

No. _____

In the
Supreme Court of the United States

MORRIS S. GLOVER,
Petitioner,

vs.

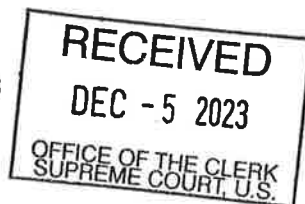
DANIEL E. COHEN,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for
the Federal Circuit

PETITION FOR WRIT OF CERTIORARI

Morris S. Glover
6361 Stonehaven Lane
Bedford Heights, Ohio 44146
(440) 735-1835

Petitioner Pro Se



QUESTION(S) PRESENTED

- I. Is this a case of patent infringement where judges are abusing Summary Judgment at the request of the law firm; which showed bias, and prejudice toward a Pro Se litigant?.....Page 6.
- II. Is a Summary Judgment lawful where no discovery, no depositions, no admissions, no plaintiff, no defendants was present, and no due process when a Constitutional Seventh Amendment jury trial was demanded?.....Page 8.
- III. Is it true that two or more persons can have a patent for the same device that goes over the bridge of the Nose; and does it matter who was first with the idea and who was first patented?.....Page 11.

LIST OF PARTIES

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Bruce C. Johnson
Suzanne Kameese
Lowell French &
Creative Integration & Design, Inc.

RELATED CASES

Morris v. Cohen, No. 2021-2126, United States Court of Appeals for the Federal Circuit. *Affirmed*. December 9, 2022.

Morris v. Cohen, No. 2:19-CV-00734-WSH, Judge W. Scott Hardy. Dismissed Complaint in its entirety as to all Defendants with Prejudice. February 19, 2021.

Morris S. Glover v. CNS, Inc., United States Court of Appeals for the Federal Circuit. *Affirmed*. April 7, 1997.

Morris S. Glover v. CNS, Inc., No. 1:95-CV-2227 States District Court for the Northern District of Ohio, Entered May 17, 1996, Judge Paul R. Matia. Dismissed Complaint in its Entirety.

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**IN THE
SUPREME COURT OF THE UNITED STATES**

PETITION FOR WRIT OF CERTIORARI

Petitioner Morris S. Glover respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

Rehearing was denied.

OPINIONS BELOW

United States District Court for the Western
District of Pennsylvania No. 2:19-CV-00734-WSH
(*rehearing denied*, December 9, 2022)

JURISDICTION

This Court has jurisdiction pursuant to 28
U.S.C 1257(a).

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

The Sixth Amendment to the United States Constitution provides for speedy and public trials, impartial jury, nature cause, right to confront compulsory witnesses, and assistance of counsel. The Seventh Amendment to the United States Constitution provides for right to trial by jury, according to the rules of common law.

STATEMENT OF THE CASE

Morris S. Glover is a long time sufferer of sinus problems and excessive oil in the pores of the skin on his nose. In June of 1987, he came up with an idea for a device to clear the oil from the skin of his nose and to help open his nasal passages. Glover constructed his device - the "Nose Bridge" - which went over the bridge of the nose and added to its efficiency by the addition of medication to the device. He then contacted a company named American Idea Management (AIM) which was purported to help inventors obtain patents and buyers for their inventions. Glover filled out an application with AIM and sent them drawings and other materials related to his inventions - materials which he never got back.

Although AIM advertised that they helped inventors obtain patents and buyers for their inventions, all AIM did was to file a disclosure document with the U.S. Patent Office on November 14, 1988. When Glover filed suit against AIM, he learned that the Federal Trade Commission had put AIM out of business for deceptive practices with inventors. Glover was told by the FTC that if anything (any device) similar to his idea came out he was to take them to court.

Therewith, Glover pursued the patent independently by renewing the disclosure document with the U.S. Patent Office. In April 1991, Glover retained a patent lawyer to represent him and on November 27, 1991 applications were filed for design and utility patents as well as a trademark. Glover filed the application himself and on October 25, 1994, he received a design patent for his invention. On November 14, 1995, the Patent Office issued him a

utility patent on his invention.

In November of 1994, while watching a football game, Glover noticed a device just like his invention being worn by Hershel Walker and other players of the Eagles advertised on a commercial. Glover retained a lawyer who sent a letter to CNS (Central Nervous System) - the company advertising the product - advising them that their product infringed on Mr. Glover's invention. CNS refused to discuss a resolution of the matter. Not trusting attorneys, or having funds to pay for one, Glover decided to pursue the matter himself by filing a lawsuit for patent infringement. A-73.

Petitioner Morris S. Glover filed a complaint Pro Se against CNS for patent infringement in the United States District Court for the Northern District of Ohio, on October 20, 1995; however, service was not perfected until December 22, 1995.

On January 16, 1996, CNS submitted its answer to the Glover Complaint and a motion for Summary Judgment, supported by "declarations" from Daniel E. Cohen, an officer of CNS, and David A. Allgeyer, one of CNS's attorneys. Glover filed his response to CNS's Motion on February 14, 1996, supported by an affidavit. On February 21, 1996 CNS filed a reply memorandum with a "declaration" from Bruce C. Johnson, whom they alleged to be the inventor of the infringed product. The Glover complaint alleged that CNS infringed both his design and the utility patent issued to Glover. He also alleged that Johnson and CNS engaged in unfair competition and misappropriated his invention. A-92.

Interestingly, Mr. Johnson filed for a patent application June 10, 1991, now abandoned. But no

patent was issued. He filed a second application May 15, 1992, well after the November 27, 1991 date when Mr. Glover filed his application with the Patent Office. Johnson filed a third application with the patent office on April 16, 1993. All three of Johnson's applications were abandoned and all three were rejected, probably because Glover's patents were pending for the same device.

Mr. Cohen had started marketing his "Breathe Right" nasal device without a patent. Should not Mr. Glover have been entitled to the benefits of his patent? (See A-88, Johnson's declaration.)

A serious miscarriage of justice ensued. The parties were to appear in court, however when Mr. Glover arrived, he learned that on May 15, 1996, Judge Matia had granted CNS's Motion for Summary Judgment, and dismissed Glover's complaint in its entirety - this without discovery and without a jury trial as requested. Maybe the parties knew full well that they would not prevail with a jury trial.

Not only did the judge grant the Summary Judgment but he negated/invalidated Glover's patent - nothing less than theft. In the "MEMORANDUM OF OPINION AND ORDER RE: GRANTING DEFENDANT'S MOTION FOR SUMMARY" Mr. Matia states, "It is a nonmedical, disposable device in the form of a butterfly shape that improves nasal breathing by reducing nasal airflow resistance. This looked to be perjury as in the fall of 2000, Breathe Right came out with Vicks in the strip and this was identical to what was presented to AIM by Glover. This, along with how many strips in a box, and even a diagram. Everything that Glover presented to AIM came out on the market by different companies,

including Glover's drawings. At inception, Glover had sent to himself a certified, sealed envelope with such items connected to his invention. (A-153 to A-159).

Documents submitted by Cohen and Johnson, that the courts relied upon, never established how Mr. Johnson came up with the idea of putting a device over the bridge of the nose some four years after Mr. Glover presented the nose bridge device to AIM. A number of companies came out with a device that goes over the bridge of the nose. Before November 14, 1987, no one on the market had a device or apparatus that goes over the bridge of the nose. Each one had a different design but the function was basically the same. As noted, Glover's complaint alleged that CNS infringed both design and utility patents issued to him and engaged in unfair competition and misappropriated his invention.

In the "MEMORANDUM OF OPINION AND ORDER RE: GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT" Matia ruled that Glover's patents on his devices were invalid. In essence he stole the patents that Glover had paid for and owned. Thereafter, and only thereafter, Bruce Johnson was able to get a patent on his Breathe Right device.

For the court to dismiss the case with prejudice is not supported by any declaration by Johnson telling how he came up with the idea of a device going over the bridge of the nose. The question is what are the odds of 2 or more inventors coming up with the same device with the same purpose and worn over the bridge of the nose four years after Glover presented his Nose Bridge to AIM? It is over a

trillion to one. A jury trial was demanded not a bench decision where no plaintiff or defendant was present. The defendants know full well where they got the idea from and they had four years to make plans as to how to tinker with it and market what Mr. Glover had initially presented to the fraudulent AIM Company. A-59.

REASONS FOR GRANTING THE PETITION

I. IS THIS A CASE OF PATENT INFRINGEMENT WHERE THE JUDGE IS ABUSING SUMMARY JUDGMENT AT THE REQUEST OF THE DEFENDANT'S LAW FIRM?

Mr. Glover paid a filing fee to have a jury trial. A jury trial was denied by Matia who showed bias, prejudice and disrespect for Mr. Glover when he did everything the defendants requested. The Judge and attorneys were in a conspiracy against Glover 's right to a jury trial. 18 U.S.C. 241. The summary judgment allowed the court to operate under admiralty jurisdiction with the lawyer David A. Allgeyer and Daniel Cohen. Where is a Summary Judgment found in the U.S. Constitution? Summary Judgment takes the power away from the people and gives it to judges and lawyers who are creating a society of nobility. Glover's right to a jury trial was a demand and where rights are secured by the Constitution, there can be no rule making or legislation which would abrogate them. *Miranda v. Arizona*, 384 U.S. 436 (1966).

The defendant presented declarations that showed patent infringement. Mr. Glover's AFFIDAVIT OF MORRIS S. GLOVER, at No. 12,

states: "My device has a flexible plastic strip for the nose area and a pad attached to the second surface. The plastic strip is bent in the middle and a person using the device can eitherleave it sitting on the nose or it can be pulled along their nose thereby pulling/scraping away oil, dirt and the like." A-94.

The way the last sentence is worded "thereby scraping away oils", the word "scraping" should be "pulling away oils." The sentence does not describe a back and forward motion, only a pulling off.

Furthermore, a jury trial was demanded, which resulted in a violation of the Seventh Amendment to the U.S. Constitution, the supreme law of the land. *Marbury v. Madison*, 5 U.S.137. Glover could not get a patent for a nose scraper as a nose scraper had already been patented.

Rule 8:3(b), Summary Judgment: Patent and the Federal Cir. Summary Judgment cannot be used to determine causes that are not before the court by pleading or otherwise. *Flowdata, Inc. v. Cotton*, 57 F. 3d 1046 (Fed. Cir. 1995).

Rule 1:1(b) Patents and the Federal Circuit. The patent system encourages inventors to invent and disclose. Corporations don't invent; people do. Yet the patent system also encourages corporations and investors to risk investment in research, development, and marketing without which the public could not gain the full benefit of the patent system. The right to exclude conferred by a valid patent thus deserves the same respect when that right is in the hands of an individual as when it is in the hands of a corporation. In assessing damages, emphasis on an individual inventor's lack of money and manufacturing capacity can tend to distinguish the respect due the patent rights of impecunious

individual inventors from that due the patent rights of well-funded, well-lawyered, large manufacturing corporations. Any such distinction should be rejected as the disservice it is to the public interest in technological advancement. *In re Etter*, 756 F.2d 852, 225 USPQ 1 (Fed. Cir. 1985).

Rule 10.4(a) Right to Jury Trial: Patent and the Federal Cir. A right to a jury trial in federal court must arise out of the Seventh Amendment or be granted by a federal statute. The Seventh Amendment preserves the right to a jury trial in those actions in which the right existed at common law when the amendment was adopted in 1791. *Washington Int'l Inc. Co. v. United States*, 863 F.2d 877 (Fed. Cir. 1988).

II. IS THERE A TIME LIMIT ON A VOID SUMMARY JUDGMENT WHERE NO DISCOVERY, NO DEPOSITION, NO ADMISSIONS, NO PLAINTIFF, NO DEFENDANTS WERE PRESENT AND NO DUE PROCESS, WHEN A CONSTITUTIONAL SEVENTH AMENDMENT JURY TRIAL WAS DEMANDED?

The original complaint was filed October 20, 1995, and was timely filed. A Summary Judgment was made that was not supported by facts of the case. (For instance, that Glover had a patent on his device and Bruce Johnson was unable to obtain a patent for his device until such time as the summary judgment was rendered and Mr. Glover's patent was made invalid.)

Discovery was denied and, although requested and paid for, a jury trial was denied - resulting in a void judgment. The refiled case must be considered

timely filed so that the error can be corrected by any court that had jurisdiction or presented before a jury - which was demanded. A-117.

Glover's case before Matia was well presented before Matia, that is as follows:

1. Mr. Johnson filed for a patent application June 10, 1991, now abandoned.
2. He filed a second application May 15th, 1992, now abandoned.
3. A third application was filed by him on April 16, 1993, now abandoned. All his applications were rejected, no doubt because Mr. Glover's patents were pending for the same device.
4. Mr. Cohen started marketing the Breathe Right nasal device before it was patented.
5. Mr. Glover was the first to come up with the idea of a device that goes over the nose.
6. Mr. Glover was the first to give a disclosure date and a date of conception (November 14, 1987) with AIM (P2571) filed at the U.S. Patent Office.
7. Mr. Glover was the first to get his Design Patent No. Des. 351,924 on October 25, 1994.
8. Mr. Glover was the first to get a Utility Patent No. 5,466,456 on November 14, 1995.
9. Mr. Glover's device contains medication to help drain a stuffy sinus cavity to make breathing

easier.

10. Mr. Glover's device could come in different colors and sizes.

Matia did not consider any facts presented by Mr. Glover, only that both went over the nose - which is a patent infringement as well. This opinion is a void judgment because device functions are the same - a void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided) that the party is properly before the court. *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999). A "void judgment" as we all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to any manner of collateral attack (thus hereby). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not res judicata, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then as though a trial and adjudication had never been. *Norton v. Shelby County*, 118 U.S. 425. 10/13/58; *Fritts v. Krugh*, Supreme Court of Michigan, 92 N.W. 2d 604, 354 Mich. 97.

On certiorari this Court may not review questions of fact. *Brown v. Blanchard*, 39 Mich.790. It is not at liberty to determine disputed facts (*Hyde v. Nelson*, 11 Mich. 353), nor to review the weight of the

evidence. (*Linn v. Roberts*, 15 Mich. 443; *Lynch v. People*, 16 Mich. 472). Certiorari is an appropriate remedy to get rid of a void judgment - one which there is no evidence to sustain. *Lake Shore & Michigan Southern Railway Co. v. Hunt*, 39 Mich. 469.

Although Rule 60(b)(4) is ostensibly subject to the "reasonable" time limit of Rule 60(b), at least one court has held that no time limit applies to a motion under the Rule 60(b)(4) because a void judgment can never acquire validity through laches. See *Crosby v. Bradstreet Co.*, 312 F.2d 483 (2nd Cir.) cert. denied, 373 U.S. 911, 83 S.Ct. 1300, 10 L.Ed.2d 412 (1963) where the court vacated a judgment as void 30 years after entry. See also *Marquette Corp. v. Priester*, 234 F.Supp. 799 (E.D.S.C. 1964) where the court expressly held that Rule 60(b)(4) carries no real time limit. Moreover, Glover was denied his motion for discovery and no depositions were taken. Where there are no depositions, admissions, or affidavits, the court has no facts to rely on for a summary determination. *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F.Supp. 647.

III. IS IT TRUE THAT TWO OR MORE PERSONS CAN HAVE A PATENT FOR THE SAME DEVICE AND DOES IT MATTER WHO WAS FIRST WITH THE IDEA AND WHO WAS THE FIRST TO HAVE THEIR INVENTION PATENTED?

The device that cleans the nasal cavity and goes over the bridge of the nose originated with Morris S. Glover and not with Bruce C. Johnson. Johnson, Cohen and Allgeyer acknowledge in their "declaration" and they claim to have come up with the idea in 1991 - the year Glover retained a patent lawyer and filed applications for design and utility

patents and a trademark. The Daniel E. Cohen, David Allgeyer declarations are a fraud because Cohen was not the inventor of the device. Glover was the first to give a disclosure date and a date of conception (November 14, 1987) with AIM (P2571) filed at the U.S. Patent Office. Glover was the first to get his Design Patent No. Des. 351,924, October, 1994, and to get a Utility Patent No. 5,466,456, November 14, 1995.

Due to the fact that Glover was denied discovery, depositions, admissions, or affidavits, the court has no facts to rely on for a summary determination." *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F.Supp. 647.

Matia failed to realize that Bruce C. Johnson did not have a patent for the Breathe Right device and he was denied a patent three times. (He did not get a patent until the summary judgment invalidated Mr. Glover's patents.) Glover not only had both patents, he had established a much earlier disclosure date with AIM (P2571). It doesn't take a rocket scientist to find out where Respondent Bruce Johnson got the idea to tinker with Glover's "Nose Bridge" device and call it the "Breathe Right."

The courts only gave their opinions when the law requires a "Finding of Facts and Conclusions of Law" required for all decisions under the law. 5 U.S.C. 557(c)(3). Every judge must take an "Oath of Judges". 28 U.S.C 372. Are these judges operating under "Admiralty Jurisdiction?" 28 U.S.C. 1333? Where Rule 60(b)(4) is properly invoked on the basis that the underlying judgment is void, "relief is not a discretionary matter; it is mandatory." *Orner v. Shalala*, 30 F.3d 1307 (10th Cir. 1994)(quoting *VT.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224 n.8 (10th

Cir. 1979)

Although Glover was the inventor of the device in question, Bruce Johnson was given a patent to "Breathe Right" only after Matia dismissed Glover's complaint in its entirety and invalidated Glover's patent. This after Johnson's application for a patent was three times denied. How can two or more persons have a patent for the same device?

Paramount among the patentability requirements is that the device which is to be patented be a new entity. It has been said that the person seeking a patent must be the "first and original" inventor of the product. Certainly the invention must be original. Under 102(f) one cannot knowingly patent the invention of another. *In re Schoenwald*, 964 F.2d 1122, 22 USPQ 2d 1671 (Fed. Cir. 1992).

What happened to Morris Glover negates the entire process and protections to be afforded inventors. His intellectual property was stolen. His money for a jury trial was confiscated and patents that he paid for were invalidated. Surely he deserves justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Morris S. Glover
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Bedford Heights, Ohio 44146
(440) 735-1835

Date: May 25, 2023

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

MORRIS S. GLOVER,
Plaintiff-Appellant

v.

DANIEL E. COHEN, BRUCE C. JOHNSON,
CREATIVE INTEGRATION & DESIGN, INC.,
Defendants-Appellees

SUZANNE KAMEESE, LOWELL FRENCH,
Defendants

2021-2126

Appeal from the United States District Court for
the Western District of Pennsylvania in No. 2:19-cv-
00734-WSH, Judge W. Scott Hardy.

MANDATE

In accordance with the judgment of this Court,
entered October 5, 2022, and pursuant to Rule 41 of
the Federal Rules of Appellate Procedure, the formal
mandate is hereby issued.

FOR THE COURT

December 9, 2022

Date

s/ _____
Peter R. Marksteiner
Clerk of Court

NOTE: This order is nonprecedential.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

MORRIS S. GLOVER,
Plaintiff-Appellant

v.

DANIEL E. COHEN, BRUCE C. JOHNSON,
CREATIVE INTEGRATION & DESIGN, INC.,
Defendants-Appellees

SUZANNE KAMEESE, LOWELL FRENCH,
Defendants

2021-2126

Appeal from the United States District Court for
the Western District of Pennsylvania in No. 2:19-cv-
00734-WSH, Judge W. Scott Hardy.

ON PETITION FOR-PANEL REHEARING

Before DYK, TARANTO, and STARK, *Circuit*
Judges. PER CURIAM.

ORDER

Morris S. Glover filed a petition for panel
rehearing.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The mandate of the court will issue December 9,
2022.

FOR THE COURT

December 2, 2022
Date

s/
Peter R. Marksteiner
Clerk of Court

United States Court of Appeals
for the Federal Circuit

MORRIS S. GLOVER,
Plaintiff-Appellant

v.

DANIEL E. COHEN, BRUCE C. JOHNSON,
CREATIVE INTEGRATION & DESIGN, INC.,
Defendants-Appellees

SUZANNE KAMEESE, LOWELL FRENCH,
Defendants

2021-2126

Appeal from the United States District Court for
the Western District of Pennsylvania in No. 2:19-cv-
00734- WSH, Judge W. Scott Hardy.

JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

AFFIRMED

FOR THE COURT

October 5, 2022

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MORRIS S. GLOVER,
Plaintiff-Appellant

v.

**DANIELE. COHEN, BRUCE C. JOHNSON,
CREATIVE INTEGRATION & DESIGN, INC.,**
Defendants-Appellees

SUZANNE KAMEESE, LOWELL FRENCH,
Defendants

2021-2126

Appeal from the United States District Court for
the Western District of Pennsylvania in No. 2:19-cv-
00734- WSH, Judge W. Scott Hardy.

Decided: October 5, 2022

MORRIS S. GLOVER, Bedford Heights, OH,
pro se.

KURT JOHN NIEDERLUECKE, Fredrikson &
Byron, PA, Minneapolis, MN, for defendants-
appellees. Also represented by CARA S. DONELS,
Des Moines, IA.

Before DYK, TARANTO, and STARK, *Circuit Judges*.

PERCURIAM.

Morris S. Glover ("Glover") appeals the final judgment of the United States District Court for the Western District of Pennsylvania following dismissal with prejudice of his complaint, which largely concerns the prior litigation *Glover v. CNS, Inc.*, No. 95-02227 (N.D. Ohio). For the reasons below, we affirm.

I

Glover owns expired utility and design patents, U.S. Patent Nos. 5,466,456 (issued November 14, 1995) and D351,924 (issued October 25, 1994), which concern a facial cleanser and an ornamental design for a facial cleanser, respectively. In the current litigation, Glover appears to maintain his assertion, first made over twenty-five years ago, that his patents were infringed by a product called the Breathe Right® dilator, manufactured and sold by CNS, Inc. ("CNS").

In 1995, Glover sued CNS in the United States District Court for the Northern District of Ohio for infringing his patents. During that litigation, one of the Defendants in the current case, Bruce C. Johnson ("Johnson"), submitted a declaration asserting that he was the primary inventor of the Breathe Right® dilator and that he had transferred his rights in the device to Creative Integration & Design, Inc. ("CID"), which in turn granted CNS an exclusive license concerning the device. Johnson maintained that Glover had nothing to do with the invention of the Breathe Right® device. Similarly, current-Defendant Daniel E. Cohen ("Cohen"), then associated with CNS, submitted a declaration that Glover had

nothing to do with the Breathe Right® device. The District Court eventually granted CNS's motion for summary judgment, finding no infringement. Glover appealed, and we affirmed. See *Glover v. CNS, Inc.*, 111 F.3d 144 (1997) (per curiam).

In the instant case, brought in 2019, Glover appears to again assert that the Breathe Right® dilator infringes his patents. He alleges that in 1987 he submitted the idea for his invention to American Idea Management Corporation ("AIM"), an entity associated with Defendants Suzanne Kameese and Lowell French. Glover contends that AIM improperly conveyed his idea to Defendant CID, which in turn improperly conveyed his idea to Defendant Johnson. He also attacks various aspects of the evidence in the prior litigation.

The caption of Glover's Complaint indicates his claims are for "[p]atent infringement, conspiracy for a summary judgment making Plaintiffs patents invalid," "[d]enial of due process of law, VII Amendment to the Constitution which renders a void judgment," and "42 U.S.C. §§ 1983, 1985, 1986." Complaint at 1, *Glover v. Cohen*, No. 19-00734 (W.D. Pa. June 26, 2019). In his prayer for relief, Glover sought to void the summary judgment ruling from the prior litigation, reinstate his patents, and be provided an opportunity to demonstrate infringement in a jury trial.

Kameese, CID and Johnson, and Cohen filed three separate motions to dismiss, each of which the District Court granted.¹ Glover timely appealed. We

¹ Glover thereafter filed a "Motion: Objection to the Court's Memorandum Opinion," which the District Court construed as an untimely motion for reconsideration, but nonetheless considered and denied. See Memorandum Order denying

have jurisdiction pursuant to 28 U.S.C. § 1295(a)(1).

II

We apply the law of the applicable regional circuit, here the Third Circuit, on issues of procedural law that do not implicate patent law, while we apply the law of our own circuit to issues of patent law. See *Landmark Screens, LLC v. Morgan, Lewis, & Bockius, LLP*, 676 F.3d 1354, 1361 (Fed. Cir. 2012). Thus, we apply regional circuit law to dismissals under Fed. R. Civ. P. 12(b)(6) see *Endo Pharms. Inc. v. Teva Pharms. USA, Inc.*, 919 F.3d 1347, 1352 (Fed. Cir. 2019); applications of issue preclusion, see *Voter Verified, Inc. v. Election Sys. & Software LLC*, 887 F.3d 1376, 1382 (Fed. Cir. 2018);² and statute of limitations rulings, see *id.*

Like the Third Circuit, we review a *prose* litigant's submissions liberally. See *Higgs v. Atty. Gen. of the U.S.*, 655 F.3d 333, 339 (3d Cir. 2011); *In re Steed*, 802 F.3d 1311, 1317 (Fed. Cir. 2015).

We apply de novo review to a Rule 12(b)(6) dismissal. See *Endo Pharms.*, 919 F.3d at 1352 (applying Third Circuit law). "To survive a motion to dismiss for failure to state a claim, a complaint must allege enough facts to state a claim to relief that is plausible on its face." *Id.* (internal quotation marks omitted). Here, Glover failed to state any claim upon which relief could be granted.

A

Concerning patent infringement, Glover failed to

Plaintiffs "Motion: Objection to the Court's Memorandum Opinion," *Glover v. Cohen*, No. 19-00734 (W.D. Pa. Mar. 25, 2021).

² Even if we were to conclude that Federal Circuit law applies to issue preclusion, the result would be the same.

state a claim upon which relief can be granted because his suit is barred by issue preclusion. Issue preclusion can be a proper basis for a Rule 12(b)(6) dismissal. See *Leyse v. Bank of Am. Nat'l Ass'n*, 804 F.3d 316, 320 (3d Cir. 2015). Under this doctrine, a party cannot relitigate an issue that has already been litigated. See *Peloro v. United States*, 488 F.3d 163, 175 (3d Cir. 2007). That is the situation here. Glover litigated the same issue - patent infringement by the Breathe Right® dilator - in the Northern District of Ohio action and cannot relitigate that issue now.

The Third Circuit generally applies plenary review to determinations of issue preclusion. See *Jean Alexander Cosmetics, Inc. v. L'Oreal USA, Inc.*, 458 F.3d 244, 247-49 (3d Cir. 2006) (noting abuse of discretion review for non-mutual offensive collateral estoppel). In the Third Circuit, the prerequisites for applying issue preclusion are

(1) the issue sought to be precluded [is] the same as that involved in the prior action; (2) that issue [was] actually litigated; (3) it [was] determined by a final and valid judgment; and (4) the determination [was] essential to the prior judgment. For defensive collateral estoppel - a form of non-mutual issue preclusion - to apply, the party to be precluded must have had a "full and fair" opportunity to litigate the issue in the first action.

Peloro, 488 F.3d at 174-75 (internal quotation marks omitted).

Here, all of these prerequisites are met. First, the same issue - whether the Breathe Right® dilator infringes Glover's patents - was at issue in the prior action. Second, the issue was actually litigated; the

District Court expressly determined there was no infringement. Third, the issue was determined by a final and valid judgment, which was entered by the District Court and affirmed by us. Fourth, the issue was necessary to the District Court's decision; the Court grant of summary judgment was premised on the finding of no infringement. Finally, Glover had a full and fair opportunity to litigate and, in fact, did litigate the issue of infringement in both the District Court and this Court.

Because Glover is barred by the doctrine of issue preclusion from proceeding with his claim of patent infringement, we need not address any other potential deficiencies in this claim.

B

Glover also failed to state any claim upon which relief could be granted concerning a conspiracy to invalidate his patents in the prior litigation or that the grant of summary judgment denied him due process and violated his Seventh Amendment right to a jury trial. Relatedly, he failed to state any claim upon which relief could be granted with respect to 42 U.S.C. §§ 1983, 1985, and 1986.

All of these claims arise from the prior litigation. As an initial matter, we note that, contrary to Glover's beliefs, the District Court never invalidated his patents in that litigation. Glover's patents expired naturally, as do all patents granted by the federal government.

A valid and proper grant of summary judgment, preceded by the litigants having had a full and fair opportunity to litigate, does not violate the Seventh Amendment. *See, e.g., In re TMI Litig.*, 193 F.3d 613, 725 (3d Cir. 1999). Nor do such circumstances amount

to a violation of due process. See *Kehoe v. Int'l Ass'n of Theatrical Stage Emps. Loc. 21*, 682 F. App'x 161, 163 (3d Cir. 2017).

Finally, any possible §§ 1983, 1985, or 1986 claim is barred by the applicable statute of limitations. The statute of limitations for a § 1983 claim is the same as the pertinent state's statute of limitations for personal injury torts, which is two years in both Ohio (where Glover brought his earlier action) and Pennsylvania (where he brought the instant action).³ See *Wallace v. Kato*, 549 U.S. 384, 387 (2007); *Kach v. Hose*, 589 F.3d 626, 634 (3d Cir. 2009) (two years under Pennsylvania law); *Browning v. Pendleton* 869 F.2d 989, 992 (6th Cir. 1989) (en banc) (two years under Ohio law).

The same two-year statute of limitations applies to Glover's § 1985 claim. See *Dique v. NJ State Police*, 603 F.3d 181, 189 (3d Cir. 2010) (applying state law statute of limitations to §1985); *Baugher v. Univ. of Pittsburgh*, 882 F.2d 74, 79 (3d Cir. 1989) (two years under Pennsylvania law); *Dotson v. Lane*, 360 F. App'x 617, 619 n.2 (6th Cir. 2010) (two years under Ohio law).

Section 1986, by its very terms, carries a one-year statute of limitations. See 42 U.S.C. § 1986; *Fitzgerald v. Larson*, 741 F.2d 32, 34 n.2 (3d Cir. 1984), *vacated on other grounds*, 471 U.S. 1051 (1985).

³ Although § 1983 was amended in 1996, the four-year statute of limitations in 28 U.S.C. § 1658 does not apply, because Glover's claim was not made possible by the 1996 amendment. See *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 382-83 (2004); Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, § 309(c), 110 Stat. 3847, 3853 (1996). Even if the four-year statute of limitations applied, Glover's claim would still be barred.

Each of these causes of action (i.e., claims under §§ 1983, 1985, and 1986) accrued "when the plaintiff knew or should have known of the injury upon which [his] action is based." *See, e.g., Kach*, 589 F.3d at 634 (concerning accrual under §1983). Glover's allegations concern events that happened at least twenty years ago. His claims were brought well after the one- and two-year statutes of limitations had expired.⁴ Further, Glover presents no argument or evidence to support any equitable tolling (assuming such tolling is even possible). Thus, his claims are barred.

C

It appears that Glover did not request leave to amend his Complaint before the District Court and does not do so on appeal either. Regardless, in light of our analysis, any amendment would be futile. *See generally Alston v. Parker*, 363 F.3d 229, 235-36 (3d Cir. 2004) (requiring opportunity to amend unless futile), *abrogated on other grounds by Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

III

We realize that Glover continues to believe his intellectual property was stolen. But Glover already litigated his patent infringement claim, and the time for litigating his remaining claims, to the extent they are actionable, has long since passed. Therefore, we affirm the judgment of the District Court.

⁴ To the extent Glover relies on 18 U.S.C. § 241, which is a criminal statute without any private right of action, *see United States v. City of Phila.*, 644 F.2d 187 (3d Cir. 1980), *overruled on other grounds by Leatherman v. Tarrant Cnty. Narcotics Intel. & Coordination Unit*, 507 U.S. 163 (1993), any such claim also fails. Only the federal government can prosecute a violation of that statute. *See, e.g., Watson v. Washington Twp. of Gloucester Cnty. Pub. Sch. Dist.*, 413 F. App'x 466, 468 (3d Cir. 2011).

**AFFIRMED
COSTS**

No costs.

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MORRIS S. GLOVER,
Plaintiff-Appellant

v.

**DANIELE. COHEN, BRUCE E. JOHNSON,
SUZANNE KAMEESE, CREATIVE
INTEGRATION & DESIGN, INC.,**
Defendants-Appellees
LOWELL FRENCH,
Defendant

2021-2126

Appeal from the United States District Court for
the Western District of Pennsylvania in No. 2:19-cv-
00734- WSH, Judge W. Scott Hardy.

ON MOTION

PER CURIAM.

ORDER

Upon consideration of appellees' motion to dismiss
this appeal as timely, ECF No. 5, and the district
courts' finding that Morris S. Glover's notice of appeal

was timely received and filed on March 24, 2021,

IT IS ORDERED THAT:

- (1) The motion to dismiss, ECF No. 5, is denied.
- (2) The stay is lifted, and the appellees should calculate the due date of their response brief from the date of filing of this order.

FOR THE COURT

March 02, 2022

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

MORRIS S. GLOVER,

Plaintiff,

v.

Civil Action No. 19-734

DANIELE. COHEN, BRUCE C. JOHNSON,
SUZANNE KAMEESE, LOWELL FRENCH, and
CREATIVE INTEGRATION & DESIGN, INC.,
Defendants.

COURT FINDINGS

AND NOW, this 28th day of January, 2022, in accordance with the Order from the United States Court of Appeals for the Federal Circuit remanding this case to the District Court for the limited purpose of investigating the date on which it received the notice of appeal (ECF No. 73), and upon undertaking such investigation, this Court finds and concludes that the "Motion: Objection to Court's Memorandum Opinion" (ECF No. 68) and Notice of Appeal in this case (ECF No. 70) were each received and filed with the Clerk of Court on March 24, 2021, and then were processed and placed on the docket after the filing fee was received by the Clerk's Office on March 26, 2021.

/s/ W. Scott Hardy

W. Scott Hardy

United States District Judge

cc/ecf: All counsel of record

Morris S. Glover (via U.S. mail)
6361 Stonehaven Lane
Bedford Heights, OH 44146

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MORRIS S. GLOVER,
Plaintiff-Appellant

v.

**DANIELE. COHEN, BRUCE E. JOHNSON,
SUZANNE KAMEESE, CREATIVE
INTEGRATION & DESIGN, INC.,**
Defendants-Appellees

LOWELL FRENCH,
Defendant

2021-2126

Appeal from the United States District Court for
the Western District of Pennsylvania in No. 2:19-cv-
00734- WSH, Judge W. Scott Hardy.

ON MOTION

Before O'MALLEY, STOLL, and CUNNINGHAM,
Circuit Judges.
PERCURIAM.

ORDER

The court construes Morris S. Glover's December
7, 2021 submission (ECF No. 9) as a request for

reconsideration of this court's November 10, 2021 order dismissing his appeal.

Mr. Glover appeals from the district court's final judgment entered on February 22, 2021. On March 26, 2021, Mr. Glover paid the docketing fee for filing a notice of appeal. The notice of appeal was docketed by the district court on March 29, 2021. The face of the docketed notice includes a stamp indicating "FILED MAR 24 2021" by the "CLERK, U.S. DISTRICT COURT WEST. DIST. OF PENNSYLVANIA." ECF No. 1-2 at 1.

The Appellees moved to dismiss the appeal as untimely filed, arguing that the March 24, 2021 stamp was in error because it contradicted the listed date of service and the date of the docketing fee receipt. Mr. Glover did not file a response to the motion to dismiss or otherwise object to this characterization. In the absence of any dispute regarding the date of filing, the court dismissed the appeal because it was filed outside the 30-day filing period.

However, Mr. Glover's motion for reconsideration sheds potential new light on these events. He indicates that he drove to the courthouse on March 24, 2021 to file a "Motion Objection to the Opinion" and his notice of appeal. He states that the "Clerk time stamped both documents on March 24, 2021." ECF No. 9 at 2. He further states that, because he did not have the filing fee at the time, "the Clerk told him to mail it." *Id.* Instead, Mr. Glover says that he "drove back on March 26, 2021, and paid the \$505.00 for the appeal." *Id.*

If Mr. Glover filed his notice of appeal on March 24, 2021, it would be within the filing deadline even if he had not yet paid the court's docketing fee. The

court further notes that Mr. Glover's "Motion Objection to the Opinion" was docketed on March 24, 2021. Under the circumstances, the court deems it appropriate here to grant Mr. Glover's motion for reconsideration, vacate the order dismissing his appeal, and remand to the district court to investigate the date of receipt of the notice of appeal.

Accordingly,

IT IS ORDERED THAT:

(1) The motion for reconsideration is granted. The court's November 10, 2021 order is vacated.

(2) The matter is remanded to the district court for the limited purpose of investigating the date on which it actually received the notice of appeal. This court retains jurisdiction. Within seven days from the date of the district court's completion of its fact findings, the parties are directed to inform this court how they believe this appeal should proceed.

FOR THE COURT

January 21, 2022

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court

May 13, 2021

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

C.A. No. 21-1606

MORRIS S. GLOVER, Appellant

vs.

DANIELE. COHEN, ET AL.

(W.D. Pa. Civ. No. 2:19-cv-00734)

Present: RESTREPO, MATEY and SCIRICA,
Circuit Judges

Submitted are:

- (1) By the Clerk for possible dismissal
due to a jurisdictional defect; and
- (2) Appellees' response
in the above-captioned case.

Respectfully,

Clerk

_____ORDER_____

We lack jurisdiction over this appeal of an order dismissing a complaint raising a claim of patent infringement. The United States Court of Appeals for the Federal Circuit has exclusive jurisdiction "of an appeal from a final decision of a district court of the United States...in any civil action arising under...any Act of Congress relating to

patents." 28 U.S.C. § 1295(a)(1). Here, Glover's complaint alleged patent infringement and asserted jurisdiction in part under 28 U.S.C. § 1338(a), which confers on the district courts original jurisdiction "of any civil action arising under any act of Congress relating to patents." We therefore transfer this appeal to the Court of Appeals for the Federal Circuit pursuant to 28 U.S.C. § 1631. We do not make a final determination as to whether Glover's notice of appeal, which is affixed with three different dates, was timely, Fed. R. App. P. 4(a)(1)(A); United States v. Solly, 545 F.2d 874,876 (3d Cir. 1976) (noting that an appeal is considered "filed as of the time it is actually received in the clerk's office even though it is designated as filed...at a later date"), but rather reserve the question for resolution by the Federal Circuit in the first instance.

By the Court,

/s/ Paul B. Matey
Circuit Judge

Dated: June 30, 2021

CJC/cc: Morris S. Glover
Joseph J. Cassioppi, Esq.
Suzanne Kameese

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

MORRIS S. GLOVER,) Civil Action No.
) 2:19-00734-VVSH
Plaintiff,)
) **NOTICE OF APPEAL**
)
)
DANIEL E. Cohen, CNS,)
BRUCE C. JOHNSON)
SUZANNE KAMEESE,)
LOWELL FRENCH, &)
CREATIVE INTEGRATION)
& DESIGN, INC.,)
Defendants.)

NOTICE OF APPEAL

Now comes the Plaintiff Morris S. Glover, hereby giving notice of appeal to the Sixth Circuit Court of Appeals, of the "Memorandum of Opinion" dismissal with prejudice that was not supported by evidence by the Defendants (no date of conception and no date of disclosure) and by denial of due process for the Plaintiff.

Respectively submitted,

/s/ Morris S. Glover
Morris S. Glover, Pro Se
6361 Stonehaven Lane
Bedford Heights, OH 44146

CERTIFICATE OF SERVICE

A copy of the Motion: Objection to the Court
"Memorandum Opinion" is served upon each
Defendant this March 26, 2021, by U.S. Mail.

s/ Morris S. Glover
Morris S. Glover, Pro Se
6361 Stonehaven Lane

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

MORRIS S. GLOVER,)
)
 Plaintiff,)
) Civil Action
) No. 19-734
 DANIELE. COHEN, BRUCE C.)
 JOHNSON, SUZANNE KAMEESE,)
 LOWELL FRENCH and CREATIVE)
 INTEGRATION & DESIGN, INC.,)
 Defendants.)

MEMORANDUM ORDER

Presently before the Court is *pro se* Plaintiff Morris S. Glover's "Motion: Objection to the Court's Memorandum Opinion." (Docket No. 68). The Court construes Plaintiff's filing as a motion for reconsideration given his request that the Court "revisit" the Memorandum Opinion filed on February 19, 2021, which granted the Defendants' motions to dismiss and dismissed his Complaint in its entirety as to all Defendants with prejudice. (*See* Docket Nos. 63; 68 at 4). In requesting reconsideration, Plaintiff expresses his disagreement with the Memorandum Opinion, contending that it is a void judgment because he requested a jury trial and it was somehow improper for the Court to have ruled upon, and granted, the Defendants' motions to dismiss.¹ (*See*

¹ Defendant also incorrectly claims that the undersigned did not sign the Memorandum, Opinion, Order and Judgment. (Docket No. 68 at 1). The undersigned electronically signed each of those documents, (*see* Docket Nos. 63 at 15; 64; 65), which is

generally Docket No. 68). For the following reasons, Plaintiff's request for reconsideration is DENIED.

As the parties are familiar with the facts of this matter, which are fully detailed in the Memorandum Opinion, (Docket No. 63), the Court turns to the governing legal standards. "A motion for reconsideration is not to be used as a means to reargue matters already argued and disposed of or as an attempt to relitigate a point of disagreement between the Court and the litigant." *Donegan v. Livingston*, 877 F. Supp. 2d 212, 226 (M.D. Pa. 2012) (citation omitted). Therefore, the Court may grant a motion for reconsideration only if the moving party shows: (1) an intervening change in the controlling law; (2) the availability of new evidence which was not available when the court issued its order; or (3) the need to correct a clear error of law or fact or to prevent a manifest injustice. *Max's Seafood Cafe by Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). In sum, "motions for reconsideration should be granted sparingly and may not be used to rehash arguments which have already been briefed by the parties and decided by the Court." *PBI Performance Prods., Inc. v. NorFab Corp.*, 514 F. Supp. 2d 732, 743-44 (E.D. Pa. 2007) (citation omitted).

In this instance, Plaintiff has failed to meet his burden to demonstrate that the Court should reconsider its Memorandum Opinion because he has

permissible pursuant to this Court's Standing Order relating to Electronic Case Filing Policies and Procedures. See MC 05-186, Docket Nos. 1; 1-1, ¶5 ("All signed orders will be filed electronically by the court or court personnel. An order filed electronically without the original signature of a judge shall have the same force and effect as if the judge had affixed a signature to a paper copy of the order and the order had been entered on the docket in a conventional manner.").

not pointed to any intervening change in the controlling law, new evidence which was not available at the time of the decision, or clear errors of fact or law creating a manifest injustice.² Instead, Plaintiff merely expresses his disagreement with the Court's decision and repeats arguments that were previously rejected, neither of which support reconsideration. *See Donegan*, 877 F. Supp. 2d at 226. Accordingly, Plaintiff's "Motion: Objection to the Court's Memorandum Opinion" (Docket No. 68) is DENIED.

s/ W. Scott Hardy

W. Scott Hardy

United States District Judge

Date: March 25, 2021

cc/ecf: All counsel of record

Morris S. Glover (via U.S. mail)
6361 Stonehaven Lane
Bedford Heights, OH 44146

² Although the Court liberally construes Plaintiff's filing given that he is proceeding *prose*, see *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), the Court additionally notes that his request for reconsideration was not timely filed. Pursuant to ¶ II.C(6) of this Court's Interim Civil Practices and Procedures, (available at https://www.pawd.uscourts.gov/sites/pawd/files/Interim_Civil_Practices_Procedures_Hardy.pdf), a motion for reconsideration must be filed within seven (7) days of the order at issue. In this case, the Memorandum Opinion was filed on February 19, 2021, and Plaintiff did not file his "Motion: Objection to the Court's Memorandum Opinion" in which he seeks reconsideration until March 24, 2021.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

COPY

Morris S. Glover,

Plaintiff,

v.

Daniel E. Cohen, Bruce C. Johnson,
Suzanne Kameese, Lowell French, and
Creative Integration & Design, Inc.,

Defendants.

Civil Action No. 2:19-00734-WSH

FAX LETTER OF EVIDENCE TO W.Scott Hardy.
This is for my records and the court of THE
WESTERN DISTRICT OF PENNSYLVANIA. ☞

IMPORTANT NOTICE REGARDING TELEPHONE PROCEEDINGS



All telephonic proceedings will be held via the AT&T dial-in numbers listed below.

Dial-in phone number: 877-810-9415
Access Code: 2019884

W. Scott Hardy
W. Scott Hardy
United States District Judge



- 1. IMPORTANT NOTICE REGARDING TELEPHONE PROCEEDINGS
 - 2. But no actual date or time from judge W. Scott Hardy courthouse at all why?
- and he Dismiss my case for Kameese, Johnson, Cohen

Motion to DISMISS case by Judge W. Scott Hardy
WHY?
The DEFENDANTS Kameese, Johnson, Cohen,
show no EVIDENCE to your courthouse at all.
And you held my case up to be Dismiss why judge?

The Judge Fax Number is 1-(412)208-7577 ☞

FAX on 05-13-21
File
FAXED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

MORRIS S. GLOVER,) Civil Action No. 19-734
)
 Plaintiff,)
 v.)
)
 DANIEL E. COHEN,)
 BRUCE C. JOHNSON,)
 SUZANNE KAMEESE,)
 LOWELL FRENCH and)
 CREATIVE INTEGRATION)
 & DESIGN, INC.,)
)
 Defendants.)

ORDER OF COURT

AND NOW, this 19th day of February, 2021,
the Court having granted Defendants' Motions to
Dismiss (Docket Nos. 27, 31, 50) and dismissed the
above-captioned case by separate Memorandum
Order on this date,

IT IS HEREBY ORDERED that final
judgment of this Court is entered against Plaintiff
pursuant to Rule 58 of the Federal Rules of Civil
Procedure.

s/ W. Scott Hardy
W. Scott Hardy
United States District Judge

cc/ecf: All counsel of record

Morris S. Glover (via U.S. mail)
6361 Stonehaven Lane
Bedford Heights, OH 44146

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

MORRIS S. GLOVER,) Civil Action No. 19-734
)
) Plaintiff,)
) v.)
)
) DANIEL E. COHEN,)
) BRUCE C. JOHNSON,)
) SUZANNE KAMEESE,)
) LOWELL FRENCH and)
) CREATIVE INTEGRATION)
) & DESIGN, INC.,)
)
) Defendants.)

ORDER OF COURT

AND NOW, this 19th day of February, 2021, in accordance with the foregoing Memorandum Opinion, IT IS HEREBY ORDERED that the Motion to Dismiss filed by Defendant Suzanne Kameese (Docket No. 27), Defendants Bruce C. Johnson and Creative Integration & Design, Inc. (Docket No. 31), and Defendant Daniel E. Cohen (Docket No. 50) each are GRANTED;

IT IS FURTHER ORDERED that Plaintiff's Complaint (Docket No. 1) is DISMISSED in its entirety as to all Defendants WITH PREJUDICE; and

IT IS FURTHER ORDERED that the Clerk of Court shall mark this case CLOSED.

s/ W. Scott Hardy
W. Scott Hardy
United States District Judge

cc/ecf: All counsel of record

Morris S. Glover (via U.S. mail)
6361 Stonehaven Lane
Bedford Heights, OH 44146

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

MORRIS S. GLOVER,) Civil Action No. 19-734
)
Plaintiff,)
v.)
)
DANIEL E. COHEN,)
BRUCE C. JOHNSON,)
SUZANNE KAMEESE,)
LOWELL FRENCH and)
CREATIVE INTEGRATION)
& DESIGN, INC.,)
)
Defendants.)

MEMORANDUM OPINION

I. INTRODUCTION

In the mid-1990's, *pro se* Plaintiff Morris S. Glover litigated a patent infringement lawsuit against CNS, Inc. in the United States District Court for the Northern District of Ohio. In May 1996, the district court granted summary judgment in favor of CNS in that case, and the decision was affirmed by the United States Court of Appeals for the Federal Circuit in April 1997. Now, over two decades later, Plaintiff seeks to relitigate his patent infringement claim against a number of different defendants in this case, asserting that the prior final summary judgment decision somehow denied him due process and his Seventh Amendment right to a jury trial which violates his civil rights under 42 U.S.C. §§

1983, 1985 and 1986.

Presently before the Court are three Motions to Dismiss Plaintiff's Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) filed by Defendant Suzanne Kameese (Docket Nos. 27, 28), Defendants Bruce C. Johnson and Creative Integration & Design, Inc. ("CID") (Docket Nos. 31, 32), and Defendant Daniel E. Cohen (Docket Nos. 50, 51), Plaintiff's Responses in opposition thereto, and Defendants' Replies. (Docket Nos. 33-35, 37, 52-55). After careful consideration of the parties' arguments in light of the prevailing legal standards, and for the following reasons, the Motions to Dismiss are granted, and Plaintiff's Complaint is dismissed in its entirety as to all Defendants with prejudice.¹

II. BACKGROUND

¹ Plaintiff's Complaint is devoid of allegations which would permit the Court to determine whether venue is proper in the Western District of Pennsylvania. Nonetheless, "the right to defend suit in the appropriate venue is conferred for the personal benefit of defendant and may be waived by defendant" *Breland v. ATC Vancom, Inc.*, 212 F.R.D. 475, 476 (ED. Pa. 2002) (citing *Davis v. Smith*, 253 F.2d 286,288 (3d Cir. 1958)); see 28 U.S.C. § 1406(b) ("Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue."). Given that none of the Defendants have argued that venue is improper in this District and instead have moved to dismiss Plaintiff's Complaint on the various grounds discussed herein, the Court concludes that Defendants intended to waive any improper venue argument and will proceed to rule on their Motions to Dismiss. See *Nathan v. Takeda Phanns. U.S.A., Inc.*, Civ. Action No. 18-4547, 2019 WL 3216613, at *3 n.4 (ED. Pa. July 17, 2019) ("[W]here a defendant does not 'interpose timely and sufficient objection to the venue,' the district court retains jurisdiction, even if venue would otherwise be improper." (citing 28 U.S.C. § 1406(b)).

As alleged in the Complaint, Plaintiff submitted his idea for a device he calls the "Nose Bridge" to American Idea Management Corporation ("AIM"), owned by Defendant Suzanne Kameese, on November 19, 1987. (Docket No. 1 at 2). According to Plaintiff, instead of assisting its inventor/clients in obtaining a patent by submitting their ideas to companies for marketing, AIM was "running a scam" and selling those ideas for its own profit. (*Id.*) Plaintiff claims that AIM supposedly submitted his ideas to various companies, but he subsequently found out that the companies either did not exist or, if they did, they had never heard of AIM. (*Id.*)

With the assistance of legal counsel, Plaintiff eventually obtained two patents for the "Nose Bridge," which he says he invented to help drain the nose: a design patent issued on October 25, 1994, U.S. Patent No. Des. 351,924 (the "'924 Design Patent"); and a utility patent issued on November 14, 1995, U.S. Patent No. 5,466,456 (the "'456 Utility Patent").² (Docket No. 1 at 3, 4).

Plaintiff next recounts that he saw a commercial in 1994 for the "Breathe Right Dilator," which he alleges "looked just like [his] patented design." (Docket No. 1 at 4). He subsequently engaged legal counsel to investigate the matter. (*Id.*)

As explained in Declarations from the prior litigation which are attached to Plaintiff's Complaint, Defendant Johnson was the primary inventor of the Breathe Right Dilator. (Docket No. 1-5 at 1, ¶ 1). Johnson applied for patents on the device beginning in 1991, and presented a prototype for it to CNS in

² To clarify, although Plaintiff's Complaint avers that he obtained patents for what he refers to as the "Nose Bridge," both the '924 Design Patent and the '456 Utility Patent are entitled and describe a "Facial Cleanser." (See Docket Nos. 32-2; 32-3).

October 1991. (*Id.*) Johnson transferred his rights in the Breathe Right Dilator to CID, which in turn granted CNS an exclusive license for the device in January 1992. (*Id.*) CNS began marketing the Breathe Right Dilator in October 1993. (*Id.*) As Johnson explained the device improves nasal breathing by reducing nasal airflow resistance. (*Id.*, ¶ 3).

Defendant Cohen, who was the Chief Executive Officer, Treasurer and Chairman of the Board of CNS, attested that CNS manufactures and markets the Breathe Right Dilator, which was invented by Johnson. (Docket No. 1-5 at 18, ¶¶ 1, 3). Cohen confirmed that CNS received the exclusive license for the device in January 1992 and began marketing it in October 1993. (*Id.*, ¶ 4). Cohen explained that Plaintiff had nothing whatsoever to do with CNS or the Breathe Right Dilator at any time. (*Id.* at 20, ¶ 9).

Plaintiff disagrees with Johnson and Cohen, claiming he believes that "[they] may have obtained data on his device from AIM who was known for their corrupt dealings with inventors." (Docket No. 1 at 4). Without support, Plaintiff theorizes that Cohen purchased Plaintiff's idea and drawings from AIM, subsequently contacted Johnson and gave him the documents, and together they redesigned Plaintiff's drawings, reworded his documents, and renamed his idea the Breathe Right Dilator. (*Id.*) Based on these allegations, Plaintiff apparently attempts to assert a patent infringement claim against Johnson, CID and Cohen, claiming that the Breathe Right Dilator infringes his rights in the '924 Design Patent and the '456 Utility Patent.

As Plaintiff admits in his Complaint, however, he previously "filed a lawsuit against the companies

in question in the Federal Court of Cleveland, Ohio for infringement." (Docket No. 1 at 6). That occurred on October 20, 1995, when Plaintiff sued CNS in the United States District Court for the Northern District of Ohio at Case No. I:95CV2227, alleging that the Breathe Right Dilator infringed the '924 Design Patent and the '456 Utility Patent (hereinafter, the "Prior Ohio Litigation"). (See Docket No. 32-7 at 3).³ CNS moved for summary judgment in that case, arguing that its Breathe Right Dilator did not infringe either patent, and Plaintiff opposed the motion by contending that it was premature and he should have been allowed to obtain discovery from CNS. (*Id.* at 4). The district court rejected Plaintiff's position because he had had

³ "In deciding a Rule 12(b)(6) motion, a court must consider only the complaint, exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents." *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010). Here, Plaintiff's Complaint refers to the Prior Ohio Litigation and specifies that the court granted summary judgment in favor of the defendant in that case. (Docket No. 1 at 6). Although Plaintiff did not attach to his Complaint the district court's Memorandum Opinion and Order from the Prior Ohio Litigation, Defendants Johnson, CID and Cohen filed it as an exhibit to the Briefs in Support of their Motions to Dismiss. (Docket Nos. 32-7; 51-7). This Court may properly take judicial notice of the Memorandum Opinion and Order from the Prior Ohio Litigation. Where, as here, a Rule 12(b)(6) motion raises issue preclusion, and the plaintiff has not included the substance of the prior adjudication in the body of: or attachments to, his complaint, "it is axiomatic that a court must still consider the prior adjudication in order to determine whether issue preclusion bars that plaintiff's claims." *M & M Stone Co. v. Pennsylvania*, 388 F. App'x 156, 162 (3d Cir. 2010). In that instance, the Third Circuit Court of Appeals has held that "a prior judicial opinion constitutes a public record of which a court may take judicial notice." *Id.*

adequate time for discovery and, moreover, discovery would have been "an absurd waste of time," given that CNS demonstrated that there was no genuine issue as to any material fact. (*Id.* at 4, 5). The district court explained that CNS presented evidence supporting its noninfringement motion and Plaintiff failed to proffer any evidence that raised a genuine issue of material fact on noninfringement. (*Id.* at 13). Ultimately, the district court found that CNS's "Breathe Right® device is completely distinct from [P]laintiff's facial cleanser" and granted summary judgment in favor of CNS. (*Id.* at 13, 14). The United States Court of Appeals for the Federal Circuit summarily affirmed the district court's judgment on April 7, 1997. (Docket No. 32-11). Following that decision, the named Defendants here "heard nothing further from [Plaintiff] until 2019" when he initiated this lawsuit for "[p]atent infringement, conspiracy for a summary judgment making Plaintiff's patents invalid," as well as "[d]enial of due process of law, VII Amendment to the Constitution which renders a void judgment," and "42 U.S.C. §§ 1983, 1985 and 1986." (See Docket Nos. 1 at 1; 32 at 5).

In response to Plaintiff's Complaint, all remaining Defendants have filed Motions to Dismiss.⁴ Defendants Johnson, CID and Cohen argue that Plaintiff's Complaint should be dismissed with prejudice pursuant to Fed. R. Civ. P. 12(b)(6) because, even under the most liberal construction of the facts, it does not state a plausible claim for relief. (Docket Nos. 32 at 8; 51 at 8). Specifically, Defendants Johnson, CID and Cohen contend that the Complaint

⁴ Lowell French originally was named as a Defendant in this case; however, by Order dated March 5, 2020, Plaintiff's claims against Defendant French were dismissed without prejudice. (See Docket Nos. 29, 30).

does not allege the elements of patent infringement but, even if it did, the claim is barred by the judgment in the Prior Ohio Litigation and the '924 Design Patent and the '456 Utility Patent expired well before the applicable limitations period. (Docket Nos. 32 at 8; 51 at 8-9). These Defendants additionally maintain that the remaining claims have no factual support and are time-barred as well. (Docket Nos. 32 at 8; 51 at 9). Defendant Kameese likewise argues that the Complaint should be dismissed pursuant to Rule 12(bX6) because Plaintiff's claims against her fail as a matter of law. (*See generally* Docket No. 28). For reasons explained below, Defendants are correct on all counts.

III. ANALYSIS

A. Plaintiff's Patent Infringement Claim is Barred by Issue Preclusion.

As recounted above, Plaintiff filed a federal lawsuit against CNS over 25 years ago for patent infringement, alleging that CNS's Breathe Right Dilator infringed his '924 Design Patent and '456 Utility Patent. The district court entered summary judgment in favor of CNS, finding as follows: the Breathe Right Dilator did not literally infringe the '456 Utility Patent because "the Breathe Right® device has none of the key elements of claim 1 of the '456 patent;" the Breathe Right Dilator did not infringe the '456 Utility Patent under the doctrine of equivalents because it "does not perform substantially the same function in substantially the same way to achieve substantially the same result as the product covered by the '456 patent;" and the Breathe Right Dilator did not infringe the '924 Design Patent

because "there is no real resemblance between the two designs," "[t]he two designs are not substantially the same," and any resemblance would not "deceive an ordinary observer." (Docket No. 32-7 at 8, 10, 11-12). The district court's judgment was summarily affirmed on appeal. (Docket No. 32-11). At that point, Plaintiff took no further action regarding the Prior Ohio Litigation.

Despite the final decision in the Prior Ohio Litigation that CNS's Breathe Right Dilator did not infringe the '924 Design Patent and '456 Utility Patent, Plaintiff now seeks to relitigate that very same issue against different Defendants in this case. Plaintiff's attempt at a second bite at the apple on his patent infringement claim is underscored by his request that this Court "declare the Summary Judgment a void judgment ruling" and "reinstate [his] patents so that [he] can prove that he is the original owner of the 'Nose Bridge' idea and that Bruce C. Johnson and others infringed upon his idea." (Docket No. 1 at 11).

Defendants Johnson, CID and Cohen argue that Plaintiff's patent infringement claim in this case is barred by issue preclusion. (See Docket Nos. 32 at 10-12; 51 at 11-13). The Court agrees.

"Under the doctrine of issue preclusion, a determination by a court of competent jurisdiction on an issue necessary to support its judgment is conclusive in subsequent suits based on a cause of action involving a party or one in privity." *Delaware River Port Auth. v. Fraternal Order of Police*, 290 F.3d 567, 572 (3d Cir. 2002). "Stated broadly, issue preclusion prevents relitigation of the same issues in a later case." *Id.* The present case involves defensive use of issue preclusion which " 'occurs when a defendant seeks to prevent a plaintiff from asserting