

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

July 10, 2023

Christopher M. Wolpert
Clerk of Court

LARRY DRAKE HANSEN,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 22-4102
(D.C. No. 2:19-CV-00102-BSJ)
(D. Utah)

ORDER AND JUDGMENT*

Before **HARTZ, TYMKOVICH, and PHILLIPS**, Circuit Judges.

Larry Drake Hansen sued the United States under the Federal Tort Claims Act (FTCA), seeking damages for delays during the processing of his patent application.

The district court dismissed his claim, and we affirm.

Background

We gather the facts in this section from Mr. Hansen’s Second Amended Complaint and the exhibits he attached to it. *See Smith v. United States*, 561 F.3d

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties’ request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

1090, 1098 (10th Cir. 2009). In reviewing the district court’s dismissal, we accept Mr. Hansen’s allegations as true. *See id.* at 1097.

Mr. Hansen applied for a patent. The United States Patent and Trademark Office (the Patent Office) claimed to have sent him notice that his application lacked required information and gave him two months to provide the missing information. Mr. Hansen did not receive the notice, however, so he did not respond to it. With no response from Mr. Hansen, the Patent Office sent him notice (which he did receive) that it had deemed his application abandoned. Mr. Hansen then filed several unsuccessful petitions to revive his application before the Patent Office eventually revived it nearly three years after deeming it abandoned. He ultimately received a patent.

Mr. Hansen sued the United States under the FTCA. He claimed that the Patent Office wrongfully labelled his application incomplete, deemed it abandoned, and dismissed his initial petitions to revive it. He sought more than \$3 billion to compensate for “the lost portion of the patent term” starting when the Patent Office labelled his application incomplete and ending when it revived the application. *R.* vol. 2 at 443.

But Congress has created a different scheme to compensate applicants for delays that occur while the Patent Office processes applications. A patent term typically ends 20 years after the filing of the application. *See* 35 U.S.C. § 154(a)(2). That term will be extended, however, “if the issue of an original patent is delayed due to the failure of” the Patent Office to take certain actions within certain time frames.

§ 154(b)(1)(A). The term will also be extended, with some exceptions, if the Patent Office takes longer than three years after filing to issue a patent. *See* § 154(b)(1)(B). An extension will in turn be reduced to account for any “period of time during which the applicant failed to engage in reasonable efforts to conclude prosecution of the application.” § 154(b)(2)(C)(i).

The Patent Office must determine “the period of any patent term adjustment” and “provide the applicant one opportunity to request reconsideration of any patent term adjustment determination.” § 154(b)(3)(B). “An applicant dissatisfied with the” reconsideration decision “shall have exclusive remedy by a civil action . . . filed in the United States District Court for the Eastern District of Virginia.”

§ 154(b)(4)(A).

In district court the government moved to dismiss Mr. Hansen’s operative complaint, arguing, among other things, that § 154 preempted his FTCA claim. The district court granted the motion. It concluded that § 154’s remedial scheme “has preempted the more general remedies available under the FTCA with respect to the relief” that Mr. Hansen sought.¹ R. vol. 3 at 217. Mr. Hansen appeals.

¹ The district court alternatively concluded that the United States had not waived sovereign immunity for Mr. Hansen’s claim because the discretionary-function exception to the FTCA covered the Patent Office’s challenged conduct. We need not address whether sovereign immunity barred this lawsuit, though, because we conclude that the district court correctly held that § 154 precludes Mr. Hansen’s FTCA claim.

Discussion

Mr. Hansen represents himself, so we construe his filings liberally. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). We review the district court’s dismissal de novo. *See Steele v. United States*, 19 F.3d 531, 532 (10th Cir. 1994).²

“In a variety of contexts,” the Supreme Court “has held that a precisely drawn, detailed statute pre-empts more general remedies.” *Brown v. Gen. Servs. Admin.*, 425 U.S. 820, 834 (1976). The text of § 154 makes clear that Congress intended to create an exclusive scheme to compensate applicants for delays in the processing of patent applications. The scheme starts with the Patent Office’s patent-term-adjustment determination. *See* § 154(b)(3)(B)(i). The applicant may then ask the Patent Office to reconsider its determination. *See* § 154(b)(3)(B)(ii). If still unsatisfied, the applicant’s “exclusive remedy” is through a civil action in the United States District Court for the Eastern District of Virginia. § 154(b)(4)(A). And if the applicant succeeds in that action, the Patent Office must “alter the term of the patent” according to the court’s judgment. *Id.* This “comprehensive scheme” prevents Mr. Hansen from seeking damages under the FTCA to compensate for a delay in the processing of his patent application. *Steele*, 19 F.3d at 532 (internal quotation marks omitted) (concluding the Civil Service Reform Act preempted the plaintiff’s FTCA claims). The clear import of the statute is that (1) if the delay is not of the type that

² Mr. Hansen claims to appeal not only the district court’s dismissal but also its denial of his postjudgment motion. But he makes no argument targeting the postjudgment order, so he has waived any challenge to it, *see Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 679 (10th Cir. 1998).

justifies a patent-term adjustment, then it is simply unworthy of compensation, whether it be a term adjustment, money damages, or whatever; and (2) if the delay does justify an adjustment, then such adjustment should be awarded and any other compensation would be both unnecessary and duplicative.

Mr. Hansen argues that his claim falls outside of the remedial scheme in § 154. That is so, he says, because the Patent Office *correctly* determined his term adjustment, leaving him nothing to gain by challenging the determination. But for purposes of whether the Patent Act prevents Mr. Hansen’s claim, it does not matter whether the term-adjustment determination was right or wrong. What matters is that Mr. Hansen seeks compensation for delay in the Patent Office’s processing of his application. If he is to recover any compensation for that delay, it must take the form of a patent-term adjustment and it must come through the remedial scheme that Congress prescribed in § 154. He may not seek damages under the FTCA for “the lost portion of the patent term.” R. vol. 2 at 443.

Conclusion

We affirm the district court’s judgment.

Entered for the Court

Harris L Hartz
Circuit Judge