IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SARVINT TECHNOLOGIES, INC.,	
Plaintiff,	CIVIL ACTION FILE
v.	NUMBER 1:15-cv-69-TCB
CARRÉ TECHNOLOGIES, INC.,	
Defendant.	

O R D E R

This case comes before the Court on Plaintiff Sarvint Technologies, Inc.'s motion to dismiss this action without prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure [55]. Defendant Carré Technologies, Inc. does not oppose dismissal but argues that it should be with prejudice. Carré also moves for an award of attorneys' fees pursuant to 35 U.S.C. § 285 [58]. Also pending is Carré's motion for summary judgment [40].

Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, a plaintiff may request voluntary dismissal of its action, which a court may grant "on terms that the court considers proper." "Unless the order

states otherwise, a dismissal under [Rule 41(a)(2)] is without prejudice." *Id.* But "[a] voluntary dismissal without prejudice is not a matter of right." *Fisher v. P.R. Marine Mgmt., Inc.*, 940 F.2d 1502, 1502 (11th Cir. 1991). "[T]he district court has the discretion under Rule 41(a)(2) to dismiss [a] case with prejudice." *Cunningham v. Whitener*, 182 F. App'x 966, 971 (11th Cir. 2006). The decision to grant a motion under Rule 41(a)(2) rests "within the sound discretion of the district court," and the exercise of that discretion should take into account "the interests of the defendant, for Rule 41(a)(2) exists chiefly for protection of defendants." *Fisher*, 940 F.2d at 1503. "[I]n most cases," a motion to dismiss under Rule 41(a)(2) "should be granted unless the defendant will suffer clear legal prejudice, *other than the mere prospect of a subsequent lawsuit*, as a result." *McCants v. Ford Motor Co.*, 781 F.2d 855, 856-57 (11th Cir. 1986).

As for fee-shifting pursuant to § 285, the decision whether to grant such a motion rests in the sound discretion of the Court, which must take into account "the totality of the circumstances." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1456 (2014). The

exercise of this discretion is guided by a "'nonexclusive' list of 'factors,' including 'frivolousness, motivation, objective unreasonableness (both in the factual and legal components of the case) and the need in particular circumstances to advance considerations of compensation and deterrence.'" *Id.* at 1756 n.6 (quoting *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 n.19 (1994)).

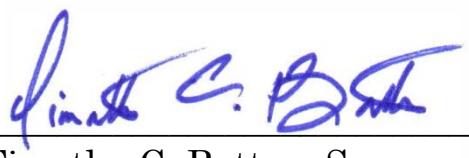
Applying these standards to this case, the Court finds that the serious questions regarding Carré's infringement warrant imposing some conditions to ensure that Carré is not subjected to future litigation without being recompensed for the expenses incurred in this lawsuit. However, the record does not show that Sarvint's claims were so objectively frivolous or unreasonable from the beginning that an award of fees pursuant to § 285 is justified. In so holding, the Court is mindful of the evidence that Sarvint diligently pursued discovery into the identity of Carré's fabric manufacturer and the manufacturing process. The Court imputes no bad faith to Carré, but it does appear that Sarvint promptly sought dismissal after it obtained the declaration of the manufacturer. Additionally, it is unclear that a more thorough pre-

filing investigation would have made Sarvint aware of the facts Carré now relies upon in asking the Court to declare this case exceptional. *Cf. Enpat, Inc. v. Microsoft Corp.*, 26 F. Supp. 2d 811, 813-14 (E.D. Va. 1998) (declaring case exceptional where the plaintiffs "presented no evidence that Enpat, its counsel, or its expert performed any prefiling investigation" whatsoever of the accused products and where the Court had found the plaintiffs' claims meritless based on "obvious factors which should have been apparent to plaintiffs early in the litigation," including facts that the plaintiffs admitted).

Instead, the Court finds that the concerns implicated by Rule 41(a)(2) and § 285 are best addressed by a conditional grant of the motion to dismiss that will ensure Sarvint does not relitigate these claims without first compensating Carré for defending against its first lawsuit. Accordingly, Sarvint's motion to dismiss this action without prejudice pursuant to Rule 41(a)(2) [55] is granted on the condition that upon any refiling of suit against Carré arising from alleged infringement of U.S. Patent Nos. 6,970,731 or 6,381,482, Sarvint must pay the attorneys' fees and costs incurred by Carré in this litigation. *See*

Versa Prods., Inc. v. Home Depot, USA, Inc., 387 F.3d 1325 (11th Cir. 2004) (affirming conditional grant of motion under Rule 41(a)(2) and holding that these conditions do not amount to legal prejudice to the plaintiff but rather are designed to protect the defendant from the unfairness of duplicative litigation). Carré's motion to declare this case an "exceptional" one and award attorneys' fees pursuant to § 285 [58] is denied. Carré's motion for summary judgment [40] is denied as moot.

IT IS SO ORDERED this 9th day of March, 2016.



Timothy C. Batten, Sr.
United States District Judge