

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HAKAN LANS,)	
)	
Plaintiff,)	Civil Action No. 97-2523 (JGP)
)	Civil Action No. 97-2526 (JGP)
v.)	
)	
GATEWAY 2000, INC.,)	
DELL COMPUTER CORP.)	
)	
Defendant.)	
_____)	
 UNIBOARD AKTIEBOLAG)	
)	
Plaintiff,)	Civil Action No. 99-3153 (JGP)
)	
v.)	
)	
ACER AMERICA CORP. et al.)	
)	
Defendants.)	
_____)	

MEMORANDUM OPINION

This matter comes before the Court pursuant to **Plaintiffs’ Motion for Reconsideration of the Courts September 6, 2001 Order Concerning Attorneys’ Fees** [#s 136, 99, 124 respectively]. Hakan Lans and Uniboard Aktiebolag (“Plaintiffs”) claim that they were not properly represented on the motions for attorneys fees that were the subject of the September 6, 2001 order. One of the firms that represented plaintiffs on those motions, Adduci, Mastriani, and Schaumberg (“AMS”), filed a motion to intervene that was granted on April 13, 2004.¹ As

¹Plaintiffs filed a malpractice action against AMS, and the Swedish law firm, Advokatfirman Delphi Co. (“Delphi”), on November 5, 2002. See Lans v. Adduci, Mastriani, & Schaumberg, et. al., Civil Action No. 02-2165 (stayed pending resolution of the motion for reconsideration). AMS’ pleadings in the current action are filed under seal.

explained more fully below, the Court concludes that plaintiffs' Motion for Reconsideration should be denied.

BACKGROUND

Plaintiff Hakan Lans ("Lans") filed his United States Patent No. 4,303,986 ("986 patent") on January 9, 1979. Compl. at ¶ 7. This patent, which accelerates the performance of color graphics subsystems in contemporary computers, was issued by the United States Patent Office on December 1, 1981. Id. On October 24, 1997, Lans, through his attorneys AMS, filed a patent infringement suit, in his own name, against various computer companies, including Gateway 2000, Inc. ("Gateway"), Dell Computer Corp., and Compaq Computer Corp.² See Compl.

During the discovery process, Gateway found that on October 19, 1989, Lans had assigned and transferred the 986 patent to Uniboard Aktiebolag ("Uniboard"), a company wholly owned by Lans.³ Gateway subsequently filed a motion for summary judgment arguing that Lans

²Collectively referred to as the Lans cases, these related matters are Lans v. Gateway 2000, Inc., No. 97-2523 (D.D.C. filed Oct. 24, 1997), Lans v. Dell Computer Corp., No. 97-2526 (D.D.C. filed Oct. 24, 1997), Lans v. Acer America Corp., No. 97-2528 (D.D.C. filed Oct. 24, 1997), and Lans v. AST Research, Inc., No. 97-2529 (D.D.C. filed Oct. 24, 1997). Four other related matters, Lans v. Digital Equipment Corp., No. 97-2493 (D.D.C. filed Oct. 24, 1997), Lans v. Hewlett-Packard Co., No. 97-2524 (D.D.C. filed Oct. 24, 1997), Lans v. Packard Bell NEC, Inc., No. 97-2525 (D.D.C. filed Oct. 24, 1997), and Lans v. Compaq Computer Corp., No. 97-2527 (D.D.C. filed Oct. 24, 1997), were dismissed pursuant to stipulations of dismissal entered into between the parties. Two other related matters, Lans v. Olsy North America, No. 97-2530 (D.D.C. filed Oct. 24, 1997), and Lans v. Siemens Nixdorf Info., No. 98-0050 (D.D.C. filed Jan. 9, 1998), had been previously dismissed. Defendants Compaq Computer Corp., Hewlett-Packard Co. and Packard Bell NEC have withdrawn their motions for attorneys fees in Uniboard pursuant to stipulations of dismissal filed by the parties. Defendant Digital Equipment Corp., which joined Compaq Computer Corp.'s motion for attorneys fees, also withdrew its motion for attorneys fees pursuant to a stipulation of dismissal filed by the parties.

³On October 19, 1989, Lans entered into an agreement with International Business Machines Corporation (IBM) for the licensing of his 986 patent. In order to avoid heavy taxation by the Swedish government, Lans decided to license the patent through his company, Uniboard.

was not the registered owner of the patent, and thus lacked standing to sue. See Gateway’s Mot. Summ. J. Lans then filed a motion to amend his complaint to substitute Uniboard as the plaintiff. As justification for this motion, Lans claimed both that he forgot he made the assignment, and that he thought the assignment was invalid. See Lans Decl. at ¶ 7-9 (attached to Pl.’s Mot. for Leave to File First Am. Compl.). The Court, however, did not find Lans’ arguments tenable holding that “the information concerning the assignment was solely in the control of Lans and Uniboard.” Lans v. Gateway, 84 F.Supp.2d 112, 120 (D.D.C. 1999) (“Lans I”). Moreover, “any inventor would keep a record of the assignment of such a valuable patent.”⁴ Id. The Court concluded that “Lans chose to conceal all information about the assignment, possibly even from his attorneys, until confronted with irrefutable evidence that the assignment had occurred.” Id. at 122. Accordingly, the Court granted summary judgment in favor of Gateway and denied Lans’ motion to amend.

After the Court dismissed his claims, Lans appealed the summary judgment order, filed suit against the computer companies in the name of Uniboard, and filed a Federal Rule of Civil Procedure 60(b)(2) motion seeking reconsideration based on newly discovered evidence. The newly discovered evidence proffered by Lans was a document entitled “Clarification Contract.” This document, which appeared to be drafted and signed by Lans eight days after he assigned his rights in the 986 patent to Uniboard, states that Lans owns the patent and Uniboard only has the right to license and receive proceeds from the patent. See Pl.’s Rule 60(b)(2) Mot. Regarding

He therefore assigned his rights in the 986 patent to Uniboard, and signed the IBM licensing agreement on behalf of Uniboard. See Lans 1/26/05 Dep. Tr. at 75-77; Intervenor’s Mem., Ex.17.

⁴The licensing agreement between Uniboard and IBM was worth at least \$1,500,000.00 in 1989. See Intervenor’s Mem., Ex. 17 (IBM Agreement).

Newly Disc. Evidence. The Court held that the Clarification Contract did not qualify as newly discovered evidence within the context of Rule 60(b)(2). See Lans v. Gateway, Inc., 110 F.Supp.2d 1, 5-10 (D.D.C. 2000) (“Lans II”). The Court also took judicial notice of the fact that Lans had filed both a motion for reconsideration of the Court’s order in Lans I, and a new complaint against the computer companies in the name of Uniboard.⁵ The Court noted that if there was shared ownership between Lans and Uniboard, as the Clarification Contract purported to establish, Lans should have named himself as a co-plaintiff in the new complaint. Id. at 9.

“The result is that the Court sees Lans in his individual capacity claiming he owns the patent, and Uniboard, of which Lans has repeatedly informed the Court he has complete control of, claiming that it owns the patent. Together these two positions are untenable, and thus cast further doubt on the credibility of the Clarification-Contract.” Id.

The suit filed in the name of Uniboard was also dismissed. The Court found that the patent had already expired, and that Uniboard failed to give notice pursuant to 35 U.S.C. § 287(a). See Uniboard Aktiebolag v. Acer Am. Corp., 118 F.Supp.2d 19 (D.D.C. 2000).

Lans and Uniboard went on to appeal all of the aforesaid judgments, which were all consolidated and affirmed by the Federal Circuit. See Lans v. Digital Equipment Corp., 252 F.3d 1320 (Fed. Cir. 2001). While the appeals were pending, the computer companies filed various motions for attorneys fees against Lans, Uniboard, and AMS. In its September 6, 2001 order, the Court granted the motions for attorneys fees against Lans and Uniboard, and denied the motion with respect to AMS.

The Court’s basis for granting the computer companies’ motions for attorneys fees against

⁵Lans filed a new complaint in the name of Uniboard on 11/29/99. See Uniboard Aktiebolag v. Acer America Corp., 118 F.Supp.2d 19 (D.D.C. 2000). Lans subsequently filed his motion for reconsideration of Lans I on 1/21/00.

Lans and Uniboard stemmed from Lans' behavior during the litigation process. The Court found that Lans' failure to sue in the name of the proper party was not "an honest and understandable mistake," and that he should have been more "thorough with his record keeping and more forthcoming with his attorneys." See Sept. 6, 2001 Mem. Op. at 9, 11. The Court also found that Uniboard "knew or should have known by reasonable investigation that its suit was groundless." Id. at 17. However, the Court did not hold AMS liable stating that although AMS' dual representation of Lans and Uniboard, when both were claiming ownership of the patent, should have raised ethical considerations for the firm, there was no evidence that AMS engaged in "vexatious and unreasonable conduct." Id. at 14.

In plaintiffs' current motion for reconsideration, of the September 6, 2001 order, they make a litany of allegations. First, they argue that since AMS was a named defendant in the computer companies' motion for attorneys fees, AMS had a conflict of interest and should have advised plaintiffs to seek separate counsel on that motion. Mot. For Recons. at 2. Second, plaintiffs allege that AMS knew about the assignment of the 986 patent to Uniboard, and acted below the standard of care when they failed to conduct proper research on the ownership of the patent. Id. at 10. Third, plaintiffs allege that AMS had motive to file the complaints in Lans' name, instead of Uniboard's, because of the provisions of a financing agreement which required documentation of Lans' consent to representation. Id. at 12. Plaintiffs also contend that AMS made the decision to subsequently file in Uniboard's name, and that Uniboard was merely following the advice of counsel. Id. at 17.

ANALYSIS

I. *Standard of Review*

Pursuant to Federal Rule of Civil Procedure 54(b), an interlocutory order “is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.” Motions to reconsider such interlocutory orders are within the discretion of the trial court “as justice requires.” Lewis v. United States, 290 F.Supp.2d 1, 3 (D.D.C. 2003) quoting United Mine Workers v. Pittston Co., 793 F.Supp. 339, 344-45 (D.D.C. 1992), *aff’d*, 299 U.S.App.D.C. 399, 984 F.2d 469 (1993), *cert. den.*, 509 U.S. 924, 113 S.Ct. 3040 (1993); American Lands Alliance v. Norton, No. 00-2339, 2004 WL 3246687 at *2 (D.D.C. June 2, 2004). The September 6, 2001 attorneys fees order qualifies as an interlocutory order because the Court has not issued a final order with respect to the fees. Hence, plaintiffs’ motion for reconsideration will be assessed under the standard for Rule 54(b) motions.

II. *Knowledge of the Uniboard Assignment*

The main issue before the Court concerns Lans’ credibility. In the motion for reconsideration, Lans argues that AMS knew about the assignment of the 986 patent to Uniboard. Mot. For Recons. at 7-8. He claims that his previous arguments to the Court were not authorized by him, and were made by AMS to protect their own interests. Mot. For Recons. at 11-12. Plaintiffs proffer numerous arguments in support of this contention.

Plaintiffs claim that AMS knew about the assignment to Uniboard at least nine months before the first complaint was filed. Mot. For Recons. at 8. In January 1997, after Lans had consented to AMS’ representation, AMS was contacted by counsel for IBM regarding the scope of

the IBM license agreement. Intervenor's Mem. In Opp. ("Intervenor's Mem.") at 12.⁶ Plaintiffs' argue that since AMS represented Uniboard in negotiations over Uniboard's rights under the IBM agreement, they had to know that Lans had assigned some type of interest in the 986 patent to Uniboard. Id. at 8. AMS concedes that they knew about the IBM agreement. See Intervenor's Mem., Ex. 1, 17. However, the terms of agreement do not indicate that Uniboard was the owner of the patent; it only indicates that Uniboard had the power to grant the license. Id.

Plaintiffs also reference a February 1997 fax from Lans to AMS where Lans tells AMS that he had previously transferred the patent to Uniboard. Lans declares

"as you know the license has been signed with a company (UNIBOARD AB) and not with me as an individual (the patent has been transferred to the company for many years ago and the agreement with IBM was made with UNIBOARD AB)." Mot. For Recons., Ex. 9.

Lans sent AMS this fax after receiving service of process in a suit filed in Idaho by Micron Electronics. Intervenor's Mem. at 13. Lans was concerned about the fact that he was the named defendant in the case and wanted to know whether Uniboard could be substituted as the defendant. See 3/24/05 Tr. at 113-114. AMS claims that when AMS attorney, Louis Mastriani ("Mastriani"), questioned Lans about the statement, Lans stated that he was the registered owner of the patent, and Uniboard only had the right to collect revenues. Intervenor's Mem. at 13. Lans only wanted to substitute Uniboard as the defendant so that he could protect his family's financial interests. See 3/24/05 Tr. at 113-114.

Plaintiffs claim that in a January 1999 e-mail responding to interrogatories served during the discovery period of Lans I, Lans again told AMS that Uniboard owned the patent.

⁶AMS subsequently obtained Lans' consent to act on behalf of Uniboard with respect to this issue. Intervenor's Mem. at 12.

“the response to interrogatory 10 could maybe be changed from ‘I am the sole owner of the ‘986 patent’ to ‘the company Uniboard AB is the owner of the ‘986 patent rights but the patent is still registrated in Mr. Hakan Lans name. Consequently, Mr. Lans has the sole right to sign license agreements.’” Mot. for Recons., Ex. 15.

AMS claims that upon receipt, Mastriani contacted Lans and asked him to clarify the e-mail. They claim that Lans confirmed that he was the sole owner of the 986 patent. Intervenor’s Mem. at 14.

While all of plaintiffs’ claims cast suspicion on whether AMS acted within the appropriate standard of care in determining ownership of the patent, these claims are not determinative as to whether Lans told AMS about the assignment. During an evidentiary hearing held on March 24, 2005, Lans admitted that he did not tell AMS that he had signed an agreement transferring his ownership rights. See Evidentiary Hr’g Tr. at 62. Moreover, if Lans believed, as he now claims, that the suits should have been filed in the name of Uniboard, he would not have authorized AMS to send infringement letters naming himself as the owner of the patent. See Intervenor’s Mem., Ex. 23. Additionally, the Court is troubled by the fact that Lans continued to claim that he was the registered owner of the patent even after the transfer to Uniboard was revealed. See Intervenor’s Mem., Ex. 4, 33, 35, 39, 40, 42-44; Prehearing Br. of Intervenors, Ex. 3-5; Evidentiary Hearing, Pl.’s Ex. 25.

III. *Motive to Conceal Assignment*

In defense of his credibility, Lans contends that he was not in control of the case. He claims that AMS knowingly filed suit in the wrong name in order to protect their own financial interests. In support of his claim, Lans references a partnership (“986 Partnership”) that was formed by AMS in order to finance the litigation.⁷ See Mot. for Recons., Ex. 6. The financing

⁷In early contract negotiations between Lans and AMS, Lans declared that he did not want to finance the expenses of any litigation. See Intervenor’s Mem., Ex. 8.; 1/26/05 Lans Dep.

agreement between AMS and the 986 Partnership states that AMS and Delphi are

“ employed by Hakan Lans of Stockholm, Sweden (“Lans”) to pursue such demands, requests, negotiations, litigation or other remedies Adduci and Delphi deem appropriate to collect or obtain royalties and/or damages in connection with alleged infringements of U.S. Patent No. 4,303,986.” Mot. For Recons., Ex. 6.

Lans argues that AMS concealed Uniboard’s interest in the ‘986 patent because such disclosure might have upset the financing of the litigation, and subjected AMS to liability. See Mot. For Recons. at 12-13. However, the Court finds it unlikely that AMS would have intentionally filed in the wrong name because to do so may have subjected them to liability from the 986 Partnership. In fact, because of the partnership, AMS had more of a motivation to ensure that the suit was filed in the name of the proper party.

IV. *Uniboard*

Plaintiffs allege that AMS took certain actions during the litigation process without consulting Lans or obtaining his approval. They claim that after the dismissal of the original infringement complaint, AMS made the decision to file in the name of Uniboard without consulting Lans. However, in a letter executed by Lans on December 20, 1999, Lans authorized AMS to file an infringement action against the computer companies with Uniboard as the named plaintiff. See Intervenor’s Mem., Ex. 38. Hence, it is clear that Lans was in control of the litigation and that the representations made to the Court on Uniboard’s behalf were made with his consent and approval.

Given Lans’ history of making inconsistent arguments to the Court with regard to ownership of his 986 patent, in addition to documented evidence of his inconsistent statements to

Tr. at 37.

AMS,⁸ and other parties,⁹ the Court does not find Lans' current argument credible.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Reconsideration of the Court's September 6, 2001 Order Concerning Attorneys' Fees is DENIED.¹⁰ An appropriate order accompanies the Memorandum Opinion.

Date: June 23, 2005

**JOHN GARRETT PENN
United States District Judge**

⁸See Evidentiary Hearing, AMS Ex. 4.

⁹See Gateway's Opp. to Mot. for Recons., Ex. A, B.

¹⁰Plaintiffs make additional claims as to AMS' failure to tell Lans about the 986 Partnership, failure to exercise the proper standard of care, failure to conduct proper research, failure to properly explain American patent law, as well as AMS' failure to advise Lans or Uniboard to seek separate counsel on the motions for attorneys fees. However, these claims are analogous to the claims made by Lans against AMS in a malpractice action that is also before this Court. Accordingly, the Court will not address those claims in this memorandum so as to prevent prejudice to the parties in the related case. See Lans v. Adduci, Mastriani, & Schaumberg, et. al., Civil Action No. 02-2165.