

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

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

**ORDER AWARDING DEFENDANT
ATTORNEYS’ FEES UNDER 35
U.S.C. § 285**

On February 3, 2023, the Court granted Defendant Cerner Corporation (“Cerner”)’s motion for attorneys’ fees pursuant to 35 U.S.C. § 285; found this case to be “exceptional;” and awarded Cerner its reasonable attorneys’ fees incurred since August 29, 2022. (Dkt. No. 133.) On February 24, 2023, Cerner filed its brief in support of its request for its attorneys’ fees incurred since August 29, 2022. (Dkt. No. 136.) On March 10, 2023, CliniComp filed its response to Cerner’s request for attorneys’ fees. (Dkt. No. 141.) On March 17, 2023, Cerner filed its reply. (Dkt. No. 149.) For the reasons set forth below, the Court awards Cerner \$802,334.60 in attorneys’ fees under 35 U.S.C. § 285.

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,

1 using, selling, and/or offering to sell within the United States Cerner’s CommunityWorks,
2 PowerWorks, and Lights on Network services (collectively “the accused services”). (Dkt.
3 No. 103, Ex. 2 at 21; see also Dkt. No. 1, Compl. ¶¶ 15-16.)

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

10 On March 5, 2019, the Patent Trial and Appeal Board (“PTAB”) instituted an *inter*
11 *partes* review (“IPR”) as to claims 1-25 and 50-55 of the ’647 Patent. (Dkt. No. 30-1, Ex.
12 A.) On March 7, 2019, the Court granted a stay of the action pending completion of the
13 IPR proceedings. (Dkt. No. 31.) On March 26, 2020, the PTAB issued a final written
14 decision, determining that claims 50-55 of the ’647 Patent are not patentable in light of the
15 prior art, but that claims 1-25 of the ’647 Patent are patentable.¹ (Dkt. No. 32, Ex. A at 93-
16 94.) On April 20, 2021, the Federal Circuit affirmed the PTAB’s determination that claims
17 1-25 of the ’647 Patent are patentable.² (Dkt. No. 38-2, Ex. B at 10.) On June 24, 2021,
18 the Court granted the parties’ joint motion to lift the stay of the action. (Dkt. No. 44.)

19
20
21 ¹ Specifically, the PTAB concluded that Cerner had shown by a preponderance of the
22 evidence that: (1) claims 50-52 are not patentable based on Evans; (2) claims 53 and 54 are
23 not patentable based on Evans and Rai; (3) claims 50-53, and 55 are not patentable based
24 on Johnson and Evans; and (4) claim 54 is not patentable based on Johnson, Evans, and
25 Rai. (Dkt. No. 32, Ex. A at 93-94.) The PTAB further concluded that Cerner had not
26 shown by a preponderance of the evidence: (1) that claims 1-5, 10-13, and 15-25 are
27 unpatentable based on Johnson and Evans; or (2) that claims 6-9, and 14 are unpatentable
28 based on Johnson, Evans, and Rai. (*Id.* at 93.)

² On November 15, 2021, the PTO issued an *inter partes* review certificate for the
’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.)

1 On July 23, 2021, Cerner filed an amended answer to CliniComp’s complaint. (Dkt.
2 No. 52.) On October 7, 2021, the Court issued a scheduling order for the action. (Dkt. No.
3 55.) On July 28, 2022, the Court issued a claim construction order, construing the disputed
4 claim terms from the ’647 Patent. (Dkt. No. 91.)

5 On November 15, 2022, the Court granted Cerner’s motion for summary judgment
6 of non-infringement. (Dkt. No. 120.) Specifically, the Court held that Cerner demonstrated
7 that the accused services do not infringe the asserted claims of the ’647 Patent as a matter
8 of law. (Id. at 44.) On November 16, 2022, the Court entered a judgment in the action in
9 favor of Defendant Cerner and against Plaintiff CliniComp. (Dkt. No. 121.)

10 On December 30, 2022, the Clerk of Court taxed costs in favor of Cerner in the
11 amount of \$8,265.80. (Dkt. No. 131 at 3.) On February 3, 2023, the Court granted Cerner’s
12 motion for attorneys’ fees pursuant to 35 U.S.C. § 285, and the Court awarded Cerner its
13 reasonable attorneys’ fees incurred since August 29, 2022. (Dkt. No. 133 at 23.) By the
14 present briefing, Cerner requests that the Court award it \$802,334.60 for its attorneys’ fees
15 incurred since August 29, 2022. (Dkt. No. 144 at 1, 11; Dkt. No. 149 at 6.)

16 II. DISCUSSION

17 Cerner requests that the Court award it \$802,334.60 in attorneys’ fees under the
18 lodestar method. (Dkt. No. 144 at 1-2; Dkt. No. 149 at 6.) An award of attorneys’ fees
19 under 35 U.S.C. § 285 must be “reasonable.” Kilopass Tech., Inc. v. Sidense Corp., 82 F.
20 Supp. 3d 1154, 1164 (N.D. Cal. 2015); see SRI Int’l, Inc. v. Cisco Sys., Inc., 930 F.3d
21 1295, 1311 (Fed. Cir. 2019) (“Section 285 permits a prevailing party to recover reasonable
22 attorneys’ fees.”). “The requirement that fees awarded be reasonable is a safeguard against
23 excessive reimbursement.” IPS Grp., Inc. v. Duncan Sols., Inc., No. 15-CV-1526-CAB
24 (MDD), 2018 WL 3956019, at *1 (S.D. Cal. Aug. 17, 2018) (citing Mathis v. Spears, 857
25 F.2d 749, 754 (Fed. Cir. 1988)).

26 In calculating an attorneys’ fee award under § 285, “a district court usually applies
27 the lodestar method, which provides a presumptively reasonable fee amount by multiplying
28 a reasonable hourly rate by the reasonable number of hours required to litigate a

1 comparable case.” Lumen View Tech. LLC v. Findthebest.com, Inc., 811 F.3d 479, 483
2 (Fed. Cir. 2016) (citing Perdue v. Kenny A. ex rel. Winn, 559 U.S. 542, 551, 554 (2010));
3 see also Staton v. Boeing Co., 327 F.3d 938, 965 (9th Cir. 2003) (“When a statute provides
4 for such fees, it is termed a ‘fee-shifting’ statute. Under a fee-shifting statute, the court
5 ‘must calculate awards for attorneys’ fees using the ‘lodestar’ method.”). “Ultimately, a
6 ‘reasonable’ number of hours equals ‘the number of hours which could reasonably have
7 been billed to a private client.” Gonzalez v. City of Maywood, 729 F.3d 1196, 1202 (9th
8 Cir. 2013) (quoting Moreno v. City of Sacramento, 534 F.3d 1106, 1111 (9th Cir. 2008)).
9 A district court should not award “fees for hours expended by counsel that were ‘excessive,
10 redundant, or otherwise unnecessary.” SRI, 930 F.3d at 1311 (quoting Hensley v.
11 Eckerhart, 461 U.S. 424, 437 (1983)); accord Gonzalez, 729 F.3d at 1203.

12 “The fee applicant bears the burden of establishing entitlement to an award and
13 documenting the appropriate hours expended and hourly rates.” Hensley, 461 U.S. at 437;
14 see Welch v. Metro. Life Ins. Co., 480 F.3d 942, 945–46 (9th Cir. 2007) (“The party
15 seeking fees bears the burden of documenting the hours expended in the litigation and must
16 submit evidence supporting those hours and the rates claimed.”). “Once the party seeking
17 fees meets that initial burden of adequately documenting the hours requested, the burden
18 shifts to the opposing party” to challenge the accuracy and reasonableness of the hours
19 billed. Maloney v. T3Media, Inc., No. CV 14-05048-AB VBKX, 2015 WL 3879634, at
20 *4 (C.D. Cal. May 27, 2015); see Hiken v. Dep’t of Def., 836 F.3d 1037, 1045 (9th Cir.
21 2016) (“[T]he party opposing the fee application has a burden of rebuttal that requires
22 submission of evidence to the district court challenging the accuracy and reasonableness
23 of the hours charged or the facts asserted by the prevailing party in its submitted
24 affidavits.”) (quoting Gates v. Deukmejian, 987 F.2d 1392, 1397–98 (9th Cir. 1992)).

25 The determination of the amount of reasonable attorneys’ fees under § 285 is “‘a
26 matter that is committed to the sound discretion of a district court judge.” In re Rembrandt
27 Techs. LP Pat. Litig., 899 F.3d 1254, 1278 (Fed. Cir. 2018) (quoting Lumen View, 811
28 F.3d at 483). In awarding fees, a district court must “explain how it came up with the

1 amount,” and that explanation “must be ‘concise but clear.’” Moreno, 534 F.3d at 1111
2 (quoting Hensley, 461 U.S. at 437); see also United Steelworkers of Am. v. Phelps Dodge
3 Corp., 896 F.2d 403, 407 (9th Cir. 1990) (“[H]ours actually expended in the litigation are
4 not to be disallowed without a supporting rationale.”). “Where the difference between the
5 lawyer’s request and the court’s award is relatively small, a somewhat cursory explanation
6 will suffice. But where the disparity is larger, a more specific articulation of the court’s
7 reasoning is expected.” Moreno, 534 F.3d at 1111.

8 In support of its fees request, Cerner explains that the undiscounted hourly rates for
9 defense counsel in this action are as follows: (1) \$1,465, \$1,120, and \$1,055 for the three
10 partners; (2) \$805 and \$610 for the two associates; and (3) \$495, \$420, and \$415 for the
11 three paralegals. (Dkt. No. 144 at 2-3.) Cerner further explains that the actual hourly rates
12 paid by Cerner are lower than this due to the benefit of a negotiated discount that Cerner
13 received from defense counsel. (Id. at 2-3.)

14 The Court finds these hourly rates to be reasonable. First, “rate determinations in
15 other cases . . . are satisfactory evidence of the prevailing market rate.” United
16 Steelworkers, 896 F.2d at 407. District courts in other complex patent cases have found
17 similar rates to be reasonable in awarding attorneys’ fees. See, e.g., Orthopaedic Hosp. v.
18 Encore Med., L.P., No. 319CV00970JLSAHG, 2021 WL 5449041, at *13 (S.D. Cal. Nov.
19 19, 2021) (approving hourly rates of up to \$1,260 for partners and \$1,065 for associates as
20 reasonable); NuVasive, Inc. v. Alphatec Holdings, Inc., No. 3:18-CV-347-CAB-MDD,
21 2020 WL 6876300, at *3 (S.D. Cal. Mar. 20, 2020) (approving hourly rates of \$1,005 and
22 \$860 for partners as reasonable); Facebook, Inc. v. Power Ventures, Inc., No. 08-CV-
23 05780-LHK, 2017 WL 3394754, at *7 (N.D. Cal. Aug. 8, 2017) (approving Orrick’s hourly
24 rates of up to \$1,200 for a partner, \$800 for an associate, and \$430 for a paralegal as
25 reasonable); Healthier Choices Mgmt. Corp. v. Philip Morris USA, Inc., No. 1:20-CV-
26 4816-TCB, 2022 WL 870206, at *4 (N.D. Ga. Feb. 22, 2022) (approving hourly rates of
27
28

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.