

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Civil Division

PAT CHOATE)
149 Clark Lane)
Washington, Virginia 22747)

Plaintiff,)

v.)

Case No. _____

INTELLECTUAL VENTURES, LLC)
3150 139th Avenue, Southeast)
Building 4)
Bellevue, Washington 98005)

JURY TRIAL DEMANDED

Please serve:)
CORPORATION SERVICE COMPANY)
300 Deschutes Way, Southwest)
Suite 304)
Tumwater, Washington 98501)

Defendant.)

COMPLAINT AND JURY DEMAND

Plaintiff Pat Choate by and through his undersigned counsel, hereby brings this action against Defendant and states as follows:

JURISDICTION AND VENUE

1. This Court has diversity jurisdiction pursuant to 28 U.S.C. §1332 in that the amount in controversy exceeds \$75,000 and Plaintiff and Defendant are citizens of different states. Venue properly rests in this Court pursuant to 28 U.S.C. §1391(a)(2).

PARTIES

2. Plaintiff Pat Choate (“Choate”) is a political economist, policy analyst, and author.

One of his primary areas of focus is United States competitiveness and public policy. Choate is the author of several books on economic development and public policy, including the publication in 2005 of the book “Hot Property,” which traces the role of intellectual property in U.S. economic development. Between 2002 – 2006, Choate wrote three studies on intellectual property for the U.S.- China Economic and Security Review Commission. He is also the author of “The Global Publication of U.S. Patent Applications”, an analysis funded by the Small Business Administration as part of a larger report: “The Crisis in Intellectual Property Protection and China’s Role in that Crisis.” In 2006, he testified before the House Judiciary Committee on the weaknesses of the patent reform system then being considered by Congress. In 2009, he wrote “Saving Capitalism” a book that describes efforts to weaken U.S. patent protections and identified alternatives to the current system. He has written numerous other monographs and articles on the topic of innovation-driven job creation. Choate also directs the Manufacturing Policy Project, a Washington, D.C. based policy institute.

3. Defendant Intellectual Ventures, LLC (“IV”) is a corporation organized under the laws of the State of Washington, with its principal place of business in Bellevue, Washington. Employees of IV regularly met with Choate in the District of Columbia in furtherance of the agreement at issue in this action, including at an office that IV maintains in the District. In addition, at least one of IV’s employees, Peter Harter resides in the District of Columbia for the purpose of transacting business here. IV, either directly or through affiliates, purchases inventions from individual inventors and institutions, including universities, and then licenses those inventions. IV (and/or its affiliates) owns tens of thousands of patents, and has earned significant licensing fees as a result of those patents. In recently filed litigation pending in

Delaware, two of IV's affiliates have alleged that another affiliate, Intellectual Ventures Management, LLC ("Management") has purchased more than 30,000 "assets," having paid inventors "hundreds of millions of dollars." In turn, Management has apparently earned "nearly \$2 billion" in licensing fees from those patents.

FACTS

4. As set forth above, Choate is the author of "Hot Property," which was published by Alfred A. Knopf, Inc. in September 2005. The thesis of the book is that strong intellectual property protections have always been the underlying girding for U.S. economic and job growth. The book was well reviewed in the New York Times and literary journals.

5. In Fall 2005, Choate was contacted by Peter Harter, IV's Vice President for Public Affairs, and its representative in Washington, D.C. ("Harter"). Harter told Choate that he had read "Hot Property" and invited Choate to dinner to discuss mutual interests, including patent issues. At all times relevant to this Complaint, Harter acted on behalf of IV with actual or apparent authority, and represented that his activities were at the direction of the management of IV.

6. During the 2005 – 2006 period, several large technology companies began an initiative to alter U.S. patent laws, operating through an association named the Coalition for Patent Fairness (CPF). CPF took the position that innovation was being hampered because of frivolous patent litigation and unreasonably large awards.

7. Opponents of the initiative argued that the proposed changes would make infringement easier and less expensive. Because its value is heavily dependent on the strength of the patent law, IV was (and is) opposed to the proposed changes that would weaken the rights of

patent owners.

8. The 109th Congress (2005 – 2007) held hearings on the issue, in anticipation of considering legislation in the next Congress. Choate testified (by invitation) before the House Judiciary Committee on April 27, 2006, as a member of the Advisory Board of the Professional Inventors Alliance. Choate took the position that although there were problems with the patent system, they were different than those being pushed by the CPF. Advocates for the legislation also testified on its behalf.

9. Sometime during mid- 2006, Harter, on behalf of IV, suggested to Choate that he become a consultant to IV. During that period, Harter arranged for Choate to meet Nathan Myhrvold and Peter Jung, two of the four co-founders of IV. It was clear during these meetings that Doctors Myhrvold and Jung viewed Harter, and the work he does as IV's Vice President for Public Affairs in Washington, as significant to the operations of IV and its affiliates, and consistent with the founder's directives. At no time did either of these gentlemen suggest that Harter was not fully authorized in his activities in Washington, including with regard to efforts regarding the proposed patent legislation.

10. In 2006, at Harter's urging, Choate submitted a formal proposal to IV for funding support of Choate's work, but no agreement was reached. Nevertheless, Harter, on behalf of IV, told Choate that in the 2007 budget cycle, it was likely that funding would be available.

11. In June 2006, Choate testified before the U.S. China Economic and Security Commission on the need for stronger patent protections. He also arranged with the Committee for Peter Jung of IV to testify.

12. In the opening days of the 110th Congress (2007 – 2008), the four Congressional

advocates of the bill (Senators Patrick Leahy and Orrin Hatch, and Representatives Howard Berman and Lamar Smith) introduced legislation that was quickly considered by the House and Senate Judiciary Committees. The bill was on a fast track and the opponents, including IV, were stunned by the prospect that legislation would be enacted that would greatly diminish the value of their patent portfolios.

13. On May 9, 2007, the House Judiciary Committee held an extraordinary two-hour, closed-door session with all the Committee Members and seven patent experts to discuss the draft legislation. Choate was one of those seven. A handful of representatives from the various advocates and opponents were permitted to attend.

14. Soon after, Choate was again approached by Harter, on behalf of IV, who asked if Choate would head a "Plan B" effort, distinct from that of other opposition alliances. Harter told Choate that IV wanted to create a new effort in opposition to the bill, and that this effort was at the specific direction of founders Myhrvold, Jung, and Peter Dekin. A new effort was required because IV had been rejected as a member of the major coalitions representing the opposition to the new legislation. Harter told Choate that other members of the opposition to the bill considered IV to be a "troll" -- *i.e.*, an owner of non-practiced patents that is in the business of extracting payments either through coerced licensing arrangements or litigation.

15. In May 2007, in discussions in Washington, D.C., Harter, on behalf of IV, and Choate agreed that the funding to Choate for his Plan B efforts would be \$30,000 per month (with Choate paying for any expenses he incurred). Harter represented to Choate that the Plan B funding would be raised by IV from partners, vendors, and other interested parties, but that if IV did not raise the \$30,000 per month from outside sources, IV itself would make up the difference.

Harter also advised Choate that IV wished to maintain a low visibility, as several of its investors, including Bill Gates, were leaders in the CPF and supported the proposed legislation. Harter told Choate that IV wished to “hide in the crowd.”

16. Harter, on behalf of IV, arranged for Choate to meet with various companies, inventors and philanthropists to discuss the issue. IV quickly raised the initial funds, and Choate began his work on Plan B. As agreed by Choate and Harter, Choate’s role was to devise strategy and tactics, perform analysis, serve as an expert witness, and educate opponents of the legislation about its nuances. Because of Choate’s long-standing relationship with organized labor, Harter and Choate agreed that a primary focus of Choate’s efforts on behalf of Plan B was to work with organized labor to educate union leadership about the legislation and its harmful impact on job creation, and to facilitate union opposition against it.

17. Choate’s work included analysis to debunk the theory that the patent system was in crisis because of frivolous litigation. Choate wrote a major article in Manufacturing News, and a monograph on the subject for the U.S. Business and Industrial Council. With invitations arranged by Harter, or directly from the Members, Choate participated in Congressional briefings where he presented his findings, being one of the few nationally-known economists knowledgeable about patents, development and the proposed legislation. Choate was fully paid for his Plan B efforts during the 110th Congress.

18. By the end of 2008, the CPF proposals were dead for the 110th Congress. Nevertheless, the advocates were vocal in their enthusiasm for their chances of passage of the legislation in the 111th Congress in 2009, given the change in administrations. IV and other opponents of the proposed legislation knew that they faced a major battle in the 111th Congress.

19. In the fall of 2008, Harter, on behalf of IV, asked Choate, and Sam Dawson, a Republican strategist, to help develop a long-term strategy for strengthening the U.S. patent system. Harter, Choate, and Dawson met several times, and the result was a plan that Harter presented on December 18, 2008 at an afternoon meeting in the offices of TPL Group in Cupertino, California. TPL had been introduced to the Plan B effort by Peter Detkin, an IV co-founder. Upon information and belief, it was Detkin who arranged for Harter to secure funding and assistance for Plan B from the TPL Group.

20. Harter had invited Senator Arlen Specter to speak at the meeting on December 18, 2008, and TPL executives, including its CEO, Dan Leckrone, were in attendance. After Specter left the meeting, Harter explained Plan B to the TPL CEO and the work that Choate had done during the 110th Congress. Leckrone, on behalf of TPL, agreed to participate in funding Plan B at a level of \$10,000 per month.

21. After the TPL meetings, Harter, on behalf of IV, suggested that funding for Plan B should be through a 501 (c)(4) organization that would embark on a public policy campaign. Although the Plan B efforts had played a key role in stopping enactment of the Patent Reform Act of 2007, Harter and Choate recognized that Plan B would have to evolve during the 111th Congress. Their goal was to also develop an agenda of actions and proposed legislative changes that would strengthen the patent system for all stakeholders, work that would extend through the 111th Congress and into the 112th Congress.

22. Harter took the lead to create the organization, raise funds, and contact other companies and inventors to join in the effort. Harter, on behalf of IV, agreed that Choate's engagement would continue throughout the two years of the 111th Congress and that he would be

paid at the rate of \$30,000 per month for twenty-five months beginning December 2008 (just prior to the start of the 111th Congress) . Unlike the payment arrangements between Choate and IV during the 110th Congress, the parties agreed that during the 111th Congress, Choate would be reimbursed his expenses in addition to payment of the \$30,000 monthly fee. Harter further agreed, on behalf of IV, that the continued funding would begin in December 2008, and that whatever funds were not raised from outside sources, IV would pay the difference.

23. At all times, Choate considered IV as his client. Choate would never have agreed to work on Plan B during the 111th Congress without Harter's specific assurance, on behalf of IV, that any shortfall in outside funding would be satisfied by IV. Moreover, it was IV, with its value heavily dependent on the ability to protect its patents, that had the most to gain from the success of Plan B.

24. For reasons unknown to Choate, Harter never created the 501(c)(4) organization. Nevertheless, Harter, on behalf of IV, continued to promise Choate that if Harter was unable to raise contributions from other sources, IV would fund the \$30,000 per month and expenses for the duration of the 111th Congress. In November 2009, Harter, on behalf of IV, sent Choate an e-mail, "since [the 501(c)(4)] has taken forever to get going we may need to have IV pay you directly. For now you can address the invoice to me."

25. Early in the 111th Congress, Senator Leahy reintroduced his patent reform bill (S. 515) and moved to quickly get it out of the Judiciary Committee and onto the Senate floor. The bill contained several provisions that were adverse to inventors and companies such as IV. Harter arranged for Dr. Myhrvold (founder and CEO of IV), to meet with Members of the Senate and House to relay his concerns. The morning of March 23, 2009, Dr. Myhrvold, Harter, Leckrone

and Choate had breakfast at the Mandarin Oriental to discuss Plan B, the proposed legislation, and the upcoming meetings with Congress.

26. At Harter's request, Choate hosted a private dinner that evening at the Cosmos Club in Washington, D.C. Myrhvold, Harter, Leckrone, and Choate attended, and Choate also invited Robert Buden, President of the Patent Office Professional Association (POPA), Ron Stern, their senior advisor and a former POPA President, and Randy Myers, Treasurer of POPA. The dinner involved an extensive discussion about the reforms that are required to make the patent agency more efficient, and how the office's needs compared to the bill then before the Senate. The POPA officials provided extensive information (at the dinner, and then later) that assisted Choate and Harter in formulating Plan B's substantive work, op-eds, and testimony.

27. Choate and Harter, on behalf of IV, continued to work closely on Plan B during the 111th Congress. At all times, Choate understood, and Harter, on behalf of IV, represented, that Harter's activities on Plan B were approved and supported by IV management. Harter was involved in reviewing and commenting on Choate's written materials, and both Harter and Mr. Leckrone (TPL Group) arranged for Choate to attend numerous meetings and briefings throughout the country in furtherance of Plan B. In the meetings that Choate attended with Harter, Harter took the lead, and Choate was available to answer economic questions. In addition, on several occasions when Choate was invited to brief Members of Congress or their staffs, it had been arranged through Harter, and Harter was present. In early 2009, and through 2010, and in furtherance of Plan B, both Harter and Choate were also actively involved with IV's efforts with regard to patent secrecy and export restriction issues involving the United States Patent & Trademark Office.

28. During the 111th Congress, Choate and Harter (along with Leckrone) focused the Plan B efforts on various groups, including universities and inventors groups. There was also a particular focus on the State of Nevada, then-Majority Leader Harry Reid's home state. Choate identified and worked with Nevada inventors groups to educate their members on the proposed legislation and what it would mean to their ability to patent ideas. Choate arranged to engage a local law firm/public affairs organization that created a website on this issue, conducted meetings, and interacted with Senator Reid and his staff. Choate did radio shows in Nevada on the proposed legislation and the importance of innovation. Harter, on behalf of IV, was fully apprised of these efforts.

29. Senator Reid, who was in a very tight reelection race, did not schedule the patent bill for a Senate vote. Without floor time, the bill was not voted upon and died.

30. In March 2009, the Senate Judiciary Committee modified the bill in such a way that the damages provision that was so critical to IV was made acceptably less damaging to them. IV held fund raising events for Patrick Leahy, Chairman of the Senate Judiciary Committee. By mid-2010, IV was officially urging the Senate leadership to allow a vote on the patent reform bill. However, at no time did Harter or any other agent of IV instruct Choate to stop the work IV had hired him to do, which was to stop passage of the Leahy bill altogether and to gain passage instead of a substitute bill which would strengthen the patent system. At no time during Choate's relationship with IV did IV impose any restrictions on the manner in which Choate could accomplish the goals of his engagement.

31. By the end of December 2010, Choate had been paid a total of only \$295,000 for Plan B during the 111th Congress – \$45,000 of which was paid by TPL, and \$250,000 of which

was paid by a sponsor that had participated in funding Plan B during the 110th Congress.

32. Despite Harter's continuing promises of payment from IV, which continued throughout 2009 and 2010, no payments were forthcoming. To date, Choate is owed \$494,986 (\$455,000 for unpaid services, and \$39,986 for expenses).

COUNT I - BREACH OF CONTRACT

33. Plaintiff realleges and incorporates herein by reference Paragraphs 1-32.

34. The parties had an express contract regarding the provision of services by Choate to IV. They agreed to all material terms, including the type of services to be provided by Choate and the amount Choate would be paid for his services. Pursuant to their agreement, IV agreed to fund Choate for his Plan B efforts at the rate of \$30,000 per month, and to reimburse Choate all of his expenses incurred in connection with those services. Both Choate and IV intended to be bound by their respective promises.

35. The services performed by Choate covered a period of 25 months, from December 1, 2008 through January 1, 2011 for which IV had agreed to pay him a total of \$750,000 (at the rate of \$30,000 per month) plus expenses.

36. Although Choate has received payments in the amount of \$295,000, he is still owed an additional \$494,986 (\$455,000 for unpaid services, and \$39,986 for expenses).

37. In material breach of its agreement, IV has failed and refused to pay Choate the remaining amounts he is owed.

38. IV's material breach of its contract has proximately caused Choate to suffer damages in the amount of \$494,986.00.

WHEREFORE, Plaintiff Pat Choate demands judgment against Defendant Intellectual

Ventures, LLC in an amount not less than Four Hundred Ninety-Four Thousand, Nine Hundred Eight-Six Dollars (\$494,986.00), plus interest and costs, and for such other further relief the Court deems necessary or proper.

COUNT II - QUANTUM MERUIT (Implied in Fact Contract)

39. Plaintiff realleges and incorporates herein by reference Paragraphs 1-38.

40. As alleged above, Choate and IV entered into an express contract pursuant to which Choate agreed to provide services to IV and IV agreed to pay Choate a monthly fee for his services and to reimburse Choate his expenses incurred in the provision of those services. Alternatively, even if the parties did not enter into an express contract, Choate is entitled to recover under quantum meruit because a contract can be inferred parties' conduct.

41. Choate performed valuable services for IV in connection with Plan B beginning just prior to the start of the 111th Congress and continuing through the end of December 2010 (a period of 25 months). IV accepted and received the benefits of all the services performed by Choate and the expenses incurred by Choate in connection with those services. The circumstances under which Choate performed his Plan B services reasonably put IV on notice that Choate expected to be paid \$30,000 per month for his services and to be reimbursed his related expenses.

42. Although Choate has received payments in the amount of \$295,000, he is still owed an additional \$494,986 (\$455,000 for unpaid services, and \$39,986 for expenses).

43. In material breach of the parties' implied-in-fact agreement, IV has failed and refused to pay Choate the remaining amounts he is owed and has proximately caused Choate to suffer damages in the amount of \$494,986.00.

WHEREFORE, Plaintiff Pat Choate demands judgment against Defendant Intellectual Ventures, LLC in an amount not less than Four Hundred Ninety-Four Thousand, Nine Hundred Eight-Six Dollars (\$494,986.00), plus interest and costs, and for such other further relief the Court deems necessary or proper.

COUNT III - UNJUST ENRICHMENT (Quasi-Contract)

44. Plaintiff realleges and incorporates herein by reference Paragraphs 1-43.

45. As alleged above in Count I, Choate and IV entered into an express contract pursuant to which Choate agreed to provide services to IV and IV agreed to pay Choate a monthly fee for his services and to reimburse Choate his expenses incurred in the provision of those services. Alternatively, as alleged in Count II, a contract should be implied in fact based on the conduct of the parties. Even if the parties entered into neither an express nor an implied-in-fact contract, a contract should be implied in law, entitling Choate to recover for IV's unjust enrichment.

46. IV was unjustly enriched at Choate's expense. The circumstances are such that in good conscience IV should be required to make restitution. Choate performed valuable services for IV in connection with Plan B over a period of approximately 25 months. IV accepted and received the benefits of all the services performed by Choate and the expenses incurred by Choate in connection with those services. It would be unjust if IV were not required to compensate Choate an additional \$494,986 (\$455,000 for unpaid services, and \$39,986 for expenses) .

WHEREFORE, Plaintiff Pat Choate demands judgment against Defendant Intellectual Ventures, LLC in an amount not less than Four Hundred Ninety-Four Thousand, Nine Hundred Eight-Six Dollars (\$494,986.00), plus interest and costs, and for such other further relief the Court deems necessary or proper.

COUNT IV - PROMISSORY ESTOPPEL

47. Plaintiff realleges and incorporates herein by reference Paragraphs 1-46.

48. As alleged above in Count I, Choate and IV entered into an express contract pursuant to which Choate agreed to provide services to IV and IV agreed to pay Choate a monthly fee for his services and to reimburse Choate his expenses incurred in the provision of those services. Alternatively, as alleged in Count II, a contract should be implied in fact based on the conduct of the parties. Alternatively, as alleged in Count III, even if the parties entered into neither an express nor an implied-in-fact contract, a contract should be implied in law, entitling Choate to recover for IV's unjust enrichment. Alternatively, as alleged in this Count IV, IV is estopped from honoring its promises of payment to Choate.

49. IV promised Choate that it would pay him at the rate of \$30,000 per month for a period of 25 months for services he would render during the 111th Congress, as well as expenses he incurred during that time. Choate reasonably relied on IV's promises. Choate had already provided services to IV for the 110th Congress and Choate had been paid for those services. When just prior to the 111th Congress IV again requested Choate to provide services and promised that he would again be compensated at the monthly rate of \$30,000 plus additional reimbursement for expenses, it was reasonable for Choate to rely on those promises. Choate did in fact rely on the promises of IV by performing services related to the Plan B efforts. As a consequence of IV's failure to honor its promises, Choate has suffered real and actual economic loss.

WHEREFORE, Plaintiff Pat Choate demands judgment against Defendant Intellectual Ventures, LLC in an amount not less than Four Hundred Ninety-Four Thousand, Nine Hundred Eight-Six Dollars (\$494,986.00), plus interest and costs, and for such other further relief the Court

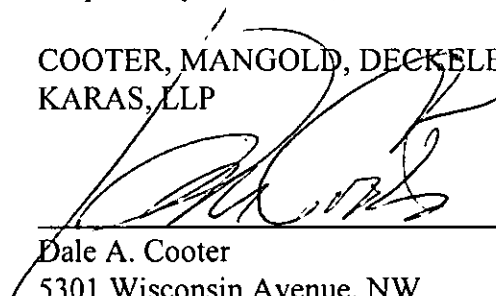
deems necessary or proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues.

Respectfully submitted,

COOTER, MANGOLD, DECKELBAUM &
KARAS, LLP



Dale A. Cooter
5301 Wisconsin Avenue, NW
Suite 500
Washington, DC 20015
(202) 537-0700
efiling@cootermangold.com

Attorneys for Plaintiff