

Intellectual Property Alert

April 29, 2014

Supreme Court Makes It Easier for District Courts to Sanction Unreasonable Patent Litigants

This morning, the Supreme Court announced its much-anticipated decisions concerning a district court's authority to award attorney fees in "exceptional" patent cases under 35 U.S.C. § 285. Those two decisions provide greater discretion to district courts to sanction unreasonable patent litigants by awarding attorney fees to the prevailing party in appropriate cases.

In *Octane Fitness, LLC v. Icon Health & Fitness, Inc.*, No. 12-1184 (S. Ct. Apr. 29, 2014), the Supreme Court reversed and ruled that the Federal Circuit's framework for finding a patent case "exceptional" under Section 285—requiring that the litigation was both "objectively baseless" and "brought in subjective bad faith," or that a party engaged in litigation misconduct—"is unduly rigid, and it impermissibly encumbers the statutory grant of discretion to district courts." The Court held "that an 'exceptional' case is simply one that stands out from others with respect to the substantive strength of a party's litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated." As a result, district courts may determine in their discretion whether a case is "exceptional" on a "case-by-case" basis, considering the totality of the circumstances.

In *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, No. 12-1163 (S. Ct. Apr. 29, 2014), the Supreme Court reversed and ruled that the Federal Circuit should apply abuse-of-discretion review to "all aspects of a district court's § 285 determination." Relying on its concurrent decision in *Octane Fitness*, the Supreme Court reasoned that "[b]ecause § 285 commits the determination whether a case is 'exceptional' to the discretion of the district court, that decision is to be reviewed on appeal for abuse of discretion."

In practice, the Supreme Court's decisions in *Octane Fitness* and *Highmark* make it easier for district courts to award attorney fees to prevailing patent litigants and make it harder for losing parties to reverse such awards on appeal. Akin Gump filed an amicus brief in *Octane Fitness* on behalf of four major companies urging that result.

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