Two U.S. Supreme Court Decisions Make It Easier To Award Attorney Fees In Patent Infringement Cases

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The U.S. Supreme Court issued two landmark decisions reversing existing Federal Circuit precedent on the fees that can be awarded to the prevailing party in exceptional patent infringement cases. Both cases involved the interpretation of 35 U.S.C. § 285, which is the patent statute for awarding attorney fees to the prevailing party “in exceptional cases.” In *Octane Fitness, LLC v. Icon Health & Fitness*, the Supreme Court was asked to review the substantive standard for awarding attorney fees pursuant to Section 285. In *Highmark Inc. v. Allcare Health Management System, Inc.*, the litigants asked the Supreme Court to review the standard of review of Section 285 on appeal. Both cases were argued in February.

In *Octane Fitness*, the Supreme Court defined “exceptional case” under Section 285 to mean “one that stands out from others with respect to the substantive strength of a party’s litigation position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated.” This reversed a long-standing Federal Circuit interpretation of “exceptional case” to two limited circumstances: “when there has been some material inappropriate conduct,” or when the litigation is both “brought in subjective bad faith” and “objectively baseless.” The Supreme Court noted that the framework established by the Federal Circuit “is unduly rigid and it impermissibly encumbers the statutory grant of discretion to district courts.” Although the Supreme Court indicated that exceptional cases should still be “rare,” this decision substantially relaxes the requirements for finding a case exceptional, and should assuage concerns expressed by the industry and the patent bar that the current regime in patent law is doing too little to deter aggressive patent assertion entities (i.e., “trolls”) from bringing baseless lawsuits.

Next, the Supreme Court tossed out the existing “de novo” standard of review established by the Federal Circuit for exceptional cases. Under that standard, a district court’s determination that a case was exceptional was afforded no deference by the Federal Circuit, which could decide for itself whether or not a case was exceptional. Instead, the *Highmark* court held that “all aspects of a district court’s exceptional-case determination under §285 should be reviewed for abuse of discretion.” This change in the standard of review complements the holding in *Octane Fitness*, and should give district courts greater confidence to find meritless cases exceptional by making it more difficult for the Federal Circuit to overturn their decisions on this issue.

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