

FILED
U.S. DISTRICT COURT

2016 JUL 18 3:18

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

PETTER INVESTMENTS, INC. d/b/a
RIVEER, a Michigan corporation,

Plaintiff,

vs.

HYDRO ENGINEERING, INC., a Utah
corporation; CALIFORNIA CLEANING
SYSTEMS, INC., a California company,

Defendants.

ORDER GRANTING DEFENDANTS'
MOTION FOR RULE 54(b) FINAL
JUDGMENT, DENYING
DEFENDANTS' MOTION FOR
ATTORNEY FEES, AND DENYING
THE REMAINDER OF PLAINTIFF'S
MOTION TO RECONSIDER

Case No. 2:14-CV-45-DB

Before the Court are Defendants' Motion for Rule 54(b) Final Judgment [Dkt. 293] and Motion for Attorneys Fees [Dkt. 287]. A hearing was held before the Court on June 29, 2016. Plaintiff was represented by Stephen Lobbin and Mark Ford. Defendants were represented by Mark Miller and Brett Foster. Having considered the parties' written and oral arguments and the relevant facts and law, the Court hereby grants Defendants' Motion for Final Judgment and

denies Defendants' Motion for Attorneys Fees. The Court also denies the remainder of Plaintiff's Motion to Reconsider [Dkt. 221].

MOTION FOR ENTRY OF FINAL JUDGMENT

Defendants move the Court for entry of final judgment on certain of Plaintiff's causes of action, pursuant to Federal Rule of Civil Procedure 54(b). In a case involving multiple claims and counterclaims, Rule 54(b) provides that the court may "direct the entry of a final judgment as to one or more but fewer than all claims or parties only upon an express determination that there is no just reason for delay. . . ."

An analysis of whether certification of a final judgment under Rule 54(b) is appropriate requires the court: (1) to determine that the order to be certified is a final judgment; and (2) to find that there is no just reason for delay. *Stockman's Water Col, LLC v. Vaca Partners, LP.*, 425 F.3d 1263 (10th Cir. 2005)(citing *Old Republic Ins. Co. v. Durango Air Serv., Inc.*, 283 F.3d 1222, 1225 n.5 (10th Cir. 2002); *Oklahoma Turnpike Auth. v. Bruner*, 259 F.3d 1236 (10th Cir. 2001)). The court weighs "Rule 54(b)'s policy of preventing piecemeal appeals against the inequities that could result from delaying an appeal." *Stockman's Water Co.*, 425 F.3d at 1265 (citing *Curtiss-Wright Corp v. General Electric Co.*, 446 U.S. 1, 8; *Oklahoma Turnpike Auth.*, 259 F.3d at 1241)). In doing so, the court considers "whether the claims under review [are] separable from the others remaining to be adjudicated and whether the nature of the claims already determined [are] such that no appellate court would have to decide the same issues more than once even if there were subsequent appeals." *Id.*

On January 9, 2015, the Court entered summary judgment in Defendants' favor on Plaintiff's first (infringement of '298 patent), fourth (false advertising), fifth (intentional interference with prospective economic relations) and sixth (unfair competition) causes of action. [Dkt. 216]. It also entered partial summary judgment on Plaintiff's third (infringement of '720 patent) cause of action. [Dkt. 216]. Following entry of the Court's Memorandum Decision and Order on Claim Construction [Dkt. 235], the parties stipulated to summary judgment of non-infringement on Plaintiff's second (infringement of '774 patent) and third (infringement of '720 patent) causes of action. [Dkt. 239]. The stipulated judgment was entered by the Court on May 22, 2105. [Dkt. 252]. On June 30, 2015, the Court granted Defendants' Second Motion for Summary Judgment on Plaintiff's First Claim (infringement of '298 patent), finding no infringement. [Dkt. 253].

The Court finds that its orders granting summary judgment on Plaintiff's first, second, third, fourth, fifth and sixth causes of action are final judgments. They constitute final adjudications of the merits of claims that are "distinct and separable from the claims left unresolved." *Oklahoma Turnpike*, 259 F.3d at 1243 ("To be considered 'final,' an order must be final in the sense that it is an ultimate disposition of an individual claim entered in the course of a multiple claims action.").

There remain in the case, unresolved claims for trademark infringement, tortious interference, trade secret misappropriation, civil conspiracy, and unfair competition ("the

remaining claims”).¹ These are scheduled for trial on November 18, 2016.

The resolved claims are independent, both legally and factually, from the remaining claims. All of the patent claims have been adjudicated.² As have all of the causes of action arising out of the two competitive bidding transactions.³ The remaining causes of action do not involve either the patents or the bids upon which the resolved claims were based. The remaining claims arise from different facts and call on different law. They are distinct and separable from the resolved claims. Summary judgment was entered on all of the resolved claims over one year ago.

The Court finds that there is no just reason to delay entry of final judgment on Plaintiff’s first, second, third, fourth, fifth and sixth causes of action. Defendants’ Motion for Entry of Final Judgment pursuant to Rule 54(b) is hereby GRANTED.

MOTION FOR ATTORNEYS FEES

Defendants seek an award of their attorneys fees and expenses incurred in defending Plaintiff’s patent infringement and false advertising claims. They contend those claims meet the

¹ On November 18, 2015, the Court denied Plaintiff’s motion for summary judgment on Defendants’ claims of trade secret misappropriation, intentional interference with contractual relations, and civil conspiracy. [Dkt. 284]. On January 4, 2016, the Court denied the parties cross-motions related to competing trademark infringement claims. [Dkt. 285].

² These were Plaintiff’s first, second and third causes of action (alleging infringement of Plaintiff’s ‘298, ‘774 and ‘720 patents, respectively), on which judgment was entered in Defendants’ favor. [Dkt. 216, 252, 253].

³ These were Plaintiff’s fourth, fifth and sixth causes of action (for false advertising, intentional interference with prospective economic relations, and unfair competition, respectively) that the Court dismissed on summary judgment [Dkt. 216].

“exceptional” case standard under § 285 of the Patent Act as defined in *Octane Fitness LLC v. ICON Health & Fitness, Inc.*, 134 S.Ct. 1749 (2014).

Section 285 of the Patent Act states that “[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party.” 35 U.S.C. § 285. The United States Supreme Court, in *Octane Fitness*, defined “an exceptional case” for purposes of § 285 as “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.” *Id.* at 1756. The determination of whether a particular case is “exceptional” is within the court’s discretion and based upon the “totality of the circumstances.” *Id.*

Defendants contend that Plaintiffs actions in the course of this litigation make this an exceptional case. Specifically, they argue that Plaintiff’s claims were baseless and pursued “in a dilatory manner.” They assert that Plaintiff was motivated by “a desire to impose an onerous lawsuit on Defendants” and that Plaintiff demonstrated “bad faith and misconduct by its disregard of the local patent rules.” Plaintiff disputes this argument and contends the motion is premature given the remaining claims that are pending and scheduled for trial in November 2016.

The Court finds that under the totality of the circumstances, Plaintiff’s actions in the course of this litigation do not rise to the level of “exceptional.” Defendants’ Motion for Attorneys Fees is hereby DENIED.

MOTION FOR RECONSIDERATION OF SUMMARY ADJUDICATION

Plaintiff moved the Court for reconsideration of its ruling denying Plaintiff’s motion for

relief under Federal Rule of Civil Procedure 56(d) and granting Defendants' motions for summary judgment and partial summary judgment. [Dkt. 216, 221]. In its Memorandum Decision and Order [Dkt. 253], the Court denied Plaintiff's motion to reconsider its Order granting summary judgment on Plaintiff's first cause of action. The Court hereby DENIES the remainder of Plaintiff's motion for reconsideration.

IT IS SO ORDERED.

DATED this 18th day of July, 2016.

A handwritten signature in cursive script that reads "Dee Benson".

Dee Benson
United States District Judge