

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

IN RE: Bill of Lading Transmission and Processing System Patent Litigation. : MDL Docket No. 1:09-md-2050
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ORDER

This matter is before the Court on the motion for attorney’s fees and costs pursuant to 35 U.S.C. § 285 filed by Defendants DriverTech, LLC, Intermecc Technologies, Inc. and PeopleNet Communications Corporation. Doc. No. 412. For the reasons that follow, Defendants’ motion for attorney’s fees and costs is well-taken and is **GRANTED**.

The U.S. Patent Act provides that “[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party.” 35 U.S.C. § 285. A case is “exceptional” within the meaning of § 285 if it “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.” Octane Fitness, LLC v. ICON Health & Fitness, Inc., 134 S. Ct. 1749, 1756 (2014). The district court should determine whether a patent case is exceptional under the totality of the circumstances of the case. Id. A non-exclusive list of factors for the court to evaluate in determining whether the case is exceptional include “frivolousness, motivation, objective unreasonableness (both in the factual and in the legal components of the case) and the need in particular circumstances to advance considerations of compensation and

deterrence.” Fogerty v. Fantasy, Inc., 510 U.S. 517, 534 n.19 (1994). The movant must establish its right to exceptional case fees by a preponderance of the evidence. Octane Fitness, 134 S. Ct. at 1758.

All of the reasons stated by the Court in its order granting Defendant Qualcomm, Inc.’s motion for attorney’s fees and costs (Doc. No. 413) fully support declaring this an exceptional case as to these moving Defendants and granting their motion for attorney’s fees and costs.

Awarding Defendants their fees and costs is justified for the additional facts that:

1. R+L disregarded reasonable assurances of non-infringement of the ‘078 Patent proffered by Defendants and their customers.
2. R+L knew or should have known, based on the opinion of its own expert, Lee Clair, that the bar code technology sold by Intermec was not covered by the ‘078 Patent.
3. R+L proceeded with its infringement claims despite substantial evidence that the ‘078 Patent was invalid in light of prior art references.
4. R+L proceeding with its infringement claims despite the fact that it knew or should have know that there were substantial questions whether the ‘078 Patent claimed patentable subject matter.
5. As explained in Defendants’ motion and reply brief, there is substantial reason to believe that R+L initiated this litigation to embark on a fishing expedition into Defendants’ operations and proprietary customer lists for the purpose of developing direct patent infringement claims against their customers. In other words, there is substantial reason to believe that R+L did not institute this litigation for a proper purpose, but rather as a means to obtain evidence of infringement against Defendants’ customers it could not

otherwise obtain because it did not have a good-faith belief that Defendants' customers were actually infringing the '078 Patent. Indeed, as Defendants point out in their papers, R+L received repeated assurances from Defendants' customers that infringement of the patent was not occurring.

The Court concludes that a preponderance of the evidence shows that this is an exceptional case entitling Defendants to recover their attorney's fees. Accordingly, Defendants' motion to declare this case exceptional pursuant to 35 U.S.C. § 285 is well-taken and is **GRANTED**. Defendants' shall file a fee petition within 30 days of the date of this order. Briefing on Defendants' fee petition shall then proceed according to S.D. Ohio Civ. R. 7.2(a)(2).

IT IS SO ORDERED.

Dated: January 27, 2017



s/Sandra S. Beckwith
Sandra S. Beckwith
Senior United States District Judge