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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

LAWRENCE B. LOCKWOOD, PANIP, LLC,

Plaintiffs,

v.

SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP, JONATHAN HANGARTNER, STEVE P. HASSID,

Defendants.

Case No. CV 09-5157 JFW (AGRx)

NOTICE OF MOTION AND DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT

[**FED. R. CIV. P.** 12(b)(6)]

Submitted Herewith:
(1) Memorandum of Points and Authorities;
(2) Declaration of Dennis J. Smith;
(3) Request for Judicial Notice; and
(4) [Proposed] Order

Hearing
Date: November 9, 2009
Time: 1:30 p.m.
Ctrm: 16 - Spring, Hon. John F. Walter

TO: PLAINTIFFS LAWRENCE B. LOCKWOOD AND PANIP, LLC AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on November 9, 2009, at 1:30 p.m., or as soon thereafter as counsel may be heard, in the courtroom of the Honorable John F. Walter, Courtroom 16, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012, Defendants Sheppard, Mullin, Richter & Hampton LLP, Jonathan Hangartner, and Steve P. Hassid will bring on for hearing the following motion.

MOTION

Defendants move to dismiss Plaintiffs' Complaint filed July 15, 2009, and each cause of action stated therein, under RULE 12(b)(6) of the FEDERAL RULES OF CIVIL PROCEDURE for failure to state a claim upon which relief can be granted.

The grounds for this motion are:

1. All of Plaintiffs' claims are barred by applicable statutes of limitations.

2. Plaintiffs' RICO claims fail to state a claim for relief because they (a) do not allege an actionable pattern of racketeering activity; (b) fail to show standing, reliance, and proximate cause in light of (i) the requirement that the U.S. Patent and Trademark Office ("PTO") had to conduct an independent investigation before granting Defendants' reexamination requests, and (ii) Plaintiffs' stipulation to stay their infringement litigation against Defendants' clients; and (c) fail to show how Plaintiffs can maintain their RICO claims in view of the prior settlement and release between Plaintiffs and Defendants' clients.

3. Plaintiffs' state law claims for interference with prospective economic advantage and fraud are further barred by the litigation privilege.

4. Plaintiffs' state law claim for interference with prospective economic advantage is further barred because Plaintiffs are seeking damages for alleged interference with potential relationships that never arose.

5. Plaintiffs' state law claims for malicious prosecution and fraud are further barred by federal preemption. There is no private cause of action for alleged malicious prosecution or fraud on the PTO.

6. Plaintiffs' state law claim for malicious prosecution is further barred because (a) the PTO conducted an independent investigation in response to Defendants' reexamination requests; and (b) Defendants cannot effectively defend themselves without revealing privileged communications with, and confidential information learned from, their clients.

7. Plaintiffs' state law claim for fraud further fails to state a claim for relief because Defendants' alleged mischaracterizations of the publications and patents in their clients' reexamination requests simply did not constitute fraud.

In support of this motion, Defendants rely on the accompanying (1) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT; (2) DECLARATION OF DENNIS J. SMITH IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND MOTION TO STRIKE; (3) DEFENDANTS' REQUEST FOR JUDICIAL NOTICE; DECLARATION OF DARREN M. FRANKLIN IN SUPPORT OF DEFENDANTS' REQUEST FOR JUDICIAL NOTICE, the pleadings and other papers on file in this action, and any further papers and evidence that may be submitted and any oral argument that may be presented at the hearing of this motion.

In compliance with the Court's Standing Order, also submitted herewith is a [PROPOSED] ORDER DISMISSING PLAINTIFFS' COMPLAINT.

This motion is made following the conference of counsel pursuant to LOCAL RULE 7-3 which took place on August 19, 2009.

Dated: September 11, 2009

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By */s/ Darren M. Franklin*
DARREN M. FRANKLIN

Attorneys for Defendants
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JONATHAN HANGARTNER and STEVE P. HASSID