

LUMEN VIEW TECHNOLOGY LLC v. FINDTHEBEST.COM, INC., Appeal Nos. 2015-1275, 2015-1325 (Fed. Cir. January 22, 2016). Before Lourie, Moore and Wallach. Appealed from S.D.N.Y. (Judge Cote).

Background:

Lumen View sued Findthebest.com ("FTB") for allegedly infringing Lumen View's '073 patent, even after being informed by FTB's counsel that FTB's accused search website assistance feature did not use the multilateral preference matching process claimed in Lumen View's patent. The district court eventually found the claims of Lumen View's '073 patent to be invalid under 35 U.S.C. §101. FTB then moved for attorney's fees on the ground that the case was exceptional under 35 U.S.C. §285. The district court granted FTB's motion, finding that "the most basic" pre-suit investigation would have shown that FTB's accused assistance feature did not use the claimed multilateral preference matching process. In the decision awarding attorney's fees, the district court enhanced the lodestar amount by a multiplier of two, in light of "the need to deter the plaintiff's predatory strategy," and the fact that the lodestar amount in this particular instance was extremely low as a result of the court's expeditious resolution of the case. Lumen View appealed.

Issues/Holdings:

(1) Did the district court err in finding the case exceptional? No, affirmed. (2) Did the district court err in enhancing the lodestar amount? Yes, vacated and remanded for determining reasonable attorney's fees.

Discussion:

With regard to (1), the Federal Circuit first noted that the U.S. Supreme Court's *Octane Fitness* case states that "[a] district court may award fees in the rare case in which a party's unreasonable conduct - while not necessarily independently sanctionable - is nonetheless so 'exceptional' as to justify an award of fees." The Federal Circuit found that even if Lumen View's litigation conduct was not quite sanctionable, the district court had reasonably determined that the case was exceptional. As evidence, the Federal Circuit noted that Lumen View's allegations of infringement were ill-supported (particularly in light of the parties' communications), and thus that the lawsuit appears to have been baseless.

With regard to (2), the Federal Circuit noted that in rare and exceptional cases, a district court may enhance the lodestar amount. However, the Federal Circuit agreed with Lumen View's argument that the district court failed to provide a proper rationale to justify enhancing the attorney fee award by a multiplier of two. First, the Federal Circuit found that the district court's stated rationale of deterrence is not generally a factor to be considered in determining a reasonable attorney fee under §285. Although deterrence may be a consideration in determining *whether* to award attorney fees, it is not an appropriate consideration in determining the *amount* of a reasonable attorney fee. Second, although the fact that the case was expeditiously decided may be considered in the initial determination of the lodestar amount, this fact does not provide a basis for *enhancement* of the lodestar amount. Therefore, the Federal Circuit vacated the attorney fee award, and remanded to the district court for recalculation.