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Inventor loses patent, blames law office negligence. \$61.5M. San Diego County.

Summary

Negligent office procedures by law firm lead to loss of client's patent protection.

The Case

Case Name: Asbaghi v. Nydegger

Court and Case Number: San Diego Superior Court / 37-2013-00066639-CU-PN-CTL

Date of Verdict or Judgment: Thursday, October 20, 2016

Date Action was Filed: Wednesday, October 09, 2013

Type of Case: [Breach of Fiduciary Duty](#), [Legal Malpractice](#)

Judge or Arbitrator(s): Hon. Kevin A. Enright

Plaintiffs:

Hooman Asbaghi

HBA Medical Group, Inc.

Defendants:

Neil K. Nydegger

Nydegger & Associates

Type of Result: Jury Verdict

The Result

Gross Verdict or Award: \$61,587,000

Net Verdict or Award: \$46,190,250

Contributory/Comparative Negligence: 25% plaintiffs; 75% defendants.

Economic Damages:

Future loss of income: \$61,587,000

Trial or Arbitration Time: 3 1/2 weeks.

Jury Deliberation Time: 5 days.

The Attorneys

Attorney for the Plaintiff:

Adibzadeh Law Firm by Kambiz Adibzadeh, Walnut Creek.

Khashayar Law Group, PC by Daryoosh Khashayar, Vista.

Attorney for the Defendant:

Lindahl Beck LLP by George M. Lindahl, Los Angeles.

The Experts

Plaintiff's Technical Expert(s):

Ron Stoker, damages, Herriman, Utah.

Robert Wallace, economics, La Mesa.

Gregory Coy, liability, Cincinnati, Ohio.

Bill Hollowell, OSHA, Montrose.

Walter Weller, President and COO of MedPro – safety needles, Lexington, Kentucky.

Defendant's Technical Expert(s):

Walter Bratic, economics, Houston, Texas.

Larry Londre, damages, Los Angeles.

David Hoffmann, liability, Woodland Hills.

Facts and Background

Facts and Background:

Plaintiff is an inventor who invented a safety needle for use in the dental profession. Plaintiff alleged the safety needle would have been the safest by CC and FDA standards. Plaintiff hired defendant's law firm to submit the patent for him. Plaintiff did receive a patent in the year 2003. In order to keep the patent alive, the United States Patent and

Trademark Office (USPTO) requires that a maintenance fee be paid periodically.

Defendant's office had allowed a non-attorney staff to create and send out forms to clients concerning maintenance fees. One such form asked the client to mark with a check mark his/her desire to continue or abandon the patent, with the choices being 1/8 of an inch apart. The same form also allowed the client to write down the check number and amount enclosed if they chose to continue with the patent. Plaintiff accidentally marked the wrong box which indicated he did not wish to maintain the patent, but did write in the amount of the check he enclosed to continue the patent. Also, plaintiff wrote in the memo of the check "patent maintenance."

The check was cashed by the staff and the amount was placed in the law firm's general account instead of client's trust account. Client's file was then closed. Subsequent notices received from the USPTO warning of the abandonment of the patents were not forwarded to plaintiff. Plaintiff was unaware that his patent had been abandoned, and continued to spend the time and money to promote the product. Upon signing a contract to possibly license the product, in lieu of receiving royalties, the company subject to the contract did its due diligence and informed plaintiff that the patent was abandoned and withdrew its offer.

Plaintiff's Contentions:

That defendant's patent law office lacks proper procedures without attorney oversight, where the defendant, as the attorney in charge, allowed a non-attorney to communicate legal matters of the case with clients. The staff created confusing forms which they would use, without any oversight by defendant, and work done by the staff lacks the procedure to catch any mistakes or contradictions made on the form allowing such mistakes to fall through the cracks without being detected. Such errors would surface only when the issue had become fully developed to a point of nearly no return for the clients resulting in plaintiff's patent becoming abandoned and worthless.

The United States Patent office did provide defendant's office with many warning letters of not receiving the required fees for the patent, and provided warnings that if no fees were received by them within a required time-frame that plaintiff's patent would become abandoned; however, defendant's office staff never notified nor forwarded those warning letters to the plaintiff. When such warning letters were received by defendant's staff, the staff simply ignored them, which led the patent to become abandoned.

Since defendant did not have a proper procedure in place to catch such mistakes, neither defendant nor plaintiff ever knew that the patent had actually become abandoned until years later. Defendant did attempt to revive the abandoned patent by filing the revival application, however the grace period for such revival procedures had also passed and the application for revival was rejected by the U.S. Patent Office, leaving plaintiff without any remedy. Unaware that the patent had become abandoned, plaintiff spent a tremendous amount of money for years to develop and promote the patent product. A contract was

about to be signed by a major company and plaintiff when the abandonment of the patent was discovered and thus the contract fell through. As a result, plaintiff lost millions of dollars in sales and royalty which plaintiff would have been entitled to, had defendant not allowed the patent to go abandoned.

Defendant's Contentions:

That plaintiff marked the box that stated to abandon his patent and that is what defendant did.

That the maintenance fee check was applied in reimbursement of a recently paid Canadian patent maintenance on the same invention.

Special Damages

Special Damages Claimed - Future Lost Earnings: \$61,587,000 (Per defense counsel: \$90 to \$154 million on past and future royalties.)

 

  



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