IN THE SUPREME COURT OF THE STATE OF NEVADA

TOUCHBET GAMING, INC., A NEVADA CORPORATION, AND MICHAEL P. SNYDER, INDIVIDUALLY,
Appellants,
vs.
TRIPP ENTERPRISES, INC., A NEVADA CORPORATION; TRIPP PLASTICS, A FICTITIOUS FIRM NAME; TRIPP GAMING INTERNATIONAL, A FICTITIOUS FIRM NAME; AND WARREN TRIPP, INDIVIDUALLY,
Respondents.

No. 39158

FILED

JUN 18 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Appellants Touchbet Gaming, Inc. and Michael P. Snyder appeal a district court order dismissing their complaint for lack of subject matter jurisdiction. The district court concluded that appellants' cause of action arose under federal patent law, thereby requiring appellants to file it in federal court. Appellants argue that dismissal was improper because they did not raise federal patent law claims on the face of their well-pleaded complaint, and thus, their cause of action does not arise under federal patent law.

A motion to dismiss is properly granted when there is lack of subject matter jurisdiction on the face of the complaint.[1] We review a

[1]Rosequist v. Int'l Ass'n of Firefighters, 118 Nev. ___, ___, 49 P.3d 651, 653 (2002).

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dismissal for lack of subject matter jurisdiction de novo.[2]

The federal courts have exclusive subject matter jurisdiction over all cases "arising under" federal patent law.[3] Thus, federal jurisdiction extends to those cases where a well-pleaded complaint establishes that (1) federal patent law creates the cause of action; or (2) the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal patent law, in that patent law is a necessary element of one of the well-pleaded claims.[4] The mere presence of a patent issue, however, cannot of itself create a cause of action "arising under" patent law; instead, federal patent law must be essential to the resolution of plaintiff's claims.[5]

In this instance, appellants assert purely state law claims, and though these claims may peripherally involve federal patent law, we conclude that resolution of these claims does not necessarily involve federal patent law. Accordingly, we conclude that appellants' cause of

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[2]See Sommatino v. U.S., 255 F.3d 704, 707 (9th Cir. 2001) (interpreting federal counterpart to NRCP 12(b)(1)).

[3]28 U.S.C. § 1338(a) (2003) states:

> The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.

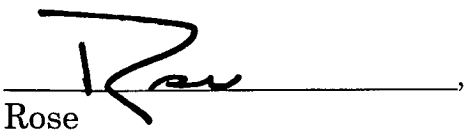
[4]Christianson v. Colt Industries Operating Corp., 486 U.S. 800, 808-09 (1988).

[5]See Christianson, 486 U.S. at 810; Consolidated World Housewares, Inc. v. Finkle, 831 F.2d 261, 265 (Fed. Cir 1987).

action does not arise under federal patent law, and thus, the district court erred in dismissing appellants' complaint for lack of subject matter jurisdiction.

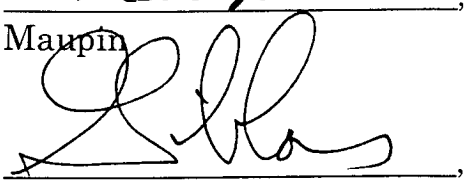
Therefore, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



_____, J.
Rose

_____, J.
Maupin



_____, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Law Office of Richard C. Blower
Steve E. Wenzel
Washoe District Court Clerk