

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

October 2013

NEW CASES

Jesse R. Enjaian v Jose A. Dorta and Renee Schomp. United States District Court, Eastern District of Michigan. (Judge Robert H. Cleland) (Served September 16, 2013)

Plaintiff alleges that, pursuant to a search warrant, his electronic equipment was seized from his residence in connection with an alleged charge of stalking, and not returned for 446 days. Plaintiff further claims that Defendant Schomp made false allegations about him to University Defendants. Plaintiff seeks compensatory damages from Defendant Dorta and nominal damages from Defendant Schomp.

Lynne Crandall v Manageability Incorporated and the University of Michigan Expanded Long Term Disability Plan. Washtenaw County Circuit Court (Judge Carol Kuhnke) (Served September 30, 2013)

Plaintiff was an Instructional Learning Lead in the Instructional Support Services Department at the University. She alleges that she is a person with a disability and is unable to work. Plaintiff alleges that, in accordance with the University's disability insurance policy, she applied for long term disability benefits and was denied those benefits on December 27, 2012, despite the recommendations of her physicians that she stay off work. She seeks judgment in excess of \$25,000, plus interest, costs, and attorney's fees.

CASE UPDATES

Regents of the University of Michigan v St. Jude Medical, Inc. United States District Court, Eastern District of Michigan. (Judge Avern Cohn/Magistrate Judge Laurie J. Michelson) (Filed July 2, 2012).

In 1997, the University licensed to St. Jude Medical, Inc. its rights to patents and other technology related to chemical compositions for treating bio-prosthetic tissues. St. Jude has been paying royalties to the University for a number of years, but last year stopped paying, claiming that the University's patents and technology do not cover all the St. Jude products and that therefore the company was entitled to a credit on amounts previously paid. The University filed this lawsuit to recover the royalties that are currently owed, and to protect the University's ability to receive the future royalties to which the University is entitled. Defendant St. Jude filed its Answer with the court, including a counterclaim that the University should have to repay all the royalties since 1998. The University replied to Defendant's counterclaim, denying liability because the claim, among other things, is barred by the Michigan Court of Claims Act. On November 9, 2012, St. Jude Medical filed a Petition for Inter Partes Review at the U.S. Patent Office, seeking reexamination of the patentability of the claims in one of the patents licensed to St. Jude. The University filed an amended complaint for procedural reasons. On December 17, 2012, St. Jude Medical filed an Answer adding a count seeking declaratory judgment that the University's patent is invalid. On December 27, 2012, the University moved to dismiss Defendant's counterclaim given Defendant's failure to file notice with the Michigan Court of Claims as required by Michigan law. On December 31, 2012, the University filed a summary judgment motion seeking an affirmative finding of liability on the license agreement. Defendant filed its opposition to the University's motion to dismiss on January 17, 2013, and the University filed a reply on January 31, 2013. On February 25, 2013, the Court denied the University's motion to dismiss. On March 7, 2013, St. Jude Medical notified the University it was terminating the 1997 license agreement as a matter of right, effective in June 2013. On April 5, 2013, the Court ruled the University could amend its Complaint to add a patent infringement count. On May 31, 2013, the Court granted St. Jude's motion to stay the litigation during Patent Office proceedings. The University and St. Jude will resolve the validity of the patent-in-suit at the Patent Office by 2014, and then the University will reopen the district court litigation to resolve its contract claims and any remaining patent claims. On August 8, 2013, the University filed a Motion to Amend the Complaint to add a patent infringement count

against St. Jude Medical. On September 5, 2013, the District Court granted the University's Motion to Amend and Supplement the Complaint to add a count alleging patent infringement by St. Jude Medical; this Amended Complaint was filed on September 9, 2013.

Champions Press, L.L.C. v University of Michigan and It's [sic] Athletic Department. Michigan Court of Claims (Judge Laura Baird) (Served November 15, 2012)

Plaintiff claims it entered into a written agreement with the University in March 2011 contemplating the joint sale and marketing of a new book publication titled "I Wore 21: The Legend of Desmond Howard." Plaintiff asserts the alleged agreement imposed obligations on the University to "sell 12 sponsorship advertising pages for inclusion in the book, or provide a list of 'preferred' contacts for CP to approach." Plaintiff alleges that the University did not meet these obligations, resulting in alleged damages of over \$145,000. In addition, Plaintiff claims the University breached its obligation to market or sell the book. Plaintiff seeks damages, with interest, costs, and attorney's fees. On September 4, 2013, Defendants filed a Motion for Summary Disposition that was denied by Judge Baird. A trial date has been set for October 28, 2013.

Polytorx, LLC, a Michigan Limited Liability Company, v. Regents of the University of Michigan. Court of Claims. (Judge James S. Jamo) (Served May 13, 2013)

Plaintiff has been a licensee of University patents since June 26, 2003. Plaintiff alleges that faculty in the Civil Engineering Department used the licensed patent rights to perform research and activities outside the scope of the rights retained by the University in the license, and that the faculty and a former graduate student also collaborated in the misappropriation of confidential information and trade secrets that resulted in a patent application being issued in Korea to Sambo Construction (a Korean Company). Plaintiff seeks damages, interest, costs, and attorney's fees. On August 28, 2013, Plaintiff filed an Amended Complaint. On July 3, 2013, Defendant's filed a Motion for Summary Disposition that was granted on September 10, 2013.

Bin Kang, PhD. v. The Regents of the University of Michigan. Washtenaw County Circuit Court (Judge Carol Kuhnke) (Filed May 14, 2013)

Plaintiff, a former postdoctoral fellow at the University's Department of Biology (now known as the Department of Molecular, Cellular and Developmental Biology), alleged that the University failed to credit him on various research publications. His four-count complaint included claims for Breach of Contract, Fraud, Misrepresentation, and Retaliation. Plaintiff sought compensatory damages. Defendants filed a Motion for Summary Disposition on July 16, 2013, that was granted by Judge Kuhnke on August 28, 2013. On September 18, 2013, Plaintiff filed an appeal to the Sixth Circuit Court of Appeals.

CASE RESOLUTIONS

Joseph Dean Vigil v Regents of the University of Michigan, Edie Goldenberg, Christina Whitman and Anna Kirkland. United States District Court, Eastern District of Michigan. (Judge Patrick J. Duggan) (Served January 3, 2011).

Mr. Vigil is a former Ph.D. candidate in Political Science. He alleged that he was removed from the program for not defending his dissertation within six years of becoming a candidate. His allegations included violations of the First Amendment right to free speech, due process, breach of contract, defamation, and discrimination based on his race and ethnicity. Plaintiff sought damages, interest, costs, attorney's fees, and reinstatement to Rackham. On July 28, 2011, judgment was entered granting Defendants' motion to dismiss with prejudice all of Plaintiff's claims except Plaintiff's breach of contract claim, which was dismissed without prejudice. Plaintiff filed an appeal to the Michigan Court of Appeals that was granted in part on

December 6, 2012. The Court of Appeals affirmed the dismissal of the defamation claim; affirmed the dismissal of the personal injury and civil rights claims based on alleged lack of support while he was enrolled in the doctoral program; and vacated the dismissal regarding the breach of contract claim and Plaintiff's personal injury and civil rights claims related to his dismissal of the program in 2007. On August 1, 2013, Defendants filed Motion for Summary Judgment that was granted on September 30, 2013.

Yusong Gong v Board of Regents of the University of Michigan, and Martin G. Myers, Jr. Washtenaw County Circuit Court. (Judge Timothy Connors) (Served October 9, 2012); AND **Yusong Gong v. Board of Regents of the University of Michigan and Martin G. Myers, Jr.** United States District Court, Eastern District of Michigan (Judge Sean Cox) (Filed February 6, 2013)

Plaintiff previously worked in the Department of Internal Medicine in a research laboratory under the direction of Dr. Myers. On February 6, 2013, Plaintiff filed a Complaint in Federal Court alleging she is a qualified individual with a disability who was terminated because of a disability. The two-count complaint brought claims under the Discrimination/Rehabilitation Act and Retaliation/Rehabilitation Act. Plaintiff sought lost wages, damages, costs, interest, and attorney's fees. On April 18, 2013, the parties stipulated to the dismissal of named Defendant Martin G. Myers, Jr., M.D., Ph.D. Settlement was reached between the parties. Both cases are concluded.

Michael Dwayne Thomas v University of Michigan, Lynn Noder-Love, Detective Ryan Cavanaugh, Deputy Scott Heddle and Deputy William Coggins. United States District Court, Eastern District of Michigan. (Judge Bernard Friedman) (Filed June 28, 2013)

Plaintiff alleges he was falsely arrested on June 27, 2011 by Defendants Heddle and Coggins and later arraigned on charges of Assault with Intent to do great bodily harm, which, he claims, were later dismissed. His seven-count complaint includes counts alleging Gross Negligence, Intentional Infliction of Emotional Distress, and Violation of 42 U.S.C.-1983 as to all defendants; False Arrest and False Imprisonment as to defendants Cavanaugh, Heddle and Coggins; Constitutional Deprivation: Individual Law Enforcement Officer as to defendants Cavanaugh, Heddle and Coggins; Constitutional Deprivation: Municipal/Supervisory Liability as to defendant University of Michigan; and Malicious Prosecution as to defendants Cavanaugh and Noder-Love. Plaintiff seeks judgment in excess of \$75,000, plus costs, interest and attorney's fees, together with exemplary and/or punitive damages. On June 28, 2013, Plaintiff filed a First Amended Complaint, adding the University of Michigan Health System as a defendant. On August 19, 2013, Defendants filed a Motion to Dismiss that was granted on October 2, 2013.

Respectfully submitted,



Timothy G. Lynch
Vice President & General Counsel