

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

CHRISTOPHER ROLLER,

Civil No. 07-1296 (JRT/FLN)

Plaintiff,

v.

**ORDER DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS* ON
APPEAL**

ANTHONY OSTLUND & BAER, P.A.,
STATE OF MINNESOTA, and UNITED
STATES,

Defendants.

Christopher Roller, 13150 Harriet Avenue South #273, Burnsville, MN 55337, *pro se* plaintiff.

Richard T. Ostlund and Cory D. Olson, **ANTHONY OSTLUND BAER LOUWAGIE & ROSS, P.A.**, 90 South Seventh Street, Suite 3600, Minneapolis, MN 55402, for defendant Anthony Ostlund & Baer, P.A.

John S. Garry, Assistant Attorney General, **OFFICE OF THE MINNESOTA ATTORNEY GENERAL**, 445 Minnesota Street, Suite 1100, St. Paul, MN 55101-2128, for defendant State of Minnesota.

David W. Fuller, Assistant United States Attorney, **OFFICE OF THE UNITED STATES ATTORNEY**, 600 United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, for defendant United States.

Plaintiff Christopher Roller filed this patent infringement action alleging that defendants have conspired to infringe upon his “godly powers.” In a Report and Recommendation dated December 10, 2007, United States Magistrate Judge Franklin L. Noel recommended granting defendants’ motions to dismiss and dismissing plaintiff’s complaint with prejudice. After reviewing plaintiff’s objections *de novo*, this Court

adopted the Report and Recommendation of the Magistrate Judge. Plaintiff has filed a notice of appeal with the Federal Circuit and now applies to proceed *in forma pauperis* (“IFP”) on appeal.

A litigant who seeks to be excused from paying the filing fee for an appeal in a federal case may apply for IFP status. *See* 28 U.S.C. § 1915(a)(1). However, “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” § 1915(a)(3). To determine whether an appeal is taken in good faith, the Court must decide whether the claims to be decided on appeal are factually or legally frivolous. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). An appeal is frivolous, and therefore cannot be taken in good faith, “where it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

Here, it is undisputed that plaintiff does not have a patent on any “godly powers.” While plaintiff contends that an application for such a patent is pending, “[i]t is axiomatic that there can be no infringement of a patent prior to its issuance.” *Cohen v. United States*, 487 F.2d 525, 527 (Ct. Cl. 1973). Until plaintiff is issued a patent – an event which appears exceptionally improbable in light of the subject matter – there is no factual or legal basis for his patent infringement action. Plaintiff’s application for leave to proceed IFP on appeal is therefore denied.

ORDER

Based on the foregoing records, files, and proceedings herein, **IT IS HEREBY ORDERED** that plaintiff's motion to proceed *in forma pauperis* on appeal [Docket No. 109] is **DENIED**.

DATED: June 13, 2008
at Minneapolis, Minnesota.

s/ John R. Tunheim
JOHN R. TUNHEIM
United States District Judge