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Trials&TRIBULATIONS

Want to copy and paste? It could cost you

You may have heard about Ropes & Gray LLP's most recent lawsuit debacle — the one where a former IT partner copied and pasted text from an earlier patent application, potentially causing the denial of his client's application.

The recent decision of *Cold Spring Harbor Laboratory v. Ropes & Gray LLP and Matthew P. Vincent*, 2011 WL 204762 (EDNY 2011) authored by Eastern District Judge Arthur Spatt essentially involves the mundane issue of proper venue for an action asserting legal malpractice, which is nothing ground-breaking. But the facts of this case make it interesting and could teach us a lesson about copying and pasting and giving credit where credit is due.

By VICTORIA GLEASON
Daily Record Columnist

While not uncommon, copying and pasting is simply a bad practice. It can lead to carelessness and oversight.

Consider the case of *Ayala v. Walsh*, 2009 WL 4282034 (EDNY 2009), in which District Judge Joanna Seybert chastised counsel for its obvious copy and paste job. The court noted that counsel "utterly failed in his obligation to review his opposition papers prior to submitting them. … [T]he quotes [in the papers] clearly have been copied and pasted from another case, as they discuss a 'taxi … found, riddled with bullet holes, mere yards away from the spot where the victim left it' and a victim who was 'alert to the general threat of danger which cab drivers faced.' It is inconceivable how counsel could copy and paste quotes in two pages of his brief discussing a taxi driver victim, when this case involves the murder of a pet-store owner," Id. n. 1.

Whoops.

Similarly, in a case involving the protection of free speech under the First Amendment, the court was puzzled as to why statutes with no relevance to the case appeared in counsel's complaint. The court chalked it up to a "'copy and paste' document preparation method, which apparently involves lifting and reusing parts of pleadings and other papers from unrelated cases, without bothering to check to make sure that they are accurate and relevant to the case at bar," *Sullivan v. Chappius*, 711 F.Supp.2d 279, n. 4 (WDNY 2010).

In another case regarding claims against a bank for discrimination, the plaintiff's complaint referred to the plaintiff "quit[ting] her employment at defendant NYPD," *Russo-Lubrano v. Brooklyn Federal Savings Bank*, 2007 WL 121431, n. 8 (EDNY 2007). The court noted that this was clearly an allegation that had been copied and pasted from a previous complaint, Id.

Each of the foregoing cases involves a sloppy copy and paste job, which is completely avoidable. If you're going to do it, at least take a minute to read your papers to ensure that your sexual harassment case doesn't involve facts of a bank robbery (unless, of course, it does).

The *Ropes & Gray* case also involves a copy and paste job. However the copied text was intentionally put into a patent application, without any reference or citation to the origins of the copied work — which is not only sloppy but potentially unethical and could end up costing Ropes & Gray big time.

Alleged facts of the case

This suit was commenced by Cold Spring Harbor Laboratory against Ropes & Gray and Matthew P. Vincent. CSHL employs a Dr. Gregory Hannon who developed several inventions involving the exploitation of a cellular mechanism called RNA interference. CSHL owns the rights to any of Dr. Hannon's inventions.

In 1999, CSHL decided to patent Dr. Hannon's work and approached Ropes & Gray for that purpose. Attorney Vincent, who was a patent attorney and a partner at Ropes & Gray, was the lead attorney assigned to the matter.

Like any cutting edge science, other scientists were also researching and applying for patent applications on the same topic as Dr. Hannon. Specifically, a Dr. Andrew Fire submitted an application involving similar subject matter to Dr. Hannon's research to the United States Patent and Trademark Office in July 1999 (Fire Application) and received a patent in 2003.

In or around 2000, attorney Vincent prepared several applications to patent Hannon's inventions with the PTO. In doing so, he copied and pasted many pages verbatim from the Fire Application.

Eventually, the PTO rejected the applications submitted by Vincent stating that the invention was too similar to that contained in the Fire Application. This was so even despite the fact that Dr. Hannon had made efforts to explain how his inventions

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were different from those of Dr. Fire.

Neither CSHL or Dr. Hannon were aware that any text from the Fire Application had been included in the applications and indicated that if they had known, they would have differentiated Hannon's inventions from the Fire patent. In fact, it was not until 2008 that CSHL learned that Vincent had copied portions of the Fire Application and only learned this through an internal investigation of the PTO's rejections.

In particular, CSHL's internal investigator found that 11 pages of one of the applications were identical to the Fire Application and that none of the pages containing that material cited to the Fire Application. CSHL confronted Vincent, who admitted to copying the 11 pages from the Fire Application. Thereafter, CSHL ceased to utilize Ropes & Gray's services.

As a side note, Vincent was fired for reasons unrelated to this suit and later voluntarily resigned from the practice of law.

In February 2010, CSHL brought suit alleging legal malpractice, breach of fiduciary duty and fraud/fraudulent inducement due to the prejudice caused by including the Fire Application text in Dr. Hannon's applications. CSHL alleged that Vincent knew that an important part of the patent applications would be distinguishing Dr. Hannon's research from that of Dr. Fire and that by blatantly copying Dr. Fire's application, the distinction was not made.

Essentially, CSHL contends that Vincent's copying and pasting led directly to the denial of their patent applications for failure of being unique. CSHL is claiming that it is entitled to damages for legal fees for work done by Ropes & Gray in connection with the patent applications, the cost of switching to another law firm after discovering Vincent's alleged misdeeds, and costs relating to user license income and royalties if CSHL ends up receiving a patent for Dr. Hannon's work.

Ropes & Gray and Vincent, in a united front, argue that Vincent's copying of the text was not to blame for the patent rejections, but rather that Dr. Hannon's work was too similar to other anticipated patents already filed and was therefore not unique.

As much as I would love to be able to report the resolution of this action, it is still in its beginning stages and the instant decision, despite its fascinating detail, only involves Ropes & Gray's and Vincent's motion to dismiss for improper venue. They asked the court to transfer the case from the Eastern District of New York to the District of Massachusetts and their motion was granted.

Despite the routine procedural details, it will be interesting to see how this case of copying and pasting will end.

The lesson learned? Among others, if you copy and paste, make sure it makes sense and always give credit where credit is due.

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