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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED CONSTRUCTION PRODUCTS, INC., D/B/A BISON INNOVATIVE PRODUCTS,)	CASE NO. CV 14-8570-R
)	
)	ORDER DENYING PLAINTIFF'S
)	MOTION FOR AWARD OF
Plaintiff,)	ATTORNEYS' FEES
)	
v.)	
)	
TILE TECH, INC.,)	
)	
Defendant.)	
)	

Presently before the Court is Plaintiff's Motion for Award of Attorneys' Fees, which was filed on December 9, 2015. Having been thoroughly briefed by the parties, this Court took the matter under submission on January 12, 2016.

On October 5, 2015, this Court ordered Defendant Tile Tech to file a supplement to each disputed interrogatory in good faith and to produce all documents requested not subject to valid objections by 10:00 A.M. October 12, 2015. It was further ordered that if Defendant did not comply with this Court's order, default judgment would be entered against it. After non-compliance with the Court's order, Plaintiff brought a motion for default judgment, which was

1 heard on November 16, 2015. Counsel argued before this Court and for the reasons stated on the
2 record the Court granted Plaintiff’s motion for default judgment. Plaintiff’s counsel was ordered to
3 submit findings of fact and conclusions of law as well as a proposed judgment consistent with the
4 Court’s ruling.

5 On November 23, 2015, Plaintiff’s counsel filed a proposed judgment containing the
6 following language: “Pursuant to 35 U.S.C. § 284 and/or § 285, Plaintiff is entitled to recover
7 from Defendant its reasonable attorney’s fees, costs and disbursements incurred in this action.”
8 The proposed judgment was signed by the Court and entered on December 1, 2015. (Dkt. No.
9 111). It is on this language that Plaintiff’s counsel relies for recovery of attorneys’ fees in the
10 present motion.

11 Title 35 U.S.C. § 285 states that “[t]he court in exceptional cases may award reasonable
12 attorney fees to the prevailing party.” The Supreme Court in *Octane Fitness, LLC v. ICON Health*
13 *& Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014), defined an “exceptional” case as simply one that
14 stands out from others with respect to the substantive strength of a party’s litigating position or the
15 unreasonable manner in which the case was litigated. The Court held that district courts may
16 determine whether a case is “exceptional” in the case-by-case exercise of their discretion,
17 considering the totality of the circumstances. *Id.*

18 While this case has been unusual, to say the least, this Court is not prepared to qualify it as
19 “exceptional” under the standards adopted in *Octane*. This case does not stand out from others
20 with respect to the substantive strength of a party’s litigating position. And while defense counsel
21 perhaps handled the case unreasonably, this Court does not attribute that to bad faith, but instead a
22 complete lack of preparation. Considering the totality of the circumstances, the Court finds that
23 justice requires each party to pay its own attorney’s fees and expenses.

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IT IS HEREBY ORDERED that Plaintiff's Motion for Attorneys' Fees is DENIED.
(Dkt. No. 113).
Dated: January 21, 2016.



MANUEL L. REAL
UNITED STATES DISTRICT JUDGE