



District Court Finds That Case Is Not Exceptional Under 35 U.S.C. § 285 Because Patent-Eligibility Law “Evolved” After Plaintiff Filed Suit

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The patent-in-suit, U.S. Patent No. 8,630,942, entitled “Method of Billing a Purchase Made Over a Computer Network,” is directed to payment authorization and fraud control for Internet transactions. Within months of the lawsuit being filed, defendant filed a petition for Covered Business Method review on all claims of the patent-in-suit. Citing *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, the Patent Trial and Appeal Board (PTAB) instituted review of all claims on September 11, 2015, because the claims are directed to the abstract idea of “preventing fraud based on the buyer’s identifying information.”

Two months later, on November 11, 2015, plaintiff filed an opposed motion to dismiss; the patent owner filed a Request for Cancellation and Adverse Judgment with the PTAB on December 9, 2015. Defendant opposed the motion to dismiss so that it could seek fees under 35 U.S.C. § 285.

With all claims of the patent-in-suit canceled, defendant filed a motion for attorneys’ fees and costs under 35 U.S.C. § 285. Defendant argued that it was objectively unreasonable for plaintiff to believe that the claims of the patent-in-suit were directed to patent-eligible subject matter, given the *CyberSource* decision. Also, plaintiff should have evaluated whether the patent-in-suit was directed to patent-eligible subject matter as part of its pre-suit investigation. The court, however, found that “Plaintiff’s litigation position was not frivolous or objectively unreasonable,” because the “substantive law of Section 101 patent-eligibility has evolved since Plaintiff initiated this lawsuit.” Defendant also argued that bad faith could be inferred from the patent owner’s decision to obtain an adverse judgment from the PTAB. The court, however, accepted plaintiff’s explanation that the potential damages in the case did

not justify defending the patent-in-suit before the PTAB. As a result, the court denied plaintiff's fees motion.

Credit Card Fraud Control Corp. v. MaxMind, Inc., 14-3262 (N.D. Tex. Apr. 7, 2016)

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