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# Ropes & Gray Settles Patent Malpractice Suit

BY ROSS TODD

ROPES & Gray has agreed to pay an undisclosed sum of cash to settle a long-running malpractice suit filed against the firm by former client Cold Spring Harbor Laboratory, which had accused Ropes of, among other things, undermining a patent it was hired to prosecute by plagiarizing another inventor's application.

CSHL, which announced the settlement in a press release issued Monday, originally sued Ropes in the Eastern District of New York in February 2010 (NYLJ, March 25, 2010). The laboratory claimed in its complaint that it had been deprived of millions of dollars in potential licensing and royalty revenue as a result of delays in the issuance of a patent originally prosecuted by former Ropes partner Matthew Vincent.

The lab maintained that Vincent had copied, without citation, 11 pages of its application for a patent on technology that allows researchers to selectively turn off genes directly from a separate patent application submitted to the U.S. Patent and Trademark Office by a Nobel Prize-winning scientist. After

initially rejecting the lab's application, the patent office issued the patent in question in 2012.

Ropes succeeded in getting the original malpractice suit transferred to Boston federal court in January 2011 (NYLJ, Jan. 25, 2011).

Eastern District Judge Arthur D. Spatt said that venue has generally been determined in such malpractice actions based on where an attorney's improper conduct allegedly occurred, not where the injured parties were located.

Spatt noted that Vincent appears to have drafted the patent applications while working in Ropes & Gray's Boston office.

Vincent did meet with lab personnel on several occasions in Long Island early in the patent application process, but the judge said that discussions at those sessions did not directly relate to the alleged malpractice.

"Because the defendants did not commit any of the alleged acts or omissions underlying the legal malpractice claim in the Eastern District of New York, and any relevant communications were tangential to the legal malpractice claim, venue is not proper in the Eastern District of New York," Spatt wrote.

In Boston, U.S. District Judge

Richard Stearns dismissed the case in March 2013, citing U.S. Supreme Court precedent that held that state courts have jurisdiction over patent malpractice claims. The lab refiled its malpractice claims in Massachusetts state court shortly thereafter, and the case was due to go to trial within days.

Teri Willey, CSHL's vice president for business development and technology transfer, said the settlement was reached after a round of mediation with Jonathan J. Lerner of Pilgrim Mediation Group LLC, a former partner in the New York office of Skadden, Arps, Slate, Meagher & Flom. Willey said Ropes had agreed to pay a "cash settlement" to resolve the litigation, but declined to say how much money is changing hands. For its part, Willey said, the lab has agreed to drop all of its pending claims.

A Ropes spokesman declined to comment on the settlement.

Vincent was dismissed from Ropes in 2009 after the firm discovered that a patent database company he secretly owned billed the firm and its clients more than \$730,000. He resigned from the Massachusetts bar in 2009 while disciplinary charges were pending against him. It was not immediately clear Monday where he is working now.

@ Ross Todd is a reporter for [alm.com](http://alm.com), an affiliate of the Law Journal. He can be contacted at [rtodd@alm.com](mailto:rtodd@alm.com).

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