

No. 19-167

In the
SUPREME COURT OF THE UNITED STATES

GALEN J. SUPPES, *Petitioner*,
v.
CURATORS OF THE UNIVERSITY OF MISSOURI,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Missouri

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SUPREME COURT, U.S.

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Was the Judgment's demand of perpetual (no limit in time or geography) and unconditional payment of remunerations of sixteen years of Defendant Suppes' "completed mental elements" (employer's definition of "invention") a prohibited practice of Patent Misuse?
2. Did the state circuit court improperly create new patent law, in violation of existing Patent Law, when the court ordered Suppes perpetually to pay the Curators all remuneration Suppes received for inventions:
 - (i) for which no patent application was made,
 - (ii) for which Plaintiff did not patent,
 - (ii) for Suppes' mere "transfer" of an invention, or
 - (iii) for over fifty inventions with no regard to which Party properly owned rights to each invention or even if there were any legally enforceable rights to be owned on any specific invention.
3. Was the Respondent's arbitrary pursuit of court-enforced demands of perpetual ownership of sixteen years of Suppes' "completed mental elements" (Respondent's definition of "invention") a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?
4. Was the Appeal Court Opinion that "Only if the University affirmatively[ly] waives its rights to an invention may an employee seek a patent for the invention independently." a violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

RELATED CASES

Judgment, 13th Judicial Circuit Court of Boone County, Missouri, Case. No. 09-BA-CV02314, The Curators of the University of Missouri v. Galen J. Suppes and Homeland Technologies, LLC, October 12, 2017.

Opinion, Missouri Court of Appeals Western District, WD81278, The Curators of the University of Missouri v. Galen J. Suppes, January 8, 2019.

Disp-App Tran to SC Denied, Supreme Court of Missouri, SC97734, The Curators of the University of Missouri v. Galen J. Suppes, April 30, 2019.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Galen J. Suppes respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The decision of the state supreme court to review the merits appears at Appendix C and is the denial by the Supreme Court of Missouri for transfer. The concise denial is not published, but appears on the case docket.

The opinion of the Missouri Appeals Court appears at Appendix B to the petition. The court's opinion is published as *The Curators of the University of Missouri*, Respondent, v. Galen J. Suppes, Appellant, WD81278 (Mo. Ct. App. Jan. 8, 2019).

The judgment of the 13th Circuit Court of Missouri appears at Appendix A to this petition. The Judgment case reference is *The Curators of the University of Missouri v. Galen J. Suppes*, Boone County Case No. 09-BA-CV02314.

JURISDICTION

The Missouri Supreme Court issued its decision (denying transfer) on April 30, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Doctrine of Patent Misuse

Patent Misuse is an active defense against penalty, but its definition is only indirect and case-law-based. The following are two defining references:

- 1) The term "misuse" and "illegal" show up one time each in USC 35 per 35 USC 271(d): "(d) No patent owner otherwise entitled to relief for infringement or contributory infringement of a patent shall be denied relief or deemed guilty of misuse or illegal extension of the patent right".
- 2) "[T]he doctrine of patent misuse [has a policy-based purpose] ... to prevent a patentee from using the patent to obtain market benefit beyond that which inheres in the statutory patent right."
Mallinckrodt, 976 F.2d at 704.

35 USC 271(a)

"(b) Whoever actively induces infringement of a patent shall be liable as an infringer."¹

Constitutional Provisions

Equal Protection Clause: "nor shall any State [...] deny to any person within its jurisdiction the equal protection of the laws" (14th Amendment).

Due Process Clause: "No person shall ... be deprived of life, liberty, or property, without due process of law." (5th Amendment). "nor shall any State deprive any person of life, liberty, or property, without due process of law (14th Amendment)."

¹ Infringement is of a patent. The patent must be issued for court action to be started.

STATEMENT OF THE CASE

On or about October 12, 2017, the Boone County Missouri Circuit Court entered judgment against Petitioner ("Suppes") in the amount of \$600,000, finding in accordance with the jury that he had breached his contract with, and his duty of loyalty to the University (the "Judgment"). The Judgment included four orders of injunctive relief.

Subsequent to the Judgment, the following occurred:

- Appeals Court, Opinion-Affirmed, January 8, 2019.
- Appeals Court, Mot for Withdrawal of Counsel (in favor of Pro Se) Sustained, January 23, 2019.
- Appeals Court, Mot for Rehearing (Pro Se), denied, January 26, 2019.
- Missouri Supreme Court, Application for Transfer to Supreme Court, denied (Pro Se), April 30, 2019.

Prior to Petitioner assuming Pro Se representation on January 23, 2019; Petitioner's attorney based the defense around his impression that the Respondent had not justified damages under contract law. The Constitutional and Patent Law issues presently before Supreme Court of the United States were substantially not considered in the Judgment and the Appellant Court Opinion.

The Patent Law and Constitutional issues before this court reside in the Respondent's interpretation and subsequent actions of the employee-contract phrase from the University's Collected Rules and

Regulations (CRR) section 100.020.B ("Clause"),² which states:

"... and each Employee as a condition of employment agrees to execute any assignments requested by the University."

within the context of the Clause, agents of the University demanded assignment of Petitioner's inventions where invention was broadly interpreted as "completed mental elements".

CRR Chapter 100.020, which is entitled "Patent and Plant Variety Regulations". Respondent presented the Clause to Petitioner under the auspices of patent rules.

Agents of the University interpreted the Clause liberally, including demanding assignments for inventions (i) without intent to file for patent, (ii) without limit in time (i.e. forever), (iii) without limit in geography, (iv) without any intent to pursue outside any "cherry picking" that came their way, and (v) at times including demands that any future invention improvements to an invention also belonged to the University.

In the Judgment (Page B-4, Item 3, hereafter, "Declaratory Judgment 3") the Court ordered Petitioner to pay Respondent University all remuneration Petitioner received as related to his "completed mental elements" (i.e. Inventions) of the past sixteen years, including merely "transferring" a "completed mental element". The Order was effective without limit in time or geography.

² Available at
https://www.umsystem.edu/ums/rules/collected_rules/business/ch100/100.020_patent_and_plant_variety_regulations .

In the context of Declaratory Judgment 3 (and in about October of 2018), Petitioner recognized the Clause as an illegal restraint of trade (e.g. a non-complete) presented under the designation of invention assignments. As an illegal non-compete, the Clause is unenforceable; except for the "technicality" that Petitioner has a court order to succumb to the illegal non-compete.

To date, no court has written a judgment or an opinion on the federal Questions of this appeal to the US Supreme Court, because (i) the legal theory only began to mature too late and (ii) Petitioners former attorney failed to deviate from another course of appeal. Requests to consider were denied by the Missouri Supreme Court, and related objections are not preserved as part of the jury trial.

REASON FOR GRANTING THE WRIT

I.

THE COURT SHOULD GRANT THE WRIT TO DETERMINE THE CONDITIONS UNDER WHICH "ASSIGNMENT OF INVENTIONS" IS A PROHIBITED PRACTICE OF PATENT MISUSE

Case law on Patent Misuse (e.g. *Mallinckrodt*, 976 F.2d at 704) is substantially only related to patent owners improperly extending the terms to a licensor beyond what Patent Law intended to cover. The federal question is whether inventors have similar protections from employers/ universities who demand ownership of employees' inventions as part of the employers patent rules. This is:

- not a matter of trade secrets, since both academic freedom and investigator-vested knowledge (versus company-vested

knowhow) of universities is generally incompatible with university ownership of trade secrets (and trade secrets are not mentioned in the CRR) and

- not a matter of universities being able to protect their interests since a 35 USC 115 Substitute Statement enables a university to protect its interests by filing for patent (so long as the invention is disclosed).

Declaratory Judgment 3 (Page B-4, Item 3) reads that Petitioner will:

"3. Pay over to Plaintiff University all revenue and other consideration received by Defendant Suppes, including but not limited to license/option fees, milestone fees, royalty payments and sales revenues, from the licensing, assignment, sale or other transfer of the inventions contained in the sworn statement described in Paragraph 1 above, other than for such inventions for which Plaintiff University previously has provided to Defendant Suppes a written waiver or a written assignment or reassignment".

Subsequent to the Judgment, Petitioner tried to gain rights to an invention by filing a petition in Boone County, MO, Case No. 18BA-CV01139, wherein, the University opposed the request in court, and the judge dismissed the case without comment. Hence, the University and local courts are interpreting Declaratory Judgment 3 as a broad-based restraint on Petitioner including that the Petitioner must perpetually pay the Respondent all remuneration received for each and every invention regardless of:

- the failure of the University to pursue patent and
- no vested business interest of the University in the invention.

The restraint on the trade of Petitioner is without limit in time or geography.

Declaratory Judgment 3 applies to sixteen years of the Petitioner's "completed mental elements" (16 years of employment), which the Respondent/University claims to be all the chemical engineering field. When the University terminated Petitioner's job in May of 2017; he was restrained from pursuing a meaningful career in chemical engineering because of that ruling.

Petitioner suggests that the US Supreme Court should prohibit practices such as Declaratory Judgment 3 as a prohibited Patent Misuse; and more specifically, ownership of inventions by universities should be temporally limited to the few months it takes for the university to apply for patent. Petitioner suggests that the research power of all U.S. universities is potentially compromised without such protection to university employees.

This issue's importance emerges in the simple question:

Why would any university researcher embark on innovation if the primary result is the university perpetually owning the researcher's "completed mental elements", without manifesting of patent, reward, or societal benefit?

Patent Misuse should be recognized as a Petitioner defense, and the entire Judgment should be dismissed.

II.

THE COURT SHOULD GRANT THE WRIT TO DETERMINE IF STATE CIRCUIT COURTS HAVE THE RIGHT TO CREATE INTELLECTUAL PROPERTY LAWS THAT ARE CONTRARY TO PATENT LAW

Petition I (previous paragraphs) is incorporated by reference herein. The following are disturbing aspects of Petition I:

- The Judgment creates a perverted infringement penalty where the owner of the patent must pay all remuneration to a former employer.
- The Judgment creates a perverted infringement penalty that is enforced without granting of patent and is thus contrary to 35 USC 271(a).
- The Judgment creates a perverted infringement penalty without temporal or geographical limit.

The merit of this Petition II stands at face value from the reading of Declaratory Judgment 3.

CRR Chapter 100.020, which is entitled "Patent and Plant Variety Regulations". Respondent presented the Clause to Petitioner under the auspices of patent rules; and as such, the actions qualify as an illegal practice of Patent Misuse including the creation of new patent laws.

Petitioner suggests the US Supreme Court should provide a ruling that state courts should enforce Patent Law and advocate Patent Law remedies as opposed to creating local versions of patent law.

It should be noted that while actions of the Respondent were presented as pursuing "assignment

of invention", the outcomes are an illegal restraint of trade that violate every principle of *Healthcare Svcs. of the Ozarks, Inc. v. Copeland* (198 S.W.3d 604, 609-10; Mo. banc 2006). Respondent's actions are illegal restraints of trade by every state's standards.

III.

THE COURT SHOULD GRANT THE WRIT TO DECLARE THAT RESPONDENT VIOLATED PETITIONER'S FOURTEENTH AMENDMENT RIGHTS ON EQUAL PROTECTION

Petitions I and II are incorporated herein by reference in this petition ("Petition III"). At face value, it should be recognized that essentially no meritorious researcher would accept a job from a university that claimed to own all his/her "completed mental elements" as completed during the scope of employment (i) for all time hence forward, (ii) for all nations, and (iii) in his/her profession.

At face value, the actions of Declaratory Judgment 3 against Petitioner were unconscionable, arbitrary, and capricious. The actions were consistent with a restraint of trade wherein Respondent pursued dominion over Petitioner and then punished Petitioner for not succumbing to the demands.

Evidence to date indicates that Respondent has only made the contract interpretation of Declaratory Judgment 3 against Petitioner.

The actions of the Respondent constitute dirty hands that entrapped Petitioner and biased the Jury. Petitioner asks that the Judgment against Petitioner be dismissed in its entirety.

IV.

THE COURT SHOULD GRANT THE WRIT TO DECLARE THAT APPEALS COURT VIOLATED PETITIONER'S FOURTEENTH AMENDMENT RIGHTS ON DUE PROCESS

Petitions I, II, and III are incorporated herein by reference in this petition ("Petition IV"). The Opinion (Page A-3) states:

"Only if the University affirmative[ly] waives its rights to an invention may an employee seek a patent for the invention independently." (hereafter "Opinion's Clause")

In this instance, the CRR 100.020.D.1.b also states, "An Employee of the University shall be entitled to all rights resulting from any Invention or Plant Variety which was made by her/him outside the general scope of her/his University duties,".

Patent Law protected the interests of Respondent with a due process through 35 USC 115 Substitute Statement. That process consists of the Respondent filing for patent and submitting the Substitute Statement. It is a Patent Law process for an employer to take ownership of a patent from an uncooperative employee.

Patent Law provides for a balance of rights, since the inventor/Petitioner can also file for patent. In this balance, both the Petitioner and Respondent are able to pursue rights as opposed to an improper dominion of one over the other.

The Opinion Clause gives the Respondent improper dominion over Petitioner. And for dozens of inventions, the Petitioner failed to (i) pursue patent, (ii) affirmatively waive rights back to

Petitioner, or even (iii) document the basis for Respondent claiming rights to an inventor.

35 USC 111(b)(1) states:

"(1) AUTHORIZATION.—A provisional application for patent shall be made or authorized to be made by the inventor,".

Similar statements are made throughout 35 USC Chapter 11 which vest default ownership of a patent in the inventor.

At face value, the Opinion's Clause denies inventors USC 35 Chapter 11 rights without process. The Opinion's Clause destroys the balance of rights set forth in USC 35; and in the case of the Respondent, creates an improper dominion of university administration and attorneys over employee-inventors.

The processes established in 35 USC create a balance of power which promotes discussion and compromise to work through disputes. The Opinion's Clause trumps the process wherein a state court vested improper dominion in administrators of a state institute. Improper dominion typically manifests in disputes, injustice, suppression, and mediocrity; which is like a disease starting at state universities and having the potential to spread through the entire country.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
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