

Bad Faith Patent Litigation Is Bad News For Plaintiffs

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Affirming a \$1.6 million dollar award for attorney fees against a non-practicing entity (NPE) for pursuing and maintaining patent litigation in bad faith, the Federal Circuit has served notice that patent litigants "must continually assess the soundness of pending infringement claims, especially after an adverse claim construction."¹

In *Taurus IP, LLC v. Daimler Chrysler Corp.*, the Federal Circuit reviewed the District of Wisconsin's exceptional case determination without deference and independently determined that Taurus's case was objectively baseless and maintained in bad faith. The patent-in-suit, U.S. Patent No. 6,141,658, is directed to a computer system for managing product sales information. Taurus asserted claims against defendants on the theory that an Internet user of the defendants' websites could be a "user" of the system within the meaning of the asserted patent. The Federal Circuit reasoned that Taurus's proposed construction for the term "user" was unsupported by the patent's specification and the file history and below "the threshold required to avoid a finding of objective baselessness." The Federal Circuit held that "no reasonable litigant in Taurus's position could have expected a finding that a web surfer accessing the accused external websites satisfied the requirement for an 'user' as recited in the asserted independent claim."

Other district courts have cited the District of Wisconsin's ruling for the proposition of awarding attorney's fees for prolonging patent litigation in bad faith. In *BIAX Corp. v. NVIDIA*, the District of Colorado this week denied a motion for reconsideration of over \$2 million dollars in attorney's fees and costs that parties agreed would result in the plaintiff seeking bankruptcy protection.²

Outside the NPE context, the Federal Circuit has also recently affirmed an exceptional case determination and award of attorney fees and costs in litigation between competitors.³ In *Monolithic Power Systems, Inc. v. O2 Micro Int'l Ltd.*, the Federal Circuit rejected the argument that "vexatiousness may be found only when coupled with the assertion of 'objectively baseless' positions" and upheld an award for over \$8 million dollars in attorney fees.

These cases provide defendants with well-deserved ammunition against plaintiffs maintaining questionable patent infringement suits. As the Federal Circuit noted, "attorneys are always charged with the 'obligation to file cases reasonably based in law and fact and to litigate those cases in good faith.'" Plaintiffs and their counsel should consider themselves on notice and be mindful of the obligation to re-evaluate their allegations after claim construction.

¹ *Taurus IP, LLC v. Daimler Chrysler Corp.*, ___ F.3d ___, Nos. 2008-1462, 2008-1463, 2008-1464, 2008-1465, 2013 U.S. App. LEXIS 16507 (Fed. Cir. Aug. 9, 2013) *affirming Taurus IP, LLC v. DaimlerChrysler Corp.*, 559 F. Supp. 2d 947 (W.D. Wis. 2008).

² *BIAX Corp. v. NVIDIA Corp.*, No. 09-cv-01257-PAB-MEH at Dkt. No. 1076, U.S. Dist. LEXIS 113314 (D. Colo. Aug. 12, 2013); *see also BIAX Corp. v. NVIDIA Corp.*, No. 09-cv-01257-PAB-MEH at Dkt. No. 1077 (D. Colo. Aug. 12, 2013) (awarding defendant NVIDIA \$1,283,030.77 in attorney's fees and \$28,648.24 in costs, awarding defendant Sony \$688,773 in attorney's fees and \$10,913 in costs).

³ *Monolithic Power Systems, Inc. v. O2 Micro Int'l Ltd.*, ___ F.3d ___, No. 2012-1221 (Fed. Cir. Aug. 13, 2013) (upholding an award of \$8,419,429 for attorney fees).