IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DRONE TECHNOLOGIES, INC., Plaintiff	)	Civil Action No. 2:14-cv-00111
	)	Judge Arthur J. Schwab
v.	)	
PARROT S.A. and PARROT, INC. Defendants	)	FILED ELECTRONICALLY

PLAINTIFF DRONE TECHNOLOGIES, INC.'S MOTION FOR AN EXCEPTIONAL CASE FINDING UNDER 35 U.S.C. § 285, AND FOR FEES PURSUANT TO RULE 54(d), FED. R. CIV. P.

On November 3, 2014, this Court entered a default judgment against Defendants as to liability. Doc. No. 107. Believing that judgment to be final except for an accounting (28 U.S.C. §1292(c)(2)), Defendants immediately filed a Notice of Appeal. Doc. No. 108. To ensure compliance with Rule 54(d), Fed. R. Civ. P., Plaintiff Drone Technologies, Inc. moves to claim attorney's fees and related nontaxable expenses "no later than 14 days after the entry of judgment." *Id.*[1]

Section 285 of the Patent Act authorizes a district court to award attorney's fees in patent litigation. It provides, in its entirety, that "[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party." 35 U. S. C. § 285. Until recently, Federal Circuit precedent required that "[a] case may be deemed exceptional" under § 285 only in two limited circumstances: "when there has been some material inappropriate conduct," or when the

1 Plaintiff is not seeking duplicate recovery of fees and expenses assessed under Rule 37(b)(2)(C). Plaintiff notes, however, that under Rule 54(d)(2)(E), fees and expenses ordered under Rule 37(b)(2)(C) are not subject to the requirements of Rule 54(d)(2)(A)-(D).

litigation is both "brought in subjective bad faith" and "objectively baseless." *Brooks Furniture Mfg., Inc. v. Dutailier Int'l, Inc.*, 393 F.3d 1378, 1381 (Fed. Cir. 2005).

In April 2014, however, the Supreme Court overruled Federal Circuit precedent and held the word "exceptional" in the statute should be interpreted according to its ordinary meaning. *Octane Fitness, LLC v. ICON Health & Fitness, Inc.,* 134 S. Ct. 1749, 1756 (2014). In *Octane*, the Supreme Court held that an "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." *Id.* "District courts may determine whether a case is 'exceptional' in the case-by-case exercise of their discretion, considering the totality of the circumstances." *Id.*

As set forth fully in this Court's Memorandum Opinion dated November 3, 2014 [Doc. No. 107], this case is "exceptional" under the standard articulated by the Supreme Court in *Octane* and under the more stringent standard previously applied by the Federal Circuit. After all, this Court found that "Defendants have proactively and steadfastly refused to comply with Orders of Court." Doc. No. 106, at 14. This Court further held that Defendants' "unprecedented" conduct during discovery "presents this Court with the first instance of such tactical and pervasive defiance in a patent case." *Id.* at 16. Defendants "have consciously and willfully chosen to defy the Court's Orders in order to delay this litigation, attempt to obtain some tactical advantage, or for some other unknown reason. . . . Defendants have acted in bad faith." *Id.* at 22. By this reference, Plaintiff incorporates in full this Court's Memorandum Opinion dated November 3, 2014. Doc. No. 106.

Under the standard set forth in *Octane Fitness*, this case undoubtedly "stands out from others . . . given the unreasonable manner in which the case was litigated." 134 S. Ct. at 1756. Accordingly, Plaintiff respectfully requests that this Court find this case exceptional under 35 U.S.C. § 285, and award Plaintiff its attorney's fees and related non-taxable expenses. Plaintiff will provide support for the amount of fees at the time and in the manner directed by this Court. A proposed Order is filed concurrently herewith.

Respectfully submitted,

Dated: November 17, 2014

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