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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NUANCE COMMUNICATIONS, INC.,

Plaintiff,

No. C 08-02912 JSW

v.

ABBYY SOFTWARE HOUSE, ET AL.,

Defendants.

**ORDER GRANTING MOTION
FOR COSTS**

Now before the Court is the motion by Defendants ABBYY USA Software House, Inc., ABBYY Software, Ltd., ABBYY Production, LLC, and Lexmark International, Inc. (“Defendants”) to compel payment of costs award and request entry of final judgment. This motion is fully briefed and ripe for decision, and the Court finds the motion suitable for disposition without oral argument. N.D. Civ. L.R. 7-1(b). Accordingly, the hearing set for June 6, 2014, is VACATED. Having reviewed the parties’ pleadings, the relevant legal authority, and the record in this case, for the reasons set forth herein, the Court GRANTS the motion for payment of costs award.

After a full and fair trial on the issues selected by Nuance for its case-in-chief, the Court entered judgment on August 26, 2013. The final judgment explicitly stated that the judgment was “entered in favor of Defendants and against Plaintiff.” The judgment did not exempt any of Nuance’s causes of action or reserve judgment on any of Nuance’s patents that it chose not to pursue at trial. Costs are due to the prevailing party.

1 During the course of the litigation, the Court afforded Nuance the opportunity to pursue
2 discovery and claim construction on all its patents. However, for the purposes of case
3 management, the Court agreed with Nuance’s proposal that it would conduct a single trial to
4 allow the plaintiff to pursue a “manageable set” of patents and claims for “one trial.”
5 (Transcript of Proceedings, July 2, 2010 (docket 218) at 15-16.) The Court had the parties
6 employ the services of a special master to winnow the claims to a manageable set and to aid the
7 parties in configuring the issues presented during the single trial. Although in the initial stages
8 of this case, the Court kept the option open to Nuance to pursue discovery and claims
9 construction on all of its originally asserted patents, there was never any mention that there
10 would be serial trials. Rather, according to its own representations, Nuance selected its “best”
11 and “strongest” patents for trial. (Transcript of Proceedings, April 9, 2010 at 10.)

12 In a complex case such as this, the Court, with the aid and cooperation of the parties,
13 may administer the proceeding in the best way possible to bring the case to trial before a jury.
14 *See e.g., In re Katz Interactive Call Processing Patent Litigation*, 639 F.3d 1303, 1313 (9th Cir.
15 2011) (holding that, given the district court’s broad discretion to manage the cases before it and
16 the “strong public interest in the finality of judgments in patent litigation,” the Ninth Circuit
17 declined to adopt appellant’s position that it should be able to seek further disposition on its
18 previously unselected claims). Here, Nuance cooperatively selected its best and strongest
19 patents for trial after full discovery and unrestricted claims construction selection process.

20 At the end of a lengthy trial, the jury’s verdict was solely in Defendants’ favor.
21 Accordingly, final judgment in Defendants’ favor was entered. After the verdict and entry of
22 judgment, Defendants’ filed their bills of cost. Nuance filed a renewed motion for judgment as
23 a matter of law, or in the alternative, for a new trial. Not once did Nuance indicate that the trial
24 was not complete. Nuance did not indicate any intention to try its remaining, unasserted patents
25 or claims. The Court denied the motion for judgment as a matter of law. Once undisputed costs
26 were assessed, the Court referred Defendants’ motion for review of the taxation of disputed
27 costs to a magistrate for a report and recommendation. On January 9, 2014, Magistrate Judge
28 Nandor Vadas issued his report and recommendation recommending the award of \$195,239.51

1 in contested costs. Defendants sought clarification on the additional, undisputed costs, which
2 was granted on February 3, 2014, for a total sum of reimburseable costs in the amount of
3 \$298,389.68. Nuance did not file objections to the Magistrate's reports.

4 Considering the parties' cooperative and voluntary management of the case for trial, the
5 Court's entry of final judgment, Nuance's failure to mention in its post-trial motions or its
6 notice of appeal its potential request for a new trial on additional patents and claims, and
7 Nuance's failure to file any timely objections to the Magistrate's reports, the Court finds entry
8 of judgment appropriate on all of Nuance's patents and orders Nuance to pay forthwith the costs
9 as recommended by Magistrate Judge Vadas in the amount of \$298,389.68. The Court does
10 not award Defendants the cost of bringing this motion.

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IT IS SO ORDERED.
Dated: June 4, 2014



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE