

PATENT ASSIGNMENT

Electronic Version v1.1
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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	Court Order Dismissing all claims of Cardot
CONVEYING PARTY DATA	
Name	Execution Date
Minnesota District Court	07/30/2007
RECEIVING PARTY DATA	
Name:	Synesi Group, Inc., f/k/a Portogo, Inc.
Street Address:	7420 Izaak Walton Road
City:	Bloomington
State/Country:	MINNESOTA
Postal Code:	55438
PROPERTY NUMBERS Total: 4	
Property Type	Number
Patent Number:	6922720
Patent Number:	7020692
Patent Number:	7246157
Patent Number:	7349954
CORRESPONDENCE DATA	
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ATTORNEY DOCKET NUMBER:	5085
NAME OF SUBMITTER:	Gregory A. Lemaire

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Total Attachments: 18

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S/N 6,922,720; 7,020,692; 7,246,157; 7,349,954

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: Krys Cianciarulo et al. Attorney Docket: 5085.007US1
Patent No.: 6,922,720
Issued: July 26, 2005
Title: SYSTEMS AND METHODS FOR INSURING DATA OVER THE INTERNET

Inventors: Krys Cianciarulo et al. Attorney Docket: 5085.007US2
Patent No.: 7,020,692
Issued: March 28, 2006
Title: SYSTEMS AND METHODS FOR INSURING DATA TRANSMISSIONS

Inventors: Krys Cianciarulo et al. Attorney Docket: 5085.007US3
Patent No.: 7,246,157
Issued: July 17, 2007
Title: SYSTEMS AND METHODS FOR UNDERWRITING COVERAGE FOR
DATA TRANSMISSIONS

Inventors: Krys Cianciarulo et al. Attorney Docket: 5085.007US6
Patent No.: 7,349,954
Issued: March 25, 2008
Title: SYSTEMS AND METHODS FOR REPORTS BASED ON
TRANSMISSION-FAILURE CLAIMS

REQUEST TO RECORD DOCUMENT UNDER 37 C.F.R. § 3.11(a)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TranSurety, LLC, respectfully submits that it is 100-percent owner of the above-listed patents by virtue of an assignment executed on August 29, 2006, and recorded within three (3) months on October 17, 2006 (reel/frame 018398/0222), and by an assignment executed on October 16, 2006, and recorded on October 17, 2006 (reel/frame 018398/0225). Pursuant to 37 C.F.R. § 3.11(a), to further supplement the history of claimed interests in this patent, TranSurety, LLC respectfully requests that the accompanying July 30, 2007 Hennepin County Court Order (State of Minnesota) be recorded by the United States Patent and Trademark Office's

PATENT
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Assignment Branch as an “other document” within the meaning of 37 C.F.R. § 3.11(a) that affects the title of these patents.

Facts and circumstances cited in support of this request to record document

The facts and sequence of events upon which this request is made are as follows:

1. On December 9, 2002, Stephen Cardot executed an assignment that conveyed to **Portogo, Inc.** all of Mr. Cardot’s patent rights in the inventions of certain identified patent applications, including U.S. Patent Application Serial No. 10/094,591 that later became U.S. Patent No. 6,922,720. As part of this assignment, Mr. Cardot also assigned “any and all U.S. and international parents, continuations, divisionals, renewals, reissues, reexaminations or other such applications or patents arising from or related to” certain identified patent applications, including U.S. Patent Application No. 10/094,591. U.S. Patent Application No. 10/922,322 that became U.S. Patent No. 7,020,692 was a divisional of U.S. Patent Application No. 10/094,591; U.S. Patent Application No. 11/348,035 that became U.S. Patent No. 7,246,157 was a divisional of U.S. Patent Application No. 10/922,322; and U.S. Patent Application No. 11/753,550 that became U.S. Patent No. 7,349,954 was a divisional of U.S. Patent Application No. 11/348,035; and therefore U.S. Patent Nos. 7,020,692, 7,246,157 and 7,349,954 were also conveyed to Portogo, Inc. by the December 9, 2002 assignment. This assignment was **recorded** (within 3 months) on **January 7, 2003** (reel/frame 013638/0797).
2. On August 29, 2006, the Knoblach Family Trust, successor to the Marcellus P. Knoblach Revocable Trust, executed an assignment that conveyed to TranSurety, LLC, all of the Knoblach Family Trust’s claims, rights, title and interest in property, including all patent rights, that included then U.S. Patent Nos. 6,922,720 and 7,020,692 and U.S. Patent Application No. 11/348,035 that later became U.S. Patent No. 7,246,157, and also later U.S. Patent Application No. 11/753,550 that became U.S. Patent No. 7,349,954. The Knoblach Family Trust’s property interest in these patents was based on property rights it held in “all indebtedness, loans and obligations of Synesi Group, Inc. (f/k/a Portogo, Inc.) (the “Company”), including that evidenced by the Amended, Restated and Consolidated Secured Convertible Tenn Promissory Note, dated as of March 17, 2003, the Amended, Restated and

Consolidated Secured Promissory Note, dated as of March 17, 2003 and all other Secured Promissory Notes issued by the Company to Assignor (the "Loans") and all security agreements, pledge agreements and guaranties thereof, including Assignor's rights under that certain Amended and Restated Security Agreement, dated as of March 17, 2003 and Collateral Patent, Trademark and License Agreement dated as of March 17, 2003, together with all rights of Assignor against the borrowers, guarantors and others by reason of the transactions evidenced by the Loans, as well as the benefits of all representations, warranties, agreements and other terms contained in the Loans to the extent they are assignable." This assignment was **recorded on October 17, 2006** (reel/frame 018398/0222).

3. Additionally, on October 16, 2006 Portogo, Inc., in an effort to further ensure the proper transfer of patent rights to TranSurety, LLC, executed an assignment that conveyed to TranSurety, LLC "the entire right, title and interest in, to and under the Patents, for the United States and all foreign countries (if any), including any divisions, reissues, reexaminations, extensions or foreign equivalents thereof or continuations or continuations-in-part that have been filed," that included then U.S. Patent Nos. 6,922,720 and 7,020,692, and U.S. Patent Application No. 11/753,550 that became U.S. Patent No. 7,349,954. This assignment was **recorded on October 17, 2006** (reel/frame 018398/0225).
4. On November 17, 2006, Mr. Cardot, through his attorney, sought a rescission of the Assignments he executed on December 9, 2002, via a letter sent to Synesi Group, Inc. (f/k/a Portogo, Inc.). On June 7, 2007, Mr. Cardot, through his attorney and as part of a lawsuit filed in Hennepin County District Court (Fourth Judicial District Court of Minnesota) against Portogo, Inc., amended his complaint to include a claim seeking rescission of the December 9, 2002 Assignments. On **July 26, 2007**, Mr. Cardot **recorded** the amended complaint and the Synesi letter (which the recordation cover sheet erroneously lists as being executed October 17, 2006, rather than the November 17, 2006 execution date on the document) as a purported recovery back to himself of the rights he had assigned December 9, 2002 to Portogo, Inc. that were associated with the above-listed patents (reel/frame 019605/0908).
5. On July 30, 2007, Hennepin County District Court Judge Francis J. Connolly issued an order and memorandum of law granting summary judgment in favor of Synesi Group, Inc.

(f/k/a Portogo, Inc.) in the lawsuit between Mr. Cardot and Portogo, Inc. The order includes a recitation that “**All claims [of Mr. Cardot] against Synesi Group, Inc. [(f/k/a Portogo, Inc.)] are dismissed with prejudice and on the merits.**” The dismissed claims included the claim (see pages 9-10 of the Order Granting Summary Judgment in favor of Defendant and Memorandum of Law) seeking rescission of the Assignments from Mr. Cardot to Synesi, i.e., those assignments of December 9, 2002 to Portogo.

Conclusion

Based at least upon the above-listed facts and circumstances, pursuant to 37 C.F.R. § 3.11(a) TranSurety, LLC respectfully requests that the accompanying July 30, 2007 Minnesota Court Order issued by Hennepin County District Court Judge Francis J. Connolly be recorded as manifestly affecting title to these patents.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 502931.

Respectfully submitted,	TranSurety, LLC
By its representatives,	Lemaire Patent Law Firm, P.L.L.C. P.O. Box 1818 Burnsville, Minnesota 55337 Telephone: (952) 435-0200

Date: 21 May 2008

By: /Charles A. Lemaire/
Charles A. Lemaire
Reg. No. 36,198

CERTIFICATE UNDER 37 CFR 1.8(a)(1)(i)(C):

The undersigned hereby certifies that this document is being electronically filed via the U.S. Patent Office's **Electronic Patent Assignment System (EPAS)**, addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on **this 21st day of May, 2008, Central Time.**

Gregory A. Lemaire
Name

/Gregory A. Lemaire/
Signature

STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF HENNEPIN

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FOURTH JUDICIAL DISTRICT

STEPHEN C. CARDOT,

DEPUTY
HENNEPIN CO. DISTRICT
COURT ADMINISTRATOR

File No. 06-14558

Plaintiff,

**ORDER GRANTING
SUMMARY JUDGMENT IN FAVOR
OF DEFENDANT
and
MEMORANDUM OF LAW**

vs.

SYNESI GROUP, INC. f/k/a PORTOGO, INC.

Defendant.

Defendant brought a Motion for Summary Judgment in the above-entitled matter before the undersigned Judge of District Court on May 22, 2007 at Hennepin County District Courthouse 1657, Hennepin County, State of Minnesota. Both parties filed additional briefs and the case was deemed submitted as of June 14, 2007.

David Albright, Esq., 7814 131st St. W., Apple Valley, MN 55124, appeared on behalf of the Plaintiff.

Jodi Johnson, Esq., 333 S. Seventh Street, Suite 2000, Minneapolis, MN 55402, appeared on behalf of the Defendant, Synesi, Inc..

Based upon all the files, records and proceedings held herein:

IT IS HEREBY ORDERED:

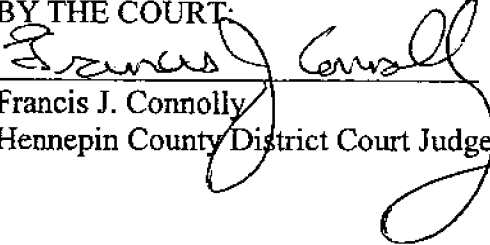
1. Defendants' Motion for Summary Judgment is GRANTED.
2. Cardot's Complaint against Synesi Group, Inc f/k/a Portogo, Inc. is DISMISSED WITH PREJUDICE and on the merits.

3. The attached Memorandum of Law is hereby incorporated herein by reference.
4. The Defendant is awarded statutory costs and disbursements.

LET JUDGMENT BE ENTERED ACCORDINGLY

Dated: July 30, 2007

BY THE COURT:


Francis J. Connolly
Hennepin County District Court Judge

MEMORANDUM OF LAW

I. INTRODUCTION

The Plaintiff, Stephen Cardot (“Cardot”) brings this action to undo the assignment of intellectual property rights he negotiated with Synesi Group, Inc. f/k/a Portogo, Inc. (“Synesi”) or in the alternative, to undo the release, including a release of all claims related to any intellectual property that he executed in March of 2003.

The Court held a pre-trial conference in this matter on May 22, 2007. At that conference, the Court had concerns that these claims might be barred as a matter of law. The Court then considered the motion in limine papers submitted by the Defendant as a motion for summary judgment. The Plaintiff was allowed to file a responsive brief by June 7, 2007 and the Defendant was allowed to file a reply brief by June 14, 2007. The Court then deemed the motion submitted as of June 14, 2007.

II. FACTS THAT DO NOT APPEAR TO BE IN DISPUTE

1. Cardot is a resident of the State of Minnesota and has been a shareholder in Synesi.
2. Synesi is now an inactive Minnesota corporation which was formerly known as Portogo, Inc.
3. Synesi has no assets at the present time.
4. Synesi was formed to sell and market whatever product was produced by certain Patents.
5. Cardot is one of three original authors of US Patent #6922720 and US Patent #7020692 (“the Patents”).

6. Cardot was the Chief Executive Officer and President of Portogo, Inc. from its inception until March 10, 2003.
7. The Patents are process patents and relate to securing, bonding, insurance and underwriting internet transmissions.
8. The three authors of the Patents filed a provisional patent application for the patents on September 10, 1999.
9. The original patent application was later split into two applications to expedite the application process.
10. US Patent #6922720 was granted on July 26, 2005 and US Patent #7020692 was granted on March 28, 2006.
11. Cardot and the other authors assigned the Patents to Synesi in part to secure investors for the development of a product and continued work on the patent applications.
12. On May 15, 2001, Cardot entered into an Assignment of Interest Regarding US Patents and Patent Cooperation Treaty Patent of INSURITI by and between Portogo, Inc.
13. On July 19, 2001, Cardot entered into an Amendment to Assignment of Interest Regarding US Patents and Patent Cooperation Treaty Patent of INSURITI.
14. On December 9, 2002, Cardot entered into an Intellectual Property Agreement with Portogo.
15. Pursuant to the terms of the Assignments, Cardot assigned any and all rights he had in the Patents to Synesi, formerly known as Portogo.

16. In return, Portogo agreed to pay Cardot a royalty equal to “one third of one percent (.333%) of Portogo’s gross revenue for a period of twelve years from the effective date hereof.”
17. The Amendment to the First Assignment Agreement amended Portogo’s obligation to pay Cardot by stating:
 - a. Portogo shall pay and owe no royalties to Cardot from the first Two Million Dollars \$2,000,000 in gross revenue generated by Portogo.
 - b. All royalties owing from Portogo to Cardot shall be paid at the end of Portogo’s fiscal year in which the royalty was earned. In the event that Portogo does not have sufficient funds to pay the royalty, Cardot agrees to forgo collection of the royalty until such time as Portogo has the funds to pay, or for two years, whichever is sooner. The Board of Directors’ determination of whether Portogo has sufficient funds to pay the royalty will be conclusively binding upon all parties hereto.
 - c. In the event that substantially all of the assets of Portogo or the majority of stock in Portogo is sold to an outside third party, Cardot agrees to offer to sell to that third party all of his interest in the patent and all of his right to receive royalties for a sum of money equal to one-third of one percent (.333%) of the gross sales price for the company or \$1,700,000, whichever is greater.
18. The Intellectual Property Agreement Cardot entered into with Portogo further clarified the consideration received by Cardot under the First Assignment and Amendment to Assignment by providing that:

Whereas in improving the chances for Portogo’s success Developer receives consideration in the form of potentially increasing the value of Developer’s stock holdings in Portogo or potentially increasing the possibility that Developer will obtain royalties or a buy out of Developer’s royalties . . .

19. The Intellectual Property Agreement also provides:

Both parties hereby reaffirm the royalty and royalty buy-out provisions of the Assignment of Interest dated June 25, 2001 and the Amendment of Assignment of Interest dated July 19, 2001. . . and agree and represent that such provisions are the sole and entire royalty obligations of Portogo to the Develop for any of the intellectual property assigned by Developer to Portogo under this or any other preceding agreements,

either written or oral, between Develop and Portogo, or for any intellectual property transferred by operation of law from Developer to Portogo.

20. On March 17, 2003, Cardot entered into a Severance Agreement and Release (“Severance Agreement”) with Portogo which provides in pertinent part:

Employee hereby unconditionally waives, releases, acquits and forever discharges the Company and any entity affiliated with the Company, including, but not limited to, its wholly or partially-owned subsidiaries, if any, or owners, officers, agents, directors, shareholders, lenders, employees and other representatives, including, but not limited to, any such person’s counsel (all such persons being referred to herein as “Release Parties”), from any and all past, present or future claims, demands, obligations, actions, damages and expenses of any nature, whether for compensatory, punitive or other damages, which Employee now has or in the future may have. This release includes, but is not limited to, all claims on account of or in any way growing out of the employment or other relationship between the parties hereto, including, but not limited to, . . . fraud or misrepresentation, breach of a covenant of good faith and fair dealing, . . . breach of contract, . . . claims arising out of or in connection with any intellectual property or other rights or property assigned by Employee to the Company, and any other claims for unlawful employment practices, . .

21. Synesi has not generated at least Two Million Dollars in gross revenue from the Patents. Synesi has not generated any revenues to date related to the Patents. No royalties have been paid to Cardot by Synesi.

III. STANDARD OF LAW

A. Summary Judgment Standard

Rule 56 of the Minnesota Rules of Civil Procedure provides in relevant part that:

Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to summary judgment as a matter of law.

Minn. R. Civ. Pro. 56.03.

In order to oppose a motion for summary judgment, the non-moving party must demonstrate at the time of the motion that specific material facts are disputed, creating a genuine issue for the finder of fact to resolve at trial. Hunt v. IBM Mid America Emp. Fed. Cr. Union, 384 N.W.2d 853, 855 (Minn. 1986). Summary judgment is appropriate when there is exclusively a question of law involved. French v. State Farm Mut. Auto Ins. Co., 372 N.W.2d 839, 841 (Minn.Ct.App. 1985). Evidence presented upon a summary judgment motion must be taken in the light most favorable to the non-moving party. Concord Co-Op v. Security State Bank of Claremont, 432 N.W.2d 195, 197 (Minn.Ct.App. 1988).

The mere existence of a scintilla of evidence in support of the non-moving party's position will be insufficient; there must be evidence on which the jury could reasonably find for the non-moving party. DLH, Inc. v. Russ, 566 N.W.2d 60, 71 (Minn. 1997). "While summary judgment is intended to secure a just, speedy, and inexpensive disposition, it is not designed as a substitute for a trial where there are issues to be determined." Vieths v. Thorp Fin. Co., 305 Minn. 522, 525, 232 N.W.2d 776, 778 (Minn. 1975). A material fact is one that will affect the result or outcome of the case, depending upon its resolution. Zappa v. Fahey, 310 Minn. 555, 556, 245 N.W.2d 258, 259-60 (Minn. 1976). Thus, "summary judgment is proper when the non-moving party fails to provide the court with specific facts indicating that there is a genuine issue of material fact." Hunt v. IBM Mid Am. Emp. Fed. Credit Union, 384 N.W.2d 853, 855 (Minn. 1986) *citing* Erickson v. General United Life Ins. Co., 256 N.W.2d 255, 258-59 (Minn. 1977). Whether a genuine issue of material fact is presented is determined by asking if "a reasonable jury could return a verdict for the non-moving party." Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 248 (1986). As to the timing of a summary judgment motion, a party may move at any time for a summary judgment. Minn. R. Civ. Pro. 56.02. As to which facts are material, "the substantive law will identify which facts are material. Only disputes over facts that might affect

the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” Anderson v. Liberty Lobby, Inc., 106 S. Ct. 2505, 2510 (1986). The United States Supreme Court has stated:

In our view, the plain language of Rule 56c mandates the entry of summary judgment, after adequate time for discovery and upon motion, against the party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which the party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 106 S. Ct. 2548, 2553 (1986).

IV. ANALYSIS OF DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

A. Severance Agreement

Synesi argues that the causes of action and allegations in Cardot’s Amended Complaint are based upon and arise out of the Assignments. Synesi also argues that Cardot released Synesi from “any and all past, present or future claims, demands, obligations, actions, damages and expenses of any nature” pursuant to the language of the Severance Agreement. The Severance Agreement specifically states that the release includes the assignment of any intellectual property rights or other rights or property by Cardot to Synesi. The Severance Agreement also expressly provided that the release included all claims arising out of the relationship between Cardot and Synesi.

Under Minnesota law, a release should not be vacated except for the most compelling reasons. Simons v. Schiek’s Inc., 145 N.W.2d 548, 553 (Minn. 1966). The law favors compromises and “there must a zone of free action within which differences may be terminated by the parties with the complete assurance that the matter is final.” Schmidt v. Smith, 216 N.W.2d 669, 671-72 (Minn. 1974). Allowing a release to be vacated creates “uncertainty, chaos, and confusion with respect to future dispositions, and is a disservice to other litigants whose

matters are thereby delayed.” Simons v. Schiek’s Inc., 145 N.W.2d 548, 553 (Minn. 1966). A settlement and release is a means for buying peace for all future disputes on the claims which form the basis of the settlement and release.” Moffat v. White, 279 N.W. 732, 736 (Minn. 1938). “A release is not only evidence of the relinquishment but, of itself, extinguishes the pre-existing obligation.” Id.

In Sundae v. Anderson, plaintiff and defendant entered into an interim release agreement in which plaintiff released “any and all claims of each and every kind present and future. . ..” 2003 WL 24014341 at *7 (D. Minn. April 24, 2003). The court found that the interim release and final release barred plaintiff’s negligence claims. Id.

In this case, the Severance Agreement expressly released Synesi from all past, present and future “claims, demands and obligations” Cardot had or in the future may have against Synesi. The Severance Agreement signed by Cardot specifically states that Cardot is releasing all claims of breach of contract, breach of a covenant of good faith and fair dealing, and fraud or misrepresentation. Upon execution of the Severance Agreement, Cardot released these claims that he now brings before this Court. Additionally, Cardot’s claims are barred by the Severance Agreement because the Severance Agreement released all of Cardot’s claims arising out of the Assignments.

Thus, all of Cardot’s claims fail because the allegations upon which Cardot is basing his claims arising out of the Assignments were extinguished by the terms of the Severance Agreement.

B. Damages

Even though the Court has stated that Plaintiff’s claims are barred due to the Severance Agreement, the Court will address the other arguments raised by Cardot.

Cardot is seeking rescission of the Assignments between himself and Synesi. Synesi, however, no longer owns the Patents. TranSurety became the owner of the Patents by means of a foreclosure, which Cardot received notice and an opportunity to object. Because Synesi is no longer the owner of the assigned Patents, this Court cannot grant the damage relief requested by Cardot. TranSurety was not named as a party to this action. The Court cannot order TranSurety, a non-party in this action to transfer the Patents. It would also be clearly prejudicial to TranSurety since it has not had an opportunity to be heard in this matter and defend its interest. Cardot had the opportunity to intervene in TranSurety's foreclosure action on the Patents in 2006, but declined. Therefore, a rescission would have no legal effect and Cardot could not recover damages on that claim.

C. Breach of Duty of Good Faith

Cardot alleges that Synesi breached its duty of "good faith and non hindrance." Cardot claims that he is entitled to a voiding of the contracts due to Synesi's alleged breach of the duty of good faith and hindrance of the performance of the contracts as to the patent assignments.

In Minnesota, the covenant of good faith requires that one party not unjustifiably hinder the other party's performance of the contract. In re Hennepin County 1986 Recycling Bond Litigation, 540 N.W.2d 494, 502 (Minn. 1995). "The implied covenant of good faith and fair dealing extends only to actions within the scope of the underlying contract." Id. A claimant does not have an independent "breach of duty of good faith" cause of action when it is shown that the specific terms of the underlying contract have not been breached. Medtronic v. Convacare, Inc., 18 F.3d 252, 256 (8th Cir. Minn. 1994). Minnesota does not recognize a claim for breach of the implied covenant of good faith and fair dealing separate from the underlying breach of contract claim. Id.

Cardot cannot support his claims of breach of duty of good faith and nonhindrance because Cardot has not shown or pled that any specific terms of the Assignments have been breached by Synesi and Synesi has not hindered Cardot's performance of the contract. Cardot claims that he has not received royalties from Synesi and that Synesi failed to pursue financing, sales, revenue and licensing opportunities. However, these alleged obligations of Synesi were never part of the Assignments. It does not state in the Assignments that an obligation was placed upon Synesi to provide Cardot with a definite payment amount or for Synesi to pursue and secure specific sales, revenue, financing and licensing opportunities.

Further, Cardot was not hindered from performing under the contract. Synesi has not prevented Cardot from performing under the contract simply because Cardot completed his obligation upon execution of the Assignments. Under the law, Cardot must show that he was prevented from performing under the contract due to the actions of Synesi. Cardot sets forth numerous acts that Synesi should have done, however, the acts or omissions were not part of the contract between Cardot and Synesi. Therefore, Cardot's claims are barred.

D. Frustration of Purpose

Cardot claims that that actions of Synesi is a frustration of the purpose of the assignments between Cardot and Synesi.

The law in Minnesota does not recognize an affirmative claim of frustration of purpose in relation to the performance of the contracts. Frustration of purpose is a defense to a breach of contract claim. The elements of a frustration of purpose claim are to be proven by a party defending a breach of contract claim, not by a party alleging a breach of contract against a defendant. Nat'l Recruiters, Inc. v. Toro Co., 343 N.W.2d 704, 707 (Minn. Ct. App. 1984). It is not an affirmative cause of action, but is a party's defense as to why it did not or could not

perform under the contract. Little Canada Charity Bingo Hall Assoc. v. Movers Warehouse, Inc., 498 N.W.2d 22, 25 (Minn. Ct. App. 1993).

Therefore, Cardot's claim against Synesi is legally and factually insufficient and is barred.

E. Fraudulent Inducement and Misrepresentation

Cardot alleges that the Assignments entered into by Cardot and Synesi are void or voidable due to Synesi's alleged misrepresentations and fraudulent inducement. Cardot argues that Synesi made unlawful and untrue representations of fact to Cardot which were relied upon by Cardot. In order to establish a claim for fraudulent inducement in Minnesota a plaintiff must show:

- (1) A false representation of a material past or present fact susceptible of knowledge;
- (2) The defendant either knew it to be false or asserted it as his own knowledge without knowing whether it is true or false;
- (3) The defendant intended the plaintiff to act on his representation;
- (4) The plaintiff was induced to act in reliance on the representation;
- and (5) The plaintiff suffered damages which were the proximate cause of the representation.

Progressive Technologies, Inc. v. Shupe, 2005 WL 832059 at *4 (Minn. Ct. App. 2005) citing Rognlien v. Carter, 443 N.W.2d 217, 220 (Minn.Ct. App.1989).

An expectation will not support an action for fraud. Belisle v. Southdale Realty Co., 283 Minn. 537, 539-40, 168 N.W.2d 361, 363 (1969).

In order to establish a claim for misrepresentation, a plaintiff must prove:

1. There must be a representation;
2. That representation must be false;
3. It must * * * [relate to] a past or present fact;
4. That fact must be material;
5. It must be susceptible of knowledge;
6. The representer must know it to be false, or in the alternative, must assert it as of his

own knowledge without knowing whether it is true or false;

7. The representer must intend to * * * [induce] the other person * * * to act, or justified * * * [to] ac[t] upon it;

8. That person must be so induced to act or so justified in acting;

9. That person's action must be in reliance [on] the representation;

10. That person must suffer damage;

11. That damage must be attributable to the misrepresentation, that is, the statement must be the proximate cause of the injury.

Lack Industries, Inc. v. Ralston Purina Co., 327 F.2d 266, 275 (8th Cir.1964).

Since the elements for both claims of fraudulent inducement and misrepresentation are similar, the same analysis applies for both of these claims. In this case, Cardot has not alleged that the misrepresentation relates to a past or present fact, but rather to an expectation regarding future events. An expectation or representation as to future events is not a sufficient basis to support an action for fraud merely because the represented act did not take place. Belisle v. Southdale Realty Co., 168 N.W.2d 361, 363 (1969). A representation known to be false at the time of the representation is what can form the basis for a fraud claim. Carpenter v. Vreeman, 409 N.W.2d 258, 261 (Minn. Ct. App. 1987). To prove a misrepresentation claim, a plaintiff must show that the misrepresentation related to a past or present fact. Southern Municipal Power Agency v. City of St. Peter, 433 N.W.2d 463, 469 (Minn. Ct. App. 1988).

In this case, Cardot's claims are what he perceives to be as misrepresentations as to expectations of future events and not representations known to be false by Synesi at the time the parties entered into the patent assignment. Cardot alleges that Synesi failed to pursue revenue opportunities, drove away financing opportunities and conspired with other entities to convert Synesi's assets. Synesi denies these allegations and argues that these are not representations that were known to be false by Synesi at the time the Agreements were entered into and therefore are

not a basis for a fraudulent or misrepresentation claim. All of Cardot's claims relate to his expectation of what was going to happen in the future after he entered into the Assignments. In addition, the alleged misrepresentations relied upon by Cardot all relate to alleged activity that occurred after Cardot entered into the Assignments and after Cardot was out of the office.

Therefore, Cardot has no basis in either the law or facts of this case to support his claims of fraudulent inducement and misrepresentation.

V. CONCLUSION

Thus, the Court is granting Defendants' Motion for Summary Judgment. All claims against Synesi, Group, Inc. are dismissed with prejudice and on the merits.

F.J.C.

A handwritten signature in black ink, appearing to be the initials 'F.J.C.' with a stylized flourish extending to the right.