

21-4110

ALBERT SCHATZ, :
Plaintiff, :
vs. : COMPLAINT
SELMAN A. WAKSMAN AND :
RUTGERS RESEARCH AND :
ENDOWMENT FOUNDATION, :
Defendants. :
:

Plaintiff, Albert Schatz, residing at 210 Riverdale Avenue, Brooklyn, New York, says:

1. During June, July, August, September and October of 1943, plaintiff was a graduate student in the Department of Soil Microbiology of Rutgers University at New Brunswick, New Jersey.
2. During the period aforesaid, the defendant Selman A. Waksman was a professor of soil microbiology and was a head of the Department of Soil Microbiology at Rutgers University.
3. During the period aforesaid, the plaintiff conducted experiments and research in continuation of prior work done by him, which eventually led to the isolation and discovery of a new drug now known as streptomycin.
4. The plaintiff's research and experimentation were checked and confirmed by the defendant Waksman and thereafter, the plaintiff and defendant Waksman collaborated in the further development of the said drug, eventually proving a great value in the treatment of diseases.
5. During the period aforesaid and for some time prior thereto, there existed a very close personal relationship between the plaintiff and the defendant Waksman. The plaintiff relied upon the defendant's Waksman's advice in all matters touching the plaintiff's welfare and reposed implicit

confidence and trust in the said defendant with the full knowledge of the said defendant.

(6) On or about February 9, 1945, the plaintiff and the defendant Waksman made joint application to the United States Patent Office for letters patent covering streptomycin. The plaintiff and the defendant Waksman are described as co-discoverers of streptomycin in the application for letters patent aforesaid.

(7) At the time the said application for letters patent was ^{signed} ~~filled~~ by the plaintiff, the defendant Waksman represented to the plaintiff that the sole purpose in applying for letters patent was to prevent anyone from gaining a monopoly in the manufacture of streptomycin and to prevent anyone by such monopoly from controlling the price and sale thereof and from profiting thereon. The plaintiff signed the application for letters patent and other documents relating thereto relying upon the representation so made by the defendant Waksman.

(8) On or about May 3, 1946, the defendant Waksman requested of the plaintiff that the plaintiff join with the defendant in an assignment of the application for letters patent aforesaid to the defendant Rutgers Research and Endowment Foundation, a corporation of New Jersey (hereafter sometimes referred to as "the defendant Foundation"). When plaintiff refused to sign without independent advice, defendant Waksman represented to the plaintiff that by virtue of the said defendant's power, position, and influence in the field of microbiology and the world of science, as contrasted with the plaintiff's youth and inexperience, the said defendant would see to it that the plaintiff would fail to gain employment in the scientific and professional field for which he was trained; that no reputable institution

would employ the plaintiff if the plaintiff should embarrass the said defendant by refusing to execute said assignment; that if the plaintiff should refuse to exercise said assignment, the said defendant would cause the plaintiff's name to be withdrawn from said patent application; that if plaintiff refused to execute said assignment there could be no patent at all; that it was essential for the welfare of both defendant and plaintiff and in the interest of the public that the assignment be executed; that time was of the essence and that all rights would be forfeited unless the assigned assignment was returned that same day.

(9) Plaintiff being then in need of employment and having no business experience of any kind fearing that said defendant Waksman by virtue of his power, position and influence had the means to prevent the plaintiff from securing gainful employment in the scientific and professional field for which he was trained and relying upon the representations of said defendant executed said assignment of the application for letters patent to the defendant Foundation.

(10) Plaintiff received no consideration for the assignment of said application for letters patent.

(11) On September 21, 1948, the United States Patent Office granted Patent No. 2,449,866, entitled "streptomycin and process of preparation", Selman A. Waksman and Albert Schatz, assignors, to Rutgers Research and Endowment Foundation.

(12) Plaintiff is informed and believes that in addition to the assignment of the United States Letters Patent, the defendant Waksman secured the assignment by the plaintiff upon the same representations made by said defendant as set out in paragraph 8 hereof, to the defendant Foundation of all rights in an application for letters patent in Argentine.

(13) Plaintiff is informed and believes that the defendant Foundation procured a patent on streptomycin in the Argentine Patent Office as a result of the assignment referred to in paragraph 12 hereof.

(14) Plaintiff is informed and believes that applications for letters patent have been filed in New Zealand and Canada and that letters patent may have issued thereon for streptomycin. Plaintiff has not executed any assignment of patent rights in New Zealand and Canada.

(15) The defendants have licensed firms and corporations unknown to plaintiff, to manufacture and sell streptomycin with a result that the defendants have received and will continue to receive large sums of money by way of royalties.

(16) Plaintiff was and is the owner of one-half interest in and to all patent applications and royalties or other profits derived or to be derived from the manufacture and sale of streptomycin under said patent or applications for patents in the United States of America, Argentine, New Zealand and Canada.

(17) Notwithstanding the plaintiff's importance and essential services and discoveries in isolating and discovering streptomycin, the defendant Waksman has represented himself to be and continues to represent himself to be the sole discoverer of said drug and as a result thereof has reaped rewards both monetary and professional to his sole benefit and to the damage and injury of the plaintiff.

(18) Plaintiff has demanded payment from the defendant of one-half of all proceeds received by them in exploiting the discovery of said drug but such payment has been refused.

WHEREFOR PLAINTIFF DEMANDS JUDGMENT

(a) Setting aside all assignments made by plaintiff

to the defendant Foundation

(b) Directing defendants to account for all monies received as royalties, seize and otherwise, from the discovery, exploitation, manufacture and sale of streptomycin and under all licenses granted by the defendants or either of them.

(c) Restraining the defendants from selling, assigning or in any way disclosing of any interests in the payment of streptomycin or applications for letters patent thereon, and from diverting, transferring or otherwise disclosing of any monies received or to be received by them from the discovery, exploitation, manufacture and sale of streptomycin and from and under all licenses granted by the defendants or either of them.

(d) Restraining the defendant Waksman from representing himself as being the sole discoverer of streptomycin

(e) Directing the defendants to pay to the plaintiff such sum or sums as the court shall find to be due to the plaintiff together with interest and costs of suit.

EISENBERG & SPICER
744 Broad Street
Newark 2, New Jersey

BY: JEROME C. EISENBERG

Complaint filed March 10, 1950