

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ULTRAVISION TECHNOLOGIES, LLC,)	
)	
Plaintiff,)	Case No. 2:18-cv-00100-JRG-RSP
)	(LEAD CASE)
v.)	<u>JURY TRIAL DEMANDED</u>
)	
GOVISION, LLC,)	
)	
Defendant.)	

ULTRAVISION TECHNOLOGIES, LLC,)	
)	
Plaintiff,)	Case No. 2:18-cv-00112-JRG-RSP
)	(CONSOLIDATED CASE)
v.)	<u>JURY TRIAL DEMANDED</u>
)	
SHENZHEN ABSEN OPTOELECTRONIC)	
CO., LTD., ET AL.,)	
)	
Defendants.)	

**PLAINTIFF ULTRAVISION TECHNOLOGIES, LLC'S OPPOSITION
TO SHENZHEN ABSEN OPTOELECTRONIC CO., LTD. AND ABSEN, INC.'S
MOTION FOR ATTORNEYS' FEES (DKT. 703)**

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Ultravision Technologies, LLC (“Ultravision”) files this Opposition to Defendants Shenzhen Absen Optoelectronic Co., Ltd. and Absen, Inc.’s (collectively, “Absen”) Motion for Attorneys’ Fees Under 35 U.S.C. § 285 (Dkt. 703).

I. INTRODUCTION

At one point, the verdict sheet read that Ultravision was the prevailing party. Dkt. 690-1. After five days of trial and several hours of deliberation, the jury initially sided with Ultravision, finding all patents infringed and the ’782 patent valid. *Id.* But after partially filling out the verdict form in Ultravision’s favor, the jury changed its mind, voided its initial verdict, and sided with Absen. *Id.*; Ex. A, Day 5 Trial Tr. 116:21-117:6, June 11, 2021. This case could not have been closer, and nothing about Ultravision’s case against Absen was unreasonable or exceptional under *Octane*. *Octane Fitness LLC v. ICON Health & Fitness Inc.*, 134 S. Ct. 1749 (2014). The law is clear that declaring a case exceptional and awarding attorneys’ fees is not proper simply because a party’s argument does not carry the day. *Checkpoint Sys., Inc. v. All-Tag Sec. S.A.*, 858 F.3d 1371, 1376 (Fed. Cir. 2017) (“The [Supreme] Court has cautioned that fee awards are not to be used ‘as a penalty for failure to win a patent infringement suit.’”) (quoting *Octane Fitness*, 134 S. Ct. at 1753).

Absen mischaracterizes Ultravision’s litigation positions and the evidence in an attempt to manufacture allegedly unreasonable arguments by Ultravision. None of Ultravision’s litigation positions, alone or together, meet the exceptional case standard. Once Absen’s assertions are closely examined and the totality of the circumstances considered, Absen fails to meet the high burden required by *Octane Fitness*, and its Motion proves to be as frivolous as its failed attempts at summary judgment. Absen’s Motion should be denied.

Courts in this District have held that “awards of attorney’s fees in patent cases should be reserved for rare and unusual circumstances.” *Stragent, LLC v. Intel Corp.*, No. 6:11-cv-421, 2014

WL 6756304, at *3 (E.D. Tex. Aug. 6, 2014); *see also Erfindergemeinschaft UroPep GbR v. Eli Lilly & Co.*, No. 2:15-CV-1202-WCB, 2017 WL 3044558, at *1 (E.D. Tex. July 18, 2017) (“[F]ee awards are not to be made lightly, but are to be reserved for cases that are ‘uncommon, rare, or not ordinary,’ i.e., well out of the mainstream.”) (citing and quoting *Octane Fitness*, 134 S. Ct. at 1756). By any objective measure this is not such a case, at least, because:

- 1) Ultravision overcame Absen’s Motions for Summary Judgment based on the same issues presented in the immediate Motion. Dkts. 626, 668 (improper inventorship); Dkt. 670 (non-infringement based on “cabinet,” waterproofing, and “adjacent panel”); *see Sulzer Textil A.G. v. Picanol N.V.*, 358 F.3d 1356, 1370 (Fed. Cir. 2004) (approving district court’s reasoning that surviving summary judgment indicates a claim is not baseless).
- 2) Ultravision overcame Liantronics’ Motion to Intervene in the Absen case in order to correct inventorship. Dkt. 578.
- 3) Ultravision overcame Liantronics’ Motion to Correct Inventorship in a separate litigation. Dkt. 111, Case No. 2:18-cv-00099-JRG-RSP.
- 4) Ultravision overcame Absen’s Motion for Required Findings of Fact based on Issue Preclusion and Judicial Estoppel with respect to an arbitration decision regarding misappropriation of trade secrets by third-party Shenzhen Only against Ultravision. Dkt. 655.
- 5) Ultravision overcame Absen’s Motion for Partial Summary Judgment that Ultravision’s Claim to Pre-Notice Damages is Barred for Failure to Mark Under 35 U.S.C. § 287. Dkts. 654, 669.
- 6) Ultravision was successful in its Daubert Motion of Absen’s technical expert regarding inventorship. Dkt. 661.
- 7) Ultravision was successful in its Motion to Exclude Absen’s technical expert from relying on the Daktronics ProTour for Absen’s invalidity arguments against the ’904 Patent. Dkt. 646.
- 8) Ultravision overcame Absen’s Daubert Motion of its damages expert. Dkt. 656.
- 9) At trial, Absen dropped its marking defense that it pursued throughout discovery. [REDACTED] [REDACTED]).
- 10) At trial, Absen dropped its invalidity arguments based on the Shenzhen Only V-Series, the Yaham DT12.5, and the Barco C11, which it pursued throughout discovery and expert discovery.

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