IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BECTON, DICKINSON & CO., PLAINTIFF,	§	
V.	§	CAUSE NO. 1:14-CV-222-LY
BAXTER INTERNATIONAL INC., DEFENDANT.	§	

ORDER

Before the court are Defendant Baxter's Motion for Fees under 35 U.S.C. § 285 and Fee Application filed July 6, 2016 (Clerk's Doc. No. 77); Plaintiff Becton, Dickinson & Co.'s Opposition to Baxter's Motion for Fees under 35 U.S.C. § 285 and Fee Application filed July 20, 2016 (Clerk's Doc. No. 79); and Defendant's Reply in Support of Baxter's Motion for Fees under 35 U.S.C. § 285 and Fee Application filed July 27, 2016 (Clerk's Doc. No. 80). Having reviewed the motion, response, reply, applicable law, and case file, the court renders the following order.

In patent cases, "[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party." 35 U.S.C. § 285 ("Section 285"). "[A]n 'exceptional' case is simply one that stands out from others with respect to the substantive strength of a party's litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014).

Federal Circuit law is applied to the issue of attorney's fees in patent-infringement cases. *Q-Pharma, Inc. v. Andrew Jergens Co.*, 360 F.3d 1295, 1299 (Fed. Cir. 2004). The Federal Circuit explains that Section 285 "is limited to circumstances in which it is necessary to prevent

a 'gross injustice' to the accused infringer" and warns that "it is not contemplated that the recovery of attorney's fees will become an ordinary thing in patent suits." *Forest Labs., Inc. v. Abbott Labs.*, 339 F.3d 1324, 1329 (Fed. Cir. 2003). The burden is on the moving party to prove the exceptional nature of the case by clear-and-convincing evidence. *Diego, Inc. v. Audible*, Inc., 505 F.3d 1362, 1368 (Fed. Cir. 2007) (quoting *Carroll Touch, Inc. v. Electro Mech. Sys., Inc.*, 15. F.3d 1573, 1584 (Fed. Cir. 1993)). "A case may be deemed exceptional when there has been some materially inappropriate conduct related to the matter in litigation, such as willful infringement, fraud or inequitable conduct in procuring the patent, misconduct during litigation, vexatious or unjustified litigation, conduct that violates Fed. R. Civ. P. 11, or like infractions." *Brooks Furniture Mfg. v. Dutailer Int'l, Inc.*, 393 F.3d 1378, 1381 (Fed. Cir. 2005).

Defendant Baxter International Inc. ("Baxter") asserts that this case qualifies as an exceptional case warranting the award of attorney's fees because Plaintiff Becton, Dickinson & Co. ("Becton") sought to enforce a "facially invalid and unenforceable patent" in contravention of the Supreme Court's ruling in *Alice Corp. Pty. v. CLS Bank International*. *See* 134 S. Ct. 2347 (2014). Baxter seeks an award of $1,026,720.96 in attorney's fees. Becton asserts Baxter is not entitled to attorney's fees because this is not an exceptional case, and Becton's arguments defending its patent were reasonable and made in good faith.

Baxter's argument ignores the presumption of validity afforded to issued patents and overlooks the role of an opposing party in our adversarial system of dispute resolution. *See Canon Computer Sys., Inc. v. Nu-Kote Int'l, Inc.*, 134 F.3d 1085, 1088 (Fed. Cir. 1998) ("[A] patent is presumed valid, and this presumption exists at every stage of the litigation."); *see also Vasudevan Software, Inc. v. Microstrategy, Inc., No.* CV 11-06637 RS, 2015 WL 4940635, at *6

(N.D. Cal. Aug. 19, 2015) (denying award of attorney's fees even though patentee "engaged in numerous questionable and overly aggressive litigation tactics," reasoning that "[o]n balance…such behavior may reasonably be interpreted as part of [patentee's] good-faith effort to advance its position in the face of [the adversary's] vigorous and equally fervent defense"). Becton was entitled to rely on and vigorously seek to enforce the patent at issue in this cause. Baxter's argument, when taken to its logical conclusion, appears to suggest that the owner of a patent similar to patents found unpatentable in *Alice* must either abandon its right to enforce the patent through an infringement action or face the risk of paying a sizeable award of attorney's fees pursuant to Section 285. The court declines to interpret Section 285 as imposing such a harsh and unfeasible fee-shifting rule on patent owners.

The court concludes that Baxter has not proved by clear-and-convincing evidence that this is an exceptional case under Section 285. The court will therefore deny Baxter's motion for attorney's fees.

IT IS THEREFORE ORDERED that Baxter's Motion for Fees under 35 U.S.C. § 285 and Fee Application (Clerk's Doc. No. 77) is **DENIED**.

SIGNED this 3rd day of February, 2017.

LEE YEAKEL
UNITED STATES DISTRICT JUDGE