

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 07-1675 JRT/FLN

CHRISTOPHER ROLLER,)	
)	
Plaintiff,)	
)	
v.)	FEDERAL DEFENDANTS'
)	MEMORANDUM IN SUPPORT
GEORGE W. BUSH,)	OF MOTION TO DISMISS
RICHARD B. CHENEY,)	
)	
Defendants.)	

INTRODUCTION

Christopher Roller ("Plaintiff") filed this action against President George W. Bush and Vice President Richard B. Cheney ("Defendants") on March 27, 2007. C. D. 1.¹ By this complaint, plaintiff purports to sue defendants under Title 35, United States Code, Section 271 for "possible" patent infringement.

Plaintiff has filed a patent application seeking the "exclusive right to the ethical use and financial gain in the use of godly powers on planet Earth." See U.S. Patent Publication No. 2007/0035812 A1 (Feb. 15, 2007). That patent application has been published by the U.S. Patent Office

¹See Clerk's Docket, which is referred to herein as "C. D." followed by an appropriate docket entry.

("USPO"), but has not yet been filed as a valid patent by the USPO to date. Plaintiff alleges in his complaint that defendants conspired to carry out 9/11 and the Iraq war, using plaintiff's "godly powers". Compl. 6. Plaintiff states that defendants were using the "godly powers" to set up plaintiff "as a false profit." Id. In other words, defendants were using plaintiff's powers to blame plaintiff for the acts of 9/11 and the war in Iraq.

The federal defendants requests this court to dismiss plaintiff's patent infringement claim for lack of jurisdiction and failure to state a claim upon which relief may be granted pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), and 12(b)(6), and on the basis that defendants are immune from suit.

STANDARD OF REVIEW

Defendants move to dismiss plaintiff's complaint for failure to set forth a jurisdictional basis pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(2). Federal Rule of Civil Procedure 12(b) states: "The following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person." A Rule 12(b)(1) motion also

permits a defendant to challenge the complaint on its face, or the defendant may contest the truthfulness of the alleged facts. Osborn v. United States, 918 F.2d 724, 729 n. 6 (8th Cir. 1990).

Defendants also move to dismiss the complaint for failure to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). A cause of action may be dismissed for failure to state a claim when it appears beyond doubt that the plaintiff cannot prove any set of facts in support of [his] claim that would entitle [him] to relief. Schaller Tel. Co. v. Golden Sky Sys., Inc., 298 F.3d 736, 740 (8th Cir. 2002). In analyzing the adequacy of a complaint under Rule 12(b)(6), the court must construe the complaint liberally and afford the plaintiff all reasonable inferences to be drawn from those facts. See Turner v. Holbrook, 278 F.3d 754, 757 (8th Cir. 2002). For the purpose of a motion to dismiss, facts in the complaint are assumed to be true. Navarre Corp., Sec. Litig., 299 F.3d 735, 741 (8th Cir. 2002).

LEGAL ANALYSIS

Plaintiff alleges patent infringement by President George W. Bush and Vice President Richard B. Cheney under Title 35, United States Code, Section 271. This must be dismissed.

A. Plaintiff's Claim Must Be Dismissed As There Is No Jurisdictional Basis for the Court to Entertain Any Claim Against the Defendants.

1. Defendants' Sovereign Immunity Defense

A complaint must be dismissed if the plaintiff fails to set forth a cognizable jurisdictional basis to allow the district court to entertain plaintiff's claims. Fed.R.Civ.P. 12(b)(1). Whenever it appears by suggestion of the parties or otherwise that the court lacks subject matter jurisdiction, the court must dismiss the action. Fed.R.Civ.P. 12(h)(3). The person asserting jurisdiction bears the burden of showing that the case is properly before the court at all stages of the litigation. See McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936). Thus, when defendants who are sued in their official capacities raise the doctrine of sovereign immunity as a bar to claims brought against them, a plaintiff must overcome the defense of sovereign immunity in order to establish the jurisdiction necessary to survive a Rule 12(b)(1) motion to dismiss.

The doctrine of sovereign immunity bars those suits against the United States that are not specifically waived by statute. United States v. Nordic Village Inc., 503 U.S. 30, 37 (1992). 35 U.S.C. § 271 does not waive sovereign immunity

for the United States. See 35 U.S.C. § 271(h).

In this case, to the extent that plaintiff sued President Bush and Vice President Cheney *arguendo* in their official capacities, the United States is the real party in interest, and sovereign immunity bars those claims. See Moore v. Cross, 2007 WL 835417, at *6 (D. Minn. March 15, 2007) (citing Kentucky v. Graham, 473 U.S. 159, 166 (1985) (suits against public officials acting in their official capacities should be treated as suits against the public entity); Elder-Keep v. Aksamit, 460 F.3d 979, 986 (8th Cir. 2006) ("A suit against a public officer in his official capacity is actually a suit against the entity for which the official is an agent."). As a result, plaintiff's claims against the individual defendants, in their official capacities, should be dismissed for lack of subject matter jurisdiction.

Moreover, the Supreme Court has set forth two recognized exceptions to the sovereign immunity doctrine for government agents: (1) actions where the allegation is that officers of the United States acted beyond their statutory powers, and (2) cases where, even though officers acted within the scope of their authority, the powers themselves or the manner in which they are exercised are constitutionally void. Izaak Walton

League of Am. v. St. Clair, 313 F.Supp. 1312, 1314 (D. Minn. 1970) (citing Malone v. Bowdoin, 369 U.S. 643, 647 (1962)). Plaintiff fails to allege that defendants acted beyond their statutory powers. Plaintiff also fails to provide evidence that even though defendants acted within the scope of their authority, their actions were unconstitutional. Thus, plaintiff's claims against defendants must be dismissed for lack of subject matter jurisdiction.

2. Plaintiff's Patent Infringement Claim

Plaintiff alleges "possible" patent infringement by defendants. See Compl. 6. Plaintiff seeks the "exclusive right to the ethical use and financial gain in the use of godly powers on planet Earth." See U.S. Patent Publication No. 2007/0035812 A1 (Feb. 15, 2007). A public record search shows that plaintiff merely possesses a patent application publication; an actual patent has not been granted. See United States Patent Office, <http://www.uspto.gov/patft/index.html>. Consequently, plaintiff's 35 U.S.C. § 271 claim is not ripe, as there is no valid patent for defendants to infringe.

Furthermore, plaintiff's patent infringement claim must be presented to the Court of Federal Claims for redress. See 28 U.S.C. § 1498. Title 28, United States Code, Section

1498(a) states:

Whenever an invention described in and covered by a patent of the United States is used or manufactured by or for the United States without license of the owner thereof or lawful right to use or manufacture the same, the owner's remedy shall be by action against the United States in the United States Court of Federal Claims...the use or manufacture of an invention described in and covered by a patent of the United States by a contractor, a subcontractor, or any person, firm, or corporation for the Government and with the authorization or consent of the Government, shall be construed as use or manufacture for the United States.

President George W. Bush and Vice President Cheney would be applicable "persons for the Government" for purposes of this statute. Therefore, this claim must be dismissed because this court fails to hold subject matter jurisdiction over plaintiff's patent infringement claim.

B. Plaintiff's Claim Must Be Dismissed for Failure to State a Claim Upon Which Relief May be Granted

Dismissal of a claim is appropriate where it is clear no relief can be granted under any set of facts that are consistent with the allegations of the complaint. See F.R. Civ.P. 12(b)(6). When considering a motion to dismiss pursuant to Rule 12(b)(6), a "district court must construe the complaint liberally." Turner v. Holbrook, 278 F.3d 754, 757 (8th Cir. 2002). However, 12(b)(6) serves to eliminate

actions which are fatally flawed in their legal premises. Navarre Corp. Sec. Litig., 299 F.3d 735, 741 (8th Cir. 2002). Plaintiff's patent infringement claim is fatally flawed as shown in "part A" above. Either the statutes are inapplicable; the facts are patently and demonstrably untrue on their face (i.e. there is no valid patent); or jurisdiction has not and cannot be established. A liberal reading of the entirety of plaintiff's claim shows that the claim is legally insufficient and must be dismissed.

CONCLUSION

Based on the foregoing, this Court must dismiss plaintiff's Complaint.

Dated: May 29, 2007

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