

### Invention “Conceived” During Employment Awarded to Employer’s Assignee

An idea for using ultrasound to treat hypertension belonged to the bankrupt company that employed the scientist that had the idea, and in turn to the company that purchased its assets, rather than to the scientist, under a recent decision by the Delaware Chancery Court.

The Court construed a clause in the company’s inventions assignment agreement with the scientist that gave all inventions “conceived” during employment to the company. The Court construed “conceive” broadly in its ordinary English sense and not as a term of art from patent law.

Because the scientist witnessed the results of an experiment exploring the idea during his employment and filed two provisional patent applications for inventions using the idea 30 days after his employment terminated, the Court concluded that the idea was conceived during employment. It held that the inventions, including the resulting patent applications, belonged to the former employer and the company that bought its assets.

It may be of interest that the scientist was the CEO of the bankrupt company and that he formed a company to exploit the idea shortly after leaving the bankrupt company, although the Court did not enunciate a higher level of duty due to the scientist’s high position with the former employer.

RECOR MEDICAL, INC. v. WARNKING, CA #7387-VCN (Del. Ch. 5/31/13 revised)

Please click [here](#) to view case document.

For more information about this alert, please contact David Rabinowitz at [drabinowitz@mosessinger.com](mailto:drabinowitz@mosessinger.com).



[David Rabinowitz](#)

[Litigation](#)

[Intellectual Property](#)

[drabinowitz@mosessinger.com](mailto:drabinowitz@mosessinger.com)

212.554.7815

Since 1919, Moses & Singer has provided legal services to diverse businesses and to prominent individuals and their families. Among the firm's broad array of U.S. and international clients are leaders in banking and finance, entertainment, media, real estate, healthcare, advertising, and the hotel and hospitality industries. We provide cost-effective and result-focused legal services in the following primary areas:

- Accounting Law Practice
- Advertising
- Asset Protection
- Banking and Finance
- Business Reorganization, Bankruptcy and Creditors' Rights
- Corporate/M&A
- Corporate Trust
- Global Outsourcing and Procurement
- Healthcare
- Hospitality
- Income Tax
- Intellectual Property
- Internet/Technology
- Labor, Employment & Employee Benefits
- Legal Ethics & Law Firm Practice
- Litigation
- Matrimonial and Family Law
- Privacy and Cybersecurity
- Private Funds
- Promotions
- Real Estate
- Securities and Capital Markets
- Securities Litigation
- Sports & Entertainment
- Trusts and Estates
- White Collar Criminal Defense and Government Investigations



---

Moses & Singer LLP is the New York City law firm member of the MSI Global Alliance (MSI). MSI is one of the world's leading international alliances of independent legal and accounting firms, with over 250 member firms in 100 countries - [www.msiglobal.org](http://www.msiglobal.org).

---

Moses & Singer LLP  
The Chrysler Building  
405 Lexington Avenue  
New York, NY 10174-1299  
Tel: 212.554.7800, Fax: 212.554.7700

2200 Fletcher Avenue  
Fort Lee, NJ 07024  
Tel: 201.363.1210, Fax: 201.363.9210  
Abraham Y. Skoff, Esq.  
Managing Attorney for New Jersey

10 Cuttermill Road – Suite 201  
Great Neck, NY 11021  
Tel: 516.498.8828, Fax: 516.498.8810  
James Alterbaum, Esq.  
Managing Attorney for Long Island

---

**Disclaimer**

Viewing this or contacting Moses & Singer LLP does not create an attorney-client relationship.

This does not contain a complete legal analysis or constitute an opinion of Moses & Singer LLP or any member of the firm on the legal issues herein described. This contains information that may be modified or rendered incorrect by future legislative or judicial developments. It is recommended that readers not rely on this in structuring or analyzing individual transactions or matters but that professional advice be sought in connection with any such transaction or matter.

**Attorney Advertising**

It is possible that under the laws, rules or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation.