four aeroplanes, at its aviation station at North Island, San Diego California ... (The) claimants ... (desire) access to the records of (the War, Navy and other) Departments ... for the purpose of obtaining information as to the number and construction, and cost to the United States, of aeroplanes heretofore made, or caused to be made, for the use of or by the United States since June 25, 1910."

"(A) fair and just compensation to these claimants ... is at the rate of ten per centum of the purchase price of each aeroplane containing or employing the invention described and claimed in said Letters Patent, the same being substantially the value of said invention and the value which the claimants attribute to the use of said invention ... after allowing all just credits and set-offs."

In the Court of Claims of the United States

REGINA CLEARY MONTGOMERY, heir, and
RICHARD J. MONTGOMERY, MARY C.
MONTGOMERY, MARGARET H. MONTGOM-
ERY, and JANE E. MONTGOMERY, as-
signees of ELLEN MONTGOMERY, heir of No. 33852
JOHN J. MONTGOMERY, deceased,
Claimants.

vs.

UNITED STATES, *Defendant.*

PETITION.

(Filed September , 1917.)

To the Honorable Court of Claims:

The claimants, Regina Cleary Montgomery, widow and one of the two heirs-at-law of John J. Montgomery, deceased, and Richard J. Montgomery, Mary C. Montgomery, Margaret H. Montgomery and Jane E. Montgomery, assignees of Ellen Montgomery, mother and other heir-at-law of John J. Montgomery, deceased, and who are all citizens of the United States, residing in the state of California, bring this petition under the Act of Congress of June 25, 1910, entitled "An Act To provide additional protection for owners of patents of the United States and for other purposes" (36 Stat. L., 851), and under other Acts therefor provided; and claimants respectfully represent:

I.

That on and prior to April 26, 1905, John J. Montgomery, a citizen of the United States, residing in the County of Santa Clara, State of California, was the sole, original and first inventor of a certain new and useful invention in aeroplanes, not known or used by others in this country before his invention and discovery thereof and not published or described in any printed publication in this or any foreign country before his invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to this application, and which had not been first patented, or caused to be patented by him or his legal representatives or assigns in a foreign country upon an application filed more than twelve months prior to said April 26, 1905; that on April 26, 1905, the said John J. Montgomery made application in writing to the Commissioner of Patents for Letters Patent for said invention and filed in the Patent Office a written description of the same, and of the manner of constructing and using it, in such full, clear and concise terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make, construct and use the same, explaining the principle thereof and the best mode known to him in which he contemplated applying that principle, and particularly pointing out and explaining the particular improvements claimed by him as his invention; that said John J. Montgomery made in writing, upon such application, the oath in such case required to be made; that thereupon, upon payment of the fees required by law, and other due proceedings had, on September 18, 1906, Letters Patent of the United States No. 831,173, bearing date as of said day and year, and signed by the proper officials thereto duly authorized, were issued and delivered to said John J. Montgomery, securing to him, his heirs or assigns, the sole and exclusive right to make, use and sell the patented invention for a period of seventeen years, from September 18, 1906, all as by said Letters Patent, which are duly recorded in the United States Patent Office, or a duly certified copy thereof, here in Court to be produced, will more fully and at large appear.

II.

That prior to the issuance of said Letters Patent No. 831,173, all proceedings were duly had and taken which were required by law to be had and taken previous to the granting of said Letters Patent.

III.

That the said John J. Montgomery made no assignment or conveyance of any interest in said Letters Patent, No. 831,173, but was the owner thereof at the time of his death, intestate, which occurred in the County of Santa Clara, State of California, on October 31, 1911; that the said John J. Montgomery left surviving him, as his heirs-at-law, Regina Cleary Montgomery, his widow, and Ellen Montgomery, his mother; that thereafter, to wit, on January 5, 1912, by an order duly and regularly made and entered by the Superior Court in the County of Santa Clara, State of California, having jurisdiction in the premises, Richard J. Montgomery was appointed Administrator of the estate of said John J. Montgomery, deceased, and thereupon qualified as such Administrator and entered into and upon the administration of said estate; that on February 18, 1914, the above named Ellen Montgomery, for value received, in an instrument in writing duly executed under her hand and seal, sold, assigned and transferred all her right, title and interest in and to the estate of said John J. Montgomery, deceased, including the Letters Patent, No. 831,173, to Richard J. Montgomery, Mary C. Montgomery, Margaret H. Montgomery and Jane E. Montgomery, claimants herein; and that, upon due proceedings had, the said Superior Court of the County of Santa Clara, State of California, did, in the month of April, 1914, make and enter, in the matter of the said estate of said John J. Montgomery, deceased, its order and decree of distribution, setting aside and distributing to Regina Cleary Montgomery, Richard J. Montgomery, Mary C. Montgomery, Margaret H. Montgomery and Jane E. Montgomery, the claimants herein, the exclusive right, title and interest in and to said Letters Patent No. 831,173, and the said claimants have, since that time, continuously been and now are the joint and exclusive heirs thereof.

IV.

That the invention described and claimed in said Letters Patent No. 831,173, is and has been recognized to be a great utility and value in the construction and operation of aeroplanes; and that since the granting of said Letters Patent on September 18, 1906, your claimants have been unavoidably prevented from the exercise of their exclusive rights under said Letters Patent No. 831,173, by reason of a delay in the court proceedings with reference to the distribution of the estate of said John J. Montgomery, the patentee, said rights not being definitely assigned and distributed until April, 1914, when a partial distribution of the estate of the late John J. Montgomery conveyed to his heirs title to said Letters Patent; that your claimants in the exercise of the exclusive rights granted by said Letters Patent are now ready and willing to make and vend aeroplanes employing the invention set forth in said Letters Patent and to grant to others the right to make, use and vend the improvement so patented.

V.

Your claimants further show, upon information and belief, that the United States, through its officers and agents, well knowing the premises and the exclusive rights granted by said Letters Patent, No. 831,173, since the grant of said Letters Patent on September 18, 1906, and since the 25th day of June, 1910, at various places within the United States, has used the invention described in and covered by said Letters Patent without license of the owners thereof or lawful right to use the same, by using and by making, are causing or contracting to be made for its use, aeroplanes constructed and operated in accordance with the invention described and claimed in said Letters Patent, and has neglected and refused to pay royalty to your claimants or the previous owners of said Letters Patent, although requested so to do, all in violation of the rights granted under said Letters Patent, No. 831,173.

VI.

That your claimants are informed and believe the Government of the United States, through its duly authorized officers and agents, has used the invention described in and covered by the said Letters Patent, No. 831,173, without license of these claimants or of the previous owners thereof and without lawful right to

use the same, but using, and by making or causing or contracting to be made for its use, aeroplanes constructed and operated in accordance with the invention described and claimed in said Letters Patent, to the number of more than fifty-four aeroplanes, at its aviation station at North Island, San Diego California, and is now using the said invention without license of these claimants or the former owner thereof, and without lawful right to use the same, by using, and by making or causing or constructing to be made for its use, certain other aeroplanes employing the invention described and claimed in said Letters Patent, No. 831,173; that your claimants are unable to state with particularity, without an examination of certain records in the War, Navy and other Departments of the United States Government, precisely how many aeroplanes employing the invention described and set forth in said Letters Patent have been and are now being made, or caused or contracted to be made for the use of or by United States; and that in order to enable claimants to state this claim with greater particularity, access to the records of said Departments is necessary and required for the purpose of obtaining information as to the number and construction, and cost to the United States, of aeroplanes heretofore made, or caused to be made, for the use of or by the United States since June 25, 1910; and likewise also as to aeroplanes which are contracted to be built in the United States or for use in the United States now or hereafter, under agreements already made by or on behalf of the United States.

VII.

That the invention constituting the subject-matter of said Letters Patent, and therein recognized as broadly new and generically claimed, constitutes a fundamentally essential and indispensable structural feature of all successful flying machines, without which successful flight would not have been accomplished; and that a fair and just compensation to these claimants (an heir, and assignees of an heir, of said John J. Montgomery, deceased) for the building and use, by or for, or under contract with, the United States, as aforesaid, of aeroplanes described and claimed in said Letters Patent, No. 831,173, is at the rate of ten per centum of the purchase price of each aeroplane containing or employing the invention described and claimed in said Letters Patent, the same

being substantially the value of said invention and the value which the claimants attribute to the use of said invention.

VIII.

That the aeroplanes hereinbefore referred to were not, and none of them was, owned, leased, used by, or in the possession of the United States prior to June 25, 1910, and this claim is not based, in whole or in part, on the use by the United States of any article owned, leased, used by, or in the possession of the United States prior to June 25, 1910.

IX.

That from the time of applying for the said Letters Patent, No. 831,173, up to the date of his decease, the said John J. Montgomery remained a citizen of the United States and at all times bore true allegiance to the Government of the United States; and that the heirs of the said John J. Montgomery and claimants herein have at all times borne true allegiance to the Government of the United States.

X.

That the said John J. Montgomery, patentee of the Letters Patent, No. 831,173, as aforesaid, is not in the employment or service of the Government of the United States; that no one of the claimants herein, so far as concerns ownership of or interest in said Letters Patent, is an assignee of a patentee in the employment or service of the Government of the United States; that the said John J. Montgomery was not, at the time of his discovery or invention of the device covered by said Letters Patent, in the employment or service of the Government of the United States; and that the device constituting the subject matter of said Letters Patent, was not discovered or invented by an employee of the Government of the United States during the time of his employment or service.

XI.

That no assignment or transfer of the claim herein stated or any part thereof, or any interest therein has been made except as stated in this petition; and that

said claimants are justly entitled to the amount herein claimed from the United States after allowing all just credits and set-offs.

XII.

That the facts stated in this petition are true.

WHEREFORE, Your claimants ask judgment under the Act of Congress approved June 25, 1910, against the United States for the sum of

Dollars

as compensation for the use of the invention set forth in Letters Patent, No. 831,173, in said aeroplanes, said sum being ten per centum of the market value as determined by the cost to the United States of each and every one of the aeroplanes heretofore built or used or now contracted for and being built for use by or for the United States and embodying and making use of the invention set forth in said Letters Patent, No. 831,173.

REGINA CLEARY MONTGOMERY,
RICHARD J. MONTGOMERY,
MARY C. MONTGOMERY,
MARGARET H. MONTGOMERY,
JANE E. MONTGOMERY.

By _____
Their Attorney in Fact.

Of Counsel.

DISTRICT OF COLUMBIA, ss:

CHARLES H. BATES, of Washington, in the District of Columbia aforesaid, being duly sworn, deposes and says that he is a member of the firm of Harr & Bates, attorneys for Regina Cleary Montgomery, Richard J. Montgomery, Mary C. Montgomery, Margaret H. Montgomery and Jane E. Montgomery, claimants,

in the presentation of the claim set forth in the foregoing petition; that he has read the said petition, by his said firm subscribed for and in the name of said claimants, and is acquainted with the contents thereof, and that the matters and things therein stated are true as he verily believes.

Subscribed and sworn to before me this _____ day of September, 1917.

Notary Public.

(Power of Attorney annexed.)