



## **In Bovino v. Levenger, the United States District Court for the District of Colorado Determined That the Plaintiff's Case and Conduct Were "Exceptional" and Granted Defendant's Motion for Attorney Fees**

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Here, the court found that both the weakness of plaintiff's litigation positions and the unreasonableness of plaintiff's conduct warranted an award of attorney fees for the defendant. Regarding litigation positions, the court found that plaintiff's claim of direct patent infringement was "baseless and factually unsupported from the beginning of the case." In its complaint, plaintiff alleged that the defendant infringed claims directed to a portable computer having an integral case. However, at the same time, the complaint alleged that defendants sell or manufacture only portable computer cases. Thus, as the court explained, "although plaintiff's patent was directed toward a computer *and* an integral case, defendant only manufactured cases." As for plaintiff's litigation conduct, the court found plaintiff's affirmative representations concerning the timing of his awareness of several invalidating prior art references to not be credible. The court considered such "incorrect factual assertions" with respect to these references in finding this case to be exceptional.

*Bovino v. Levenger Co.*, 14-cv-00122 (D. Colo. April 21, 2016) (Moore, J.).

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