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DISTRICT COURT CASES

Expert Witness' Flawed Infringement Opinion Supports an Award of Attorneys' Fees

Defendants Six Flags Theme Parks Inc. sought an award of attorneys' fees under 35 U.S.C. § 285 against plaintiffs Magnetar Technologies Corp. and G&T Conveyor Co., arguing that plaintiffs advanced frivolous claims, withheld discovery about events giving rise to an on-sale bar, maintained an unreasonable litigation position, engaged in large-scale spoliation, refused to dismiss this action following the receipt of defendants' Rule 11 letters, failed to correct inventorship, and that plaintiffs knew or should have known that their expert's opinion fell short of the Daubert standard.

Under 35 U.S.C. § 285, a court may award reasonable attorneys' fees "in exceptional cases." An "exceptional" case is one that stands out from others with respect to the substantive strength of a party's litigating position or the unreasonable manner in which the case was litigated. In determining whether a case is "exceptional," courts may consider frivolousness, motivation, and objective unreasonableness in analyzing the factual or legal components, and the need in particular circumstances to advance considerations of compensation and deterrence.

The court agreed that plaintiffs' failure to correct inventorship was objectively unreasonable. The court reasoned that it was obvious that an unnamed inventor should have been a named inventor because plaintiffs "clearly suspected Chung was an inventor." In 2007, plaintiffs obtained a transfer of his rights, title and interest in the patent and in 2011 the unnamed inventor testified regarding his significant contribution to the invention. Further, a consultant hired by plaintiffs in 2007, who corroborated Chung's contribution, was aware of Chung. The court also found that plaintiffs' reliance on their expert's infringement report was objectively unreasonable because the entire report was not based on any reliable methodology. The infringement analysis, both literal and under the doctrine of equivalents, was conclusory, and without analysis of how each claim element read on or was met by the accused rides. The court further commented that even if the court assumes the documents and deposition referenced by the report contain the necessary analysis, "it is not the court's role (nor the opposition's responsibility) to comb through these documents, extrapolate the necessary information, analyze it, and hobble together an expert opinion based on assumptions of what the expert felt was significant." The court concluded that the report so lacked any reliable methodology under the *Daubert* analysis and Federal Rule of Evidence 702, that it should have been apparent to plaintiffs.

Magnetar Technologies Corp v. Six Flags Theme Park Inc., 1-07-cv-00127 (D. Del. July 21, 2015, Order) (Thynge, M.J.).

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