

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

Cardsoft, Inc. et al.,

v.

Verifone Holdings, Inc. et al.

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Case No. 2:16-CV-0098-RSP

ORDER

Before the Court is Defendants Ingenico S.A.’s, Ingenico Corp.’s, and Ingenico Inc.’s (the “Ingenico Defendants”) Motion to Declare this an Exceptional Case and For Attorney’s Fees Pursuant to 35 U.S.C. § 285 (Dkt. No. 493) (the “Motion”). Having considered the Motion, the Motion is **DENIED**.

“District courts may determine whether a case is ‘exceptional’ in the case-by-case exercise of their discretion, considering the totality of the circumstances.” *Octane Fitness, LLC v. ICON Health and Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014). Section 285 imposes “one and only one constraint” on a district court’s discretion to award attorney fees in patent litigation: the case must be “exceptional.” *Octane Fitness*, 134 S. Ct. at 1755–56. The Ingenico Defendants must show exceptionality by a preponderance of the evidence. *Iris Connex, LLC v. Dell, Inc.*, 2017 WL 365634, at *10 (E.D. Tex. Jan. 25, 2017). They have not.

First, simply because the Ingenico Defendants won at trial does not make this case exceptional. Actually, while the fact that this case went to trial and to jury verdict, notwithstanding Ingenico’s Motion for Summary Judgment of Non-Infringement and Rule 50 Motion for Non-Infringement does not preclude an exceptional case determination, it strongly suggests that CardSoft’s case was non-frivolous. This weighs against exceptionality.

Second, the Ingenico Defendants also do not present any persuasive evidence of litigation misconduct or that this litigation was brought in bad faith. Indeed, given the posture of this case, the latter is exceedingly unlikely. While the Ingenico Defendants do make claims bordering on an allegation objective baselessness or bad faith—such as that “CardSoft blatantly failed to follow Federal Circuit precedent and blindly ignored the facts of this case” (Dkt. No. 493 at 18)—the Court has reviewed all of these alleged failings and finds them each individually and in the context of this case to be unexceptional.

The Ingenico Defendants do not provide any other persuasive evidence of exceptionality. Therefore, they have failed to meet their burden to show that this case is exceptional or “stands out” under the totality of the circumstances. The Motion (Dkt. No. 493) is **DENIED**.

SIGNED this 30th day of March, 2017.


ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE