



# COPYRIGHT CLAIMS BOARD

Docket number: 25-CCB-0155  
May 2, 2025

Russell Auger

CLAIMANT

v.

Eckhard U Alt

RESPONDENT

## ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (Board) finds that your claim does not comply with the requirements of the CASE Act and related regulations. The claim cannot move forward unless it is amended.

If you wish to proceed with this claim, you must file an amended claim by **June 2, 2025**. If you do not, the Board must dismiss your claim without prejudice, although you may file again in the future before the Board or in federal court. If you file an amended claim and it is found compliant, you will be notified and directed to proceed with service. There is no additional filing fee for an amended claim. 17 U.S.C. § 1506(f)(1)(B).

To make your amended claim compliant, you must resolve the issues identified below. 37 C.F.R. § 224.1(c)(2). You may also choose to correct or edit any errors or other information in your claim before you file it again. You do not need to provide a legal argument in your claim – just a statement of facts and circumstances. Being specific in your description gives the other party and the Board more information about your claim. There is no character limit, so please be as detailed as possible.

### Allegedly Infringing Activity

You have brought a copyright infringement claim before the Board. Copyright infringement occurs when a copyrighted work is reproduced, distributed, publicly performed or displayed, or made into a derivative work without the permission of the copyright owner, if the use does not qualify for an exception, such as fair use. Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances.

You allege infringement of a work titled “Mesenchymal stromal cells as vectors for revascularization of the heart,” registered by the Copyright Office with Registration No. TX0006532754. You describe the work as: “Text [Book]: Computer text data: Three chapter series of methods applications and results for application of genetically engineered stem cells to the heart derived from mesenchyme.” You allege that the respondent’s 2016 patent application included an illustration from your work, or an image derivative of the illustration. However, submitting an allegedly infringing work to the U.S. Patent & Trademark Office (USPTO) for the purpose of obtaining a patent registration does not constitute copyright infringement, and such a submission would be a clear fair use.

Patent applicants are required to disclose to the USPTO all information that they know is relevant to

patentability. 37 C.F.R. § 1.56. Including copyright-protected material in such disclosures is typically considered fair use even by the USPTO. “Patent applicants or their attorneys sometimes make copies of copyrighted NPL [non-patent literature] and submit those copies to the USPTO, pursuant to the USPTO’s disclosure requirements. The USPTO considers this copying to be protected by the doctrine of fair use.” U.S. Patent & Trademark Office, *Position on Fair Use of Copies of NPL Made in Patent Examination* (Jan. 19, 2012) at 2, available [here](#).

The alleged use of an illustration from your work in a patent application would not be a copyright infringement. To address this issue in an amended claim, you must describe some allegedly infringing use of your work by the respondent other than in the patent application. You should not file an amended claim if this is the only instance of alleged copyright infringement.

## Relief Requested

In the “Description of harm suffered and relief sought” section of the claim, you request forms of relief that the Board cannot grant:

- “The maximum penalty of 5,000/15,000\$ is sought in damages.”
- “The maximum penalty of 2,500\$ is sought in damages to time required to defend Copyright TX0006532754.”
- “Purge of USPT US20160235942A1 from US and German systems is sought[.]”

Your request for “5,000/15,000\$” in damages is unclear. You selected “Yes” to the “smaller claims” option in the claim form. The smaller claims option is for claimants who wish to seek a maximum of \$5,000 in a proceeding. 17 U.S.C. § 1506(z). In order to seek damages above \$5,000 you must change your selection to “no.” If you want this claim to proceed under the smaller claims option, you must limit your demand for damages to an amount no greater than \$5,000 and remove the confusing reference to \$15,000.

The Board does not award damages based on “time required to defend” a copyright. In addition to a damages award, the only monetary award the Board may make is an award for the reasonable costs and attorney’s fees of a party adversely affected by the “bad-faith conduct” of another party during the proceeding, not based on the alleged infringement itself even if willful (as the Board does not consider willfulness in a damages determination). “Bad-faith conduct occurs when a party pursues a claim, counterclaim, or defense for a harassing or other improper purpose, or without a reasonable basis in law or fact.” 37 C.F.R. § 220.1(c). Furthermore, because you are appearing *pro se* (without a lawyer), any bad-faith conduct award to you would be for costs only, of no more than \$2,500. 17 U.S.C. § 1506(y)(2)(A).

The Board cannot grant any relief against non-parties, and it cannot order a “purge” of public records related to the respondent’s patent application or registration. In addition, the Board is only authorized to grant certain kinds of relief against respondents. Unlike a federal court, the Board cannot order a respondent to stop or modify activities (sometimes called an “injunction”) unless the respondent notifies the Board that, if found liable for infringement, they will stop or modify the activity.

If you file an amended claim, do not request any relief that the Board cannot grant. More information about the forms of relief the Board can grant is available in the [Damages](#) chapter of the CCB Handbook.

To submit an amended claim, log into your eCCB account and take the following steps:

1. From your dashboard, click the “**Amend claim**” button and select your docket number from the dropdown list.
2. Your claim will unlock for editing. The information you originally entered will appear in the same order as in your original claim.
3. Make the necessary edits. If you have filed supplemental documents, you must re-upload any documents you wish to include in the amended claim on the “**Documentation**” page. Please include only documents directly related to your claim, and label them clearly.
4. Once you have completed your edits, continue to click through the fillable claim form until you reach the “**Review**” page. The Review page includes all the information that you have provided in the claim up to this point. Carefully double-check the information on this page. If you have any corrections, you can select “**Edit**” to revise any entries necessary. Each section of information has an “**Edit**” button, which will take you back to that section so you can make changes. After you make changes, you can click “**Save & review**” to return to the Review page. Please review your claim carefully. Once you submit your amended claim, you will be unable to edit the claim while it is in compliance review.
5. Once you have completed your review and any revisions, you must confirm that the information in your claim is accurate and truthful to the best of your knowledge. To complete the declaration, type your full name into the “**Digital signature**” box near the bottom of the “**Review filing**” page and click “**Agree & submit.**”

If you have questions, please contact [asktheboard@ccb.gov](mailto:asktheboard@ccb.gov). Include your docket number in the subject line. The Board is unable to provide legal advice. We can only provide legal information and assistance concerning Board procedures and requirements. If you would like to seek further guidance from a lawyer or a law student at reduced or no cost, please visit the [Pro Bono Assistance](#) page on ccb.gov. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

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