

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 15-35234

CHRISTOPHER MCINTYRE,

Plaintiff/Appellant

vs.

BP EXPLORATION & PRODUCTION, INC., BP AMERICA PRODUCTION
COMPANY, JOHN DOES 1-20

Defendants/Appellees.

On Appeal from the United States District Court
for the District of Alaska

**PLAINTIFF/APPELLANT'S PETITION FOR PANEL REHEARING AND
FOR REHEARING *EN BANC***

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Plaintiff/Appellant Christopher McIntyre by and through his Counsel Phillip Paul Weidner of Phillip Paul Weidner & Associates, APC., hereby Petitions pursuant to Federal Rules of Appellate Procedure 40, Fed. R. App. P.35, 9th Circuit Rule 40-1, and 9th Cir. R. 35-1 to 3 for Rehearing by the Panel and the Ninth Circuit Court of Appeals *en banc*. Rehearing is sought as to *Memorandum Opinion* (hereinafter “MO”), submitted September 11, 2017, filed Sep 15, 2017.

I. GROUNDS FOR REHEARING

1. Opinion overlooks and/or misapprehends facts in stating “McIntyre concedes that BP extensively modified or completely changed any ideas he may have provided” [MO at 2], to cap the Macondo well blowout and oil spill; in fact McIntyre’s “method” of a ventable valve at the “flex joint landing” site is a novel and unprecedented method which BP concedes is novel and a benefit in much testimony of record and further so conceded by its attempt to patent this method as novel and of great benefit to capping a well blowout and oil spill such as Macondo. BP made no change to McIntyre’s method and simply implemented it with existing components and connections well known in the industry and their plurality of devices in their patent application are mere variations and images of McIntyre’s method.

2. Opinion overlooks and/or misapprehends legal principals and facts regarding necessary benefit McIntyre provided to BP to support a quasi-contract and unjust enrichment claim;
3. Opinion overlooks and/or misapprehends relevant facts as to actual benefit(s) provided to BP, which were a unique method of capping the undersea blowout of the Macando Well in the Gulf of Mexico, as said method was unprecedented in the industry and was so unique that BP now actually seeks to patent those precise invention(s), design(s), concept(s), and method for capping the well blowout, which were invented, originated and provided by McIntyre;
4. Opinion overlooks and/or misapprehends the fact(s) that McIntyre's ideas, which were eventually the subject of the BP patent application, were sufficiently developed or concrete, to not only be available for immediate use, but were used without any substantial modification as to the basic idea(s), concept(s) and design(s), method which was to make an unprecedented connection of a ventable valve, at the top of the LMRP, i. e. via a "landing site" (as now described in the patent application) to the Riser Connection at the Flex Joint Flange, which would not only allow a reconnect/connection of a ventable valve, but

would allow for a “soft shutoff” of the well blowout, to avoid a breach of the surrounding ocean floor/strata;

5. Opinion has overlooked and/or misapprehended the facts and law as to the significant public policy issues by which a company such as BP should not be allowed to personally benefit or profit by BP’s misrepresentations and stealing patent rights from a Citizen, who provides in response to BP’s and the U.S. Government’s desperate cry for help new patentable concept(s)/method to cap the Macondo Well blowout and oil spill, which was a national emergency with ongoing environmental catastrophic impact and danger, of great proportions [Which culpable conduct and policy issues have national security implications and national federal implications as to patent rights];
6. Opinion overlooks and/or misapprehends the basic sufficient pleadings, supported by facts, as to McIntyre’s fraud pleadings, since BP fraudulently told McIntyre, his novel concepts and ideas to cap the well blowout were not usable and thus not patentable, which they in fact were, and were used by BP to cap the Macondo well blowout and oil spill, all the while harboring and concealing BP’s intentions to use McIntyre’s ideas, method, and then patent them, and avoid hundreds of millions of dollars in fines making hundreds of millions of dollars

from the patent rights, which BP is now seeking to do, which constitutes inequitable fraud, unjust enrichment, breach of quasi-contract, and theft of patent rights¹.

II. DISCUSSION

It is undisputed from the Record, the novel and unprecedented in the industry idea(s) and method(s) which Chris McIntyre designed, originated, invented and suggested to BP in response to BP and the U.S. Government's plea(s) to Citizens to help them mitigate the devastating dangers and catastrophic damages to the Gulf of Mexico from the Macondo well blowout and oil spill, were used to cap the runaway Macondo well in the Gulf of Mexico and were in fact novel, unique, and unprecedented in the industry, to wit a "landing site" disconnect and reconnect of a "ventable valve" at the "riser flange" at the top of the LMRP, as opposed to the normal procedure, of attempting to cap the well by removing and replacing a malfunctioning and/or damaged blowout preventer (BOP), with a new blowout preventer by a disconnect of the LMRP at the "collett connection" above the wellhead, which was impractical and impossible, with a "hard shutoff" at the subsea level. McIntyre's unique, novel and unprecedented idea(s), i.e. method were

¹ Neither District Court, nor Panel held or found that McIntyre's claims failed because of lack of proof McIntyre originated and provided idea(s), concept(s), design(s), and method at issue. That is a clear jury issue. The District Court and Ninth Circuit Court erroneously held McIntyre's contributions were not of benefit to BP ignoring their unique, patentable, and unprecedented nature and the fact they were used to cap the Macondo well blowout and stop the oil spill.

to unbolt and disconnect the damaged riser from the top of the LMRP and reconnect at the Flex Joint Flange at the riser flange, a ventable valve, and then institute a “soft shutdown”. This method, which was unprecedented in the industry is now the subject of a BP patent [*See*, ER295-400, Appellant’s Opening Brief (hereinafter “AB”) at 46-48; Appendix (hereinafter “APX”) at 23-102, and 106-123], by which BP specifically claims (correctly), that this is a unique and novel and patentable method of capping a subsea blowout such as the Macondo well blowout [*See*, Discussion at AB at 46-48; APX 121-123, and Appellant’s Reply Brief (hereinafter “RB”) at 6-22; APX 125-141]. Obviously the substantial “benefits” from these novel and unprecedented idea(s), and method which not only allowed BP to stop, i.e. mitigate the national emergency from the Macondo well blowout, but has now allowed BP to seek to obtain a patent and make hundreds of millions of dollars, are substantial benefit(s). The Panel’s citation of *Reeves v. Alyeska Pipeline Service Co.*, 926 P. 2d 1130, 1143 (Alaska 1996) (per curiam) (*Reeves I*), has no relevance and is not dispositive. The BP patent application [ER295-400; APX 23-102], is a “virtual image” of McIntyre’s “method” and prima facie and conclusive proof the concepts BP now tries to claim are novel and unique and patentable are actually so and thus, McIntyre’s ideas and method were true novel, unique, substantial and usable benefit(s) to BP to cap the well. This is so as to the new “landing site” concept at the riser flange level, and use of a ventable

valve, to do a “soft shutoff” which are the “guts” of the “method” of BP’s patent application, i.e. McIntyre’s novel and unprecedented solution and was unprecedented in the industry before the Macondo well blowout and oil spill, used by BP after McIntyre invented and suggested it to cap the well. The Record reflects, Mr. McIntyre, in response to BP and the U.S. Government’s call for help in the national emergency, proposed the unique and patentable idea(s) and method which were in fact, used to cap the well and make the unprecedented connection, with a ventable valve for a soft shutoff, at the riser flange², which was done as McIntyre suggested using bolts to unbolt and re-bolt a new riser stub, and then BP reconnected to the new “male” riser stub, a ventable valve with a “female” collet connection as opposed to attempting to disconnect the damaged blowout preventer/LMRP, and reconnect a new BOP at the hydraulic collet connection (below the LMRP), that was compromised during the sinking of the rig and would likely not allow a reconnect at depth. McIntyre did so on May 14, 2010 [ER497-499; APX 13-15].

² Basic novel concepts and method of a “landing site” at the riser flange, and connection of a ventable valve, which were used by BP to cap the well, were implemented via bolts and a similar mechanism as suggested by McIntyre. BP referred to a “transition spool”, which bolted a new male “riser stub” to the “flex joint” at the top of the LMRP, i.e. at riser flange location where riser stub was connected (at the bottom of the riser) and then was connected to ventable valve with a female “collet” over the male riser stub.

While the Opinion erroneously stated that “His [McIntyre’s] ideas were not sufficiently developed or concrete to be ready for immediate use [sic]”, mis-citing *Reeves* [MO at 2], and further erroneously states “indeed McIntyre concedes [sic] that BP extensively modified or completely changed any ideas he [McIntyre] may have provided” [MO at 2], those statements are clearly factually erroneous and misstate and/or misapprehend the record. The basic novel design(s), concept(s) and ground breaking idea(s) and method which McIntyre suggested, and which were used by BP to literally “save the Gulf Coast”, was a connection, that was unprecedented at a “landing site” of the “riser flange”, i.e. at the riser level at the top of the LMRP, i.e. a connection of a new male “riser connection stub” bolted to the riser flange, with a female “collett” over the riser stub to attach a “ventable valve” for a “soft shutoff” via the ventable valve. The final precise means of connection, i.e. mechanical details to make that connection, including bolting via bolts, at the new riser connection at the riser flange landing site, one pipe bolted to the riser flange, co-axial with another pipe with a flange bolted to the new riser stub, with the two pipes welded together in a “transition spool”, did not modify McIntyre’s basic design(s), concept(s), and invention(s)³. These purported

³ McIntyre in fact, suggested certain means of using bolts and pipes to connect the ventable valve to the new riser stub connection [*See*, ER506-508; RB 6-12; AP19-21, 125-141], with the two units connected by two pipes in a co-axial connection, including using “fracking packers” to connect the two pipes. Any “modification” by BP of the connection was a mere use of a welded connection between two parts

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“modifications” are mere mechanical details regarding connection, and have nothing to do with the central novel patentable idea(s), design(s), and concept(s) and method as to the novel “landing site” at the riser flange, or the use of a “ventable valve, as opposed to a “hard shutoff” versus an unworkable attempt to replace the BOP/LMRP, or any design change as to same. However, it is significant, as discussed in AB at 55-58; APX 143-146, and Reply Brief at 6-22; APX 125-141, that the “two pipe” configuration and dimensions used by BP as to the two pipes welded together, are such they demonstrate BP was following McIntyre as to his suggested idea(s), design(s), concept(s) and dimension(s) for pipes with the packing frackers connections [See, APX 35-36; ER433-434, as to patent design which shows BP used McIntyre’s “two pipe concept”, and merely welded them together; See, also APX 1-4, as to BP’s use of McIntyre’s option and method to the Government on May 23, 2010].

Thus, basic idea(s) and method which BP, cannot dispute were used to cap the well and which BP is (correctly) maintaining is unique and novel benefit(s) to the industry, and patentable, were McIntyre’s. Moreover, Opinion misapprehended

(pipes) of the “transition spool”, which were then bolted to the riser flange below and to a new male riser stub above to further connect with the ventable valve, via a hydraulic female collett over the male riser stub, as mere “two part” mechanical connection variations from McIntyre’s suggestion that the packing frackers might be used to connect, the two co-axial pipe(s), i.e. the ventable valve to the new riser stub, which new riser stub was bolted to the riser flange.

and/or misstates the facts in claiming McIntyre' "ideas" were not sufficiently developed or concrete for immediate use.

McIntyre provided initial new and novel concept(s) to BP to cap the well on or about May 14, 2010 [ER497-499; APX 13-15]. Only nine (9) days later, BP was providing this method, to wit a soft shutoff valve at the riser level as an option to the Government. *See*, APX 1-4; Doc 52-28; Exhibit 25, pg 1 and 16, and compare to Figures 5 and 6 in the Patent Application [ER333-334; APX 35 and 36], which show the same type of bolted "swing valve" connection of a ventable valve that corresponds to McIntyre's suggestions. That "swing valve" connection bolted at the riser flange landing site was proposed by BP to the Government as an option for the shutoff on or about May 23, 2010 [APX 1-4], only nine (9) days after McIntyre suggested it, and thus McIntyre's basic idea(s) were in fact "sufficiently developed or concrete for immediate use". The statement that "there is no plausible factual basis for his contention on appeal that BP induced him to believe that his ideas were not patentable, thus causing him to delay or forgo seeking a patent. *Shehata v. Salvation Army*, 225 P.3d 1106, 1114 (Alaska 2010) (common law fraud requires inducement of justifiable reliance)" [MO at 3], both misapprehends or misconstrues law and facts. The record is replete with evidence that while BP was working to tell the U.S. Government that they were going to use McIntyre's idea [APX 1-4], and they were finalizing plans as to the connections for placing the

soft valve shutoff in place at the riser level, they were telling Mr. McIntyre that his ideas were of no use [ER502; APX 16, 109-114]. This is obvious fraud. It wasn't until after the Macondo well had been successfully capped and the blowout and oil spill shutoff, using McIntyre's unique idea(s) concept(s), design(s), method that BP then filed for a patent, to "beat McIntyre to the patent office".

It is noteworthy BP's actual mechanical connection implementation of McIntyre's ideas, to wit to specifically implement a unprecedented connection at the riser level/flange "landing site" of a ventable valve to implement a "soft shutoff" at the well head, so as to avoid a broach of the subsea floor, was done using standard engineering principals and/or connections which were well known to anybody in the industry. Thus any claim(s), McIntyre's idea was "extensively modified or completely changed [sic]" [MO at 2], as to any "ideas he may have provided" [MO at 2], which ideas are precisely the "novel" patentable ideas and method now used by BP in its patent application, and used to cap the well are simply false; and certainly misconstrues and/or misapplies the record as any such alleged modifications as to any BP details regard the welded connections between the two co-axial pipes and female collett to the new male riser stub, were merely implementation connection details, and not design modifications or concept modifications [BP simply welded McIntyre's two co-axial pipes together, as opposed to using "packing frackers" as a connection and BP still used a "two part"

connection between the valve and riser (i.e. collett versus fracking packers); this is not a substantial design or concept modification], as to the crucial and unprecedented idea of using a soft shutoff valve at the riser, i.e. establishing a connection at the riser that could be maintained, at the “riser flange landing site”, or top of the LMRP, to connect and use a soft shutoff valve, as set out in the patent application⁴.

A crucial concept in this regard is the following: Prior to and without McIntyre’s idea the standard procedure would have been to disconnect the BOP/LMRP from the damaged collett connection below the LMRP at the well level and attempt to reconnect another BOP, with a collett connection, which would have been practically and functionally impossible given the depth and damage from the rig sinking. McIntyre told them not to disturb any existing connection, that is the collett connection between the BOP and the LMRP. He told

⁴ That is McIntyre’s unique, novel and successful idea(s), concept(s) and design(s) which are in fact patentable, and were used to cap the well, were to make a connection at the riser flange on the top of the LMRP, in a manner that could be utilized to attach a new soft shutoff ventable valve (such as a bell valve) on to a new riser stub bolted on to the riser flange, as opposed to the traditional method of attempting to remove the damaged blowout preventer at the lower compromised collett connection, which could not be reestablished at the great depth and pressures of the spill. Thus, BP’s patent actually calls for the use of a modified blowout protector as a “capping stack”, simply as a soft shutoff ventable valve (which is functionally like a bell valve), and it is not the modified and ventable blowout protector that is the core subject of the patent, but the new landing site and ventable valve, i.e. the connection at the riser of a soft shutoff valve, to wit McIntyre’s novel and unique invention used to cap the well.

them rather to disconnect the riser from the existing LMRP at the riser flange and then connect a ventable valve for a soft shutoff. That concept of a “landing site” at the riser flange is precisely what BP is now patenting and what they used [See, ER295-400; A.B. at 19-22, and 43-48; APX 23-102, 106-109 and 118-123]. They made a connection at the Flex Joint Flange (with two pipes welded together with flanges as a “transition spool”, and one flange mated with bolts to the flex joint flange, and the other with bolts to the new riser stub) using bolts as to a new male riser section, which in turn could be connected by a female collett over the male riser stub to a ventable valve. That ventable valve which they used, was a modified BOP, but nonetheless was a ventable valve. Thus, it was McIntyre’s basic idea(s) and method, i.e. innovative design solution, to not disconnect the collett connection of the LMRP from the BOP, but rather to disconnect the riser from the top of the LMRP and then reconnect a ventable vale that saved the day. This solution left all the hydraulic components in place and allowed ease of reconnection and removal and reconnection at a juncture where a ventable valve could be installed and used to cap the well. When one compares the various embodiments in BP’s patent application of the basic “capping concept” [See, ER328-382, especially ER333 and 334; APX 35-36], it is apparent that the actual “transition spool” and capping stack mechanism in the riser configuration, and the one used to cap the well, were “cut from the same cloth”, as McIntyre’s novel and unique approach and invention

[See, e.g. ER333-334; APX 36-37]; a ventable valve connection to a new riser stub at “riser flange” landing site, regardless if connection between two pipes was with “packing frackers” connecting two co-axial pipes or a new female collet to the riser stub, and a weld between two co-axial pipes. These variations on McIntyre’s connections are not substantial “design” modifications, but would be “obvious” to any patent agents as mere variations of his basic invention(s)⁵.

McIntyre’s design is clearly shown as available to Federal Government on May 23, 2010, prior to any other mere connection variations of same.

III. REHEARING *EN BANC* IS APPROPRIATE UNDER FEDERAL RULES OF APPELLATE PROCEDURE 40, FED. R. APP. P.35, 9TH CIRCUIT RULE 40-1, AND 9TH CIR. R. 35-1 TO 3

⁵ McIntyre’s explaining how one version of his design implementation becomes another mere non-substantial variation, is not conceding modification; in fact BP’s patent application goes further in explaining how many versions of the original design McIntyre provided may be used, including the original. The main benefit (which is explained in great detail in the application), is a new method invented that allows for a new landing site in the event of a major fail of existing blowout preventers that adverts removal of compromised hydraulic connectors making things worse and creates a less invasive mechanical connections at a unique location with more appropriate valve function to allow for a soft shut-in. McIntyre’s basic design and many possible pluralities of such, have been listed as possible alternatives used, but the main patent application is to address McIntyre’s new and novel method as to the connection or landing site, and transition connection utilizing riser pipe to adapt to ventable valving, solving the problem as to controlling a compromised malfunctioning BOP stack that is not designed to be separated at its hydraulic connections and make things worse. All variations of McIntyre’s embodiment and his original “pipe-in-pipe” design are in the patent application.

It is of exceptional importance the entire Ninth Circuit *En Banc*, and if necessary the U.S. Supreme Court, reach the issues of the legal and equitable prohibition against a major company such as BP, who was criminally and civilly culpable and responsible for a catastrophic well blowout and oil spill in the Gulf Coast, and solicited in conjunction with the U.S. Government, in a desperate plea, information from Citizens to help, for BP to then falsely, fraudulently, tell a Citizen, such as McIntyre who responded, that his idea(s) were no good and then BP profiting from, being unjustly enriched and profiting by, the Citizens' invention and avoiding hundreds of millions of dollars in fines, and profiting from patenting the Citizen's novel and unprecedented idea(s), concept(s), design(s), and method. These are major public policy implications for both the criminal and civil law, the law of equity and the U.S. Patent System.

IV. SUMMARY & CONCLUSIONS

No one can dispute that McIntyre's concept(s), design(s), idea(s), and method were unique and novel and unprecedented to the industry; to make a connection at the riser flange level of a ventable valve to stop the Macondo well blowout, as opposed to attempting to reconnect and replace (which would be functionally and practically impossible) the failed blowout preventer/LMRP at the lower damaged collet connection. Nor that McIntyre's idea(s), design(s), concept(s) and method were those used to successfully cap the Macondo well,

stopping the blowout and oil spill. Nor that this was done at a time of great national emergency, in response to the U.S. Government and BP's desperate calls for help.

Nor that a great "benefit" was conferred upon BP (and the United States), both as to actually capping the well, blowout, and oil spill, literally saving the Gulf, saving BP hundreds of millions of dollars in fines, and as to the novel and unique patentable idea(s), concept(s), design(s) and method which they now seek to patent. No one can dispute the basic idea(s), concept(s), design(s) and method which were not only patentable as to a new "landing site", at the riser but with a ventable valve, were the precise patentable idea(s) concept(s), design(s) and method used by BP. Nor that the exact details of method of connection between the riser pipe (which was damaged), and then a new male riser stub section with a collett connection to a ventable valve, was a mere connection detail (i.e. using welds to connect the two co-axial pipes as opposed to packing frackers, and then a collett), which did not substantially modify or change the concept(s), design(s), or method. The actual mechanical details and dimensions as to the prototype(s) that BP used, to weld two pipes together as a transition spool, which connected the riser flange to the male "riser stub", and then via a female collett connection to the ventable valve, were of dimensions and configurations to demonstrate clearly BP was following Chris McIntyre's initially suggested dimensions and configurations [See, A.B. at 55-58; R.B. 6-22; APX 125-141, and 143-146].

BP falsely told McIntyre that his idea wouldn't work. Within a matter of only nine (9) days after McIntyre gave BP the idea(s), concept(s), design(s), and method BP was telling the U.S. Government that this was a viable option for capping the well, which BP then did.

The District Court's, and Ninth Circuit's rulings, clearly were not based upon any finding that it was BP and not McIntyre that originated the idea(s). In fact, there is extraordinary factual dispute in the record, as to who, when and why the idea(s) and method were conceived and originated. It is at a minimum a jury issue. The record is clear, McIntyre alerted BP to the novel idea(s) and method on or about May 14, 2010, his design was being followed in the BP prototypes that lead to the actual BP device and method used to cap the Macondo well.

No one can dispute BP was unjustly enriched, failed and refused to pay McIntyre what he was due under quasi-contract and unjust enrichment principles of law, committed fraud upon him, and is still trying to steal his patent rights, Rehearing must be granted to order a reversal and remand, afford justice to Mr. McIntyre, hold BP liable and give McIntyre his entitled day in Court.

Dated this 29th day of September, 2017.

WEIDNER & ASSOCIATES
Attorneys for Appellant

/s/ Phillip Paul Weidner
Phillip Paul Weidner
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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 40-1(a), the undersigned attorney hereby certifies the instant Petition for Panel Rehearing and for Rehearing *En Banc* submitted herewith contains 4,195 words. Said word/line count is exclusive of the Cover Page, Certificate of Compliance, and Certificate of Service.

Dated this 29th day of September, 2017.

WEIDNER & ASSOCIATES
Attorneys for Appellant

/s/ Phillip Paul Weidner
Phillip Paul Weidner

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Appellate Procedure 25(b), I, Phillip Paul Weidner, hereby certify, that on September 29th, 2017, I caused to be electronically served via ECF, on the Appellees by their Counsel of record in this Appeal.

Dated this 29th day of September, 2017.

WEIDNER & ASSOCIATES
Attorneys for Appellant

/s/ Phillip Paul Weidner
Phillip Paul Weidner

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 15 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CHRISTOPHER MCINTYRE,

Plaintiff-Appellant,

v.

BP EXPLORATION & PRODUCTION,
INC., BP AMERICA PRODUCTION
COMPANY, JOHN DOES 1-20,

Defendants-Appellees.

No. 15-35234

D.C. No. 3:13-cv-00149-RRB

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
Ralph R. Beistline, Senior District Judge, Presiding

Submitted September 11, 2017**
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes that this case is suitable for decision without oral argument. Fed. R. App. P. 34(a)(2). Therefore, McIntyre's motions for oral arguments are denied. McIntyre's Motion For Judicial Notice is granted.

Before: KOZINSKI and FRIEDLAND, Circuit Judges, and BENNETT,*** District Judge.

1. We review de novo the Rule 12(b)(6) dismissal of McIntyre's claims that he gave BP the idea that BP used to cap the blowout of an undersea oil well. *Lacey v. Maricopa Cty.*, 693 F.3d 896, 911 (9th Cir. 2012) (en banc).

McIntyre's quasi-contract and unjust enrichment claims are insufficiently pleaded. There was no plausible factual basis for his allegation that he conferred an actual benefit on BP. *See Reeves v. Alyeska Pipeline Serv. Co.*, 926 P.2d 1130, 1143 (Alaska 1996) (per curiam) (*Reeves I*). His ideas were not sufficiently developed or concrete to be ready for immediate use. *Id.* Indeed, McIntyre concedes that BP extensively modified or completely changed any ideas he may have provided.

McIntyre's claims of use of confidential information fail to allege any plausible factual basis to believe that he disclosed any ideas in confidence, *see Reeves v. Alyeska Pipeline Serv. Co.*, 56 P.3d 660, 666 (Alaska 2002) (citing *Reeves I*, 926 P.2d at 1137), let alone in the course of a fiduciary relationship, *see Munn v. Thornton*, 956 P.2d 1213, 1220 (Alaska 1998). He also pleads no plausible factual basis for his claim that he took reasonable steps to maintain the

*** The Honorable Mark W. Bennett, Senior United States District Judge for the Northern District of Iowa, sitting by designation.

secrecy of his ideas. ALASKA STAT. § 45.50.940. McIntyre has cited no authority to support his contention that disclosure of ideas to address a “national emergency” imposes confidentiality requirements or relieves him of the obligation to take reasonable steps to maintain the secrecy of his ideas, and we know of none.

McIntyre’s fraud claims also fail. McIntyre did not plausibly allege how BP induced him to rely on representations by BP. There is no plausible factual basis for his contention on appeal that BP induced him to believe that his ideas were not patentable, thus causing him to delay or forgo seeking a patent. *Shehata v. Salvation Army*, 225 P.3d 1106, 1114 (Alaska 2010) (common law fraud requires inducement of justifiable reliance).

Because McIntyre does not challenge dismissal of his other claims, we do not address them. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (“[O]n appeal, arguments not raised by a party in its opening brief are deemed waived.”).

2. The district court did not abuse its discretion by concluding that there were defects in McIntyre’s complaint that could not be cured by amendment. *See Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1034 (9th Cir. 2008). We have no more reason than the district court did to believe that a third amended complaint would fix the glaring weaknesses in his position. He has not pleaded any plausible factual basis for his additional claim for negligent misrepresentation/

misrepresentation by omission. *Arctic Tug & Barge, Inc. v. Raleigh, Schwarz & Powell*, 956 P.2d 1199, 1202 (Alaska 1998).

AFFIRMED.