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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)

[PROPOSED] ORDER DISMISSING PLAINTIFFS' COMPLAINT

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

Defendants Sheppard, Mullin, Richter & Hampton, LLP, Jonathan Hangartner, and Steve P. Hassid have moved to dismiss the Complaint filed by Plaintiffs Lawrence B. Lockwood and PanIP, LLC on 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. *Living Designs, Inc. v. E.I. Dupont De Nemours & Co.*, 431 F.3d 353, 365 (9th Cir. 2005) (RICO); CAL. CIV. PROC. CODE § 335.1 (malicious prosecution); CAL. CIV. PROC. CODE § 339(1) (interference with prospective economic advantage); CAL. CIV. PROC. CODE § 338(d) (fraud).

2. Plaintiffs' RICO claims fail to state a claim for relief because they (a) do not allege an actionable pattern of racketeering activity, *H.J., Inc. v. Northwestern Bell Tel.*, 492 U.S. 229, 239, 241-42 (1989); (b) fail to show standing, reliance, and proximate cause in light of (i) the requirement that the U.S. Patent and Trademark Office ("PTO") must conduct an independent investigation in response to Defendants' reexamination requests, 35 U.S.C. § 303(a), 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. CAL. CIV. CODE § 47(b).

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. *Westside Center Assocs. v. Safeway Stores 23, Inc.*, 42 Cal. App. 4th 507, 524 (1996).

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. *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 347-50 (2001).

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, *Werner v. Hearst Publ., Inc.*, 65 Cal.App.2d 667, 672-73 (1944); and (b) Defendants cannot effectively defend themselves without revealing privileged communications with, and confidential information learned from, their clients, *Solin v. O'Melveny & Myers*, 89 Cal. App. 4th 451 (2001).

7. Plaintiffs' state law claim for fraud fails to state a claim for relief because (a) there is no private cause of action for alleged fraud on the PTO, *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 347-50 (2001); and (b) Defendants' alleged misconduct in mischaracterizing publications and patents in their clients' reexamination requests did not constitute fraud, *Akzo N.V. v. United States Int'l Trade Comm'n*, 808 F.2d 1471, 1482 (Fed. Cir. 1986).

After consideration of the moving and opposing briefs, supporting papers, and oral argument of counsel, the Court hereby GRANTS Defendants' Motion to Dismiss Plaintiffs' Complaint on the grounds stated above. Defendants have shown that Plaintiffs' Complaint fails to state facts sufficient to constitute any causes of action. The Motion is granted without leave to amend.

Dated: _____

_____
UNITED STATES DISTRICT JUDGE

Presented by:

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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

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