

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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|-----------------------------|---|-------------------------|
| TECHGUARD SECURITY, L.L.C., |) | |
| |) | |
| Plaintiff and Counterclaim |) | |
| Defendant, |) | |
| |) | |
| vs. |) | Case No. 4:08CV1489 AGF |
| |) | |
| JAMES B. JOYCE, |) | |
| |) | |
| Defendant and Counterclaim |) | |
| Plaintiff. |) | |

MEMORANDUM AND ORDER

This matter is before the Court on several pretrial matters. By Order dated May 21, 2010, this Court asked the parties to show why Count II of Plaintiff's Second Amended Complaint and Count II of Defendant's Counterclaim should not be dismissed for failure to state a claim. These counts seek declaratory judgment as to inventorship related to pending patent applications. As the Court noted, a recent case from the Federal Circuit, HIF Bio, Inc. v. Yung Shin Pharmaceuticals Industrial, Co., 600 F.3d 1347, 1353-54 (Fed. Cir. 2010), held that such claims are precluded. Both parties have responded that they agree with the Court's position as to the two counts noted above, and thus these counts shall be dismissed. See Smith v. Boyd, 945 F.2d 1041, 1042-43 (8th Cir. 1991) (stating that a district court has the power to sua sponte dismiss a complaint for failure to state a claim). The Court notes that Defendant, in its response to the Order to Show Cause, asks the Court to reconsider the question of the Court's diversity jurisdiction over this case, which the Court will not do at this point in the proceedings.

Also before the Court is Plaintiff's motion to dismiss, with prejudice, Counts IV (constructive trust), V (conversion), VI (breach of fiduciary duty), VII (fraudulent concealment),

and X (assaults, harassment, terrorizing, and stalking) of the Second Amended Complaint.

Defendant emphasizes that the dismissals must be with prejudice, and asks the Court for an order precluding the introduction at trial of any evidence related to Count X. Plaintiff's motion shall be granted. Defendant will be able to raise the evidentiary matter referenced in a motion in limine at the proper time.

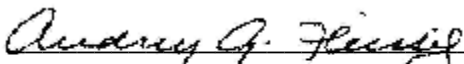
Accordingly,

IT IS HEREBY ORDERED that Count II of Plaintiff's Second Amended Complaint and Count II of Defendant's Counterclaim are dismissed for failure to state claims upon which relief may be granted.

IT IS FURTHER ORDERED that Plaintiff's motion to dismiss, with prejudice, Counts IV, V, VI, VII, and X of the Second Amended Complaint is **GRANTED**. [Doc. #142]

IT IS FURTHER ORDERED that Plaintiff's motion to strike portions of Defendant's response to the Order to Show Cause is **DENIED**. [Doc. #158]

IT IS FURTHER ORDERED that Plaintiff's motion to amend the Case Management Order by advancing the trial date is **DENIED**. [Doc. #143]



AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 16th day of June, 2010.