

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 16-06535-AG-AFM	Date	July 5, 2017
Title	SHIPPING AND TRANSIT, LLC v. HALL ENTERPRISES, INC.		

Present: The Honorable **ANDREW J. GUILFORD**

Lisa Bredahl

Not Present

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

**Proceedings: [IN CHAMBERS] ORDER GRANTING DEFENDANT’S
MOTION FOR FEES AND COSTS**

Before the Court is the Motion of Hall Enterprises, Inc. d/b/a Logistics Planning Services (“Defendant”) for Attorney Fees and Costs. (“Motion,” Dkt. 21.) Defendant asserts that it is entitled to attorney fees because this case is “exceptional” under 35 U.S.C. § 285. Defendant asserts this is an exceptional case for two primary reasons: (1) Plaintiff’s case was objectively unreasonable; and (2) Plaintiff litigated in an unreasonable manner. The Court agrees.

The Court holds that this case is “exceptional” under section 285, and **GRANTS** the Motion.

1. BACKGROUND

Plaintiff Shipping and Transit, LLC (“Plaintiff”), formerly known as ArrivalStar S.A. and Melvino Technologies Limited, is a non-practicing entity. NPEs can perform valuable functions in our economy. But in the ongoing battle for efficient justice at affordable costs, NPEs have been targeted by some. One response is to allow fee shifting under section 285 when justified by exceptional circumstances. Against that backdrop, this case arises.

Here, Plaintiff has sued hundreds of companies. (Dkt. 22, Ex. C.) In 2016 alone, Plaintiff has filed more than 100 patent lawsuits, including 35 in this District. (Dkt. 22, Exs. A, B, C.) In this action, it alleges infringement of U.S. Patent Nos. 6,415,207 (“the ’207 Patent”),

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6,763,299 (“the ’299 Patent”), and 6,904,359 (“the ’359 Patent”) (collectively, the “Patents-in-Suit”).

The Patents-in-Suit are directed to the idea of monitoring and reporting the location of a vehicle. The ’359 Patent has been asserted in more than 400 cases, while the ’207 Patent and the ’299 Patent have both been asserted in more than 90 cases. (Dkt. 22, Ex. D.) Although some Defendants have challenged the validity of the Patents-in-Suit, those cases have been voluntarily dismissed with prejudice or settled before a ruling on the merits. (*See, e.g.*, Dkt. 22, Ex. E (2:16-cv-6535) (C.D. Cal.); Ex. F (2:16-cv-3962) (C.D. Cal.); Ex. G (2:16-cv-3834) (C.D. Cal.); Ex. H (2:16-cv-3836) (C.D. Cal.).)

On August 30, 2016, Plaintiff brought this action against Defendant. (Dkt. 1.) The Complaint alleged that Defendant directly infringed claim 14 of the ’299 Patent, claims 10-12 of the ’207 Patent, and claim 19 of the ’359 Patent. (*Id.* at ¶¶ 16, 18-29.) In late September, Defendant requested that Plaintiff voluntarily dismiss its case by no later than October 15, 2016. (Dkt. 22, Ex. L.) Plaintiff did not do so.

On November 2, 2016, Defendant filed a motion for judgment on the pleadings on the ground that the asserted claims of the Patents-in-Suit concern ineligible subject matter under 35 U.S.C. § 101. (Dkt. 13.) The following week, Plaintiff moved to dismiss its own claims with prejudice under Fed. R. Civ. P. 41(a)(2). (Dkt. 15.) Defendant filed a statement of non-opposition after Plaintiff provided a covenant not to sue. (Dkt. 17.) On November 17, 2016, the Court granted Plaintiff’s motion, and all of Plaintiff’s claims against Defendant were dismissed with prejudice. (Dkt. 20.)

2. LEGAL STANDARDS

2.1 Costs

Federal Rule of Civil Procedure 54(d)(1) provides that “[u]nless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney’s fees—should be allowed to the prevailing party.” A prevailing party is presumptively entitled to recover costs. *Save Our Valley v. Sound Transit*, 335 F.3d 932, 946 (9th Cir. 2003). “[A] district court need not give

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affirmative reasons for awarding costs; instead it need only find that the reasons for denying costs [if any are provided] are not sufficiently persuasive to overcome the presumption in favor of an award.” *Id.* at 945.

2.2 Attorney Fees

The Patent Act provides that “[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party.” 35 U.S.C. § 285. In this context, “exceptional” retains its ordinary meaning of “uncommon,” “rare,” or “not ordinary.” *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, ___ U.S. ___, 134 S. Ct. 1749, 1756, 188 L. Ed. 2d 816 (2014). Accordingly, “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.” *Id.* “Section 285 discourages certain ‘exceptional’ conduct by imposing the cost of bad decisions on the decision maker.” *Cambrian Sci. Corp. v. Cox Commc’ns, Inc.*, 79 F. Supp. 3d 1111, 1114 (C.D. Cal. 2015); accord *Universal Elecs., Inc. v. Universal Remote Control, Inc.*, 130 F. Supp. 3d 1331, 1334 (C.D. Cal. 2015).

District courts determine whether a case is “exceptional” on a case-by-case basis, “considering the totality of circumstances.” *Octane Fitness*, 134 S. Ct. at 1756. Fees may be awarded where “a party’s unreasonable conduct—while not necessarily independently sanctionable—is nonetheless” exceptional. *Id.* at 1757. “[A] case presenting either subjective bad faith or exceptionally meritless claims may sufficiently set itself apart from mine-run cases to warrant a fee award.” *Id.* A party must prove its entitlement to fees by a preponderance of the evidence. *Id.* at 1758.

In the companion case to *Octane Fitness*, the Supreme Court held that “all aspects of a district court’s § 285 determination” are reviewed on appeal for abuse of discretion. *Highmark Inc. v. Allcare Health Mgmt. Sys.*, ___ U.S. ___, 134 S. Ct. 1744, 1749, 188 L. Ed. 2d 829 (2014). “The court may decide issues of liability for fees before receiving submissions on the value of services.” Fed. R. Civ. P. 54(d)(2)(C).

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3. ANALYSIS

3.1 Defendant is the Prevailing Party

When a plaintiff voluntarily moves to dismiss its claims with prejudice, the defendant is ordinarily regarded as the prevailing party for purposes of awarding costs and attorney fees. *Highway Equip. Co. v. FEEO, Ltd.*, 469 F.3d 1027, 1035 (Fed. Cir. 2006). This is particularly true in patent cases where the plaintiff has provided a covenant not to sue. *See id.* at 1035-36.

Here, Plaintiff voluntarily moved to dismiss its claims with prejudice under Fed. R. Civ. P. 41(a)(2). It also provided a covenant not to sue. (*See* Dkt. 17 at 1.) The Court's order granting Plaintiff's motion to dismiss (Dkt. 20) created "a judicially-sanctioned change in the legal relationship of the parties." *Highway Equip. Co.*, 469 F.3d at 1035. Thus, Defendant is deemed the prevailing party for purposes of awarding costs and attorney fees.

3.2 Exceptional Case

Defendant argues that this case is exceptional in two ways: (1) Plaintiff's § 101 position was objectively unreasonable; and (2) Plaintiff "litigated in an unreasonable manner by seeking to exploit the high cost of litigation to extract an unwarranted settlement . . . and then voluntarily dismissing its case only after [Defendant] had incurred the expense of drafting a motion to invalidate [the asserted] patent claims under § 101." (Dkt. 21 at 7-8.)

Plaintiff responds that the Patent-in-Suit are presumptively valid and that it has not taken an objectively unreasonable legal position under 35 U.S.C. § 101. (Dkt. 23 at 1.) Plaintiff also contends that its "settlement offers were reasonable given the uncertainties inherent in § 101 jurisprudence and the value of licenses granted to similarly situated entities." (*Id.* at 2.)

3.2.1 Plaintiff's § 101 position

The Court begins by analyzing the substantive strength of Plaintiff's litigation position for each of the Patents-in-Suit. Plaintiff asserts claim 14 of the '299 Patent, claims 10-12 of the '207 Patent, and claim 19 of the '359 Patent. (Dkt. 13-1 at 2, 6-14.) All of the asserted claims

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are method claims.

Defendant argues that the asserted claims of the Patents-in-Suit “are invalid under 35 U.S.C. § 101 and the Supreme Court’s *Alice* decision because they are directed to an abstract idea . . . and contain nothing to transform that abstract idea into a patent-eligible application.” (Dkt. 21-1 at 8.) As a result, Defendant argues that Plaintiff’s contrary position is objectively unreasonable, despite the initial presumption created when the patents were issued by the Patent Office. (*Id.*)

The test for patent-eligible subject matter under 35 U.S.C. § 101, as explained by the Supreme Court, instructs a court to examine: (1) whether the patent claims are directed to laws of nature, natural phenomena, or abstract ideas; and (2) if so, whether the claims include an “inventive concept” such that “the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, ___ U.S. ___, 134 S. Ct. 2347, 2355, 189 L. Ed. 2d 296 (2014) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, ___ U.S. ___, 132 S. Ct. 1289, 1298, 182 L. Ed. 2d 321 (2012)).

STEP 1: ABSTRACT IDEA

The Court begins with step one of the *Alice* analysis: whether the claims are “directed to” a patent-ineligible concept, which includes abstract ideas. An abstract idea is one which “[has] no particular concrete or tangible form.” *Ultramerical, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014). Here, the claims of the Patents-in-Suit are all directed to an abstract idea of monitoring and reporting the location of a vehicle. The Court analyzes each patent in turn.

The ’299 Patent

Claim 14 of the ’299 Patent recites:

14. A method, comprising the steps of:
- [a] maintaining delivery information identifying a plurality of stop locations;
 - [b] monitoring travel data associated with a vehicle in relation to the delivery information;

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- [c] when the vehicle approaches, is at, or leaves a stop location:
- [c1] determining a subsequent stop location in the delivery information;
 - [c2] determining user defined preferences data associated with the stop location, the user defined preferences data including a time period for the vehicle to reach the subsequent stop that corresponds to when the party wishes to receive the communication; and
 - [c3] sending a communication to a party associated with the subsequent stop location in accordance with the user defined preferences data to notify the party of impending arrival at the subsequent stop location.

'299 Patent, claim 14 (annotated).

The claim language confirms that the gist of claim 14 is directed to the abstract idea of monitoring and reporting the location of a vehicle. The extra steps of determining user preferences and transmitting information are everyday concepts that are just as generalized. Courts have routinely found that similar claims are directed to abstract ideas. *See, e.g., Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (noting that the “realm of abstract ideas” includes “collecting information, including when limited to particular content”); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (claims directed to collecting, recognizing, and storing data were found abstract); *MacroPoint, LLC v. FourKites, Inc.*, No. 1:15-cv-1002, 2015 WL 6870118, at *3 (N.D. Ohio Nov. 6, 2015) (“[T]he claim discloses nothing more than a process for tracking freight, including monitoring, locating, and communicating regarding the location of the freight. These ideas are all abstract in and of themselves.”).

An important consideration in evaluating patent subject matter eligibility is whether the claims would preempt use of the abstract idea. “The preemption concern arises when the claims are not directed to a specific invention and instead improperly monopolize ‘the basic tools of scientific and technological work.’” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016) (quoting *Alice*, 134 S. Ct. at 2354).

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Here, claim 14 is written so broadly that it could cover the activities of everyone from taxi dispatchers to warehouse delivery coordinators to bike messengers to hotel bellboys. Notably, claim 14 of the '299 Patent does not recite the use of any specific technology to perform the steps of the claimed method. Taking Defendant's example, "a hotel bellboy could: **[a]** write down the list of rooms he needs to deliver luggage to; **[b]** travel on his route, crossing off the rooms as he reaches them; **[c1]** as he leaves a room, look at the next room on the list and **[c2]** see if and when the next room wants a warning call before he arrives . . . ; and **[c3]** give the next room a call to say he's almost arrived." (Dkt. 13 at 7.)

The '207 Patent

The asserted claims of the '207 Patent are directed to the same abstract idea of monitoring and reporting the location of a vehicle, and add the concept of using certain information (*i.e.*, caller ID) to look up and transmit information about the vehicle status.

Claims 10-12 of the '207 Patent recite:

10. A method for monitoring and reporting status of vehicles, comprising the steps of:

- [a]** maintaining status information associated with a vehicle, said status information indicative of a current proximity of said vehicle;
- [b]** communicating with a remote communication device;
- [c]** receiving caller identification information automatically transmitted in said communicating step;
- [d]** utilizing said caller identification information to automatically search for and locate a set of said status information;
- [e]** automatically retrieving said set of status information based on said searching for and locating step; and
- [f]** transmitting said retrieved set of status information to said remote communication device.

11. The method of claim 10, wherein said caller identification information is a

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telephone number.

12. The method of claim 10, wherein said caller identification information is an e-mail address.

'207 Patent, claims 10-12 (annotated). The methods of claims 10-12 are not directed to any particular hardware or software. Returning to Defendant's hotel analogy, "a hotel employee could: **[a]** keep handwritten notes regarding the hotel's airport shuttle service, including guest reservations and vehicle locations; **[b]** receive a call or email from a guest inquiring about [the guest's] airport shuttle reservation; **[c]** see the guest's phone number (*e.g.*, on caller ID) or email address; **[d]** use the guest's phone number or email address to look up [the guest's] reservation; **[e]** retrieve from the notes the location of the relevant airport shuttle; and **[f]** tell the guest when [the] airport shuttle will arrive." (Dkt. 13 at 8.) Other than the limitation that some of the tasks are carried out "automatically," these steps do not entail much more than what hotel employees have done for decades. Further, the "automatically" limitation in these claims adds nothing of technological substance to save them from being abstract ideas. In this case, the claims are directed not to an improvement of car tracking systems but simply to the use of computers as a tool in the aid of a process focused on the abstract idea of monitoring and reporting vehicle status. That is not enough to constitute patentable subject matter. *See Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1262 (Fed. Cir. 2016) (finding patent ineligible under section 101 because it "claims the general concept of out-of-region delivery of broadcast content through the use of conventional devices, without offering any technological means of effecting that concept.").

The '359 Patent

The asserted claim of the '359 Patent is again directed to monitoring and reporting the location of a vehicle, with an additional concept that allows a user to predefine events that can create and send notice relating to the status of the vehicle.

Claim 19 of the '359 Patent recites:

19. A method for implementation in connection with a notification system,

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comprising the steps of:

[a] (a) permitting a user to predefine one or more events that will cause creation and communication of a notification relating to the status of a mobile vehicle in relation to a location, by the following steps:

[a1](1) permitting the user to electronically communicate during a first communication link with the notification system from a user communications device that is remote from the notification system and the vehicle whose travel is being monitored, the notification system being located remotely from the vehicle;

[a2](2) receiving at the notification system during the first communication link an identification of the one or more events relating to the status of the vehicle, wherein the one or more events comprises at least one of the following: distance information specified by the user that is indicative of a distance between the vehicle and the location, location information specified by the user that is indicative of a location or region that the vehicle achieves during travel, time information specified by the user that is indicative of a time for travel of the vehicle to the location, or a number of one or more stops that the vehicle accomplishes prior to arriving at the location;

[b] (b) initiating a second communication link from the host computer system to a remote communications device to be notified of the status of the mobile vehicle in relation to the location, when appropriate, based upon occurrence of the predefined one or more events by the vehicle during the travel.

'359 Patent at Inter Partes Reexamination Certificate, claim 19 (annotated). The patented method is directed to using a generic computer to notify a user regarding the location of a vehicle. Claim 19 is drawn to using a computer to perform a routine notification process that is performed daily without a computer by various businesses that call their customers to report when delivery or service vehicles will arrive. Using Defendant's hotel analogy, "a hotel employee could **[a, a1, a2]** receive a request from a guest to be notified when the guest's airport shuttle arrives at the hotel; and **[b]** call the guest when [the] airport shuttle arrives at the hotel." (Dkt. 13 at 10.)

The '359 Patent does not teach or claim any new hardware, software, or other computer

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technology for performing this routine process. Claim 19 is not directed to a specific improvement to the way computers operate, nor does Plaintiff contend as much. Rather, it merely implements an old practice in a new environment (*i.e.*, on a general-purpose computer). *See FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1095 (Fed. Cir. 2016) (claims were directed to an abstract idea because “the focus of the claims is not on . . . an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.”) (citation omitted).

To sum up, all of the asserted claims of the Patents-in-Suit are drawn to patent-ineligible abstract ideas for similar reasons.

STEP 2: INVENTIVE CONCEPT

The second step of the *Alice* framework requires determining whether the claims contain an inventive concept sufficient to transfer the abstract idea into a patent-eligible invention. The Court finds no such concept.

At best, all of the asserted claims of the Patents-in-Suit are directed to implementing an abstract idea using generic computer components. The asserted claims do not improve or change the way a computer functions. Claim 19 of the ’359 Patent recites using a generic computer system to send predefined notifications regarding a vehicle’s location. Claim 14 of the ’299 Patent and claims 10-12 of the ’207 Patent do not even recite any specific technology for performing the claimed functionality. The asserted claims are not directed to any specific and inventive implementations, but rather to a concept that may be implemented with a wide variety of entirely conventional equipment. The claim limitations, analyzed alone and in combination, fail to add “something more” to “transform the nature of the claim into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (internal quotation omitted).

The specifications of the Patents-in-Suit acknowledge that the generically-described technologies were conventional and known before the alleged inventions. *See, e.g.*, ’207 Patent at 3:14-15 (“may be a telephone, a pager, a modem, or other suitable communication device”); ’359 Patent at 8:67-9:4 (“each VCU 12 comprises a microprocessor controller 16, preferably a model MC68HC705C8P microprocessor controller that is manufactured by and

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commercially available from the Motorola Corporation, USA.”), 9:8-12 (“Examples of suitable wireless communication devices include a mobile telephone (e.g., cellular) and a transceiver . . . operating at a suitable electromagnetic frequency range, perhaps the radio frequency (RF) range.”), 12:33-34 (“The BSCU 14 may be implemented using any conventional computer with suitable processing capabilities.”). As the case law makes clear, the addition of a generic computer or other conventional technology does not transform an abstract idea into a patent-eligible application. *See Elec. Power Grp.*, 830 F.3d at 1355 (“Nothing in the claims, understood in light of the specification, requires anything other than off-the-shelf, conventional computer, network, and display technology We have repeatedly held that such invocations of computers and networks that are not even arguably inventive are insufficient to pass the test of an inventive concept in the application of an abstract idea.”) (internal quotations omitted).

Plaintiff argues that “[t]he asserted claims include vehicles mounted with GPS receivers to provide real-time status information of one or more vehicles based on real world events such as traffic information, routing, etc.” and that “the claims are very specific and narrowly drafted to carve out a specific and narrow space involving those elements.” (Dkt. 23 at 7-8.) But the claims plainly contradict these assertions. None of the asserted claims recites any “GPS receiver” or “real-time” status information.

Plaintiff’s reliance on recent Federal Circuit cases, such as *Enfish* and *BASCOM*, is misplaced for the reasons already discussed. In *Enfish*, the Federal Circuit explained that the claims were “specifically directed to a *self-referential* table for a computer database.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). The claims were therefore “directed to a specific improvement to the way computers operate” rather than to an abstract idea implemented on a computer. *Id.* at 1336. In contrast, the claims here are merely directed to an abstract idea that may use a generic computer as a tool or, in the case of the ’207 and ’299 Patents, do not require using a computer at all.

BASCOM, like *Enfish*, is distinguishable and does not save Plaintiff’s asserted claims. In *BASCOM*, the Federal Circuit held that claims “directed to filtering content on the Internet” contained an inventive concept. *BASCOM Global Internet Servs. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016). Because “an inventive concept can be found in the non-

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conventional and non-generic arrangement of known, conventional pieces,” the claims at issue had such an inventive arrangement, due in large part to the specificity of the technical solution that overcame defects in prior art embodiments. *Id.* at 1350. Here, Plaintiff’s asserted claims contain no such technical solution. Although Plaintiff argues that prior art solutions are made “more dynamic and efficient” by “the addition of real-time information updates”(Dkt. 23 at 1, 9), the claim language does not recite any requirement of “real-time” updates. Also, Plaintiff has failed to provide any explanation or evidence to support its contention that the methods recited in the patented invention are “more dynamic and efficient.” Aside from using generic computers as a tool, no technical advance or improvement is introduced. Accordingly, the claims contain nothing that “amounts to significantly more than a patent upon the [abstract idea] itself.” *Alice*, 134 S. Ct. at 2355 (citation omitted).

In sum, Plaintiff’s § 101 position was objectively unreasonable in light of the Supreme Court’s *Alice* decision and the cases that applied that decision to invalidate comparable claims. The weakness of Plaintiff’s § 101 position is a significant factor that weighs in favor of a finding that this case is “exceptional” under 35 U.S.C. § 285.

3.2.2 Reasonableness of Plaintiff’s conduct in litigation

“[U]nder *Octane Fitness*, the district court must consider whether the case was litigated in an unreasonable manner as part of its exceptional case determination” *SFA Sys. LLC v. Newegg, Inc.*, 793 F.3d 1344, 1349 (Fed. Cir. 2015). “[A] pattern of litigation abuses characterized by the repeated filing of patent infringement actions for the sole purpose of forcing settlements, with no intention of testing the merits of one’s claims, is relevant to a district court’s exceptional case determination under § 285.” *Id.* at 1350.

Defendant contends that Plaintiff’s conduct was unreasonable in that Plaintiff sought “to exploit the high cost of litigation to extract an unwarranted settlement, and then voluntarily dismiss[ed] the case to avoid a ruling on the merits of [Defendant’s] § 101 motion.” (Dkt. 21 at 13.) Defendant also asserts that Plaintiff’s business “involves filing hundreds of patent infringement lawsuits, mostly against small companies, and exploiting the high cost of litigation to extract settlements for amounts less than \$50,000.” (Dkt. 21 at 18; *see also* Dkt.

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22, Ex. A.) According to Defendant, “whenever a defendant . . . challenge[s] the validity of [Plaintiff’s patent] claims, [Plaintiff] evades a ruling by settling for next to nothing or unilaterally dismissing its complaint.” (Dkt. 21 at 18.)

Plaintiff responds that the filing of numerous cases without more does not make a case exceptional. (Dkt. 23 at 9.) Plaintiff admits that the average license fees have been between \$10,000 and \$25,000, but argues that they properly reflect “the uncertainties of the ever-evolving § 101 jurisprudence and the value of previous licenses granted under the Patents-in-Suit to similarly situated [d]efendants.” (*Id.* at 10.)

Although the Court agrees that filing a large number of cases does not necessarily mean Plaintiff litigated in an unreasonable manner, it nevertheless finds troubling that Plaintiff has repeatedly dismissed its own lawsuits to evade a ruling on the merits and yet persists in filing new lawsuits advancing the same claims. Specifically, Plaintiff has filed similar lawsuits (more than 90 for the ’207 and ’297 Patents and more than 400 for the ’359 Patent) against countless defendants. Patent litigation is expensive, so it is unsurprising that the vast majority of accused infringers choose to settle early rather than expend the resources required to show a court that the Patents-in-Suit fail under § 101. When the few challenges do occur, however, they are promptly met with voluntary dismissals with prejudice, as in this case. (Dkt. 22, Ex. E (2:16-cv-6535) (C.D. Cal.); *see also* Ex. F (2:16-cv-3962) (C.D. Cal.); Ex. G (2:16-cv-3834) (C.D. Cal.); Ex. H (2:16-cv-3836) (C.D. Cal).) Considering the record of these cases and the low-value license offers, Plaintiff’s litigation history “reflects an aggressive strategy that avoids testing its case on the merits and instead aims for early settlements falling at or below the cost of defense.” *eDekka LLC v. 3balls.com, Inc.*, Nos. 2:15-cv-541, 2:15-cv-585, 2015 WL 9225038, at *4 (E.D. Tex. Dec. 17, 2015); *see also Eon-Net v. Flagstar Bancorp.*, 653 F.3d 1314, 1326-27 (Fed. Cir. 2011) (affirming the district court’s finding of “indicia of extortion” where a plaintiff filed over 100 lawsuits and “[e]ach complaint was followed by a demand for quick settlement at a price far lower than the cost of litigation”) (citation omitted).

3.2.3 Exceptional nature of the case

Having evaluated the merits of Plaintiff’s arguments and litigation conduct, the Court now

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analyzes whether this case is “exceptional” under 35 U.S.C. § 285. Fees are awarded “not as a penalty for failure to win a patent infringement suit, but as appropriate only in extraordinary circumstances.” *Octane Fitness*, 134 S. Ct. at 1753 (internal quotation omitted). The test under *Octane Fitness* is determined on the totality of the circumstances. *Id.* at 1756. Further, the Supreme Court recognized “the need in particular circumstances to advance considerations of compensation and deterrence.” *Id.* at 1756 n.6 (internal quotation omitted).

Here, Defendant has made clear from the start its position that the asserted claims were invalid under § 101, and its intent to seek early judgment of invalidity plus attorney fees if Plaintiff did not dismiss its case. If Plaintiff had dismissed its case by October 15 as requested, most of the attorney fees would have been avoided. Instead, Plaintiff forced Defendant to incur the expense of filing the § 101 motion, which predictably led to Plaintiff voluntarily dismissing the case.

The Court is mindful that patentable subject matter is a complex and developing area of the law. Even in this case, where the asserted claims of the Patents-in-Suit are demonstrably weak, it is still difficult to determine whether Plaintiff’s position was so baseless as to make this case exceptional.

Looking at the conduct of Plaintiff, however, the Court finds a clear pattern of serial filings with the goal of obtaining quick settlements at a price lower than the cost of litigation and the intent to litigate even when Plaintiff should have realized it had a weak litigation position. Indeed, in December 2016 alone, Plaintiff had continued to assert the same patents against other defendants in a new venue. *See, e.g.*, 1:16-cv-01295, -01296, -01282, -01285, -01328, -01329 (W.D. Tex.).

Plaintiff’s business model involves filing hundreds of patent infringement lawsuits, mostly against small companies, and leveraging the high cost of litigation to extract settlements for amounts less than \$50,000. These tactics present a compelling need for deterrence and to discourage exploitative litigation by patentees who have no intention of testing the merits of their claims. Based on the totality of the circumstances, the Court finds that this is an “exceptional” case.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 16-06535-AG-AFM	Date	July 5, 2017
Title	SHIPPING AND TRANSIT, LLC v. HALL ENTERPRISES, INC.		

4. DISPOSITION

Defendant's Motion for Attorney Fees and Costs is **GRANTED**.

The Court rules that Defendant is the prevailing party, that Defendant is entitled to recover its costs to the extent taxable under L.R. 54-3, and that Defendant is entitled to recover its reasonable attorney fees under 35 U.S.C. § 285, including fees associated with its motion for attorney fees and costs.

Defendant shall identify the specific amount of its requested attorney fees and file all supporting documents no later than 14 days from the date of this Order. Plaintiff shall file its objections to Defendant's submissions no later than 14 days after it is filed. Defendant shall file any further response no later than 7 days after the objections.

In the alternative, the Court seeks an efficient resolution of the fee dispute, and notes that it is familiar with the case. *See Universal Elecs., Inc.*, 130 F. Supp. 3d at 1334-35 (adopting a aggregate global fee analysis based on an overall global understanding and review of the case). Accordingly, the Court is inclined to award \$20,000, if approved by both sides.

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