

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Christopher Roller, Plaintiff, v. David Copperfield's Disappearing, Inc., Defendant.	Case No.: 07-CV-1182 (JNE/JJG) DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS
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INTRODUCTION

Plaintiff has best summarized this case in the opening words of his Complaint: “This is *déjà vu*. It seemed like the other day when I sued David Copperfield for using my godly powers for his magic tricks. It was case 05-446 JRT/FLN.” (Complaint p. 1). That case was dismissed for failure to state a claim; this case should meet the same fate.

This is the second lawsuit in as many years instituted by Plaintiff against David Copperfield's Disappearing, Inc. (“Copperfield”) for alleged usurpation of Plaintiff's “godly powers.” This time, Plaintiff has taken the novel and absurd position that he has obtained a United States patent on his “godly powers,” and that Copperfield is infringing upon his patent rights.

Fatal to Plaintiff's Complaint is that Plaintiff has never been awarded a patent. Without a patent, his claim for infringement necessarily must fail, as no set of facts or circumstances exists that could entitle Plaintiff to the relief he seeks. Because the Complaint fails to state a claim for which relief can be granted, Plaintiff's claims must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

FACTUAL BACKGROUND

David Copperfield's Disappearing, Inc. ("Copperfield") is a Nevada corporation that brings the magic of world-famous magician David Copperfield to the stage and television screen.

Plaintiff is a *pro se* individual residing in Burnsville, Minnesota.¹ (Complaint p. 2).

On or about June 1, 2005, Plaintiff commenced an action in this Court against Copperfield, alleging that Mr. Copperfield had "been using my godly powers to perform his magic" and that this usurpation of godly powers constituted a labor dispute under Minnesota Statutes § 179.06. *See Roller v. David Copperfield's Disappearing, Inc.*, 05-CV-0446 (JRT/FLN) (D. Minn. 2005). This Court, per the Honorable Franklin L. Noel, granted Copperfield's motion to dismiss in a Report and Recommendation dated October 13, 2005. Plaintiff appealed the dismissal to the district court judge, who

¹ Copperfield respectfully urges the Court to visit Plaintiff's website, www.mytrumanshow.com, to which the Plaintiff has referred the Court in his Complaint. Therein Plaintiff makes or has made at various times the following claims:

- That Plaintiff is running for President of the United States in 2008 with Bill Gates as his running mate.
- That Plaintiff is Jesus Christ and/or God.
- That Katie Couric and Celine Dion are Plaintiff's wives and are going to have his children.
- That a movie will be released soon about Plaintiff's life that stars Tom Hanks.
- That Plaintiff has killed all of his enemies.
- That Plaintiff will magically father 1,000,000 babies.
- That Plaintiff has supernatural powers.

(Affidavit of André J. LaMere ("LaMere Aff.") Ex. A).

affirmed the dismissal on January 20, 2006. (Order dated Jan. 20, 2006). Plaintiff then appealed to the U.S. Court of Appeals for the Eighth Circuit, which summarily dismissed his appeal without the benefit of briefing or oral argument by order dated May 25, 2006. (U.S. App. Ct. (8th Cir.) J. dated May 25, 2006).

The previous lawsuit against Copperfield is by no means Plaintiff's only foray into this Court. Over the past several years, Plaintiff has burdened this Court with the following actions of which Defendant is aware:

- *Christopher Roller v. Central Intelligence Agency* (07-01298) (Plaintiff sued CIA claiming it has ruined his life by failing to inform others that he is god);
- *Christopher Roller v. Angel Productions, Inc.* (07-01297) (Plaintiff sued magician Criss Angel for stealing Plaintiff's godly powers);
- *Christopher Roller v. The James Randi Educational Foundation, Inc.* (07-01296 & 06-04702) (Plaintiff sued magician James Randi for infringing on his patent for godly powers);
- *Christopher Roller v. Department of Veterans Affairs Minneapolis Medical Center* (06-00529) (Plaintiff sued Veterans Affairs for \$1 billion for calling him mentally ill and for aiding and abetting the mafia in damaging Plaintiff's ability to perform his job as President of the United States);
- *Christopher Roller v. George Bush Administration et al.* (05-2177) (Plaintiff sued President Bush and others for conspiracy against a godly entity and conspiracy to plan the attacks of September 11, 2001); and
- *Christopher Roller v. Bossa Entertainment Corp. and Magician David Blaine* (05-01112) (Plaintiff sued magician David Blaine for usurpation of godly powers).

At some point during the previous litigation against Copperfield, Plaintiff filed a patent application with the United States Patent and Trademark Office ("U.S. PTO") seeking patent protection on his "godly powers." (Complaint p. 1; LaMere Aff. Ex. B). Plaintiff refers to this application as an issued patent. (Complaint p. 1). However, as is clear by examination of the document itself, as well as by performing a cursory search of

the U.S. PTO website, Plaintiff does not hold a patent – on “godly powers” or on anything else. (LaMere Aff. Exs. B and C). Rather, Plaintiff’s patent application was published in the ordinary course on or about February 15, 2007. (LaMere Aff. Ex. D; 35 U.S.C. § 122(b)(1)).

According to the U.S. PTO website search engine, Plaintiff’s patent application was filed on July 29, 2005, as he alleges in the Complaint. (LaMere Aff. Ex. B; Complaint p. 1). Its “earliest publication date” was February 15, 2007, the date Plaintiff claims his patent was issued. (LaMere Aff. Ex. C). No patent number has been assigned, and there is a blank in the form under the heading “Issue Date of Patent.” (*Id.*) Simply put, no patent has been issued.

Copperfield’s counsel has called to Plaintiff’s attention the fact that his published application does not, in fact, constitute a patent by letter dated March 19, 2007. (LaMere Aff. Ex. E). Plaintiff responded via e-mail claiming that he has a valid patent and directing Defendant to “[p]lay up.” Plaintiff signed his e-mail, “Chris Roller aka God.” (LaMere Aff. Ex. F).

ARGUMENT

PLAINTIFF’S COMPLAINT FAILS TO STATE A CLAIM AND SHOULD BE DISMISSED.

A. Standard of Review.

Rule 12(b)(6) motions should be granted where, as here, the moving party shows that, assuming the truth of all factual allegations, plaintiff can prove no set of facts in support of its claim that would entitle it to relief. *See Parnes v. Gateway 2000, Inc.*, 122

F.3d 539, 546 (8th Cir. 1997). Rule 12(b)(6) motions “can serve a useful purpose in disposing of legal issues with a minimum of time and expense to the interested parties.” *Hiland Dairy, Inc. v. Kroger Co.*, 402 F.2d 968, 973 (8th Cir. 1968), *cert. denied*, 395 U.S. 961 (1969).

Although the Court must assume all facts alleged in Plaintiff’s Complaint are true, the Court “do[es] not, however, blindly accept the legal conclusions drawn by the pleader from the facts.” *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir. 1990) (citations omitted). “[C]onclusions of law and unreasonable inferences or unwarranted deductions of fact” are not accepted as true. *Hiland*, 402 F.2d at 973.

In its consideration of this motion, the Court may rely on the document that Plaintiff alleges to be a “patent” and has incorporated by reference into the Complaint. *See Parnes*, 122 F.3d at 546 n.9 (trial court’s examination of prospectus attached to motion to dismiss and relied upon by plaintiff did not convert motion into one for summary judgment).²

B. Plaintiff’s Lack of a Patent Precludes His Claim for Infringement.

Plaintiff has conflated the publication of his patent application with the issuance of a patent. Because Plaintiff holds no patent, he cannot sustain a claim for infringement. This action must, therefore, be dismissed. Fed. R. Civ. P. 12(b)(6).

² Plaintiff has not physically attached the patent application, which he claims is an issued patent, to his Complaint; however, he has incorporated it by reference by referring to the URL of the document on his website. (Complaint p. 1).

The U.S. PTO publishes patent applications it receives 18 months after their earliest filing date. *See* 35 U.S.C. § 122(b)(1). It appears that is precisely what has happened here. Plaintiff filed his application on July 29, 2005; it was published on February 15, 2007. However, publication of Plaintiff's patent application does not have the same legal force as *granting* Plaintiff a patent.

Patents shall be issued in the name of the United States of America, under the seal of the Patent and Trademark Office, and shall be signed by the Director or have his signature placed thereon and shall be recorded in the Patent and Trademark Office.

35 U.S.C. § 153. Plaintiff has not appended to his Complaint—and cannot produce in response to this motion—any patent issued to him under the seal of the U.S. PTO. Further, Plaintiff has not made reference to any *actual* issued patent in his Complaint as currently styled, which is fatal to his claim.

It is axiomatic that without a patent issued by the U.S. PTO, Plaintiff lacks standing to bring a claim of infringement. As the relevant portion of the statute governing actions for infringement states:

Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any *patented* invention, within the United States or imports into the United States any *patented* invention *during the term of the patent therefor*, infringes the patent.

