

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO. 4:11-CV-30

ARGUS NEUROOPTICS, LLC,

Plaintiff,

v.

CHARLES J. MATTHEWS,

Defendant.

COMPLAINT

Plaintiff Argus NeuroOptics, LLC (“Argus”), by its undersigned counsel, respectfully alleges in support of its complaint against defendant Charles J. Matthews (“Matthews”) as follows:

INTRODUCTION

1. This is an action to declare and enforce Argus’ federal patent rights in various patentable inventions against Matthews.

2. Argus is a company organized to research and develop medical devices and treatments -- in fields including photobiology, laser therapy, photomedicine and biofeedback -- that could be used to treat patients for a variety of conditions, including head pains, migraine headaches and other neurologic conditions. Matthews is one of three founding members of Argus. Under an Invention Assignment Agreement dated December 2, 2009 (the “Patent Agreement”), Matthews assigned all of his right, title and interest in various patentable inventions to Argus. Argus is now prosecuting patent applications and is preparing for commercial implementation of the inventions developed thereunder. However, Matthews is

frustrating those efforts by asserting patent rights that Argus reasonably believes have been assigned to it, and undertaking or threatening actions to undermine Argus.

3. A controversy regarding patent rights that requires court intervention exists because the Patent Agreement specifies a comprehensive assignment of rights and interests to Argus by Matthews, but he is behaving in ways that seek to undercut those terms and make it impossible to verify whether the inventions he claims to be working on are, indeed, outside of the Agreement's broad scope. Through his counsel, Matthews has notified Argus that "Dr. Matthews and I are working on a series of new patents," and "It is my understanding that the agreement only relates to that one application and no other inventions or patent applications filed by my client that we are working on." In response, Argus has notified Matthews of its concern about the extremely narrow, and impermissible, reading he is taking of the Patent Agreement, and has demanded that Matthews "provide a detailed description of all patents and matters on which [Matthews' counsel] may be working with Mr. Matthews." Matthews has rebuffed Argus' attempts to obtain documentation and information about the patentable inventions that Argus owns under the Patent Agreement, and declined to produce any evidence to suggest that his current research activities are outside of the broad scope of the Invention Assignment Agreement.

4. Argus seeks declaratory and injunctive relief, as well as monetary damages, in enforcement of Argus' rights against Matthews.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1338(a). Argus has pled one or more claims for relief arising under federal patent law and/or Argus has pled one or more state law claims for which federal patent law is a necessary element.

This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as Argus has pled one or more claims arising under federal statutes involving copyright and trademark law.

6. To the extent that Argus may have pled a state law claim for which federal law is not a necessary element, then this Court has supplemental jurisdiction over such state law claim pursuant to the Court's supplemental jurisdiction under 28 U.S.C. § 1367.

7. Venue over this action is properly before this Court pursuant to 28 U.S.C. § 1391(b), as the events or omissions giving rise to Argus' claims occurred in this judicial district.

PARTIES

8. Plaintiff Argus is a limited liability company organized under the laws of North Carolina with its principal place of business in North Carolina. Argus currently has three individual members, two of whom are North Carolina citizens and, upon information and belief, the third Argus member (Matthews) also is a North Carolina citizen.

9. Upon information and belief, defendant Matthews is a North Carolina citizen. This action relates to and involves actions undertaken by Matthews in North Carolina.

FACTUAL BACKGROUND

10. Under an Invention Assignment Agreement dated December 2, 2009 (the "Patent Agreement") (Exhibit 1 to the Complaint) made and entered into in North Carolina, Matthews assigned all of his right, title and interest in various patentable inventions to Argus.

11. Under paragraph 1 of the Patent Agreement, Matthews agreed that "[a]ll inventions ("Inventions") stated henceforth and those related to the Company's actual or demonstrably anticipated development, are the sole and exclusive property of the Company. Inventor agrees to assign, and hereby does assign, all such Inventions to the Company."

12. Some of the patentable inventions assigned by Matthews to Argus are specifically identified in the Patent Agreement. See Exhibit A to the Patent Agreement, captioned “List of Inventor’s Assignments,” specifically identifying the following patentable inventions:

- a. A patent, METHOD OF STIMULATION OF NEURONAL ACTIVITY filed with the US Patent and Trademark Office. The application number is 61/236,748.
- b. A device based on this patent, whereby a laser is used to stimulate and control the sphenopalatine ganglion, for the purpose of treating migraine and other forms of head pain.
- c. The L-STEP monitoring system and the integration of this capability in other devices.
- d. The design of all disposable operative equipment related to the above processes.
- e. All controlling devices and mathematical algorithms in development to control and optimize the photic emitters described above.
- f. The design of operative chairs, lights, tables, armatures, and other equipment for the room in which such procedures are performed.”

(Collectively, the “Specifically Identified Patentable Inventions”).

13. Some of the patentable inventions assigned by Matthews to Argus are not specifically identified in the Patent Agreement. For instance, paragraph 7 in Exhibit A to the Patent Agreement generally refers to Matthews’ assignment of his future inventions to Argus “in the general fields of photobiology, laser therapy, photomedicine, medical devices, and algorithms related to biofeedback and control.” (collectively, the “Generally Identified Patentable Inventions”).

14. Under paragraph 2 of the Patent Agreement, Matthews agreed that “[h]e will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and assign to the Company, any and all inventions, rights, titles, and interests throughout the world, concepts, know-how, improvements, and trade secrets, whether or

not patentable or registrable under copyright or trademark law related to Invention[s] mentioned henceforth during Inventor's term of consultancy or employment.”

15. Under paragraph 3 of the Patent Agreement, Matthews agreed that “Inventor hereby certifies that no assignment, sale, agreement or encumbrance has been or will be made or entered into by Inventor that would conflict with this agreement or the laws of The State of North Carolina.”

16. Matthews is, and remains, a member of Argus holding a one-third ownership interest in Argus and is obligated to exercise his ownership interest in accordance with his fiduciary duty to act loyally to and in the best interests of Argus.

17. Matthews is, and remains, an officer employed by Argus, and is obligated to exercise his officer responsibilities in accordance with his fiduciary duty to act loyally to and in the best interests of Argus.

18. Matthews is, and remains, a consultant to Argus. Despite Matthews' unilateral attempt to “resign” as a consultant, Argus has never accepted that purported “resignation,” and Argus has never relieved Matthews of his duties to Argus as a consultant. However, even if his resignation were deemed effective, he remains a member of Argus and remains obligated to the undertakings of the Patent Agreement. Matthews cannot unilaterally escape such obligations.

19. During the Spring of 2010, Matthews accompanied Argus to a business development meeting at Harvard University for the purpose of obtaining investment financing for Argus' patentable inventions (the “Harvard Meeting”).

20. The Harvard Meeting was productive and, as a result, Argus received indications of interest for investment financing for Argus' patentable inventions.

21. Shortly after the Harvard Meeting and continuing to date, Matthews has refused to comply with his duties to provide full written disclosure (including appropriate documentation and other information) to Argus and/or to Argus' investment groups interested in financing Argus' patentable inventions, regarding the patentable inventions that Argus owns under the Patent Agreement.

22. Upon information and belief, shortly after the Harvard Meeting and continuing to date, Matthews has been engaged in behavior designed to frustrate Argus from determining whether he is improperly developing devices or treatments covered by the Patent Agreement, and thus attempting to compete with the entity to which he owes continuing fiduciary and contractual duties. This conduct is manifested by representations that Matthews is developing technology for his own use that is contrary to his obligations under the Patent Agreement. Upon information and belief, he also has made public comments intended to thwart the successful commercialization efforts of Argus related to devices, treatments and applications that it controls under the Patent Agreement.

23. During the Summer of 2010, counsel for Matthews notified Argus that "Dr. Matthews and I are working on a series of new patents," and "It is my understanding that the agreement only relates to that one application and no other inventions or patent applications filed by my client that we are working on."

24. In response, Argus, through its counsel, notified Matthews that his interpretation of the Patent Agreement is at odds with its broad coverage and demanded that Matthews "provide a detailed description of all patents and matters on which [Matthews' counsel] may be working with Mr. Matthews."

25. Matthews has continued to rebuff Argus' attempts to obtain documentation and information about the patentable inventions that Argus owns under the Patent Agreement, and to determine whether he and his counsel are working in areas barred by the Agreement's terms.

26. Matthews' admission that he is "working on a series of new patents," coupled with his refusal to share information with Argus sufficient for it to determine if he is violating the terms of the Patent Agreement, has compelled Argus to enforce its rights through this lawsuit.

COUNT I

27. The allegations of paragraphs 1 through 26 are incorporated herein as if fully set forth.

28. Pursuant to the federal declaratory judgment act (28 U.S.C. § 2201), Argus seeks a declaratory judgment that the Specifically Identified Patentable Inventions constitute patentable material under the federal patent laws (35 U.S.C. § 101 et seq.).

29. To the extent that the Specifically Identified Patentable Inventions may not constitute patentable material under the federal patent laws, then Argus seeks, in the alternative, a declaratory judgment that such non-patentable inventions constitute copyrightable material under the federal copyright laws (17 U.S.C. § 101, et seq.) and/or trademarkable material under the federal trademark laws (15 U.S.C. § 1051, et seq.).

COUNT II

30. The allegations of paragraphs 1 through 29 are incorporated herein as if fully set forth.

31. Pursuant to the federal declaratory judgment act (28 U.S.C. § 2201), Argus seeks a declaratory judgment that the Generally Identified Patentable Inventions constitute patentable material under the federal patent laws (35 U.S.C. § 101 et seq.).

32. To the extent that the Generally Identified Patent Inventions may not constitute patentable material under the federal patent laws, then Argus seeks, in the alternative, a declaratory judgment that such non-patentable inventions constitute copyrightable material under the federal copyright laws (17 U.S.C. § 101, et seq.) and/or trademarkable material under the federal trademark laws (15 U.S.C. § 1051, et seq.).

COUNT III

33. The allegations of paragraphs 1 through 32 are incorporated herein as if fully set forth.

34. Pursuant to the federal declaratory judgment act (28 U.S.C. § 2201), Argus seeks a declaratory judgment that Argus is the sole and exclusive owner of the Specifically Identified Patentable Inventions and the Generally Identified Patentable Inventions.

COUNT IV

35. The allegations of paragraphs 1 through 34 are incorporated herein as if fully set forth.

36. Pursuant to the federal declaratory judgment act (28 U.S.C. § 2202) and/or the injunctive relief available under the federal patent laws and/or the Court's equitable powers, Argus seeks a permanent injunction enjoining Matthews from taking any action, or asserting any claim, that is inconsistent with Argus' ownership rights in the Specifically Identified Patentable Inventions and the Generally Identified Patentable Inventions.

COUNT V

37. The allegations of paragraphs 1 through 36 are incorporated herein as if fully set forth.

38. Matthews knew or should have known that his actions constituted a willful violation of Argus' rights in patentable inventions.

39. Matthews' willful actions in damaging Argus' rights in patentable inventions fall within the statutory meaning of an "exceptional" case under the federal patent laws (35 U.S.C. § 285).

40. Pursuant to the attorney's fee statute under the federal patent laws (35 U.S.C. § 285), Argus is entitled to recover its reasonable attorney's fees from Matthews in an amount to be determined by the Court.

COUNT VI

41. The allegations of paragraphs 1 through 40 are incorporated herein as if fully set forth.

42. Matthews has breached his fiduciary duty to act loyally to and in the best interests of Argus, including but not limited to Matthews' refusal to provide documentation and information relating to Argus' ownership rights in the Specifically Identified Patentable Inventions and the Generally Identified Patentable Inventions.

43. Matthews' breach of fiduciary duty has proximately caused Argus to sustain damages.

44. Matthews' breach of fiduciary duty renders him liable for Argus' damages in an amount to be determined by the Court.

COUNT VII

45. The allegations of paragraphs 1 through 44 are incorporated herein as if fully set forth.

46. Matthews has breached his contractual duties to Argus under the Patent Agreement, including but not limited to Matthews' refusal to provide documentation and information relating to Argus' ownership rights in the Specifically Identified Patentable Inventions and the Generally Identified Patentable Inventions.

47. Matthews' breach of his contractual duties to Argus under the Patent Agreement has proximately caused Argus to sustain damages.

48. Matthews' breach of his contractual duties to Argus under the Patent Agreement renders him liable for Argus' damages in an amount to be determined by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, having stated its claims, respectfully prays the Court that:

1. On its first claim for relief, a declaratory judgment, as pled herein, regarding Argus' patent rights to the Specifically Identified Patentable Inventions;

2. On its second claim for relief, a declaratory judgment, as pled herein, regarding Argus' patent rights to the Generally Identified Patentable Inventions;

3. On its third claim for relief, a declaratory judgment, as pled herein, that Argus is the sole and exclusive owner of the Specifically Identified Patentable Inventions and the Generally Identified Patentable Inventions;

4. On its fourth claim for relief, a declaratory judgment and injunctive relief, as pled herein, in enforcement of Argus' ownership rights to the Specifically Identified Patentable Inventions and the Generally Identified Patentable Inventions;

5. On its fifth claim for relief, attorney's fees against Matthews, as pled herein, under federal patent law (35 U.S.C. § 285);

6. On its sixth claim for relief, damages against Matthews, as pled herein, for breach of fiduciary duty;

7. On its seventh claim for relief, damages against Matthews, as pled herein, for breach of contract; and

8. Together with such other and further relief as the Court deems just and proper herein.

This the 25th day of February, 2011.

/s/Bradley M. Risinger

Bradley M. Risinger
N.C. State Bar No. 23629

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