

ALERT

Federal Circuit Patent Bulletin: *AdjustaCam, LLC v. Newegg, Inc.*

July 5, 2017

"We reiterate today that the district court is in the best position to weigh the evidence. When a district court makes a § 285 ruling based on independent evaluation of the evidence before it, we will continue to defer to that ruling. We will not defer, however, to conclusions based on a 'clear error of judgment in weighing relevant factors.'"

On July 5, 2017, in *AdjustaCam, LLC v. Newegg, Inc.*, the U.S. Court of Appeals for the Federal Circuit (Reyna,* Mayer, Hughes) reversed the district court's denial of Newegg's motion for attorney fees under 35 U.S.C. § 285 following AdjustaCam's voluntary dismissal of its suit alleging Newegg infringed U.S. Patent No. 5,855,343, which related to camera clip that supports a camera both on a flat surface and when attached to a computer monitor. The Federal Circuit stated:

"The court in exceptional cases may award reasonable attorney fees to the prevailing party." . . . The Supreme Court has noted that § 285 "imposes one and only one constraint on district courts' discretion to award attorney's fees in patent litigation: [t]he power is reserved for 'exceptional' cases." "[A]n '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." . . .

We hold that the district court abused its discretion by not awarding fees to Newegg for two independent reasons: (1) it failed to follow our mandate on remand; and (2) its decision was based on "a clearly erroneous assessment of the evidence." We recognize the deference owed to district courts in deciding fees motions. Deference, however, is not absolute. When a district court bases its decision on a

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clearly erroneous view of the evidence, as it did here, the court abuses its discretion in denying fees.

The district court erred by ignoring our mandate “to evaluate whether this case is ‘exceptional’ under the totality of the circumstances and a lower burden of proof” in the first instance. Instead of engaging in an independent analysis, the district court adopted the previous judge’s factual findings wholesale. The entirety of the court’s analysis based on those adopted fact-findings consists of three sentences Based on the circumstances presented here, the wholesale reliance on the previous judge’s factfinding was an abuse of discretion. The court apparently felt constrained by its lack of “in-person evaluations that the trial judge who dealt with this case in the courtroom arena was best positioned to have made.” But the court allowed additional briefing and held an oral argument; therefore, it had first-hand knowledge and in-person experience with the parties. Moreover, AdjustaCam filed a supplemental brief on remand filled with new infringement arguments. Thus, contrary to the district court’s conclusion, the facts had changed since the case was before the original district judge. . . .

We reiterate today that the district court is in the best position to weigh the evidence. When a district court makes a § 285 ruling based on independent evaluation of the evidence before it, we will continue to defer to that ruling. We will not defer, however, to conclusions based on a “clear error of judgment in weighing relevant factors.” Here, the district court did not independently evaluate the evidence in view of the Supreme Court’s intervening precedent, which changed the standard by which § 285 motions are to be evaluated. . . .

The district court’s failure to follow our mandate is sufficient reason to find an abuse of discretion. Separate and apart from that issue, however, the district court’s clearly erroneous findings about the substantive strength of AdjustaCam’s case independently support reversal. The record developed over the past five years points to this case as standing out from others with respect to the substantive strength of AdjustaCam’s litigating position. Where AdjustaCam may have filed a weak infringement lawsuit, accusing Newegg’s products of infringing the ’343 patent, AdjustaCam’s suit became baseless after the district court’s Markman order, where the court found “that the claims of the ’343 patent describe ‘rotatably attached’ objects as rotating over a single axis.” . . . Stated differently, the evidence proffered by AdjustaCam showed that AdjustaCam’s lawsuit was baseless.

The district court found that the strength of AdjustaCam’s litigation position was not exceptional because Newegg’s ball-and-socket products were constrained in such a way that AdjustaCam could reasonably argue they rotated on a single axis. But AdjustaCam did not advance that argument. Instead, AdjustaCam argued that the constraint on Newegg’s ball-and-socket joint limited the rotation to a single axis at a time. AdjustaCam did not introduce any evidence that Newegg’s ball-and-socket products were limited to a single axis of rotation. We find no dispute that Newegg’s cameras rotate about at least two axes. As such, there is no possible way for Newegg’s products to infringe the ’343 patent. No reasonable factfinder could conclude that Newegg’s products infringe; therefore, AdjustaCam’s litigation position was baseless. These are traits of an exceptional case. The district court’s contrary conclusion was based on “a clearly erroneous assessment of the evidence.” Fees are warranted.

AdjustaCam litigated the case in an “unreasonable manner.” . . . [T]he totality of the circumstances demonstrates other dubious behavior that, when considered collectively, warrants fees under § 285. The district court’s contrary finding—that there was an absence of what it termed “dubious behavior”—was clearly erroneous. . . . In light of AdjustaCam’s frivolous infringement argument and unreasonable manner of litigation, however, we conclude that the district court clearly erred by failing to consider AdjustaCam’s damages methodology as part of a totality-of-the-circumstances analysis. The irregularities in AdjustaCam’s damages model and the purported nuisance value of many of its settlements should have played a role in the evaluation of whether this is case exceptional.