IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

MICHAEL J. COONEY, M.D.,	)	
	)	Civil Action No. 07-0716-WS-B
Plaintiff,	)	
	)	
v.	)	**JURY TRIAL DEMANDED**
	)	
SURMODICS, INC., et al.,	)	
	)	
	)	
Defendants.	)	

AMENDED COMPLAINT

Plaintiff, Michael J. Cooney, M.D. ("Cooney"), for his Complaint against Defendants, SurModics, Inc., Eugene DeJuan, M.D, and Johns Hopkins University, states as follows:

NATURE OF CLAIM

1. In his Complaint, Dr. Cooney states claims for (1) correction of inventorship arising under 35 U.S.C. § 256, (2) unjust enrichment, (3) fraud, and (4) breach of fiduciary duty, and (5) tortious interference with prospective economic advantage.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, 1338 (1) and 1367.

3. Personal jurisdiction exists in this Court over each defendant. Specifically, (1) SurModics transacts business in this district; (2) Dr. DeJuan transacts business in this district; and (3) Johns Hopkins transacts business in this district.

4. Venue is proper in this district under 28 U.S.C. § 1391(b).

THE PARTIES

5. Dr. Cooney is a resident of New York City, New York.

6. SurModics is a Minnesota corporation with its principal place of business located in Eden Prairie, Minnesota. In January 2005, SurModics acquired, and expressly assumed the liabilities of, InnoRx, Inc. ("InnoRX"), an entity which played a major role in the circumstances giving rise to this Complaint.

7. DeJuan is a resident of San Francisco, California.

8. John Hopkins is a private university principally located in Baltimore, Maryland. As alleged below, Johns Hopkins received a portion of the proceeds of the SurModics acquisition of InnoRx; it also participated in or acquiesced in the assignment of valuable intellectual property rights to SurModics.

STATEMENT OF FACTS

Background of the Dr. Cooney/DeJuan Relationship

9. Dr. Cooney is a 38 year- old retinal surgeon residing in New York City. Dr. Cooney's clinical practice focuses on the medical and surgical treatment of vitreoretinal diseases, particularly age-related macular degeneration and diabetic retinopathy. He is actively involved in the clinical development of new diagnostic and therapeutic modalities for vitreoretinal disease and the training of residents and fellows at Manhattan Eye Ear and Throat Hospital. Dr. Cooney has authored over 40 publications and book chapters.

10. Dr. Cooney graduated at the top of his class in high school and college,

graduated valedictorian of Columbia University Medical School, and was the first choice, out of thousands of applicants, for an ophthalmology residency at The Wilmer Ophthalmological Institute at The Johns Hopkins School of Medicine, the top-ranked ophthalmology program in the world.

11. Dr. Cooney met Dr. DeJuan, Professor of Ophthalomology and Co-Director of the Vitreoretinal Service, when he was an ophthalmology resident at the Wilmer Ophthalmological Institute at the Johns Hopkins School of Medicine in 1996. At that time DeJuan became Dr. Cooney's professional mentor and close friend. For years Dr. Cooney and DeJuan collaborated in research and development to develop proprietary drug delivery systems for the eye while at Hopkins. During this time Dr. Cooney conceived of and documented an intraocular coil for ocular drug delivery and also disclosed to Johns Hopkins concepts for subretinal drug delivery systems.

Dr. Cooney And DeJuan Found InnoRx

12. In 1998, Dr. Cooney and DeJuan founded InnoRx, Inc., a start-up company focused on the development of ocular drugs and ocular drug delivery systems. For most of the relevant time, InnoRx was a "virtual" company operating out of DeJuan's home. From 1998 through 1999 the InnoRx "team" consisted only of DeJuan and Dr. Cooney. In fact, the only people listed in InnoRx professional documents as InnoRx personnel during this time were DeJuan and Cooney. For years (during his three year ophthalmology residency and two year retinal surgery fellowship) Dr. Cooney played every role in InnoRx and wrote every business and company plan while he and DeJuan both kept their "day jobs" as retinal surgeons at Johns Hopkins. Cooney did this work

on nights, weekends, and between patients while balancing his fulltime job responsibilities at the most demanding ophthalmology training program in the world. Cooney signed legal documents on behalf of InnoRx and identified and cultivated strategic relationships, amongst many other things.

13. DeJuan repeatedly promised Dr. Cooney that once InnoRx was successful enough to be acquired, went public, or successfully commercialized a product that they would share in the proceeds as "partners". He made such statements frequently for years and made them to both Dr. Cooney and Dr. Cooney's wife. Examples include: "We will share in the outcome as partners; the more you can do without us needing to bring in other people the less we divide a successful outcome; the more you do and the less I do the better; make it happen Michael; I'm telling you Michael, the stars are aligning for us and everything we touch is going to turn to gold; I don't need you to invest your money Michael, I need you to invest your time; Focus on making InnoRx happen and you will share in the value you are creating once InnoRx is successful." These discussions occurred both in DeJuan's academic office at Johns Hopkins and at his home; they occurred every few days for years.

14. Dr. DeJuan also told Dr. Cooney that he could not be identified as having equity in InnoRx because, he (Dr. Cooney) was going to be involved in the clinical trials of a drug named Genistein, the only project which InnoRx was then handling from 1998 thru 2002. (Genistein was a potential drug for the treatment of diabetic retinopathy; it is not related to Dr. Cooney's inventions which are the subject of this lawsuit). Nonetheless, DeJuan promised that Dr. Cooney would share in any successful outcome

for InnoRx, be it an acquisition, IPO, or the commercialization of a product, as a "partner", and that he would make good on that promise to Cooney's family even if Cooney died. He also repeatedly made this promise to Dr. Cooney's wife, as the two families frequently socialized together.

15. On several occasions when Dr. Cooney asked DeJuan whether it was prudent to place so much trust in DeJuan, DeJuan, replied: "Michael, you have issues with trust. Michael, who loves you more than me? Who has looked out for your interests more than me? Name me one person at Hopkins who cares about you more than I do? What am I going to do Michael, have you do all this work and once we're successful say I'm sorry Michael, but I want this all for me, but you can still take a ride on my yacht?" On one occasion DeJuan gave Cooney his father's bible in order for Cooney to read it and learn how to trust. He also encouraged Cooney to go to church with him and his family.

Dr. Cooney's Role In The Invention Of An Ocular Drug Delivery Coil

16. In 2000, Dr. Cooney was part of a team at Johns Hopkins which developed an intraocular system for drug delivery. Dr. Cooney was the only member of the team, aside from DeJuan, to have prior drug delivery research experience, and the research he had performed from 1996 through 1998 in this field was evolutionary and key in the development and embodiment of this coil device.

17. Among other things, in 1997 Dr. Cooney conceived of a non-linear drug-delivery ocular implant; a conception corroborated in notebook entries. He also conceived of the use of a hub at a portion of the implant which is not inserted in the eye

(called the "cap element") in the patent described below. He also conceived that this device could be made entirely of, or coated with, a biodegradable polymer material for releasing a drug.

18. Dr. Cooney also played a key role in reporting the inventions to Johns Hopkins in 2000. For example, the formal disclosure statement which he and his team members submitted to Johns Hopkins was largely derived from language provided by Dr. Cooney. In fact, several paragraphs from the background and specification sections of the issued 6,719,750 patent were taken verbatim from disclosure documents written by Dr. Cooney.

19. Dr. Cooney was specifically identified as a co-inventor on the provisional patent application (the "Provisional Application"), titled "Intraocular Drug Delivery", filed on August 30, 2000. Dr. Cooney assigned his rights in the Provisional Application to Johns Hopkins, but, under Johns Hopkins' policy, stood to receive a percentage of any licensing revenue obtained by Johns Hopkins.

Dr. Cooney Leaves Johns Hopkins For Duke;
Is Informed That Nothing Is Happening With InnoRx

20. In 2001 Dr. Cooney accepted a position as Director of Medical Retina at Duke University and DeJuan accepted a position at the University of Southern California ("USC"). Dr. Cooney continued to be actively involved with InnoRx while at Duke through 2002. From 2001 through mid-2002, Dr. Cooney and InnoRx worked diligently to get an investigational new drug application (IND) filed with the FDA for the Genistein drug technology. Dr. Cooney participated in the FDA Pre-IND meeting with InnoRx in February 2002. The FDA IND was filed in late 2002 by InnoRx.

21. During that time, InnoRx still sought a large developmental partner who could fund the FDA clinical trials for Genistein. InnoRx had searched for years to identify developmental partners talking frequently to companies such as Bausch & Lomb, Allergan, Novartis, Alcon, and Pharmacia, amongst others. InnoRx also spoke to several venture capital groups. Dr. Cooney attended all of these meetings along with DeJuan, and prepared any documents/plans that were to be utilized. In fact, Dr. Cooney attended the first meeting between SurModics and InnoRx in May 2002. On several occasions Dr. Cooney presented on behalf of InnoRx when DeJuan was not available. Dr. Cooney presented InnoRx and its associated technolgies to Allergan, Domain VC, Paramount VC, and Quintiles to name a few.

22. Despite all of these meetings and presentations, no potential developmental partner was particularly interested in supporting the Genistein pharmacological program, which was the only focus of InnoRx from 1998 through 2002. Without a developmental partner there was no possible financial way for InnoRx to move forward with that program into clinical trials. Thus, InnoRx came to a complete halt at the end of 2002 and communications between DeJuan and Cooney dropped off.

23. From 2003 to 2005 Dr. Cooney had sporadic conversations with DeJuan, who told him that nothing was going on with InnoRX. Specifically, DeJuan told Dr. Cooney that nothing was happening with the Genistein technology and that the FDA clinical trials were on indefinite hold.

What Dr. Cooney Wasn't Told

24. Almost immediately after Dr. Cooney's departure from Johns Hopkins in

2001, DeJuan focused on getting intellectual property rights surrounding ocular drug delivery systems (for which Dr. Cooney had played a key role in inventing) into the hands of InnoRx. At the same time, DeJuan, assisted by Johns Hopkins' attorney Peter Corless and Varner, among others, engaged in a systematic effort to "erase" Dr. Cooney's involvement in, and inventorship of, key intellectual property assets. DeJuan did so to weaken any subsequent claim by Dr. Cooney for proceeds of any sale of InnoRx, and to destroy Dr. Cooney's rights in the intellectual property which Dr. Cooney co-invented at a minimum, and in some cases singlehandedly conceived.

25. This effort started with the elimination of Dr. Cooney as an inventor from the application which resulted in U.S. Patent No. 6,719,750 (the "750 patent"), titled "Devices for Intraocular Drug Delivery". The '750 patent claims priority from the Provisional Application which named Dr. Cooney as an inventor. Corless handled the prosecution of that patent, and removed Dr. Cooney as an inventor at the instruction of DeJuan and Signe Varner. This could not have been an innocent mistake, as a license agreement which Johns Hopkins and InnoRx prepared in August of 2001 specifically identified Dr. Cooney as an "inventor" of the "Intraocular Drug Delivery" application. Corless never contacted Dr. Cooney to investigate whether such removal was appropriate. Johns Hopkins, through William Tew, the head of Johns Hopkins' Office of Technology Licensing, granted an exclusive license of the '750 patent application to InnoRx, where Tew was a board member and consultant. The terms of this license agreement were unusually favorable to InnoRx, and Tew's conflict of interest as an InnoRx board member and consultant, as well as Johns Hopkins' equity interest in

InnoRx from a 1999 Genistein license, were not disclosed at the time of this license.

26. When an invention is made by two or more persons jointly, the patent laws of the United States require that they apply for patent jointly. This is true even though (1) they did not physically work together or at the same time, (2) each did not make the same type or amount of contribution, or (3) each did not make a contribution to the subject matter of every claim of the patent. See 35 USC 116.

27. Dr. Cooney should have been named as a co-inventor (i.e. joint inventor) due to his significant contribution to and participation in the conception and/or reduction to practice of the inventions set forth in at least one of the claims of the '750 patent..

28. On June 22, 2001, the same day that Dr. Cooney's name was deleted from the aforementioned application, DeJuan and Varner, assisted by Corless, filed patent application No. 09/888,079, titled "Method and Device for Subretinal Drug Delivery". Dr. Cooney is at least a co-inventor of this invention as well. DeJuan and Corless never told Dr. Cooney about this application. And, consistent with his approach to the '750 patent, Corless never contacted Dr. Cooney to determine Dr. Cooney's role in it. This application was assigned to Johns Hopkins and eventually licensed to InnoRx.

29. On June 22, 2001, the same day that Dr. Cooney's name was deleted from the aforementioned application, DeJuan and Varner, assisted by Corless, filed patent application No. 09/888,079, titled "Method and Device for Subretinal Drug Delivery". Dr. Cooney is at least a co-inventor of this invention as well. DeJuan and Corless never told Dr. Cooney about this application. And, consistent with his approach

to the '750 patent, Corless never contacted Dr. Cooney to determine Dr. Cooney's role in it. This application was assigned to Johns Hopkins and eventually licensed to InnoRx.

30. Dr. Cooney should be named as a co-inventor due to his significant contribution to and participation in the conception and/or reduction to practice of the inventions set forth in patent application No. 09/888,079.

31. On September 29, 2002, DeJuan and Varner, assisted by Corless, filed a provisional patent application No. 60/414,782 titled "Method for Subretinal Administration of Steroids and Related Methods for Treatment and/or Prevention of Retinal Disease". This filing eventually resulted in patent application No. 10/507,461, and was assigned, with Corless' help, directly to InnoRx and not to Johns Hopkins. DeJuan, Varner, and Corless never told Dr. Cooney about this application. And, consistent with his approach to the '750 patent, Corless never contacted Dr. Cooney to determine Dr. Cooney's role in it. The subretinal drug delivery invention claimed in that application was conceived and developed by Dr. Cooney and others and disclosed to Johns Hopkins by Dr. Cooney in 1998. Specifically, Dr. Cooney should have been named as a co-inventor due to his significant contribution to and participation in the conception and/or reduction to practice of the inventions set forth in patent application No. 10/507,461. Dr. Cooney never assigned any of his rights to this invention to InnoRx; he should be named as a co-inventor.

32. On December 19, 2003, DeJuan, Varner and others, assisted by Corless, filed patent application No. 10/740,698, titled "Devices for Intraocular Drug Delivery",

and claiming priority from the Provisional Application which originally named Dr. Cooney as an inventor. DeJuan and Corless never told Dr. Cooney about this application. And, consistent with his approach to the '750 patent, Corless never contacted Dr. Cooney to determine Dr. Cooney's role in it. This continuation application was assigned to Johns Hopkins and licensed to InnoRx. Dr. Cooney should be named a co-inventor on this application. Dr. Cooney should have been named as a co-inventor due to his significant contribution to and participation in the conception and/or reduction to practice of the inventions set forth in patent application No. 10/740,698.

33. On April 12, 2004, DeJuan, Varner and others, assisted by Corless, filed patent application No. 10/823,089, titled "Devices for Intraocular Drug Delivery", and claiming priority from the Provisional Application which originally named Dr. Cooney as an inventor. DeJuan and Corless never told Dr. Cooney about this application. And, consistent with his approach to the '750 patent, Corless never contacted Dr. Cooney to determine Dr. Cooney's role in it. This continuation application was assigned to Johns Hopkins and licensed to InnoRx**.** Dr. Cooney should be named a co-inventor on this application. Dr. Cooney should have been named as a co-inventor due to his significant contribution to and participation in the conception and/or reduction to practice of the inventions set forth in patent application No. 10/823,089.

34. On July 2, 2004, DeJuan, Varner and others, assisted by Corless, filed provisional patent application No. 60/585,236, titled "Methods, Devices and Systems for Treatment of Ocular Diseases and Conditions". It claims priority from a continuation of the '750 patent, which itself is linked to the Provisional Application originally naming Dr.

Cooney as an inventor. With Corless' help this application was assigned directly to InnoRx rather than to Johns Hopkins. The claims of this application concern administering a drug subretinally using the coil drug delivery device. This concept was developed and documented by Cooney in 2000. This particular provisional application included the names of all original Hopkins inventors (who had since moved on to USC), that were listed on the '750 patent. At the time of SurModic's acquisition of InnoRx in January 2005, documents demonstrate a concerted effort by the parties, including DeJuan, Varner, and Corless, to remove all USC/Hopkins inventors from this application with the exception of DeJuan and Varner. When the non-provisional application (No. 11/175,850) was filed on April 12, 2005, in the name of SurModics, those three USC/Hopkins inventors were omitted. USC conducted an investigation into the above inventorship irregularities and many other anomalies involving DeJuan, Varner, and InnoRx. Dr. Cooney is informed that USC's investigation culminated with DeJuan's departure from the school. Dr. Cooney did not assign his rights to this invention to SurModics; he should be named a co-inventor on this application.

35. On May 2, 2003, DeJuan, Varner and others filed provisional patent application No. 60/467,419 titled "Controlled Release Bioactive Agent Delivery Device". Subsequently, DeJuan, Varner and others filed the following non-provisional applications from this application: (1) application No. 10/835,530 filed April 29, 2004; (2) No. 11/102,465 filed April 8, 2005; (3) No. 11/203,879 filed April 15, 2005; (4) No. 11/203,931 filed August 15, 2005; (5) No. 11/203,981 filed August 15, 2005; (6) No. 11/204,195 filed August 15, 2005; (7) No. 11/204,271 filed August 15, 2005; and (8) No.

11/225,301 filed September 12, 2005. This technology is an improvement of the original coil patent using polymer coating technologies. Importantly, as DeJuan knew, Dr. Cooney conceived of the concept of the coil having a non-biodegradable backbone and being coated with a polymer to release a drug. Cooney documented that conception in June 2000, and included it in the disclosure of invention filed with Johns Hopkins in 2000. Dr. Cooney did not assign his rights to these inventions to SurModics; he should be named a co-inventor on these applications. Given Dr. Cooney's contributions to the conception and reduction to practice of the inventions set forth in one or more claims in each of these applications, he should have been named a co-inventor in each such application when it was filed.

36. On June 24, 2005, Varner and other SurModics employees filed patent application No. 11/165,884, titled "Biodegradable Ocular Devices, Methods and Systems", and assigned it to SurModics. The application claims the invention of polymer coated subretinal implants for the eye; inventions which were originally conceived by Dr. Cooney and DeJuan in 1997 while at Johns Hopkins. On information and belief, DeJuan did not name himself as an inventor on this application because he wanted to make it appear that the application was divorced from his earlier work with Dr. Cooney and any of the involved universities. Dr. Cooney did not assign his rights to this invention to SurModics; he should be named a co-inventor on this application. Dr. Cooney significantly contributed to the conception and/or reduction to practice of the inventions set forth in patent application No. 11/165,884. He therefore should have been listed as a co-inventor of that application.

37. On July 5, 2005, DeJuan and Varner filed patent application No. 11/175,850, titled "Methods and Devices for the Treatment of Ocular Conditions" and assigned it to SurModics. The application claims priority from 60/585,236 which claims the benefit of co-pending application 10/740,698 which is a continuation of the '750 patent, the application from which Dr. Cooney's name was removed. Corless assisted in the filing of the provisional application (60/585,236) and its assignment to InnoRx. The application relates to inventions which – as DeJuan knew – Dr. Cooney conceived and documented. Dr. Cooney did not assign his rights to this invention to InnoRx or SurModics; he should be named as a co-inventor on this application. Dr. Cooney significantly contributed to the conception and/or reduction to practice of the inventions set forth in patent application No. 11/175,850 and should have been identified as a co-inventor.

38. On April 7, 2006, DeJuan and Varner filed patent application No. 11/399,945, titled "Sustained Release implants and Methods for Subretinal Delivery of Bioactive Agents to Treat or Prevent Retinal Disease", and assigned it to SurModics. This application claims inventions related to a polymer coated non-biodegradable subretinal implant. Dr. Cooney and DeJuan conceived of, and Dr. Cooney documented, the concept of a subretinal implant for sustained release drug delivery in 1997. Dr. Cooney did not assign his rights to this invention to SurModics; he should be a co-inventor on this application. Dr. Cooney significantly contributed to the conception and/or reduction to practice of the inventions identified in patent application No. 11/399,945. He therefore should have been named as a co-inventor.

39. Johns Hopkins benefited from its complicity in DeJuan's machinations. First, it had an equity stake in InnoRx due to a 1999 licensing agreement involving the Genistein drug discussed above. Second, William Tew, head of Hopkins Office of Technology Licensing, and a board member and consultant to InnoRx, licensed Hopkins drug delivery technology to InnoRx along very favorable terms to InnoRx and its shareholders (Johns Hopkins) to the detriment of the inventors. The numerous conflicts of interest were not disclosed. For good measure, DeJuan also gave Johns Hopkins $2.5 million of the SurModics proceeds to endow a chair in his father's name in 2006.

40. Varner benefited from her complicity in DeJuan's machinations. Among other things, DeJuan created positions for her at USC and at SurModics. On information and belief, he also gave her a share of the SurModics proceeds.

SurModics Acquires InnoRx

41. In the Spring of 2002 InnoRx met SurModics and began discussions about ocular drug delivery systems. Dr. Cooney was not told of the evolving relationship with SurModics with regard to the drug delivery technology. In 2004 SurModics made a $5 million investment in InnoRx to further develop the coil technology. As addressed above, SurModics and InnoRx filed improvement patents for the coil as well as other patents related to subretinal drug delivery. Many of these inventions were initially conceived by Cooney and DeJuan from 1996 to 2000. Cooney was not included on any of these applications and they are now owned by SurModics.

42. In January of 2005 SurModics purchased InnoRx for approximately $60 million in a largely stock deal; much of the proceeds went to DeJuan and Johns

Hopkins. DeJuan took sole credit for founding and developing InnoRx and for inventing the coil. SurModics expressly acquired InnoRx's liabilities in that transaction, and InnoRx no longer exists.

43. The acquisition of InnoRx by SurModics was the development of an entirely new division within SurModics and is of enormous strategic importance that has been rewarded by the investment community. Bruce Barclay, SurModics CEO stated in the 2007 Annual Meeting, "the opportunity of the coil is analogous to the cardiac stent market 15 years ago." Several major pharmaceutical companies are partnering with SurModics to incorporate their drugs into the coil. The market for ocular drug delivery is estimated to be $10 billion in the next 5 years.

Dr. Cooney Discovers The Scheme

44. SurModics' acquisition of InnoRx was announced in January, 2005, along with the importance that the coil and subretinal drug delivery systems played in that acquisition. Dr. Cooney was surprised to hear that InnoRx had been acquired, as he had been told by DeJuan that nothing was going on with InnoRx. In January 2005, upon learning that the coil drug delivery device, that he had initially conceived of in 1997 and later co-developed with a team, was the main value driver in this merger, Dr. Cooney looked up that coil patent on the USPTO database and discovered that his name was missing from the issued patent. Dr. Cooney immediatly contacted John Hopkins Office of Technology Licensing and attempted to ascertain what had happened since he was named on the Provisional Application as well as in the InnoRx-Johns Hopkins licensing agreement. Cooney was told in an email by Johns Hopkins

that his name had been removed by Corless in June 2001 based on information provided by DeJuan and Varner. Dr. Cooney then discovered that his name had been removed or omitted from all subsequent applications related to ocular drug delivery technologies in which he had been intimately involved in conceiving and developing.

45. After his discovery, Dr. Cooney provided his materials concerning his inventions to a noted patent expert, Bruce Sunstein of the firm of Bromberg & Sunstein LLP of Boston, Massachusetts. After extensive review, Mr. Sunstein concluded: "In the face of an abundance of evidence, it is difficult to avoid concluding that, despite his active involvement in conception and reduction to practice of a number of inventions while at Johns Hopkins, Dr. Cooney has been systematically shut out as a co-inventor." This report was sent directly to Johns Hopkins Office of Technology Licensing, Mr. Corless, and SurModics in the Fall of 2005. Despite this report, and a two hour teleconference between Mr. Sunstein, Dr. Cooney, and Mr. Corless in December 2005 in which Dr. Cooney reviewed all of his material and the evolution of these inventive entities for Mr. Corless, Johns Hopkins has yet to respond to Dr. Cooney's claims or materials.

46. Dr. Cooney made several other attempts to resolve this matter to no avail. One such attempt was a July 2005 meeting in Atlanta with SurModics and DeJuan. In the course of the meeting, DeJuan requested to speak to Cooney alone. During this conversation, DeJuan tearfully asked Dr. Cooney to drop his claims, and declared: "I'm sorry that I forgot to tell you all those years that you had no stake in InnoRx. I want to work with you again... I won't let that happen again." He also said "Patent inventorship

errors happen all the time Michael. It's not a big deal. I'll give you $5,000 to hire a patent attorney to get your name back on the patents."

47. Dr. Cooney made another attempt to resolve this issue in February 2006 by agreeing to a prompt meeting (requested by SurModics) with DeJuan and SurModics in Chicago. SurModics requested Dr. Cooney to produce detailed patent claims charts for all patents/applications involved prior to the meeting. Dr. Cooney did so, sent them to SurModics, Johns Hopkins, SurModics patent counsel Mr. Timothy Malloy, and Corless. Thereafter, SurModics abruptly cancelled the Chicago meeting without explanation. Dr. Cooney made a third attempt to resolve this issue by agreeing to a meeting in July 2006 with DeJuan and SurModics in Minneapolis. At this meeting, SurModics refused to address any of the patent issues. Dr. Cooney made a fourth attempt to resolve this issue by retaining Peter Felfe, patent expert at Fulbright and Jaworski, to discuss the patent issues with the respective parties. Although SurModics stated in writing to Mr. Felfe on January 12, 2007 that there were problems with inventorship on multiple patents/applications, that they would send him (Felfe) documents to petition correction of inventorship by the end of January 2007, asked Mr. Felfe for written assurance that Dr. Cooney would not legally pursue Johns Hopkins [if SurModics settled all issues], and specifically asked Felfe to keep all of this highly confidential, SurModics cut off all communication with Felfe and Dr. Cooney thereafter.

COUNT I
UNJUST ENRICHMENT

1-47. Dr. Cooney restates Paragraphs 1-47 as Paragraphs 1-47 of Count I.

48. InnoRx was unjustly enriched by obtaining a benefit which it should not

retain. That benefit includes the value of the intellectual property premised on Dr. Cooney's inventions and his exclusion from licensing rights therein. SurModics, as successor to InnoRx, should disgorge such benefit in favor of Dr. Cooney.

49. DeJuan has been unjustly enriched by obtaining a benefit which he may not justly retain. That benefit includes his share of the proceeds of the SurModics acquisition -- or at least a portion thereof -- as it was premised largely on Dr. Cooney's contributions and inventions.

50. Due to DeJuan's misconduct, all compensation derived from the benefit should be disgorged in favor of Dr. Cooney.

51. Johns Hopkins has been unjustly enriched by obtaining a benefit which it may not justly retain. That benefit includes its share of the proceeds of the SurModics acquisition -- or at least a portion thereof -- as it was premised largely on Dr. Cooney's contributions and inventions.

52. Due to Johns Hopkins' misconduct, all compensation derived from the benefit should be disgorged in favor of Dr. Cooney.

COUNT II
FRAUD

1-52. Dr. Cooney restates Paragraphs 1-52 as Paragraphs 1-52 of Count II.

53. Under the circumstances, all Defendants (including SurModics, as the successor to InnoRx's liabilties) owed Dr. Cooney the duty to inform him that they were removing Dr. Cooney's name from the'750 patent application and deliberately excluding him on the other applications identified above despite his status as an inventor.

54. As the result of Defendants' silence, Dr. Cooney was prevented from (1)

insisting that he be included as a named inventor on the patent and applications, so as to enable him to participate in any licensing negotiation, and (2) learning about DeJuan's scheme to exclude him (Dr. Cooney) from benefitting from the SurModics transaction.

55. Defendants' failures to disclose were intentional and malicious.

COUNT III
BREACH OF FIDUCIARY DUTY

1-55. Dr. Cooney restates Paragraphs 1-55 as Paragraphs 1-55 of Count III.

56. A fiduciary relationship existed between Dr. DeJuan and Dr. Cooney as the result of: (1) their close personal friendship; (2) DeJuan's role as Dr. Cooney's teacher and mentor; (3) their business relationship, which DeJuan repeatedly referred to as "partners" in InnoRx; and (4) DeJuan's repeated representations and assurances.

57. DeJuan and InnoRx breached the fiduciary duties which they owed Dr. Cooney.

58. All compensation which DeJuan and InnoRx (now SurModics) derived as the result of their relationship with Dr. Cooney should be disgorged in favor of Dr. Cooney.

COUNT IV
CORRECTION OF INVENTORSHIP

1-58. Dr. Cooney restates Paragraphs 1-58 as Paragraphs 1-58 of Count IV.

59. Dr. Cooney is a co-inventor of the '750 patent. This Court is authorized by 35 USC 256 to order correction of the patent so as to name omitted inventors on notice an hearing of all parties concerned and should order correction of the '750 patent. In

the event that patents are issued on the following applications and Dr. Cooney is not named as an inventor or each such patent, Dr. Cooney reserves the right to amend the Complaint to add such patents to seek a correction of inventorship: (1) No. 10/835,530; (2) No. 11/102,465; (3) No. 11/203,879; (4) No. 11/203,931; (5) No. 11/203,981; (6) No. 11/204,195; (7) No. 11/204,271; (8) No. 11/225,301; (9) 09/888/079; (10) 10/507,461; (11) 10/740,698; (12) 10/823,089; (13) 11/175,850; (14) 11/165,884; and (15) 11/399,945.

60. The ’750 patent and the above listed applications (once they issue) should be corrected pursuant to 35 U.S.C. § 256 to name Dr. Cooney as a co-inventor.

61. The failure of Dr. Cooney to be identified as a co-inventor on the ’750 patent and the listed applications occurred without deception or fraud by him.

62. Due to the above-described conduct, Dr. Cooney should be declared the owner of all rights arising from his status as co-inventor of the ’750 patent and the listed applications (once they issue).

COUNT V
TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

1-62. Dr. Cooney restates Paragraphs 1-62 as Paragraphs 1-62 of Count V.

63. In at least two of the pending applications SurModics has represented to the Patent and Trademark Office (”PTO”):

> [I]nformation has been brought to the attention of the applicants that possible addition of another inventor may be warranted. Applicants are analyzing the information and will properly advise the examiner to the extent any change to the inventive entity is appropriate.

64. SurModics long ago conducted that analysis, based on its own review of, among other things, claim charts and other information submitted by Dr. Cooney. Based upon that analysis, SurModics concluded by January, 2007 that Dr. Cooney is an inventor on pending applications referenced above. On January 17, 2007, SurModics unequivocally represented to Dr. Cooney that it would be seeking his signature on several petitions to correct inventorship.

65. SurModics' determination that inventorship on pending applications needed to be corrected – and its communication of same to Dr. Cooney – was not a settlement proposal, nor could it be. Inventorship is a serious matter under the patent laws and cannot be the result of a litigation or settlement position. That is the very reason SurModics made the representation to the PTO quoted in Paragraph 65, above.

66. As at least a co-inventor on the patent applications (as determined by Surmodics), Dr. Cooney has the right to independently license those applications. (See, e.g., Ethicon v. United States Surgical Corp., 135 F.3d 1456, 1465 (Fed. Cir. 1998) ("in the context of joint inventorship, each co-inventor presumptively owns a pro rata individual interest in the entire patent, no matter what their respective contributions."). That right is valuable; indeed, SurModics has itself entered into a lucrative license of its patent portfolio including the applications at issue.

67. SurModics is aware of Dr. Cooney's right to license; that is the very reason why it has violated its duty of candor to the PTO, and (1) has not informed the PTO of its determination that Dr. Cooney is an inventor on pending applications, and (2) has not filed the appropriate petitions for correction of inventorship.

68. SurModics' wrongful conduct has damaged Dr. Cooney inasmuch he has been deprived the right to independently license the pending applications on which he is an inventor.

RELIEF

WHEREFORE, Dr. Cooney prays that the Court enter judgment against SurModics, Inc., Eugene DeJuan, M.D., and Johns Hopkins University, granting the following relief:

1. An order correcting the inventorship of the '750 patent and the following applications: (1) application No. 10/835,530; (2) No. 11/102,465; (3) No. 11/203,879; (4) No. 11/203,931; (5) No. 11/203,981; (6) No. 11/204,195; (7) No. 11/204,271; (8) No. 11/225,301; (9) 09/888/079; (10) 10/507,461; (11) 10/740,698; (12) 10/823,089; (13) 11/175,850; (14) 11/165,884; and (15) 11/399,945 reflecting that Dr. Cooney is a co-inventor on such patents and applications; such order also reflecting that Dr. Cooney is owner of all rights arising from his status as co-inventor;

2. Disgorgement of all benefits and profits derived by the unjust enrichment of SurModics (as successor to InnoRx), DeJuan, and Johns Hopkins;

3. An award of all damages caused by the fraud of InnoRx (whose liabilities SurModics assumed), DeJuan, and InnoRx, whose liabiities SurModics assumed;

4. An award of all benefits and profits derived from breach of fiduciary duty by DeJuan and InnoRx, whose liabilities SurModics assumed;

5. An award of damages against SurModics sufficient to compensate Dr. Cooney for SurModics' tortious interference wtih his prospective economic advantage.

6. Punitive damages in an amount to be determined at trial; and

7. Such other and further relief as this Court may deem proper and just.

Respectfully submitted,

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