

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

MR. QUINCY L. KENNEDY,

Plaintiff,

vs.

No.: 1:13-cv-01188-JDT-egb

INVENT HELP COMPANY,

Defendant.

REPORT AND RECOMMENDATION

On June 17, 2013, Plaintiff Quincy L. Kennedy, a *pro se* litigant residing in Obion County, filed a patent infringement lawsuit pursuant to 35 U.S.C.A. § 271, seeking unspecified damages for infringement of his patent covering an "animal design" on a car's headlight. Patents are an exclusively federal jurisdictional matter to be decided solely in the federal courts. 28 U.S.C.A § 1338. Nevertheless, Plaintiff has failed to state a claim for which relief can be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

The complaint in an action for patent infringement must include all of the essential elements required for this cause of action; thus, the Plaintiff must allege: first, facts showing the trial Court has jurisdiction. *Colgate & Co. v. Proctor & Gamble Mfg. Co.*, 25 F.2d 160 (E.D. N.Y. 1928). Second, that the Plaintiff has title to the patent. *Dill Mfg. Co. v. Goff*, 125 F.2d 676 (C.C.A. 6th Cir. 1942). Third, in the alternative to the second

element, that the one under whom he or she claims is the original and first inventor whose rights were infringed by the defendant. *Ashcroft v. Boston & L.R. Co.*, 97 U.S. 189, 24 L.Ed. 982 (1877). Fourth, the claims of the patent which have been infringed must be pled in the complaint. *Coyne & Delany Co. v. G.W. Onthank Co.*, 10 F.R.D. 435 (S.D. Iowa 1950). Fifth, and lastly, the plaintiff must plead in the complaint that the notice of infringement was given to the infringing party. *Westinghouse Electric & Mfg. Co. v. Condit Electrical Mfg. Co.*, 159 F. 154 (C.C.S.D. N.Y. 108).

In Plaintiff's complaint, the basis for federal court jurisdiction rests on the subject matter jurisdiction vested exclusively in federal courts for issues related to patents. 28 U.S.C.A. § 1338. Because federal courts exercise exclusive jurisdiction in patent and copyright matters, Plaintiff's claim could only be brought in a federal district court which was properly done in this case. State courts would not be able to exercise jurisdiction as there is no concurrent jurisdiction over patent and copyright claims between the state and federal courts. Alternatively, the Plaintiff could have brought this claim under the diversity jurisdiction statute, 28 U.S.C.A. § 1332, which grants federal courts the right to hear claims between plaintiff(s) and defendant(s) if (amongst other qualifications) there is complete diversity between the parties on each side of the case. Here, Plaintiff is a resident of Obion County,

Tennessee, and the Defendant corporation resides in Pennsylvania; thus, complete diversity is met and would provide another basis for federal court jurisdiction. As to personal jurisdiction and proper venue, these aspects of jurisdiction would likely be met as well if the corporation directed activities toward the forum state and locating suit in the Western District would be a proper and convenient forum for the resolution of the case.

As to the second element, in order to have a valid patent claim, there must be a valid patent issued for the particular invention claimed to have been infringed in the lawsuit. In order to have a patent, plaintiff must file an application with the Trademark and Patent Office seeking to compel issuance of a patent for his invention. Then, the Director of the United States Patent and Trademark Office will examine the application and alleged new invention to see if the applicant is entitled to a patent under the law. If the Director decides that the applicant is entitled to a patent, the Commissioner for Patents will issue a patent with a unique number that carries the force of law.

In this particular case, Plaintiff has neither filed an application with the Trademark and Patent Office nor has he mentioned any other legal process he has undertaken to obtain a patent for his "animal design" to be imprinted upon a car's headlights. In fact, Plaintiff's complaint offers no evidence at

all on whether or not a patent has been issued for his "animal design" implemented into a car's headlights.

Certain minimum standards must be met in the initial complaint in order for the court to allow the lawsuit to proceed to the next phase. Significant among these standards is the need for more than mere legal conclusions without any supporting factual allegations. Relevant to this complaint, the Plaintiff cannot simply assert that he has a cause of action for patent infringement under 35 U.S.C.A. § 271 without providing any factual support for this legal conclusion.

Without such evidence or any facts relating to the issuance of a patent for this claimed invention of the Plaintiff's, the complaint is insufficient as a matter of law and must be dismissed for failure to state a claim for which relief can be granted. FRCP 12(b)(6). At the very least, Plaintiff would have needed to make a bare factual assertion that a patent had been issued in his name for his claimed invention in order to survive this stage of the pleadings. However, no such factual allegations are made and under *Bell Atlantic v. Twombly* such a complaint must be dismissed as it is insufficient as a matter of law (*Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (U.S. 2007)). Thus, the remaining three elements of the patent cause of action are a moot point and need not be examined as the Plaintiff has failed to meet his burden of presenting a prima facie case for patent infringement.

In the alternative, Plaintiff's Complaint could be read as a breach of contract between the Plaintiff and Defendant as it is alleged that the Defendant did not fulfill its responsibilities.

However, the Complaint is deficient in that the only monetary damages alleged are the \$300 Plaintiff paid the Defendant corporation. The federal diversity statute states that "The district courts shall have original jurisdiction of all civil actions where the matter in controversy **exceeds the sum or value of \$75,000**, exclusive of interest and costs ..." (28 USCA § 1332, emphasis added). In this case, an amount that exceeds the sum or value of \$75,000 has not been pled.

For the reasons above, it is recommended that the complaint be dismissed *sua sponte* for lack of subject-matter jurisdiction, pursuant to Rules 12(b)(1) and (h)(3) of the Federal Rules of Civil Procedure.

Respectfully submitted this, the 6th day of February, 2014.

s/Edward G. Bryant
UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT AND RECOMMENDATIONS MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT AND RECOMMENDATIONS. 28 U.S.C. § 636(b)(1). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.