

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Christopher Roller,

Civil File No. 07-1296 JRT/FLN

Plaintiff,

vs.

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO
DISMISS OF DEFENDANT
STATE OF MINNESOTA**

The James Randi Educational Foundation,
Inc.; Anthony Ostlund & Baer, P.A.;
Bosley Medical Group; GE Medical
Systems Information Technologies, Inc.;
Lakewood Church;
Maslon Edelman Borman & Brand;
State of Minnesota; and United States,

Defendants.

INTRODUCTION

This is a pro se action by Plaintiff Christopher Roller asserting a patent infringement claim under 35 U.S.C. § 271. Roller's amended complaint includes the State of Minnesota as a Defendant. Docket #14 (amended complaint, to which supplemental complaint against the State of Minnesota is attached). Roller sues the State based on his allegations that he has a provisional patent on godly powers and that the State has infringed on this patent. *See id.*

Roller's claim against the State for purported patent infringement is barred by the Eleventh Amendment. In addition to this jurisdictional bar, Roller's amended complaint fails to state a plausible claim against the State. Accordingly, the Court should grant the State's motion to dismiss.

STANDARD OF REVIEW

The existence of subject matter jurisdiction in federal court is a question of law. *Keene Corp. v. Cass*, 908 F.2d 293, 296 (8th Cir. 1990). A federal court must dismiss an action if it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1), 12(h)(3).

Under Fed. R. Civ. P. 12(b)(6), a motion to dismiss for failure to state a claim must be granted where the complaint does not allege “enough facts to state a claim to relief that is plausible on its face” rather than merely “conceivable.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007). In addition, “Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law.” *Neitzke v. Williams*, 490 U.S. 319, 326, 109 S. Ct. 1827, 1832 (1989). Whether a complaint states a cause of action is a question of law. *Morton v. Becker*, 793 F.2d 185, 187 (8th Cir. 1986).

ARGUMENT

THE ELEVENTH AMENDMENT BARS THIS LAWSUIT AGAINST THE STATE.

The Eleventh Amendment bars private parties from suing an unconsenting state in federal court unless Congress has validly abrogated the state’s constitutional sovereign immunity. *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 238-40, 105 S. Ct. 3142, 3145-46 (1985). This proscription applies regardless of the nature of the relief sought. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100-02, 104 S. Ct. 900, 908-09 (1984). It also applies equally to actions against agencies or departments of the state. *Id.* at 100, 104 S. Ct. at 908; *Florida Dep’t of Health and Rehabilitative Servs. v. Florida Nursing Home Ass’n*, 450 U.S. 147, 101 S. Ct. 1032 (1981) (per curiam). Therefore, absent congressional abrogation or state consent, the Eleventh Amendment’s

jurisdictional bar prohibits Roller from bringing this patent infringement action against the State in federal court.

Congress did not validly abrogate the States' Eleventh Amendment immunity in enacting 35 U.S.C. § 271, the patent remedy statute under which Roller sues. *Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank*, 527 U.S. 627, 119 S. Ct. 2199 (1999) (holding that Congress lacked authority to abrogate Eleventh Amendment immunity with respect to patent infringement suits against states). Nor is there a state statute that waives the State of Minnesota's Eleventh Amendment immunity from suit in federal court for claims of patent infringement. Accordingly, the Eleventh Amendment deprives the Court of subject matter jurisdiction over Roller's amended complaint against the State.

Moreover, aside from the Eleventh Amendment's jurisdictional bar, Roller's amended complaint fails to state a claim against the State for patent infringement. Roller's amended complaint rests on his allegations that Minnesota state judges and other state employees have exercised "magic commands" that infringe on his patent on "godly powers." *See* Docket #14. These allegations plainly do not set forth a plausible claim for patent infringement and thus are insufficient to avoid dismissal under Fed. R. Civ. P. 12(b)(6). *See Bell Atlantic*, 127 S. Ct. at 1974 (dismissing complaint under Rule 12(b)(6) because the facts alleged in the complaint did not present a plausible claim for relief).

CONCLUSION

The Court should grant the State of Minnesota's motion to dismiss.

Dated: July 17, 2007

Respectfully submitted,

s/ John S. Garry

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