

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

LEWIS J. RUBIN,

Plaintiff

v.

UNITED THERAPEUTICS CORPORATION
ET. AL.,

Defendants.

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OPINION OF COURT

This matter came before the Court on August 29, 2017, for a hearing on Defendants' Motion to Dismiss, or in the Alternative, for Summary Judgment (DE#17), the Plaintiff's Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment (DE#47), and the Defendants' Reply to Plaintiff's Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment (DE#53). Counsel appeared on behalf of both Plaintiff and Defendants. The Court reviewed submitted memoranda supporting each side, heard both parties in argument, and the matter was taken under advisement. Post-hearing memoranda were filed, to wit, Defendants' Supplemental Memorandum in Support of Motion to Dismiss or, in the Alternative, for Summary Judgment (DE#60) and Plaintiff's Reply in Further Opposition to Defendant's Motion to Dismiss or, in the Alternative, for Summary Judgment (DE#61). This Opinion sets forth the Court's ruling, as effectuated by the attached Order.

Factual Background

Plaintiff, Dr. Lewis Rubin, filed a Complaint and Demand for Jury Trial (DE#1) on April 3, 2017. Plaintiff alleges that Defendants, United Therapeutic Corporation (UTC) and Lung Biotechnology, Inc. (LB), committed constructive fraud, negligent misrepresentation, and breach of contract when Defendants caused Plaintiff to assign certain patent rights to Defendants that were not supposed to be assigned. Plaintiff requests that the Court reform the patent assignments to reflect the appropriate scope of the patent rights.

Plaintiff is a Doctor specializing in pulmonary arterial hypertension (PAH). Defendant UTC is a corporation involved with the development of PAH treatments. Defendant LB is a subsidiary of Defendant UTC. Plaintiff performed consulting work with Defendants from

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approximately 1998 until 2001. Plaintiff took a brief hiatus from consulting in 2001, but resumed his consultancy work with Defendants shortly after until mid-2016. In mid-September 2003, Plaintiff and Defendant UTC's CEO, Martine Rothblatt, met at a luncheon to discuss a potential new method of treating PAH. Plaintiff and Rothblatt agreed to develop the new treatment method.

On September 23, 2003, Plaintiff executed a Services Agreement (2003 Services Agreement) with Defendant LB encompassing a plan to develop the new PAH treatment method. Pursuant to the 2003 Services Agreement, Plaintiff was to be paid \$10,000.00 a month for services performed under the 2003 Services Agreement. Further, pursuant to Section 9 of the 2003 Services Agreement, Plaintiff agreed to "promptly disclose, grant and assign [Defendant LB] all right, title and interest in and to any patentable or unpatentable inventions, discoveries, and ideas which are made or conceived in whole or in part by or on behalf of [Plaintiff] in the course of or as a result of services performed under this agreement[.]"

The new treatment method was eventually developed and later became the basis of two patent applications, and ultimately patents. One provisional patent application was filed in 2006, and the other provisional patent application was filed in 2007. These applications eventually issued as patents (the "'507 and '240 Patents"). After the 2006 Provisional Patent Application was filed, Plaintiff executed an assignment, as required under the 2003 Services Agreement. The 2006 Assignment assigned all of Plaintiff's rights in the 2006 provisional patent application over to Defendants. After the 2007 Provisional Patent Application was filed, Plaintiff signed both a Declaration of Invention and a 2007 Patent Assignment, assigning Plaintiff's rights in the 2007 Provisional Patent Application over to Defendants as directed by the 2003 Services Agreement.

Plaintiff challenges the scope of the 2006 and 2007 Patent Assignments, alleging that he, pursuant to the 2003 Services Agreement, should have retained a joint ownership interest in the treatment methods contained in the '507 and '240 patents.¹

¹ Plaintiff, in his complaint, refers to subsequent Consulting Agreements that he executed between 2008 and 2014 with Defendants that superseded the 2003 Services Agreement. The Court does not see how these later Consulting Agreements affect the challenged Patent 2006 and 2007 Patent Assignments, as these Consulting Agreements were executed after the 2006 and 2007 Patent Assignments. It is worth noting, however, that the most recent Consulting

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Discussion

Defendants' Motion to Dismiss, or in the Alternative, for Summary Judgment (DE#17) argues that Plaintiff's claims are time-barred by the statute of limitations. Defendants' Motion to Dismiss also argues that Plaintiff's Complaint fails to state claims upon which relief can be granted. Lastly, Defendants' Motion to Dismiss argues that summary judgment is appropriate. Plaintiff opposes all of Defendants' arguments. The Court agrees with Defendants that Plaintiff's claims are barred by the statute of limitations, and, alternatively, that Plaintiff fails to state claims upon which relief can be granted. In light of these rulings, the Court does not reach the summary judgment issue.

I. Standard of Review

When reviewing a motion to dismiss a complaint for failure to state a claim upon which relief can be granted, the Court must "assume the truth of all well-pleaded facts and allegations in the complaint, as well as all inferences that can reasonably be drawn from them[.]" *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 121 (2007) (citation omitted). The Court must order dismissal "only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, i.e., the allegations do not state a cause of action." *Id.* (citations omitted). The Court "must assume the truth of all relevant and material facts that are well pleaded and all inferences which can be reasonably drawn from those pleadings[.]" and mere "conclusory charges that are not factual allegations may not be considered." *Id.* (citations omitted). Moreover, the Court must "view all well-pleaded facts and the inferences from those facts in a light most favorable to the plaintiff." *Id.* at 122.

II. Plaintiff's Claims are Time-Barred by the Statute of Limitations

Defendant argues that all of Plaintiff's claims are time-barred by the statute of limitations because Plaintiff was on inquiry notice that Defendants were asserting all rights to the patents when Plaintiff signed the 2006 and 2007 Patent Assignments. Plaintiff counters by claiming that he did not know that Defendants were asserting all rights under the 2006 and 2007 Patent Assignments until the year 2016, and therefore, did not know of any wrongdoing by Defendants until 2016.

Agreement, which was executed in 2014, contains similar language to Section 9 in the 2003 Services Agreement, and further states that Maryland Law governs disputes.

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The Court finds that Plaintiff's claims are time-barred under the statute of limitations. In Maryland, a "civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced." *Md. Code, Cts. & Jud. Proc. Art.*, § 5-101. The statute of limitations accrual date can be extended by the "discovery rule," which will "toll the accrual of the limitations period until the time the plaintiff discovers, or through the exercise of due diligence, should have discovered, the injury." *Windesheim v. Larocca*, 443 Md. 312, 326–27 (2015) (citations omitted). Under the discovery rule, a plaintiff must have actual notice of "the nature and cause of his or her injury" before a cause of action can accrue. *Id.* at 327. Actual notice is either express or implied. *Id.* (citations omitted). At issue in this case is implied notice. Implied notice, or inquiry notice, is notice implied from "knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry (thus, charging the individual) with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued." *Id.*

Here, Plaintiff's cause of action had accrued, at least, by 2007 when he signed the 2007 Patent Assignment. The 2006 Patent Assignment states in the first paragraph, "each undersigned inventor . . . assigns [Defendant UTC] the . . . full and exclusive right, title, and interest . . . relating to [the new treatment method]." Plaintiff's signature rests on the fourth page of the 2006 Patent Assignment. Further, the 2007 Patent Assignment contains identical language assigning all rights in the new treatment method to Defendant UTC. Again, Plaintiff signed the 2007 Patent Assignment. Moreover, Plaintiff also signed the 2007 Patent Declaration, which stated that "I have reviewed and understand the contents of the above identified specification." The specification referred to was the 2007 Provisional Patent Application, which was attached to the 2007 Patent Declaration. The 2007 Patent Declaration also stated, "I believe that the above specification contains a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms"

The plain language of the various documents Plaintiff signed indicated both that Plaintiff had access to the scope of the Patent Assignments and that Plaintiff was assigning all rights over to Defendants. Plaintiff, therefore, was put on inquiry notice that he was assigning all his rights in the patents over to Defendant UTC at the latest in 2007. Plaintiff claims that both the 2003 Services Agreement and the 2006 and 2007 Patent Assignments reserved some

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patent rights to Plaintiff.² The plain language, however, in the 2006 and 2007 Patent Assignments and in the 2007 Patent Declaration indicate that Plaintiff was assigning *all rights* over to Defendant UTC. Plaintiff was on notice that the scope of the 2006 and 2007 Patent Assignments might be erroneous, and a reasonable inquiry would have revealed any potential causes of action Plaintiff might have had. *See Estate of Adams v. Cont'l Ins. Co.*, 233 Md. App. 1, 26 (2017) (holding that once “on notice of one cause of action, a potential plaintiff is charged with responsibility for investigating, within the limitations period, all potential claims and all potential defendants with regard to the injury”).

Plaintiff’s signatures on the 2006 and 2007 Patent Assignments, as well as the 2007 Patent Declaration, further indicate that Plaintiff was on inquiry notice of the scope of the Patent Assignments. It is well-settled in Maryland that one who signs documents is presumed “to have read and understood [the] documents as a matter of law.” *Windesheim*, 443 Md. at 328–29 (citations omitted); *see also Merit Music Service, Inc. v. Sonneborn*, 245 Md. 213, 221–22 (1967) (noting that one executing a document is presumed to understand “at least the literal meaning of its terms”). The plain language in the 2006 and 2007 Patent Assignments indicated that Plaintiff was signing all rights over to Defendant UTC. Further, Plaintiff signed both Assignments, raising the presumption that he read and understood at least the plain language of those documents. If Plaintiff had reservations about the scope of the 2006 and 2007 Patent Assignments, a reasonable investigation would have revealed the alleged erroneous scope of the 2006 and 2007 Patent Assignments. Moreover, the Court finds that a reasonable person in Plaintiff’s position would have clarified the 2006 and 2007 Patent Assignments’ scope before signing.³

² Plaintiff refers to case law indicating that, according to patent law, there is a presumption that co-inventors own a pro rata undivided interest in a patent. *See e.g., Ethicon, Inc. v. U.S. Surgical Corp.*, 135 F.3d 1456, 1465 (Fed. Cir. 1998) (“Indeed, in the context of joint inventorship, each co-inventor presumptively . . . owns a pro rata undivided interest in the entire patent, no matter what their respective contributions.”). While this may be true, such a presumption is inapplicable here where Plaintiff assigned all his rights to the patents pursuant to the 2006 and 2007 Patent Assignments. *See Ethicon*, 135 F.3d at 1466 (“[W]here inventors choose to cooperate in the inventive process, their joint inventions may become joint property without some express agreement to the contrary.”) (emphasis added).

³ Plaintiff alleges that when the statute of limitations period accrues is a question of fact that should be presented to the jury. The question of when a cause of action accrues, however, is not always one for the jury. *See Pennwalt Corp. v. Nasios*, 314 Md. 433, 450 (1988) (explaining

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