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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 WEST VIEW RESEARCH, LLC, a
11 California corporation,
12 Plaintiff,

13 v.

14 BAYERISCHE MOTOREN WERKE
15 AG, a German corporation;
16 BMW OF NORTH AMERICA, LLC,
17 a Delaware corporation; and BMW
18 MANUFACTURING CO., LLC, a
19 Delaware corporation,
20 Defendants.

21

And Related Counterclaim(s).

Case No.: 14-CV-2670-CAB (WVG)

**ORDER DENYING MOTION
FOR AN ORDER DECLARING
CASE EXCEPTIONAL**

[Doc. No. 108]

21 This matter is before the Court on a motion filed by Bayerische Motoren Werke AG,
22 BMW of North America, LLC and BMW Manufacturing Co., LLC, (collectively, “BMW”)
23 for an order declaring this case as exceptional and awarding BMW its attorneys’ fees since
24 December 11, 2015. [Doc. No. 108.] Upon review of the motion, and in light of the Court’s
25 familiarity with the procedural history and background of this case, a response from
26 Plaintiff is not required. The motion is **DENIED**.

27 In patent infringement disputes, “[t]he court in exceptional cases may award
28 reasonable attorney fees to the prevailing party.” 35 U.S.C. § 285. “As the statutory

1 language suggests, the award of attorneys’ fees is discretionary, and a district court may
2 decide not to award fees even in an exceptional case.” *Kilopass Tech., Inc. v. Sidense*
3 *Corp.*, 82 F. Supp. 3d 1154, 1165 (N.D. Cal. 2015) (citing *Modine Mfg. Co. v. Allen Group,*
4 *Inc.*, 917 F.2d 538, 543 (Fed. Cir. 1990) (“The decision whether or not to award fees is still
5 committed to the discretion of the trial judge, and even an exceptional case does not require
6 in all circumstances the award of attorney fees.”)).

7 “[A]n ‘exceptional’ case is simply one that stands out from others with respect to the
8 substantive strength of a party’s litigating position (considering both the governing law and
9 the facts of the case) or the unreasonable manner in which the case was litigated.” *Octane*
10 *Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014). “District
11 courts may determine whether a case is ‘exceptional’ in the case-by-case exercise of their
12 discretion, considering the totality of the circumstances.” *Id.* In that exercise, courts may
13 consider such factors as “frivolousness, motivation, objective unreasonableness (both in
14 the factual and legal components of the case) and the need in particular circumstances to
15 advance considerations of compensation and deterrence.” *Id.* at 1756 n.6 (citation omitted).

16 Upon consideration of the totality of the circumstances here, the Court does not find
17 that Plaintiff’s actions since December 11, 2015, warrant a finding that this case is
18 exceptional and entitle BMW to its attorneys’ fees from that date forward. West View’s
19 litigating position in this lawsuit was no weaker simply because BMW did not file its
20 motion at the same time as the defendants in related lawsuits. This Court’s ruling declaring
21 different patents asserted by West View in related cases to be invalid under 35 U.S.C. §
22 101 was not binding authority making it a foregone conclusion that the Court would arrive
23 at a similar decision on BMW’s motion for judgment on the pleadings, which concerned
24 two different patents. Ultimately, “[g]iven the evolving state of the law, the § 101 analysis
25 . . . is a difficult exercise,” and “therefore, not an exercise that lends itself to, e.g., shifting
26 fees pursuant to 35 U.S.C. § 285.” *Device Enhancement LLC v. Amazon.com, Inc.*, ___ F.
27 Supp. 3d ___, 2016 WL 2899246, at *7 n.12 (D. Del. 2016).

28 Separately, West View’s actions in later filed infringement actions concerning

1 different patents do not warrant a finding that West View's actions in *this* litigation were
2 unreasonable. To the contrary, the Court is not persuaded that West View's later filed
3 lawsuits concerning different patents should be transferred to the undersigned. The mere
4 fact that the undersigned handled one patent lawsuit involving these two parties does not
5 mean that every subsequent patent dispute between these parties (particularly lawsuits filed
6 years later) must also be transferred to the undersigned.

7 Accordingly, BMW's motion is **DENIED**.

8 It is **SO ORDERED**.

9 Dated: January 17, 2017



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Hon. Cathy Ann Bencivengo
United States District Judge