

IN THE UNITED STATES DISTRICT COURT
OR THE DISTRICT OF COLORADO

Civil Action No.: _____

Barry F. Shesol, M.D.,

Plaintiff,

v.

I.V. House, Inc., a Missouri Corporation,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff Barry F. Shesol, through his attorney, J. Mark Smith, alleges as follows:

NATURE OF THE ACTION

1. This is an action arising under the patent laws of the United States of America, Title 35, United States Code, and in particular the application of 35 U.S.C. §256, et seq., seeking a declaratory judgment correcting inventorship setting forth that Plaintiff is an inventor of U.S. Patent No. 6, 526, 981 ("the ' 981 Patent) (Exhibit A), and further seeking damages under theories of quasi-contract, implied contract and breach of a confidential relationship.

JURISDICTION AND VENUE

2. This is an action arising under the Acts of Congress relating to patents, 35 U.S.C. § 1 et seq. This Court has jurisdiction over the patent claims set forth below pursuant to 28 U.S.C. § 1331 and 28 U.S.C. 1338 (a) & (b). Moreover the related claims brought by plaintiff

arise out of the same factual circumstances and form part of the same case or controversy for the Court to exercise supplemental jurisdiction pursuant to 28 USC 1367.

3. Venue is proper in this district under 28 U.S.C. 1391(c) as the allegations of the complaint set forth acts that support personal jurisdiction over the Defendant in Colorado, including; executing a contract with Plaintiff to be interpreted under Colorado law, transacting business with Plaintiff in Colorado, and affecting rights and property owned by the Plaintiff in Colorado.

THE PARTIES

4. Plaintiff, Dr. Barry Shesol has been a resident of and has conducted business between himself and Defendant from Colorado.

5. Plaintiff is a medical doctor, inventor and patent holder and is actively engaged in creating and developing new inventions and related business pursuits in the area of medical devices and care.

6. Defendant I.V. House, Inc. is a Missouri Corporation, having a principal place of business at 7400 Foxmont Drive. St. Louis, Missouri 63042-2198 and upon information and belief is engaged in the business of providing health care products.

7. Upon information and belief, Defendant is the listed owner of certain patents and is in the business of manufacturing and marketing products that incorporate one or more of these patents.

THE PATENT-IN-SUIT

8. The patent-in-suit is United States Letters Patent No. 6,526,981 (the '981 patent) titled "SITE GUARD FOR INTRAVENOUS SITES AND OTHER SENSITIVE AREAS"

was issued on March 4, 2003, naming Betty M. Rozier and Lisa M. Vallino, and assigned to Defendant, I.V. House by Betty M. Rozier and Lisa M. Vallino.

9. Upon information and belief Betty M. Rozier is the President of I.V. House, and Lisa M. Vallino is the Vice President/Clinical Director of I.V. House.

BACKGROUND

10. Plaintiff, Dr. Barry F. Shesol (Dr. Shesol) is trained as a Medical Doctor and plastic surgeon. Through his practice as a physician, Dr. Shesol became aware of problems associated when tape and bandages, with adhesives, were used for the care of certain patients. The resulting damage to the patient's skin, especially with repeated application and removal, was causing discomfort as well as increased risk of infection and other related problems. It was especially acute for the old and very young patients, burn patients, or anyone with delicate skin.

11. In the early 1990's Dr. Shesol developed bandages that did not use chemical adhesives and had the added benefit of allowing the skin to breathe. This work resulted in U.S. Patents Nos. 5,456,660. and 5,897,519. Subsequently he acquired additional know-how as to uses of the adhesive-free bandages and useful applications in the medical arts.

12. In August of 1999 Dr. Shesol, through a publication for the medical profession, became aware of I.V. House and their product for the protection of IV sites on patients. The I.V. House products required and only used adhesive tape for patients.

13. Based on his own work with U.S. Patents Nos. 5,456,660 and 5,897,519 and the substantial know-how he had with the treatment of patients, Dr. Shesol believed that he could improve the Defendant's product and market acceptance as well as broaden the applications for

its use by adapting his prior work resulting in a tape-free method of attachment of IV protection such as the Defendant's products. Something that had not been done before.

14. In August 1999 Dr. Shesol contacted the president of I.V. House, Betty Rozier, and in general terms expressing his willingness to use his medical training and experience and his knowledge, know-how, and experience with his products to develop new and improved products, which could then be marketed by the Plaintiff and I.V. House for their mutual benefit.

15. On September 1, 1999, I.V. House, in response to Plaintiff's request, delivered a signed Confidential Disclosure Agreement agreeing to the restrictions therein to keep the disclosed information obtained from Dr. Shesol (through him or his company Tapeless Technologies) confidential and further agreed to not use said information except for purposes of evaluating the joint marketing of any resulting improved product. A copy of this Confidential Disclosure Agreement is attached as Exhibit B.

16. Thereafter Dr. Shesol, by application of his experience, know-how and knowledge, developed his concepts and sent I.V. House sketches, prototypes and samples for an improved IV House product.

17. On September 3, 1999, Betty Rozier wrote to Dr. Shesol acknowledging that she had received the package from Dr. Shesol containing the drawings, prototypes and samples. In the letter of September 3, 1999, Rozier stated: "We love the feel of your product. We think it is perfect for geriatric patients and because of its tapeless [sic] application will be very beneficial towards selling the concept of covering their IV's from over the top with an I.V. House®." Rozier's letter of September 3, 1999, is attached hereto as Exhibit C.

18. On September 18, 1999, Rozier writes that she would like to show his designs at a National Association of Vascular Access Networks (NAVAN) convention and states that "I would expect the NAVAN nurses to like your product a lot...." A copy of Rozier's letter of September 18, 1999 is attached as Exhibit D.

19. After the first disclosure, Dr. Shesol continued to work and develop ideas for products. Because Dr. Shesol and I.V. House had been working together on the "SITE GUARD FOR INTRAVENOUS SITES AND OTHER SENSITIVE AREAS" invention described in the Patent-In-Suit, they had planned on submitting a joint patent application. In a December 9, 1999 letter (attached hereto as Exhibit E), Rozier wrote to Dr. Shesol stating (emphasis added):

We see your name as the Inventor on patent #5,918,599, and prior patents naming Marshall P. Reich and George Glmuac too. Since it appears that it is the same "fabric" being used even in the earliest patent #5,456,660, is there a chance that either Marshall or George could sue to gain part ownership in your continuing patents using this same fabric? Could they sue for part ownership in our joint patent? Are we better off until your matter is resolved just co-marketing rather than applying for a joint patent?

20. Pursuant to their understanding as to joint inventorship, Dr. Shesol had his patent attorney draft a utility patent application naming Dr. Shesol, Betty M. Rozier, and Lisa M. Vallino as co-inventors.

21. On December 30, 1999 Dr. Shesol provided a copy of this to Betty M. Rozier, and Lisa M. Vallino for their comments. Ms. Rozier and Ms. Vallino forwarded their comments to Dr. Shesol suggesting various changes to the "joint" application, without any dispute as to the joint inventorship asserted therein.

22. On January 10, 2000, Betty Rozier wrote to Dr. Shesol asserting that she wanted I.V. House to have the majority ownership over the patent rights to their joint invention.

23. On April 14, 2000, I.V. House's attorney, Joseph A. Mahoney, wrote to Dr. Shesol explaining that he knows that Dr. Shesol, Betty Rozier, and Lisa Vallino have been working together on the development of an invention. Mr. Mahoney submitted a joint development agreement ("JDA") setting forth in more detail a proposed structure for the relationship between the parties.

24. The parties were not able to agree on the joint development agreement, and nothing further was heard from I.V. House, Betty Rozier, or Lisa Vallino regarding the joint invention.

25. On June 5, 2000, after informing I.V. House of his intent, Dr. Shesol filed a utility patent application for a device that incorporated his concept of his own improved site guard, not the I.V. House product, with a fabric connector.

26. On information and belief, attorney Mahoney, knowing that Dr. Shesol, Betty Rozier and Lisa Vallino had worked together on the device disclosed and claimed in the Patent-In-Suit, filed an application for the Patent-In-Suit omitting Dr. Shesol as a joint inventor.

27. The Patent-In-Suit issued on March 4, 2003.

28. Dr. Shesol just recently became aware of the Defendant's incorporating Plaintiff's ideas, know-how and concepts that he first disclosed to Defendant into their products, their commercialization of those concepts and their inclusion in the Patent-in-Suit.

COUNT I

(Declaration of Joint Inventorship of the '981 Patent)

29. Plaintiff reaffirms, incorporates and re-alleges each and every allegation set forth in paragraphs 1 - 28, inclusive.

30. By reason of the foregoing, Plaintiff is entitled under 35 U.S.C. § 256 to have this Court order the Director of the United States Patent Office to issue a certificate of correction naming Dr. Shesol as either the sole inventor or in the alternative a joint inventor of the '981 patent.

COUNT II
(Quasi Contract Colorado Law)

31. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 to 30, inclusive.

32. At Plaintiffs' expense Defendant I.V. House through the actions of its principals, Betty Rosier and Lisa Vallino, wrongfully received the benefits of Dr. Shesol's experience, inventive processes, and knowledge, all of which resulted in the patent-in-suit and, on information and belief, substantial sales of products which incorporated Plaintiff's intellectual property.

33. The Defendant, by reason of its action in improperly using the benefits of Dr. Shesol's invention and knowledge, has unjustly reaped rewards, profits, and other benefits related to their commercialization of the concepts Dr. Shesol disclosed.

34. The Plaintiff prays for appropriate compensatory relief.

35. The Defendant's actions were done willfully or in knowing disregard of Plaintiff's rights and as such punitive damages should be awarded in addition to compensatory relief.

COUNT III
(Trade Secret)

36. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 to 35, inclusive.

37. Defendant, after entering into the confidentiality agreement, Exhibit B, was aware that information, know-how, product concepts and related knowledge it received from the Plaintiff was confidential, competitive sensitive material and as such was a trade secret of the Plaintiff. Defendant had agreed that it would not disclose or use this material.

38. Nevertheless, Defendant misappropriated said material and incorporated it into its products and the Patent-in-Suit.

39. On information and belief the conduct of the Defendant, along with Rozier, Vallino, and Mahoney was accompanied with circumstances of fraud, deceit, and malice toward Plaintiff or with knowing disregard of Plaintiff's rights.

40. By reason of the foregoing, as a direct and proximal cause of Defendant's actions, Plaintiff has suffered damages to which they are entitled to remedies provided by law.

41. Said acts by Defendant and the co-actors, is a violation of the Colorado Trade Secrets Act, CRS 7-74-101, et seq. As such Plaintiff is entitled to punitive relief as provided by 7-74-104 and injunctive relief pursuant to 7-74-103.

COUNT IV
(Breach of Confidence)

42. The Plaintiff incorporates the allegations of paragraph 1 through 41 as if set forth herein.

43. The use and incorporation of Plaintiff's information, know-how, and concepts in Defendant's products and in their application for the Patent-in-Suit was a violation of the confidential relationship established between the parties.

44. As a result of defendant's breach of its duties of confidentiality the Defendant has improperly gained commercial advantage and benefits.

45. Plaintiff seeks all appropriate equitable relief to deprive Defendant of all benefits obtained thereby as well as his attorneys' fees as provided in the Confidentiality Agreement.

COUNT V

(Violation of Colorado Consumer Protection Act)

46. Plaintiff incorporates the allegations of Paragraph 1 through 45 as if set forth herein.

47. The aforesaid facts and allegations, upon information and belief, is a violation of the Colorado Consumer Protection Act, CRS 6-1-101, et seq. and was accompanied with bad faith by the Defendant.

48. The complained of acts have substantially impacted the consuming public and the marketplace, thus warranting this action.

49. Plaintiff seeks all appropriate relief, including recovery of treble damages and attorneys' fees pursuant to 6-1-113.

WHEREFORE, PLAINTIFF PRAYS THAT:

1. This Court Order Director of the United States Patent Office to issue a certificate of correction naming Dr. Shesol as the sole inventor or as joint inventor of the '981 patent.

2. Defendant be required to account to Plaintiff all profits unjustly gained as a result of Defendant's conduct.

3. Plaintiff be awarded all proven damages as well as treble and punitive damages because of the knowing, willful and wanton nature of Defendant's conduct.
4. Plaintiff be awarded his attorneys' fees.
5. Injunctive relief to prevent further misappropriation and improper conduct.
6. Plaintiff be awarded pre-judgment interest and costs.
7. Plaintiff be awarded such other relief, both equitable and legal, as is justified by this case.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY ON ALL LEGAL CLAIMS

Dated this 19th day of December, 2006.

By: /s/ J. Mark Smith

J. Mark Smith
Pendleton Friedberg Wilson
& Hennessey P.C.
1875 Lawrence Street, Tenth Floor
Denver, CO 80202
Telephone: (303) 839-1204
Facsimile: (303) 831-0786
Attorneys for Plaintiff Barry F.
Shesol, M.D.

Plaintiff's Address:

18158 East Long Avenue
Aurora, CO 80016