

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Electronic Communication Technologies, LLC v. ShoppersChoice.com, LLC

No. 2019-2087, United States Court of Appeals for the Federal Circuit (July 1, 2020)

SUMMARY

The Federal Circuit vacated a district court's denial of attorney fees under 35 U.S.C. § 285, holding that the district court abused its discretion by failing to consider the totality of circumstances, including the patentee's pattern of filing repeated infringement actions for nuisance-value settlements and the objective unreasonableness of the patent claim after prior invalidity rulings. The court found that the district court applied the wrong fee-shifting statute (Lanham Act instead of Patent Act) and did not address evidence of abusive litigation conduct or the claim's weakness under § 101. On remand, the district court must weigh the patentee's litigation history and the substantive strength of the litigating position to determine if the case is exceptional.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	Wallach, Circuit Judge; Prost, Chief Judge; Dyk, Circuit Judge
JURISDICTION	Federal
DECIDED	July 1, 2020
DOCKET	2019-2087
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from denial of attorney fees after judgment on pleadings invalidating patent claim.
STANDARD OF REVIEW	Abuse of discretion
PRECEDENTIAL VALUE	Published
PARTIES	ShoppersChoice.com, LLC v. Electronic Communication Technologies, LLC

TOPICS

[patent law](#)[attorney fees](#)[standard of review](#)[appellate procedure](#)

QUESTIONS PRESENTED

1. Whether the district court abused its discretion in denying attorney fees under 35 U.S.C. § 285 by failing to consider ECT's manner of litigation and the objective unreasonableness of its infringement claims.

HOLDINGS

1. The district court abused its discretion by failing to consider ECT's pattern of litigation abuses and the objective unreasonableness of its patent claims, which are relevant factors under Octane Fitness.

KEY QUOTATIONS

“A district court may determine whether a case is 'exceptional' in the case-by-case exercise of its discretion, considering the totality of the circumstances.” (at 7)

“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.” (at 8)

“We vacate the District Court's Attorney Fee Order and remand for further proceedings.” (at 13)

FACTUAL BACKGROUND

ECT sued ShoppersChoice for infringement of claim 11 of the '261 patent, directed to a system for providing advance notification of delivery or pickup. The district court granted judgment on the pleadings, invalidating the claim as patent ineligible under § 101. The Federal Circuit affirmed. ShoppersChoice then moved for attorney fees, presenting evidence that ECT had a pattern of sending demand letters and filing lawsuits against numerous defendants for low-value settlements, without intending to test the merits of its claims. The district court denied the motion, finding the case not exceptional. The Federal Circuit vacated and remanded.

PROCEDURAL HISTORY

ECT filed complaint for patent infringement. District court granted judgment on the pleadings invalidating claim 11 as patent ineligible. Federal Circuit affirmed. ShoppersChoice moved for attorney fees under § 285. District court denied motion, applying Lanham Act and finding case not exceptional. ShoppersChoice appealed.

DISPOSITION

vacated

REMAND INSTRUCTIONS

On remand, the District Court should consider ECT's manner of litigation and the objective unreasonableness of its infringement claims, applying 35 U.S.C. § 285 and relevant precedent.

CASES CITED

- Octane Fitness, LLC v. ICON Health & Fitness, Inc., 572 U.S. 545 (2014)
- Highmark Inc. v. Allcare Health Mgmt. Sys., Inc., 572 U.S. 559 (2014)
- ThermoLife Int'l LLC v. GNC Corp., 922 F.3d 1347 (Fed. Cir. 2019)

- Bayer CropScience AG v. Dow AgroSciences LLC, 851 F.3d 1302 (Fed. Cir. 2017)
- Insite Vision Inc. v. Sandoz, Inc., 783 F.3d 853 (Fed. Cir. 2015)
- Hensley v. Eckerhart, 461 U.S. 424 (1983)
- In re Rembrandt Techs. LP Patent Litig., 899 F.3d 1254 (Fed. Cir. 2018)
- SFA Sys., LLC v. Newegg Inc., 793 F.3d 1344 (Fed. Cir. 2017)
- Rothschild Connected Devices Innovations, LLC v. Guardian Prot. Servs., Inc., 858 F.3d 1383 (Fed. Cir. 2017)
- AdjustaCam, LLC v. Newegg, Inc., 861 F.3d 1353 (Fed. Cir. 2017)
- Elec. Commc'n Techs., LLC v. ShoppersChoice.com, LLC, 958 F.3d 1178 (Fed. Cir. 2020)
- Kindred Studio Illustration & Design, LLC v. Elec. Commc'n Techs., LLC (True Grit), 2019 WL 3064112 (C.D. Cal. May 23, 2019)
- Eclipse IP LLC v. McKinley Equip. Corp., 2014 WL 4407592 (C.D. Cal. Sept. 4, 2014)
- Tobinick v. Novella, 884 F.3d 1110 (11th Cir. 2018)

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