

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
CALIFORNIA

DS Advanced Enterprises, Ltd. v. Lowe’s Home Centers, LLC

DS Advanced · No. 3:23-cv-01335-CAB-JLB · Decided February 24, 2025

SUMMARY

The United States District Court for the Southern District of California denied Lowe’s Home Centers, LLC’s motion for attorneys’ fees and expenses under 35 U.S.C. § 285 and 35 U.S.C. § 1927. Although the court found that DS Advanced’s proposed claim construction was incorrect and strained the plain meaning of the patent, it did not find the case exceptional or conclude that plaintiff’s counsel acted in bad faith or unreasonably multiplied the proceedings. The order was issued after summary judgment of non-infringement and was dated February 24, 2025.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Southern District of California                                                                                                                                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Cathy Ann Bencivengo                                                                                                                                                                                                                                                                                                                                                                                   |
| JURISDICTION          | United States District Court for the Southern District of California                                                                                                                                                                                                                                                                                                                                   |
| DECIDED               | February 24, 2025                                                                                                                                                                                                                                                                                                                                                                                      |
| DOCKET                | 3:23-cv-01335-CAB-JLB                                                                                                                                                                                                                                                                                                                                                                                  |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                                                                  |
| PROCEDURAL POSTURE    | Defendant, the prevailing party after obtaining summary judgment of non-infringement, moved for attorney fees and expenses under 35 U.S.C. § 285 and for fees against plaintiff's counsel under 28 U.S.C. § 1927. The district court denied both requests.                                                                                                                                             |
| STANDARD OF REVIEW    | A district court determines whether a case is exceptional under 35 U.S.C. § 285 through a case-by-case exercise of discretion based on the totality of the circumstances. The fee applicant must establish exceptionality by a preponderance of the evidence. A fee award under 28 U.S.C. § 1927 requires intentional, bad-faith conduct that unreasonably and vexatiously multiplies the proceedings. |
| PRECEDENTIAL VALUE    | unpublished district court order                                                                                                                                                                                                                                                                                                                                                                       |

TOPICS

- attorney fees
- patent infringement
- patent law
- sanctions
- remedies

## PRACTICE AREAS

patent litigation

attorney fees

sanctions

civil procedure

## QUESTIONS PRESENTED

1. Whether the patent infringement action was exceptional under 35 U.S.C. § 285 because DS Advanced pursued an objectively unreasonable claim construction or litigated in an unreasonable manner.
2. Whether Lowe's motion for attorney fees under 35 U.S.C. § 285 was timely despite being filed before entry of final judgment.
3. Whether DS Advanced's counsel intentionally and in bad faith unreasonably and vexatiously multiplied the proceedings within the meaning of 28 U.S.C. § 1927.

## HOLDINGS

1. Lowe's motion for attorney fees was timely because the court had not yet entered final judgment and had specifically contemplated an exceptional-case determination after final judgment.
2. The case was not exceptional under § 285, and Lowe's was not entitled to attorney fees and expenses, because DS Advanced's unsuccessful claim construction, although strained and objectively weak, was not shown to have been asserted in bad faith or for an improper purpose when the totality of the circumstances was considered.
3. Lowe's was not entitled to fees against DS Advanced's counsel under § 1927 because the record did not establish that counsel intentionally and in bad faith unreasonably multiplied the proceedings.

## KEY QUOTATIONS

*“An exceptional case is simply one that stands out from others with respect to the substantive strength of a party’s litigating position . . . or the unreasonable manner in which the case was litigated.” (at 1)*

*“Under the totality of the circumstances however the Court is not convinced that DS Advanced knowingly and intentionally asserted a meritless position for improper purposes. It was just wrong.” (at 3)*

*“The Court also does not find that DS Advanced’s counsel intentionally and in bad faith unreasonably multiplied the proceedings justifying a fee award pursuant to 35 U.S.C. 1927.” (at 4)*

## FACTUAL BACKGROUND

DS Advanced alleged that Lowe's accused devices infringed the only independent claim of its patent. In its infringement contentions, DS Advanced advanced an expansive construction of the claim limitation "metal housing" that the court rejected as contrary to the claim's plain meaning and specification, ultimately granting Lowe's summary judgment of non-infringement. Although the court described the proposed construction as strained and nearly frivolous, it found no evidence that DS Advanced asserted the position knowingly, intentionally, or for an improper purpose. Counsel also violated a protective order, but the court had previously found those violations careless and unjustified rather than undertaken in bad faith.

## PROCEDURAL HISTORY

DS Advanced filed the patent infringement action on July 21, 2023, later amended its complaint, and voluntarily dismissed additional defendants. The court denied Lowe's motion to dismiss the willfulness allegations, and Lowe's answered. After the parties entered scheduling and protective orders, Lowe's moved for summary judgment of non-infringement. The court construed the patent term "metal housing" against DS Advanced's proposed construction and granted summary judgment of non-infringement on September 30, 2024, while postponing final judgment pending resolution of a sanctions matter. Lowe's then moved for exceptional-case fees and fees against counsel; the court decided the motion on the papers and denied both requests.

## DISPOSITION

other

## CASES CITED

- Dragon Intellectual Prop. v. Dish Network, 101 F.4th 1366, 1369-70 (Fed. Cir. 2024)
- Octane Fitness LLC v. ICON Health & Fitness, Inc., 572 U.S. 545, 554 (2014)
- OneSubsea IP UK Ltd. v. FMC Tech., Inc., 68 F.4th 1285, 1294 (Fed. Cir. 2023)
- Extremity Medical, LLC v. Nextremity Solutions, Inc., 2024 WL 4384202, at \*2 (D. Del. Oct. 3, 2024)