UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES – GENERAL

Case No.	**2:20-cv-10409-MCS-JEM**	Date	December 15, 2022
Title	***Seal4Safti, Inc. v. California Expanded Metal Products Co.***		

Present: The Honorable Mark C. Scarsi, United States District Judge

Patricia Kim	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **(IN CHAMBERS) ORDER RE: DEFENDANT CALIFORNIA EXPANDED METAL PRODUCTS CO.'S MOTION FOR ATTORNEY FEES AND APPLICATION TO TAX COSTS (ECF NO. 294)**

The background of this case is outlined in greater detail in the Court's Post-Trial Order addressing the parties' post-trial motions. (Post-Trial Order 2, ECF No. 286.) In the Post-Trial Order, the Court granted Defendant California Expanded Metal Products Co.'s request for an exceptional case finding under 35 U.S.C. § 285. (*Id.* at 10.) Defendant filed a motion for attorneys' fees and costs. (Mot., ECF No. 294.) Plaintiff Seal4Safti, Inc. filed an opposition, (Opp'n, ECF No. 307), and Defendant replied, (Reply, ECF No. 310). The Court deems the motion appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15.

I. LEGAL STANDARD

35 U.S.C. § 285 allows "the court in exceptional cases [to] award reasonable attorney fees to the prevailing party." The award of attorney fees involves "a two-step analysis of first determining whether the case is exceptional and then determining the amount of the award." *Special Devices, Inc. v. OEA, Inc.*, 269 F.3d 1340, 1344 (Fed. Cir. 2001).

II. ANALYSIS

A. The Case Is Exceptional

The Post-Trial Order sufficiently laid out the legal and factual basis for the Court's exceptional case finding such that it need not be restated here. (Post-Trial Order 8–10.) Given the earlier analysis, the Court is not persuaded by Plaintiff's arguments that the Court was wrong to conclude this case was exceptional. (Opp'n 8–15.) Ultimately, the Court is not interested in relitigating these settled issues by way of a disguised, procedurally defective motion for reconsideration. *See* C.D. Cal. Rs. 6-1, 7-4, 7-18.

Similarly, the Court finds no merit to Plaintiff's contention that Defendant cannot properly be classified as the "prevailing party" under 35 U.S.C. § 285. (*See* Opp'n 5–8.) Again, the Court rendered a decision on this issue, and Plaintiff cannot escape it by way of a motion for reconsideration improperly buried in an opposition brief. (Post-Trial Order 8–9.) The Court nonetheless addresses the argument on the merits. The Supreme Court has recognized a "prevailing party" is one "in whose favor a judgment is rendered, regardless of the amount of damages awarded." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Hum. Res.*, 532 U.S. 598, 603 (2001) (internal quotation marks omitted). Stated simply, a party "'prevails' when actual relief on the merits of his claim materially alters the legal relationship between the parties." *Farrar v. Hobby*, 506 U.S. 103, 111 (1992). The Supreme Court has consistently applied the same standard across "similarly-worded fee shifting statutes." *Highway Equip. Co. v. FECO, Ltd.*, 469 F.3d 1027, 1033 (Fed. Cir. 2006) (collecting cases); *see also Indep. Fed'n of Flight Attendants v. Zipes,* 491 U.S. 754, 758 n.2 (1989) (noting that the similar language of fee-shifting statutes is "a strong indication" that they are to be interpreted alike). As a result, these standards apply to cases under 35 U.S.C. § 285. *Highway Equip. Co*, 469 F.3d at 1033–34.

"Defendant's status as a prevailing party is" no longer simply a "foregone conclusion," (Post-Trial Order 9), as the Court has entered judgment "in favor of Defendant California Expanded Metal Products Co. on all its claims" against Plaintiff, (J., ECF No. 287). Despite the clarity of the judgment, Plaintiff raises several creative arguments that run headlong into well-established precedent. (*See, e.g.*, Opp'n 7 (incorporating claims *not* pursued at trial to conclude "[a]t the

conclusion of this matter, CEMCO had achieved, at best, victory on only 4.4% of the patent infringement claims that it originally asserted.").) This argument cannot be squared with the fact that "prevailing party status" "does not turn on the magnitude of the relief obtained." *Hobby*, 506 U.S. at 114. Plaintiff also claims that the judgment must be material and "modify[] the defendant's behavior in a way that directly benefits the plaintiff." (Opp'n 6 (quoting *Shum v. Intel Corp*., 629 F.3d 1360, 1367 (Fed. Cir. 2010)).) Unlike the declaration of co-inventorship at issue in *Shum*, Defendant did not merely obtain a "judicial pronouncement" that was "unaccompanied by an enforceable judgment on the merits." *Hobby*, 506 U.S. at 112. Instead, Defendant is "entitled to enforce a judgment" of infringement against Plaintiff, resulting in a "material alteration of the legal relationship between the parties." *Id.* at 113.

For the reasons stated above, the Court reiterates its findings that "Defendant is a prevailing party," and that "the case is exceptional." (Post-Trial Order 8–9.)

B. Awarding Attorneys' Fees Accrued After Plaintiff's Summary Judgment Motion is Reasonable

"In calculating an attorney fee award, a district court usually applies the lodestar method, which provides a presumptively reasonable fee amount." *Lumen View Tech. LLC v. Findthebest.com, Inc.*, 811 F.3d 479, 483 (Fed. Cir. 2016). When using the lodestar method, "[b]oth the number of hours and the hourly rate must be reasonable." *SUFI Network Servs., Inc. v. United States*, 785 F.3d 585, 594 (Fed. Cir. 2015). "An hourly rate is reasonable if it is in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Id.* (internal quotation marks omitted). Further, a district court may rely on its prior experience and knowledge in determining reasonable hours and fees. *Slimfold Mfg. Co. v. Kinkead Indus., Inc.*, 932 F.2d 1453, 1459 (Fed. Cir. 1991).

Plaintiff does not respond to Defendant's argument that the lodestar calculation is accurate or reasonable. (Reply 1; *see generally* Opp'n.) By failing to respond, Plaintiff effectively concedes Defendant's rates, hours, and total fees are reasonable. *See, e.g.*, *John-Charles v. California*, 646 F.3d 1243, 1247 n.4 (9th Cir. 2011) (deeming issue waived where party "failed to develop any argument"); *City of Arcadia v. EPA*, 265 F. Supp. 2d 1142, 1154 n.16 (N.D. Cal. 2003) ("[T]he implication of this lack of response is that any opposition to this argument is waived."). Exhibits one through four of the Trojan declaration (ECF Nos. 295 to

295-5) constitute unrebutted evidence that counsel's rates are "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *SUFI Network*, 785 F.3d at 594 (internal quotation marks omitted). In view of this evidence and the fact that Plaintiff does not dispute Defendant's lodestar calculation, the Court concludes the requested rates are reasonable. (*See generally* Opp'n.)

The reasonableness of counsel's *rates* and *hours*, however, is not the end of the inquiry. "[T]he two component steps of the [35 U.S.C. § 285] analysis are not independent. Rather, the *amount* of the attorney fees depends on the extent to which the case is exceptional." *Special Devices*, 269 F.3d at 1344 (emphasis added). Stated differently, the "exceptionality determination highly influences the award setting." *Id.* In its Post-Trial Order, the Court recognized that while Defendant raised "many arguments why the Court should find this is an exceptional case," the Court's finding rested exclusively on Plaintiff's "invalidity positions taken at trial." (Post-Trial Order 9.)

"The Court denied Plaintiff's motion for summary judgment for obviousness, anticipation, and indefiniteness, which Plaintiff filed with facts supporting its position." (*Id.*) Stripped of these claims, Plaintiff chose to proceed yet "made a nearly frivolous invalidity case at trial." (*Id.* at 10.) At bottom, Plaintiff's lack of support for the invalidity claim meant proceeding to trial was totally unnecessary. Had Plaintiff recognized the fatal weakness of its case after the summary judgment order, all parties (as well as the Court and members of the public who served on the jury) could have been spared the time and expense of resolving these claims.

Nothing about the Court's exceptional case finding, however, suggests the misconduct "was enough to comprise an abusive pattern or a vexatious strategy that was pervasive enough to infect *the entire litigation*." *Monolithic Power Sys., Inc. v. O2 Micro Int'l Ltd.*, 726 F.3d 1359, 1369 (Fed. Cir. 2013) (emphasis added) (internal quotations omitted). It was only after the Court denied Plaintiff's motion for summary judgment that Plaintiff's "incredibly weak case" was so obvious that its "decision to take its invalidity claims and defenses to trial" justified the exceptional case finding. (Post-Trial Order 10.)

For these reasons, the Court GRANTS Defendant's motion for attorneys' fees, but only for those fees accrued after the Court's order resolving Plaintiff's motion for summary judgment. (Order Regarding Pl.'s Mot. for Summ. J., ECF No. 109.)

Defendant may recover all attorney fees accrued after the order, including those involved in preparing this motion.[1]

C. Defendant Is Entitled to Recover Costs

Defendant seeks to recover $15,588 for "charges for e-discovery vendor services, court reporting services, travel expenses, and clerical expenses (e.g. copy charges, messenger charges) related to work on this case." (Mot. 24.) "[C]ourts should not be, and have not been, limited to ordinary reimbursement of only those amounts paid by the injured party for purely legal services of lawyers, or precluded from ordinary reimbursement of legitimate expenses defendant was unfairly forced to pay." *Mathis v. Spears*, 857 F.2d 749, 754 (Fed. Cir. 1988). To the extent these costs were accrued following the denial of Plaintiff's summary judgment motion, Defendant is entitled to recover.

D. Defendant Is Not Entitled to Expert Witness Fees

Even when a court has issued an exceptional case finding under 35 U.S.C. § 285, the award of expert witness fees is generally only justified under the Court's inherent power to sanction. *See Amsted Indus. Inc. v. Buckeye Steel Castings Co.*, 23 F.3d 374, 379 (Fed. Cir. 1994) (in awarding expert witness fees, courts must "distinguish between inappropriate conduct redressable under" § 285 "and egregious conduct which justifies resort to the inherent power to sanction"). "Without a finding of fraud or bad faith whereby the 'very temple of justice has been defiled,' a court enjoys no discretion to employ inherent powers to impose sanctions." *Id.* at 378 (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991)). Consequently, "[e]xpert witness fees are only awardable [under 35 U.S.C. § 285] if there is 'fraud on the court or an abuse of the judicial process.'" *Universal Elecs., Inc. v. Universal Remote Control, Inc.*, 130 F. Supp. 3d 1331, 1341 (C.D. Cal. 2015) (quoting *Amsted*, 23 F.3d at 379).

The Court is mindful that "[t]here are degrees of unjustifiable conduct. In this case, the litigation misconduct falls within the remedies of [35 U.S.C. § 285], but does not constitute bad faith and fraud on the court to the extent of defiling the very temple of justice." *Amsted*, 23 F.3d at 379 (internal quotation marks omitted). While Plaintiff should not have proceeded to trial following the summary judgment order, Plaintiff has "engaged in no fraudulent conduct, filed no false pleadings, and used

[1] Although Defendant seeks to recover them as costs, Defendant may also recover paralegal fees accrued after entry of the summary judgment order.

no tactics of oppression and harassment." *Id.* As a result, there is no basis to award expert witness fees as a sanction, and the award of expert witness fees is inappropriate under 35 U.S.C. § 285. Defendant's motion for expert witness fees is accordingly DENIED.

III. CONCLUSION

The motion is GRANTED IN PART AND DENIED IN PART. Defendant is entitled to attorneys' fees and costs accrued after entry of the summary judgment order because Plaintiff insisted on proceeding to trial despite its "incredibly weak case." (Post-Trial Order 10.) No later than January 6, 2023, Defendant shall submit a new statement of fees and costs listing only those accrued after the Court's order denying Plaintiff's motion for summary judgment. The Court will issue a further order after reviewing the statement. No other submissions are authorized.

IT IS SO ORDERED.