UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 14-0333 AG (DFMx)	Date	March 16, 2015
Title	COLLECTORS UNIVERSE, INC. v. DUANE C. BLAKE		

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 DENYING MOTION FOR ATTORNEY FEES**

Exceptional cases are, by definition, the exception. But since *Octane*'s change in the standard, the rule seems to be for prevailing parties to bring an exceptional case motion. This case is no exception. And it is not exceptional.

Before the Court is a Motion for Attorney Fees under 35 U.S.C. § 285 brought by Plaintiff and Counterclaim Defendant Collector's Universe, Inc. ("CU"), and Counterclaim Defendants Professional Coin Grading Service ("PCGS"), Expos Unlimited, LLC, and DHRCC, Inc. (collectively, the "Counterclaim Defendants"). ("Motion," Dkt. No. 95.) Counterclaim Defendants prevailed on a motion for summary judgment where the Court found that certain claims in Defendant Duane C. Blake's patent were invalid. Because this is not an exceptional case warranting attorney fees, Plaintiff's Motion is DENIED.

BACKGROUND

Blake is the inventor and owner of United States Patent No. 8,661,889 (the "'889 Patent"), issued March 4, 2014. The '889 Patent claims methods of displaying uncirculated coins. The methods include the use of a label showing that the coins have been given an above-average "eye appeal" ranking within the coin's whole number grade on the conventional Sheldon coin grading scale.

In August 2011, while his '889 Patent application was pending, Blake filed a case in federal court in Massachusetts against Professional Coin Grading Service ("PCGS"). Complaint, *Blake v. Professional Coin Grading Service, et al.*, No. CV 11-11531 (D. Mass. Aug. 31, 2011), Dkt. No. 1. Blake asserted various claims involving PCGS's alleged misappropriation of his fractional grading and labeling ideas. (*Id.*) The court granted PCGS' motion to dismiss all of Blake's claims except for his claim for injunctive relief, finding among other things that Blake had no plausible claim of ownership of the "+" symbol used in the industry to connote differential grading of coins with the same numerical score. *Blake*, No. CV 11-11531, Dkt. No. 54 (D. Mass. July 25, 2012). PCGS later prevailed on a motion for summary judgment on the sole remaining claim, for injunctive relief. *Blake*, No. CV 11-11531, Dkt. No. 150 (D. Mass. November 8, 2012).

Over a year later, on the same day the U.S. Patent and Trademark Office ("USPTO") issued the '889 Patent, Plaintiff Collectors Universe ("CU") filed this case, seeking a declaration that the '889 Patent is invalid and that CU does not infringe it. (Compl., Dkt. No. 1 at ¶¶ 31-42.) On July 3, 2014, Blake filed Counterclaims against CU, PCGS, DHRCC LLC, and Expos Unlimited LLC (collectively, the "Counterclaim Defendants"). (Am. Answer, Dkt. No. 14.)

The Court recently granted Plaintiff's and Counterclaim Defendants' "Motion for Summary Judgment or Alternatively, Partial Summary Judgment," finding that Claims 1, 3, and 4 of the '889 Patent are invalid due to lack of novelty. ("Summary Judgment Order," Dkt No. 89.)

Counterclaim Defendants now seek attorney fees under 35 U.S.C. § 285.

LEGAL STANDARD

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 statute, "exceptional" has its ordinary meaning of "'uncommon,' 'rare,' or 'not ordinary.'" *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014). Thus, "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.*, __ F. Supp. 3d. __, No. SACV 11-01011 AG, 2015 WL 178417, *1 (C.D. Cal. Jan. 6, 2015).

District courts determine whether a case is exceptional "considering the totality of the circumstances." *Id.* 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.

"[A] patentee does not act in good faith if it raises an infringement claim in which 'no reasonable litigant could realistically expect success on the merits.'" *GP Indus. Inc. v. Eran Indus., Inc.*, 500 F.3d 1369, 1374 (Fed. Cir. 2007) (citation omitted). "For this reason, proper investigation is an important pre-requisite to filing an infringement claim . . . ." *JS Prods., Inc. v. Kabo Tool Co.*, 2014 WL 7336063, at *4 (D. Nev. Dec. 22, 2014).

In the companion case to *Octane Fitness*, the Supreme Court held 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." *Highmark Inc. v. Allcare Health Mgmt. Sys.*, 134 S. Ct. 1744, 1748 (2014). The abuse-of-discretion standard applies to "all aspects of a district court's § 285 determination." *Id.* at 1749.

ANALYSIS

This case is not an exceptional case under *Octane Fitness*. Ironically, *this Motion* may be more exceptional than what it attacks. Counterclaim Defendants primarily argue that "Blake should have known that the '889 Patent is invalid," and thus presumably should not have defended the validity of his patent or asserted counterclaims. ("Motion" at 10:21-22.) They point to Blake's experience as a lawyer and the prior ruling of district court in Massachusetts as indicia of Blake's unreasonableness. For several reasons, the Court disagrees that these facts make the case an extraordinary one.

First, under the circumstances, Blake's manner of litigating this case was not exceptionally unreasonable. *It was CU, not Blake, that initiated this case.* CU sought a declaratory judgment that the '889 Patent was invalid, and ultimately received such a judgment. Now, Counterclaim Defendants essentially take the position that Blake should not have defended against CU's claims or asserted his own counterclaims. The Court disagrees. While true that the disputed patent claims were weak, that is, unfortunately, not exceptional. Absent a showing that something was withheld from the USPTO, a patentee should be able to rely to some degree on the USPTO's expert views and the resulting presumption of validity. The Court will not hold Blake's conduct to be unreasonable—and especially not exceptionally so—merely because he asserted a weak patent when its validity was challenged in court.

Second, the Court is unconvinced that the invalidity of the patents was as obvious at the onset of this litigation as Counterdefendants say. Although the Massachusetts case may have put Blake on notice that prior use of the "+" symbol likely anticipated his fractional grading limitations, the Massachusetts case didn't address the patent itself. And the claims in the patent included more than just fractional grading. For instance, the claims included the electronic storage of coin images for future comparison, and the use of a color indicator to show that the coin was imaged. Blake's conduct was not exceptional for failing to concede that his patent was invalid.

Counterdefendants point to no other evidence that Blake acted unreasonably. They assert that "Blake's claims were . . . likely motivated by a personal animosity against PCGS following his loss of the Massachusetts Lawsuit," but they provide no evidence supporting that assertion. In fact it is plausible given that CU initiated the lawsuit, and thus rendered compulsory at least some of Blake's counterclaims, that Blake was motivated to assert his claims by efficiency considerations.

In sum, Counterclaim Defendants have not met their burden of showing that attorney fees are warranted under 35 U.S.C. § 285.

DISPOSITION

The Motion is DENIED.

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