

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Intellitech Corporation,
Plaintiff

v.

Case No. 16-cv-0009-SM
Opinion No. 2018 DNH 109

The Institute of Electrical and
Electronics Engineers, Inc.
a/k/a IEEE,
Defendant

O R D E R

In this suit for copyright infringement, plaintiff, Intellitech Corporation, alleges that defendant, The Institute of Electrical and Electric Engineers ("IEEE"), infringed what it claims to be its original, registered, work, entitled "Clause for a Pipeline v. 20." Intellitech seeks injunctive relief, statutory damages, attorneys' fees, and costs. Plaintiff moves for summary judgment with respect to liability. Defendant, for its part, seeks partial summary judgment on plaintiff's requests for statutory damages, attorneys' fees and injunctive relief. For the reasons given below, both motions for summary judgment are necessarily denied.

STANDARD OF REVIEW

When ruling on a motion for summary judgment, the court is "obliged to review the record in the light most favorable to the nonmoving party, and to draw all reasonable inferences in the

nonmoving party's favor." Block Island Fishing, Inc. v. Rogers, 844 F.3d 358, 360 (1st Cir. 2016) (citation omitted). Summary judgment is appropriate when the record reveals "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

In this context, a factual dispute "is 'genuine' if the evidence of record permits a rational factfinder to resolve it in favor of either party, and 'material' if its existence or nonexistence has the potential to change the outcome of the suit." Rando v. Leonard, 826 F.3d 553, 556 (1st Cir. 2016) (citation omitted). Consequently, "[a]s to issues on which the party opposing summary judgment would bear the burden of proof at trial, that party may not simply rely on the absence of evidence but, rather, must point to definite and competent evidence showing the existence of a genuine issue of material fact." Perez v. Lorraine Enters., 769 F.3d 23, 29-30 (1st Cir. 2014). In other words, if the nonmoving party's "evidence is merely colorable, or is not significantly probative," no genuine dispute as to a material fact has been proved, and summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986) (citations omitted).

So, to defeat a properly supported motion for summary judgment, the non-movant must support his or her factual claims

with evidence that conflicts with that proffered by the moving party. See generally Fed. R. Civ. P. 56(c). It naturally follows that while a reviewing court must take into account all properly documented facts, it may ignore a party's bald assertions, speculation, and unsupported conclusions. See Serapion v. Martinez, 119 F.3d 982, 987 (1st Cir. 1997). See also Scott v. Harris, 550 U.S. 372, 380 (2007) ("When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.").

BACKGROUND

The IEEE is a not-for-profit corporation that, with the involvement and assistance of employees and expert volunteers, develops and publishes technical standards applicable in a wide range of electrical and electronic endeavors. Those standards are typically developed by "working groups" comprised of industry participants collaborating together. Once finalized, the standards are published by IEEE, and made available to IEEE members, as well as members of the general public.

To develop general technical standards, working group members participate in meetings, typically held weekly or biweekly, draft and review position pieces, and create and

review presentations. Bennett Declaration (Document No. 13-4) ¶ 4; Clark Declaration (Document No. 23-1) at ¶ 4. Meetings are usually conducted telephonically or remotely via Webex or other remote conferencing software. Bennett Declaration at ¶ 4. Each working group has its own password protected website for use, called a "grouper" site. Id. at ¶ 6. The grouper site acts as a repository for the group's working materials, including drafts or other materials group members may want to review or consider. Group members routinely upload drafts, proposed language, and presentations to the grouper site for review and comment. Id. at ¶ 8. Minutes from group meetings are also stored on the grouper site. Id. at ¶ 6.

IEEE's copyright policy governing the standards development process (the "Policy") is fairly straightforward.¹ It requires

¹ Intellitech argues that the IEEE-SA's Policy is not relevant here because "the actual copyright rules of the parent corporation which is the Defendant in this case [IEEE, Inc.]" do not reference implied licenses. Pl.'s Reply in Supp. of Mot. for Summary Judgment at 8. Intellitech says that IEEE is relying upon the rules of a "different, perhaps related, entity, IEEE-SA," and has not established that IEEE-SA's rules are applicable here. Id. Intellitech points to IEEE, Inc.'s "Section 6 - Published Products and Services" policy, and seemingly takes the position that Section 6 applies to the P1838 standards development process.

Intellitech's argument is inconsistent with the position taken by its CEO, Christopher J. Clark, in his September 2, 2014, letter to IEEE counsel, in which he relies upon Section 7.1 of the IEEE-SA bylaws in support of his position. See Document No. 23-4, p. 2. Intellitech makes no effort to explain

that “[a]ll contributions to IEEE standards development . . . meet the requirements outlined in this clause.” Document No. 13-5 (emphasis added). Two definitions in the Policy are relevant to the parties’ dispute. The first defines “published,” as:

[M]aterial for which a claim of copyright is apparent (e.g., the presence of the copyright symbol ©; an explicit statement of copyright ownership or intellectual property rights; stated permission to use text; a text reference that indicates the insertion of text excerpted from a copyrighted work; or a visual indication of an excerpt from another work, such as indented text).

Id. The second term, “work product,” is defined as: “the compilation of or collective work of all participants (e.g., a

why IEEE-SA’s policies were applicable to the mechanisms of the P1838 working group as of September 2, 2014, but are now inapplicable. Intellitech also seemingly relies upon IEEE-SA’s bylaws and practices in its motion for summary judgment, referencing the copyright policy in support of its position. See Pl.’s Mem. in Supp. of Mot. for Summary Judgment at n.2.

Moreover, the evidence in the record does not support Intellitech’s position. As defendant points out, Kathryn Bennett, IEEE’s Senior Program Manager with administrative oversight for the P1838 working group, explained in her Declaration that IEEE-SA’s copyright policies applied to and governed the work of the P1838 working group. See Bennett Declaration at ¶ 8. And, the Policy itself clearly states: “All contributions to IEEE standards development . . . shall meet the requirements outlined in this clause.” Document No. 13-5. The parties’ suit arose out of the IEEE standards development process. Intellitech fails to point to any competent evidence to the contrary.

For all those reasons, Intellitech’s argument is not persuasive.

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