

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT
CIVIL ACTION NO.

09-2654 - BL

MAX-PLANCK-GESELLSCHAFT ZUR)
FOERDERUNG DER WISSENSCHAFTEN e.V.)
)
Plaintiff)

v.)
)
WOLF GREENFIELD & SACKS, PC)
)
Defendant)

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2009 JUN 26 AM 11:59
MICHAEL JOSEPH DONOVAN
CLERK/MAGISTRATE

PLAINTIFF'S COMPLAINT

INTRODUCTION

In this action, Plaintiff alleges that its lawyers are engaged in an impermissible conflict of interest by representing multiple clients with adverse interests. Plaintiff has not waived the conflict. To the contrary, Plaintiff specifically objected to the continued multiple representation of parties with conflicting interests. The Complaint seeks immediate relief because the conflict is causing Plaintiff serious, immediate and irreparable harm.

FACTS COMMON TO ALL COUNTS

1. Plaintiff Max-Planck-Gesellschaft Zur Foerderung der Wissenschaften e.V. ("MPG") is a corporation duly organized and existing under the laws of Germany and having its principal office in Munich, Germany.

2. Defendant Wolf Greenfield & Sacks, PC (“Wolf Greenfield”) is a professional corporation duly organized under the laws of the State of Massachusetts and located in Boston, Massachusetts, Suffolk County.
3. MPG is a co-owner of a family of patent applications currently pending at the United States Patent and Trademark Office (“USPTO”), as described in the patent application entitled “RNA Sequence-Specific Mediators of RNA Interference” by, Thomas Tuschl, Phillip D. Zamore, Phillip A. Sharp and David P. Bartel. These patent applications are referred to herein as the “Tuschl I patent applications.” The Tuschl I patent applications include at least the following United States applications: USSN 09/821,832, USSN 10/255,568, USSN 11/474,738, USSN 11/474,919, USSN 11/474,930, USSN 11/474,932, USSN 11/880,355, and USSN 11/880,464.
4. The other parties shown as owners of the Tuschl I patent applications are the Whitehead Institute for Biomedical Research (“Whitehead”), the Massachusetts Institute of Technology (“MIT”) and the University of Massachusetts (“UMASS”). MPG pays for fifty percent of the costs of prosecuting the Tuschl I patent applications, including the fees of Wolf Greenfield.
5. MPG is the sole owner of a second family of patent applications currently pending at the USPTO, as described in the patent application entitled “RNA Interference Mediating Small RNA Molecules” by Thomas Tuschl, Sayda Elbashir, and Winifried Lendeckel. These patent applications are referred to herein as the “Tuschl II patent applications.”

6. As of at least March 31, 2004, Wolf Greenfield has been engaged by Whitehead, on behalf of all co-owners, including MPG, for the purpose of prosecuting the Tuschl I patent applications.
7. On March 31, 2004, in connection with the Tuschl I patent applications, MPG executed an Appointment of Power of Attorney to Wolf Greenfield for the purpose of prosecuting the Tuschl I patent applications with the USPTO. A copy of this Appointment of Power of Attorney is attached hereto as Exhibit A. This Appointment of Power of Attorney confirms the existence of an attorney-client relationship between MPG and Wolf Greenfield regarding the prosecution of the Tuschl I patent applications.
8. Since at least March 31, 2004, Wolf Greenfield has acted as legal counsel to MPG and the other co-owners by, among other things, acting upon their behalf when making submissions to the USPTO in connection with the Tuschl I patent applications.
9. During Wolf Greenfield's representation of all co-owners of the Tuschl I patent applications, a conflict arose between the co-owners with regard to the proper manner in which to prosecute these applications.
10. Specifically, certain parts of the Tuschl II invention have been wrongfully included in the Tuschl I patent applications. In addition, the Tuschl I patent applications have improperly cross-claimed priority to the filing of a European patent application that falls in the Tuschl II family of patent applications.
11. MPG has told both Whitehead and Wolf Greenfield that the issues regarding the Tuschl I patent applications must be resolved by removing the material

regarding the Tuschl II inventions from the Tuschl I patent applications and by removing from the Tuschl I patent applications any reliance on the European patent filing that relates to the Tuschl II patent applications.

Whitehead refused to take these actions, and Wolf Greenfield has followed the instructions of Whitehead and ignored the instructions and concerns of MPG.

12. In light of the refusal to follow its requests, MPG informed Wolf Greenfield that there exists a conflict of interest among the co-owners of the Tuschl I patent applications and that Wolf Greenfield must therefore withdraw from representing any of the co-owners in connection with these applications.
13. Wolf Greenfield does not have any conflict waiver agreement from the co-owners of the Tuschl I patent applications.
14. Despite Wolf Greenfield's duty of loyalty to MPG as a client and co-owner of the Tuschl I patent applications, Wolf Greenfield has continued to prosecute the applications with full knowledge of the conflict of interests among its clients.
15. Indeed, Wolf Greenfield has told MPG that it takes direction regarding the prosecution of the Tuschl I patent applications only from Whitehead; has ignored requests for information from MPG regarding the prosecution of the Tuschl I patent applications; and has taken action directly contradicting the express wishes of MGP, to its detriment.

COUNT I-LEGAL MALPRACTICE

16. MPG is a client of Wolf Greenfield for the purpose of prosecuting MPG's interests in the Tuschl I patent applications, and is thereby owed the duty of utmost loyalty.
17. As described above, Wolf Greenfield has repeatedly and continuously breached its duties to MPG by, among other things, its continued violation of the rules governing professional conduct, including Rule 1.7 of the Rules of the Supreme Judicial Court and Rule 8.4 of the Rules of the Supreme Judicial Court, which prohibit multiple representation of clients with adverse interests.
18. Wolf Greenfield's continued breach of its duties to MPG has resulted in irreparable harm to MPG, including but not limited to serious economic damages, as well as the failure to prosecute in an effective manner, in accordance with MPG's instructions, the Tuschl I patent applications, in which MPG has a substantial interest.

WHEREFORE, MPG demands judgment against Wolf Greenfield including money damages, interest and costs associated therewith.

COUNT II-BREACH OF FIDUCIARY DUTY

19. MPG reposed faith, confidence and trust in Wolf Greenfield's judgment and advice pursuant to its prosecution of MPG's interest in the Tuschl I patent applications.
20. Defendant Wolf Greenfield owes MPG a fiduciary duty to act in its best interest and not to take any actions that are adverse to its interests.

21. By its conduct as described above, Wolf Greenfield has breached its fiduciary duty to MPG resulting in irreparable harm to MPG, including but not limited to serious economic damages, as well as the failure to prosecute in an effective manner, in accordance with MPG's instructions, the Tuschl I patent applications, in which MPG has a substantial interest.

WHEREFORE, MPG demands judgment against Wolf Greenfield including money damages, interest and costs associated therewith, as well as all other relief as this Court deems equitable.

COUNT III-DECLARATORY JUDGMENT

22. Wolf Greenfield's acts as set forth in the foregoing counts have caused MPG injury by misappropriating the Tuschl II invention from MPG thereby harming the economic value of the Tuschl I and Tuschl II applications.


23. Wolf Greenfield's acts as set forth in the foregoing counts have caused MPG injury by depriving it of the benefit of its property rights in the Tuschl II inventions.

24. Wolf Greenfield has performed these acts notwithstanding the conflict of interests among clients that are mutually represented. As discussed above, it has followed the instructions of one client (Whitehead) over the express instructions of another client (MPG).

WHEREFORE, this Court should issue a judgment declaring, amongst other things, that Wolf Greenfield is required to cease its prosecution of the Tuschl I patent applications and withdraw its representation as to the co-owners.

THE PLAINTIFF

By its Attorneys,



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6/26/09