

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 16-00371-SVW-MRWx

Date February 7, 2017

Title *Cap Export, LLC v. Zinus, Inc.*

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

Proceedings: IN CHAMBERS ORDER DENYING MOTION FOR ATTORNEY FEES
[75]

Having read and considered the papers presented by the parties, the Court finds this matter suitable for determination without oral argument. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing scheduled for February 13, 2017 at 1:30 p.m. is VACATED and OFF CALENDAR.

I. INTRODUCTION

This case began on January 15, 2016, when Cap Export, LLC (“Cap Export”) filed a complaint against Zinus, Inc. (“Zinus”) seeking a declaratory judgment that Zinus’s patent (“’123 Patent”) was invalid. Dkt. 1. The ‘123 Patent was for a bed in which the pieces of the bed could be disassembled and stored in a headboard compartment. This Court decided on summary judgment that the ‘123 Patent was “obvious” through a combination of prior art references, the most critical of which was a patent for the Tiffany Bed. Dkt. 70.

In the instant motion, Zinus seeks attorney fees and other relief pursuant to “35 U.S.C. § 285, 28 U.S.C. § 1927, Local Rule 83-7, and the Court’s inherent power.” Dkt. 75-1. For the following reasons, the Court DENIES this request.

II. FACTUAL BACKGROUND

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The dispute between the parties began when Cap Export started selling a product that it essentially admitted was a direct infringement of the '123 Patent. *See* dkt. 48, pg. 10. Zinus sent Cap Export a cease and desist letter. Cap Export claims it brought to Zinus's attention prior art that "verified the tenuousness of the '123 Patent" but that a resolution prior to litigation was unsuccessful. *See* dkt. 75-1 at 2. This prior art did not include the Tiffany Bed.

The Cap Parties continued to search and produce prior art throughout litigation. The Tiffany Bed was not discovered, or at least not brought to the Court's attention, until Cap Export's sur-reply to summary judgment filed on November 11, 2016. Dkt. 59. Further, throughout the litigation, Cap Export continued to pursue a specious and ultimately unsuccessful attack on Zinus's standing due to a lone scrivener's error and argued for an erroneous application of law. *See* dkt. 59 at 8 (arguing the assignment of the patent does not comply with 37 CFR § 3.21 even though that section only applies to recording patents, not assigning them).

III. LEGAL STANDARD

"The court in exceptional cases may award reasonable attorney fees to the prevailing party." 35 U.S.C. § 285. Whether a case is "exceptional" depends on the "totality of the circumstances." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S.Ct. 1749, 1756 (2014). The conduct of both parties is relevant to this analysis. *Gaymar Industries, Inc. v. Cincinnati Sub-Zero Products*, 790 F.3d 1369, 1373 (Fed. Cir. 2015).

IV. ANALYSIS

There is no evidence that counsel for Zinus acted inappropriately, let alone "exceptionally", in this case. Cap Export bases its argument on the idea that Zinus should have known all along their patent was invalid. However, it is unlikely Cap Export would have been successful had they not "stumbled upon the Tiffany reference while preparing their sur-reply brief." *See* dkt. 80 at 1. Further, Cap Export's attack on Zinus's standing was itself tenuous and included a misleading argument that the assignment violated 35 CFR § 3.21. Lastly, the Court notes that Cap Export complains that Zinus's opposition to this motion is "29 pages of conjecture and surmise, not facts". *See* dkt. 85 at 15. However, Zinus's opposition is 25 pages, *see* dkt. 80, whereas Cap Export's Reply brief is 17 pages, *see* dkt. 85, which violates this Court's standing order, *see* dkt. 9.

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V. CONCLUSION

This case was not exceptional. Zinus's counsel did not behave inappropriately at any point in the litigation. Thus, the motion for attorney fees is DENIED.

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