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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CLINICOMP INTERNATIONAL, INC.,
Plaintiff,
v.
CERNER CORPORATION,
Defendant.

Case No.: 17-cv-02479-GPC (DEB)

**ORDER GRANTING DEFENDANT’S
MOTION FOR ATTORNEY’S FEES
PURSUANT TO 35 U.S.C. § 285**

[Dkt. No. 124.]

On November 30, 2022, Defendant Cerner Corporation (“Cerner”) filed a motion for attorney’s fees pursuant to 35 U.S.C. § 285. (Dkt. No. 124.) On December 16, 2022, Plaintiff CliniComp International, Inc. (“CliniComp”) filed a response in opposition to Cerner’s motion for attorney’s fees. (Dkt. No. 127.) On December 30, 2022, Cerner filed a reply. (Dkt. No. 130.) On February 2, 2023, the Court took the motion under submission. (Dkt. No. 132.) For the reasons set forth below, the Court grants Cerner’s motion for attorney’s fees.

I. BACKGROUND

CliniComp is the owner of U.S. Patent No. 6,665,647 (“the ’647 Patent”) by assignment. (Dkt. No. 1, Compl. ¶ 2.) In the present action, CliniComp alleged that Cerner directly infringes claims 1, 2, 5, 10-13, 15-18, and 20-23 of the ’647 Patent by making, using, selling, and/or offering to sell within the United States Cerner’s CommunityWorks,

1 PowerWorks, and Lights on Network services (collectively “the accused services”). (Dkt.
2 No. 103, Ex. 2 at 21; see also Dkt. No. 1, Compl. ¶¶ 15-16.)

3 The ’647 Patent is entitled “Enterprise Healthcare Management System and Method
4 of Using Same.” U.S. Patent No. 6,665,647, at [54] (filed Dec. 16, 2003). The Federal
5 Circuit described the ’647 Patent as follows:

6 The ’647 patent describes a healthcare management system for
7 healthcare enterprises. The purpose of the ’647 patent is to allow healthcare
8 enterprises to consolidate legacy software applications and new software
9 applications together on one software platform. Many healthcare enterprises
10 utilize legacy systems for managing data related to a variety of uses, including
11 patient care, accounting, insurance, and administrative functions. These
12 established systems are often outdated and too inflexible to support healthcare
13 enterprises in the “modern managed care environment.” ’647 patent at col. 1
14 ll. 58–62. The healthcare management system described in the ’647 patent
15 allows healthcare enterprises to preserve existing legacy applications while
16 simultaneously phasing in new or updated applications on the same system.

17 The enterprise healthcare management system in the ’647 patent allows
18 enterprises to “remotely host[] . . . turnkey health care applications” and
19 “provide[s] . . . enterprise users access to the turnkey applications via a public
20 network.” Id. at col. 2 ll. 61–65. Enterprises can upgrade existing capabilities
21 and add functionality not available in their current system without significant
22 capital investments. Because the applications are hosted on a public network
23 (*i.e.*, the internet), the healthcare enterprise only needs computing resources
24 sufficient to allow secure, quality access to the internet. The “turnkey”
25 management system adjusts to changes within the enterprise as the system
26 “easily and cost-effectively scales” to respond to an enterprise’s needs. Id. at
27 col. 3 ll. 19–23.

28 The information collected by the enterprise from its applications may
be stored in a searchable database. Specifically, the ’647 patent discloses a
clinical data repository that stores information from applications within the
suite of applications on the system. The clinical data repository stores
“multidisciplinary information on a wide variety of enterprise functions.” Id.
at col. 6 ll. 31–40. For example, the clinical data repository stores
pharmaceutical, radiology, laboratory, and clinical information data utilized
by other applications of the application suite.

The ’647 patent discloses that “the clinical data repository is a database
that is partitioned” and that “the database portion may be configured as either
a logical partition or a physical partition.” Id. at col. 9 ll. 60–64. The

1 healthcare management system is also capable of supporting multiple
2 enterprises, in which case “the information related to each of the separate
3 healthcare enterprises is stored in a separate partition of the database.” Id. at
4 col. 10 ll. 6–10. As such, when multiple enterprises are involved with using
5 the system, the clinical data repository may have multiple partitions, with each
6 partition holding healthcare management information for the respective
7 enterprise.

8 Among other things, the ’647 patent describes the partitioning of data
9 for multiple enterprises so as to allow the storing of “[the] first healthcare data
10 in a first portion of the database associated with the first healthcare enterprise
11 facility” and separately storing “[the] second healthcare data in a second
12 portion of the database associated with the second healthcare enterprise
13 facility.” Id. at col. 14 ll. 24–29. The system allows two (or more)
14 independent healthcare enterprises to share access to certain applications
15 while maintaining sole access to their respective unique healthcare
16 applications. The databases are effectively “partitioned” or “portioned” in this
17 way.

18 Cerner Corp. v. Clinicomp Int’l, Inc., 852 F. App’x 532, 532–33 (Fed. Cir. 2021).

19 Independent claim 1 of the ’647 Patent, the only independent claim asserted by
20 CliniComp in this action,¹ recites:

21 1. A method of operating an enterprise healthcare management system for a
22 first healthcare enterprise facility and a second healthcare enterprise facility
23 independent of the first healthcare enterprise facility, comprising:

24 establishing a first secure communication channel via a public network
25 between an application server and a first end user device in the first enterprise
26 facility and establishing a second secure communication channel via the
27 public network between the application server and a second end user device
28 in the second enterprise facility, the application server remotely hosting a
healthcare application and having a database;

receiving first healthcare data from the first end user and second healthcare
data from the second end user;

processing the first healthcare data and the second healthcare data with the
healthcare application;

storing the processed first healthcare data in a first portion of the database

¹ (See Dkt. No. 103, Ex. 2 at 2.)

1 associated with the first healthcare enterprise facility and storing the
2 processed second healthcare data in a second portion of the database
associated with the second healthcare enterprise facility;

3 configuring the database to accept legacy information derived from a legacy
4 application operating at each of the first and second healthcare enterprise
5 facilities, wherein the functions in the healthcare application are not
duplicative of the legacy application; and

6 generating a query to extract information from the database relevant to a
7 respective one of the first and second healthcare enterprise facilities derived
8 from the healthcare data and the legacy information for managing and tracking
9 a performance of the respective one of the first and second healthcare
enterprise facilities,

10 wherein healthcare data in the first portion of the database is only accessible
11 to the first end user device and healthcare data in the second portion of the
database is only accessible to the second end user device.

12 '647 Patent col. 14 ll. 8-45.

13 On December 11, 2017, CliniComp filed a complaint for patent infringement against
14 Cerner, alleging infringement of the '647 Patent. (Dkt. No. 1, Compl.) On May 16, 2018,
15 the Court granted Cerner's motion to dismiss CliniComp's claims for willful infringement
16 and indirect infringement as well as the relief sought in connection with these claims of
17 injunctive relief, treble damages, and exceptionality damages. (Dkt. No. 18 at 21.) On
18 June 25, 2018, Cerner filed an answer to CliniComp's complaint. (Dkt. No. 19.)

19 On March 5, 2019, the Patent Trial and Appeal Board ("PTAB") instituted an *inter*
20 *partes* review ("IPR") as to claims 1-25 and 50-55 of the '647 Patent. (Dkt. No. 30-1, Ex.
21 A.) On March 7, 2019, the Court granted a stay of the action pending completion of the
22 IPR proceedings. (Dkt. No. 31.) On March 26, 2020, the PTAB issued a final written
23 decision, determining that claims 50-55 of the '647 Patent are not patentable in light of the
24 prior art, but that claims 1-25 of the '647 Patent are patentable.² (Dkt. No. 32, Ex. A at 93-
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27 ² Specifically, the PTAB concluded that Cerner had shown by a preponderance of the
28 evidence that: (1) claims 50-52 are not patentable based on Evans; (2) claims 53 and 54 are
not patentable based on Evans and Rai; (3) claims 50-53, and 55 are not patentable based

1 94.) On April 20, 2021, the Federal Circuit affirmed the PTAB’s determination that claims
2 1-25 of the ’647 Patent are patentable.³ (Dkt. No. 38-2, Ex. B at 10.) On June 24, 2021,
3 the Court granted the parties’ joint motion to lift the stay of the action. (Dkt. No. 44.)

4 On July 23, 2021, Cerner filed an amended answer to CliniComp’s complaint. (Dkt.
5 No. 52.) On October 7, 2021, the Court issued a scheduling order for the action. (Dkt. No.
6 55.)

7 On July 28, 2022, the Court issued a claim construction order, construing the
8 disputed claim terms from the ’647 Patent. (Dkt. No. 91.) On November 15, 2022, the
9 Court granted Cerner’s motion for summary judgment of non-infringement. (Dkt. No. 120.)
10 Specifically, the Court held that Cerner had demonstrated that the accused services do not
11 infringe the asserted claims of the ’647 Patent as a matter of law. (Id. at 44.) On November
12 16, 2022, the Court entered a judgment in the action in favor of Defendant Cerner and
13 against Plaintiff CliniComp. (Dkt. No. 121.) On December 30, 2022, the Clerk of Court
14 taxed costs in favor of Cerner in the amount of \$8,265.80. (Dkt. No. 131 at 3.)

15 By the present motion, Cerner moves for attorney’s fees pursuant to 35 U.S.C. §
16 285. (Dkt. No. 124-1.) Specifically, Cerner requests that the Court award Cerner its
17 attorneys’ fees incurred since July 28, 2022 – the date the Court issued its claim
18 construction order.⁴ (Id. at 1, 17.)
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22 on Johnson and Evans; and (4) claim 54 is not patentable based on Johnson, Evans, and
23 Rai. (Dkt. No. 32, Ex. A at 93-94.) The PTAB further concluded that Cerner had not
24 shown by a preponderance of the evidence: (1) that claims 1-5, 10-13, and 15-25 are
25 unpatentable based on Johnson and Evans; or (2) that claims 6-9, and 14 are unpatentable
26 based on Johnson, Evans, and Rai. (Id. at 93.)

27 ³ On November 15, 2021, the PTO issued an *inter partes* review certificate for the
28 ’647 Patent, stating: “Claims 1-25 are found patentable” and “Claims 50-55 are cancelled.”
(Dkt. No. 71-2, Ex. A at A-20–A-21.)

⁴ Pursuant to Federal Rule of Civil Procedure 54(d)(2)(B)(iii), Cerner estimates that
the amount of fees sought by its motion for attorney’s fees is “approximately \$925,000.”

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