

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

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|------------------------|---|-------------------------------------|
| CHRISTOPHER A. ROLLER, |) | |
| |) | |
| Plaintiff, |) | Civil Action No. 07-01296 – JRT-FLN |
| |) | |
| vs. |) | DEFENDANT’S MEMORANDUM IN |
| |) | SUPPORT OF ITS MOTION TO |
| BOSLEY MEDICAL GROUP, |) | DISMISS FOR FAILURE TO STATE |
| |) | A CLAIM UPON WHICH RELIEF |
| Defendant. |) | MAY BE GRANTED |
| |) | |

INTRODUCTION

Plaintiff Christopher Roller (“Mr. Roller”) has initiated an action for the infringement of a patent that he admits he does not have, demanding royalties for the use of what he refers to as a “pseudo-patent” for “the use of godly powers.” Plaintiff has asserted his baseless claim against “Bosley Medical Group”¹—evidently alleging that its hair transplantation procedures require the use of godly powers and, thereby, infringe on Plaintiff’s pseudo-patent. Bosley submits this memorandum in support of its motion to dismiss Plaintiff’s action with prejudice pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted.

FACTUAL BACKGROUND

Plaintiff is a resident of the state of Minnesota. Plaintiff claims that he is “god...a god, but maybe *the* God”²—and has filed a number of frivolous lawsuits in this Court based on that

¹ Plaintiff names “Bosley Medical Group” as Defendant in his Complaint Supplemental. The party submitting this motion and memorandum is Bosley, Inc.—the management company to various Bosley Medical Group affiliates around the Country. Accordingly, hereinafter, “Bosley” will refer to Bosley, Inc.

² Plaintiff makes this assertion, along with many others, in an interview which can be found online at http://www.youtube.com/watch?v=R5H_kDC-rT8

assertion.³ Bosley, Inc. is a Delaware corporation that has contracts with various professional corporations around the country—the Bosley Medical Groups—to provide medical hair restoration services. Bosley’s restoration techniques combine the use of surgical skill and artistry.⁴ Contrary to Plaintiff’s allegation, employees of Bosley do *not* exercise magic commands to accomplish their job. *See* Complaint Supplemental ¶ 4.

On May 18, 2007 Mr. Roller filed a “Complaint Supplemental” against “Bosley Medical Group” in the United States District Court, District of Minnesota. On that same date, Mr. Roller filed an Amended Complaint against “Godly Powers Patent Infringers,” which apparently intends to incorporate Bosley as a defendant. Mr. Roller served the Complaints—which are evidently intended to be construed together—simultaneously, on May 25, 2007.

In piecing together the two complaints, the substance of Mr. Roller’s patent infringement claim against Bosley appears to rest on the coincidence of two baseless allegations. First, in his Complaint Supplemental, Mr. Roller alleges that “[a]ll employees of Bosley have godly powers.” *See* Complaint Supplemental ¶ 1. Second, in his Amended Complaint, Mr. Roller states that “[i]f you have godly powers, then you are infringing on my patent.” *See* Amended Complaint at 3.

As discussed in greater detail below, Plaintiff’s patent infringement claim must be dismissed because, as Mr. Roller admits, he does not have a patent for godly powers. *See*

³ Plaintiff’s past actions in this Court include, but are not limited to, the following:

- A lawsuit against the CIA claiming it has ruined his life by failing to inform others that he is god. *See* Christopher Roller v. Central Intelligence Agency (07-01298)
- Separate lawsuits against magicians David Copperfield and David Blaine for usurpation of his godly powers in violation of the labor laws. *See* Christopher Roller v. David Copperfield’s Disappearing, Inc. (05-446); Christopher Roller v. Bossa Entertainment Corp. and Magician David Blaine (05-01112)
- A lawsuit against President George Bush and others for conspiracy against a godly entity and conspiracy to plan the attacks of September 11, 2001. *See* Christopher Roller v. George Bush Administration et al. (05-2177)

⁴ *See* <http://www.bosley.com/restored/index.php?page=whybosley>

Amended Complaint at 2 (stating “People like to make fun of the fact I don’t have a patent. This is true, but I have a pseudo-patent, a provisional patent, with provisional rights.”). Plaintiff goes on to allege that he has provisional rights, pursuant to 35 U.S.C. § 154, as a result of publication of his patent application. *See* Amended Complaint at 3. Plaintiff blatantly misinterprets the statute, however, as his “pseudo-patent” affords him no rights under the law. Plaintiff has failed to state any claim upon which relief can be granted, and the claim must be dismissed in its entirety pursuant to Fed. R. Civ. P. 12(b)(6).

ARGUMENT⁵

A claim is subject to dismissal under Fed. R. Civ. P. 12(b)(6) when “plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45 (1957). Here, Plaintiff can prove no set of facts to support his claim for patent infringement, as he neither holds a valid patent, nor does his unapproved patent application afford him any rights under the law.

A. Plaintiff Does Not Hold A Valid Patent For Godly Powers

The infringement of a patent necessarily requires the existence of a patented invention. *See* 35 U.S.C. § 271. Plaintiff admits in his Amended Complaint, however, that he does not hold a valid patent for godly powers. *See* Amended Complaint at 2. Plaintiff’s claim must fail as a matter of law, since there is no possible way to prove patent infringement without a valid patent.

B. Plaintiff’s “Pseudo-Patent” Does Not Afford Him Any Right To Relief

Conceding he has no real patent, Plaintiff apparently believes that he has a “pseudo-patent” or a “provisional patent” on “godly powers.” Setting aside the obvious problems with

⁵ Defendant Bosley adopts and incorporates much of Co-Defendant Maslon Edelman Borman & Brand’s argument, as set forth in Defendant’s Memorandum In Support Of Its Motion To Dismiss, Case No.: 07-01296 (JRT/FLN), Document 21.

the patentability of the subject matter, there is no such thing as a “pseudo-patent” or a “provisional patent.” Plaintiff (apparently) misreads the patent statute to treat patent applications the same as issued patents and further believes that “provisional rights” arise once a patent application is published.⁶ He is wrong.

The use of the term “patent” in the statute refers only to *issued* patents, not published patent applications. Such a reading is consistent with the use of the word in the United States Code and by the United States Patent and Trademark Office (USPTO). *See, e.g.*, 35 U.S.C. §§ 111, 122, 131, 151 (detailing the procedure through which an invention receives a patent)⁷; USPTO Patent Full-Text and Full-Page Image Databases, <http://www.uspto.gov/patft/index.html> (hosting two search engines, one for “Issued Patents” and the other for “Published Applications”). The statute is clear that a *patent* and a *published patent application* are two distinct items. *Id.*

Plaintiff also confuses the ripeness of his claim. “[Provisional rights] do[] not mature until a patent issues... .” *Plastic Recovery Technologies, Inc. v. Container Components, Inc.*, 2004 WL 2583951, at *1 (N.D. Ill. Nov. 12, 2004). The plain language of the statute reveals that, although a person with a published patent application can recover damages based on another’s use of the invention post-publication, that right only arises if a patent *has issued*.⁸

⁶ In his Amended Complaint, Plaintiff cites 35 U.S.C. § 154(d)(1), which states in relevant part:

(d) Provisional Rights. –

(1) In General. – In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent under section 122(b)...and ending on the date the patent is issued –

⁷ The procedure begins with a patent application that is published eighteen months after it is submitted. 35 U.S.C. §§ 111, 122. Once the application is reviewed, a patent will either be denied or will be issued. 35 U.S.C. §§ 131, 151. At all points prior to the issuance of a patent, the Code refers to patent applications and applications for patents, suggesting that the applicant is merely asking for a patent at that stage.

⁸ The USPTO illuminates this very point on its website, stating: “These rights provide a patentee with the opportunity to obtain a reasonable royalty from a third party that infringes a published application claim provided actual notice is given to the third party by applicant, **and a patent issues from the application.**”

Publication of a patent application is simply not the same as being awarded a patent by the USPTO. Publication of applications is done automatically as a matter of course. 35 U.S.C. § 122(b)(1). Issuance of a patent occurs after examination and determination that the applicant meets specified statutory criteria.

Plaintiff simply does not have a patent upon which to base his claim for patent infringement under 35 U.S.C. § 271. Furthermore, Plaintiff's patent application—or "pseudo-patent"—does not form the proper basis for a claim under 35 U.S.C. § 154(d). Plaintiff has failed to state a claim upon which relief can be granted, and the claim must be dismissed as a matter of law.

CONCLUSION

For the reasons set forth above, Defendant respectfully requests that this Court dismiss the Plaintiff's claims with prejudice, pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted.

Dated: June 14, 2007

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<http://www.uspto.gov/web/offices/pac/doc/general/index.html>, click on "Publication of Patent Applications" (emphasis added).