

## APPENDIX

Table 3 - All Cases Involving § 285 Motions as of March 1, 2015

Case	Court	Fees Awarded?	Reasoning for Outcome	Cases Cited for Standard	Award?	NPE Involvement? <sup>1</sup>
<i>Kaneka Corp. v. Zhejiang Med. Co.</i> <sup>i</sup>	C.D. Cal.	No	The court held that an adverse claim construction issued apart from a case-dispositive motion would not only create an intolerable bargaining position between parties, but was issued in a majority of patent cases, and this situation could not be considered rare, unusual, or extraordinary under <i>Octane</i> and 35 U.S.C. § 285.	<i>Inland Steel Co. v. LTV Steel Co.</i> , 364 F.3d 1318, 1321 (Fed. Cir. 2004); <i>Octane Fitness, LLC v. ICON Health &amp; Fitness, Inc.</i> , 134 S. Ct. 1749 (2014)	N/A	No (Kaneka - Operating company)
<i>Ceiva Logic Inc. v. Frame Media Inc.</i> <sup>ii</sup>	C.D. Cal.	Yes	The court found that the case was exceptional because the plaintiff established that the defendants willfully infringed on the patent.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Derek Andren, Inc. v. Poof Apparel Corp.</i> , 528 F.3d 696, 702 (9th Cir. 2008);	Not determined yet	N/R

1. As discussed earlier in this Note, a party was considered an “NPE” if it was categorized as a patent holding company or a large aggregator in a dataset compiled by Christopher A. Cotropia et al., 2010 Patent Holder and Litigation Dataset, *available at* <http://npedata.com> (last updated May 28, 2014). The dataset consists of all patent litigation cases during 2010 and 2011. If the database did not contain a categorization for either party in a case, it was labeled as “N/R” for “no record.”

				<i>Rubbermaid Commercial Prods., LLC v. Trust Commer. Prods.</i> , No. 2:13-cv-02144-GMN-GWF, 2014 U.S. Dist. LEXIS 142745 (D. Nev. Aug. 22, 2014)		
<i>Cambrian Sci. Corp. v. Cox Commc'ns, Inc.</i> <sup>iii</sup>	C.D. Cal.	Yes	The plaintiff's litigating position, while unpersuasive, was not so meritless as to "stand out from others," but the plaintiff's claims on two of the devices were exceptionally lacking in substantive strength after claim construction. Furthermore, the plaintiff's litigation behavior was uncommon and rare such that its case against the defendant was exceptional.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.</i> , 134 S. Ct. 1744 (2014)	Not determined yet <sup>2</sup>	No (Cox - Operating company)
<i>Romag</i>	D.	Yes	The court concluded that the defendant's	<i>Octane Fitness</i> , 134 S.	Not	No (Romag -

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2. Although the actual award has not been determined yet, the court specifically stated that fees should only be granted for the time spent on Cambrian's continued inclusion of two of the products after June 17, 2013, as well as a reasonable award of fees for the defendant's defense of the entire case.

<i>Easterners, Inc. v. Fossil, Inc.</i> <sup>iv</sup>	Conn.		pursuit of its indefiniteness invalidity defense, and its failure to formally withdraw its remaining invalidity defenses until after the close of evidence weighed in favor of an award of fees in this case.	Ct. at 1749	determined yet <sup>3</sup>	Operating company)
<i>EON Corp. IP Holdings, LLC v. FLO TV Inc.</i> <sup>v</sup>	D. Del.	No	The court stated, “The substantive strength of EON's case was not so conspicuously deficient as to justify the award of attorney's fees, and although the court eventually found all asserted claims to be invalid as indefinite, the decision was not an easy one. Therefore, the plaintiff did not litigate the case unreasonably.”	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	Yes (EON - Patent holding company)
<i>Pragmatus Telecom LLC v. Newegg Inc.</i> <sup>vi</sup>	D. Del.	No	The defendant was not considered a prevailing party because dismissal for a license obtained by a third party that protected Newegg did not settle a dispute in favor of Newegg.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Buckhannon Bd. &amp; Care Home, Inc. v. W. Virginia Dep't of Health &amp; Human Res.</i> , 532 U.S. 598, 603 (2001)	N/A	Yes (Pragmatus Telecom LLC - Patent holding company)

3. Although the fee award has not yet been determined, the court stated that the plaintiff's awarded fees may not include costs and fees related to pursuit of a TRO, non-taxable costs under CUPTA, and fees incurred solely in pursuit of Plaintiff's Lanham Act claim for an award of Defendant's profits.

<i>Gevo, Inc. v. Butamax Advanced Biofuels, LLC</i> <sup>vii</sup>	D. Del.	No	The plaintiff's conduct in the case at bar was not considered unreasonable, nor was there evidence of "subjective bad faith." Although Gevo did not prevail on summary judgment, the court's opinion was delivered after hearing oral arguments on the issues and was based on the parties' briefing and the expert reports. Therefore, the claims were not "exceptionally meritless."	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	No (Gevo - Operating company, Butamax - Operating company)
<i>Parallel Iron LLC v. NetApp Inc.</i> <sup>viii</sup>	D. Del.	No	The court held that there must be a dispute that was settled in favor of the party seeking to be declared the prevailing party that materially alters the legal relationship between the parties. There was no settlement agreement, the court made no findings on the merits, and the case was not resolved via a consent decree. Therefore, the defendant was not a prevailing party under § 285.	<i>Inland Steel</i> , 364 F.3d at 1321; <i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Buckhannon Bd. &amp; Care Home, Inc.</i> , 532 U.S. at 603	N/A	Yes (Parallel Iron LLC - Patent holding company)
<i>Chalumeau Power Sys. LLC v.</i>	D. Del.	Yes	Plaintiff Chalumeau's infringement theories and claim construction positions were frivolous. The plaintiff only put forth a	<i>Octane Fitness</i> , 134 S. Ct. at 1749	\$799,096.02 <sup>4</sup>	N/R

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4. Attorney's fees for defense of the case using Delaware rates.

<i>Alcatel-Lucent</i> <sup>x</sup>			"meager effort" in the pre-suit investigation, and as a whole, the plaintiff's positions were frivolous.			
<i>Summit Data Sys., LLC v. EMC Corp.</i> <sup>x</sup>	D. Del.	Yes	Despite having no other evidence that NetApp's (defendant) product could infringe the asserted patents in a system not running the Microsoft software, Summit (plaintiff) brought suit against NetApp and took eighteen months to disclose the existence of a licensing agreement to NetApp.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Eon-Net LP v. Flagstar Bancorp</i> , 653 F.3d 1314 (Fed. Cir. 2011)	\$1,395,514 .62 <sup>5</sup>	No (EMC Corp - Operating company)
<i>Inventio AG v. Thyssenkrupp Elevator Corp.</i> <sup>xi</sup>	D. Del.	No	The defendant offered no basis for an "exceptional" finding other than inequitable conduct based on the best mode violation. However, the court found no inequitable conduct and the defendant did not identify, nor did the court find, any other reason that the case "stood out" from the others.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Therasense, Inc. v. Becton, Dickinson and Co.</i> , 649 F.3d 1276 (Fed. Cir. 2011)	N/A	Yes (Inventio AG - Patent holding company)
<i>Poly-America, L.P. v. API Indus., Inc.</i> <sup>xii</sup>	D. Del.	No	The court held that the case was not exceptional when considering the parties' shifting contentions (e.g. the defendant API's initial "ordinary observer" contention that was rejected by the court) and the	No citation to a case	N/A	N/R

5. Attorney's fees incurred in this case plus any additional expenses incurred in filing the present motion.

			efforts expended by the court in reaching its conclusions.			
<i>Bayer CropScience AG v. Dow AgroSciences, LLC</i> <sup>xiii</sup>	D. Del.	Yes	The plaintiff's (Bayer) case was exceptionally weak because the arguments were built upon "contorted theor[ies]" and "conjectural conclusions" that "[d]id not trump ... reality" and "amount[ed] to distraction."	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Highmark</i> , 134 S. Ct. at 1744	\$5,761,936.79 <sup>6</sup>	No (Bayer - Operating company)
<i>Momenta Pharms., Inc. v. Teva Pharms. USA, Inc.</i> <sup>xiv</sup>	D. Mass.	No	The plaintiff (Momenta) may have had an objective basis to file suit for infringement because it was plausible that at the outset, the defendant (Teva) used the claimed methods, even if it was possible to use a non-infringing method. Furthermore, it was not unreasonable for the plaintiff to continue litigating its claims under the '886 patent after the Federal Circuit vacated the injunction entered in its favor in a related case. The plaintiff notified the defendant that it would no longer assert the claims related to the '466 patent shortly after completing discovery. Finally, there was	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	No (Teva Pharms - Operating company)

6. Magistrate judge's recommendation; apportioned for the cost of defending plaintiff's appeal and preparing its fee petition, the work from August 2011 through the oral argument on the present motion, but deducts the time expended in the case where fees were not incurred defending the present litigation, updated fees in January 5, 2015.

			insufficient evidence that the plaintiff acted in bad faith or that its conduct with respect to the Pharmacopeia's standard-setting process tainted the instant litigation.			
<i>Classen Immunotherapies, Inc. v. Biogen Idec</i> <sup>xv</sup>	D. Md.	Yes	The plaintiff's (Classen) infringement claims against the defendant (Biogen) were objectively baseless.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Samsung Elec. Co., Ltd. v. Rambus, Inc.</i> , 440 F. Supp. 2d 495 (E.D. Va. 2006)	Not determined yet <sup>7</sup>	N/R
<i>Aviva Sports v. Fingerhut Direct Mktg.</i> <sup>xvi</sup>	D. Minn.	No	Despite the new standard, there was nothing that stood out from others with respect to the substantive strength of the plaintiff's litigating position or the manner in which the plaintiff litigated the case.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Highbark</i> , 134 S. Ct. at 1744	N/A	N/R
<i>Univ. of Manitoba v. Draeger Med., Inc.</i> <sup>xvii</sup>	D. N.D.	No	The case did not stand out as being frivolous and it was not prosecuted in an unreasonable manner.	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	No (Draeger - Operating company)
<i>Shire LLC v. Amneal</i>	D. N.J.	No	The case was a fairly typical Hatch-Waxman case because the defendants behaved the	<i>Octane Fitness</i> , 134 S. Ct. at 1749;	N/A	No (Shire - Operating

7. Attorneys' fees and expenses incurred after Biogen offered unrefuted evidence that Classen knew from January 26, 2005 that its claims were objectively baseless.

<i>Pharms.</i> <sup>xviii</sup>			way most defendants typically do when they seeking to market a generic version of a pharmaceutical protected by patents.	<i>Yamanouchi Pharm. Co. v. Danbury Pharmacal, Inc.</i> , 231 F.3d 1339, 1347 (Fed. Cir. 2000)		company)
<i>Home Gambling Network, Inc. v. Piche</i> <sup>xix</sup>	D. Nev.	Yes	The court found that the case was exceptional based on the totality of the circumstances: the plaintiffs alleged in their amended complaint that live casinos were located outside the United States in Costa Rica despite controlling federal circuit law holding that an infringement of a method patent could not lie unless all steps were performed in the US; the plaintiffs attempted to sue for infringement of a patent they did not own and voluntarily relinquished years earlier; the plaintiffs engaged in patent misuse by purposefully attempting to limit the defendants' usage of subject matter that was beyond the scope of the method patent from the license granted.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Highmark</i> , 134 S. Ct. at 1744	Not determined yet	N/R
<i>Rimlinger v. Shenyang 245 Factory</i> <sup>xx</sup>	D. Nev.	No	The plaintiffs provided no indication that the case was "exceptional."	No citation to a case	N/A	N/R
<i>Rubbermaid</i>	D.	Yes	The court found that the infringement was	<i>Octane Fitness</i> , 134 S.	\$272,523.7	No



<i>Commer. Prods., LLC v. Trust Commer. Prods.</i> <sup>xxi</sup>	Nev.		willful.	Ct. at 1749; <i>Highbark</i> , 134 S. Ct. at 1744	6 <sup>8</sup>	(Rubbermaid - Operating company)
<i>JS Prods. V. Kabo Tool Co.</i> <sup>xxii</sup>	D. Nev.	No	The defendant's (Kabo) manner of litigation was not exceptional – there was no "smoking-gun" type evidence that the defendant acted with the sole intent to disrupt the plaintiff's (JSP) business.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Highbark</i> , 134 S. Ct. at 1744	N/A	No (Kabo - Operating company)
<i>Pure Fishing, Inc. v. Normark Corp.</i> <sup>xxiii</sup>	D. S.C.	Yes	The plaintiff's (Pure Fishing) shifting positions as to claim construction and the ultimate dependence of the claim on the plaintiff's "one-molecule theory of claim construction" was objectively baseless. The plaintiff should have recognized the extreme weakness of the Kelley Claim prior to the date the defendant (Normark) filed its answer.	<i>Octane Fitness</i> , 134 S. Ct. at 1749	\$283,127.09 <sup>9</sup>	No (Pure Fishing - Operating company)

8. The number of hours reasonably expended in the litigation, but considering a myriad of factors such as the time and labor required; the novelty and difficulty of the issues; the skill required to perform the legal service properly; etc.

9. Additional award of fees because plaintiff should have recognized the extreme weakness of the Kelley Claim prior to the date defendant filed its answer and the need for compensation and deterrence in light of the degree to which the claim was pursued in an unreasonable manner.

<i>Western Holdings, LLC v. Summers</i> <sup>xxiv</sup>	D. Utah	No	In this case, the plaintiff filed its complaint, the defendant filed a motion to dismiss based on FRCP Rules 12(b)(2) 12(b)(3), and 12(b)(6), and the plaintiff voluntarily dismissed its claim. The court held that there was nothing in the record indicated that the case stood out from the others.	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	N/R
<i>Catheter Connections, Inc. v. Ivera Med. Corp.</i> <sup>xxv</sup>	D. Utah	No	An award of the defendant's attorney's fees was not warranted because it was not an "extraordinary case," and in the dismissal in October 2013, the parties agreed that each party would bear its own costs and attorneys' fees.	35 U.S.C. § 285 (2012)	N/A	No (Ivera - Operating company)
<i>Intex Rec. Corp. v. Team Worldwide Corp.</i> <sup>xxvi</sup>	D.C.	Yes	The defendant's (Team Worldwide Corporation) arguments in view of claim construction were exceptionally meritless because the arguments could not be reasonably described as argued at summary judgment.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Small v. Implant Direct Mfg., LLC</i> , No. 06 Civ. 683, 2014 U.S. Dist. LEXIS 154468 (S.D.N.Y. Oct. 23, 2014); <i>Cognex Corp. v.</i>	Not determined yet <sup>10</sup>	N/R

10. Fees requested are specific to those incurred since November 1, 2013 when TWW insisted on proceeding to summary judgment despite having received an adverse claim construction.

				<i>Microscan Sys.</i> , No. 13-CV-2027, 2014 U.S. Dist. LEXIS 91203 (S.D.N.Y. June 29, 2014)		
<i>Wiley v. RockTenn CP, LLC</i> <sup>xxvii</sup>	E.D. Ark.	No	The theory of post-terminations sales of the product used to bring and maintain a lawsuit was not exceptional. The court also noted that even if the case was considered exceptional, the court was exercising its discretion not to award fees.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Fogerty v. Fantasy, Inc.</i> , 510 U.S. 517, 534 n.19 (1994)	N/A	No (Wiley - Individual)
<i>Chicago Bd. Options Exch., Inc. v. Int'l Sec. Exch., LLC</i> <sup>xxviii</sup>	E.D. Ill.	Yes	The plaintiff's (ISE) litigation conduct in the face of the weakness of its infringement claims stood out from most other patent cases to which the court had been assigned.	<i>Octane Fitness</i> , 134 S. Ct. at 1749	Not determined yet	No (International Securities Exchange - Operating company)
<i>Bianco v. Globus Med, Inc.</i> <sup>xxix</sup>	E.D. Tex.	No	The court held that the defendant failed to show the plaintiff's inventorship claim was either baseless or pursued in bad faith. (The plaintiff's request for relief in the form of correction of inventorship on any patents that might emerge from applications was not unreasonable.) Therefore, the case did not present either subjective bad faith or	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	N/R

			exceptionally meritless claims that may sufficiently set it apart from mine-run claims to warrant a fee award.			
<i>Stragent LLC v. Intel Corp.</i> <sup>xxx</sup>	E.D. Tex.	No	The defendant did not seek summary judgment of non-infringement.	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	Yes (Stragent - Patent holding company)
<i>Tech. Advancement Group, Inc. v. IvySkin, LLC</i> <sup>xxxi</sup>	E.D. Va.	No	The defendant's infringement was not willful and the court found that "simply failing to respond to a lawsuit" did not rise to the standard of exceptional.	<i>Wedgetail Ltd. v. Huddleston Deluxe, Inc.</i> , 576 F.3d 1302, 1304-05 (Fed. Cir. 2009); <i>Deckers Outdoor Corp. v. ShoeScandal.com, LLC</i> , No. CV 12-7382, 2013 U.S. Dist. LEXIS 168545, at *4 (C.D. Cal. Nov. 25, 2013)	N/A	No (Technology Advancement Group - Operating company)
<i>Stretchline Intellectual Props. v. H&amp;M Hennes &amp; Mauritz LP</i> <sup>xxxii</sup>	E.D. Va.	No	The plaintiff's decision to "remain silent" was an insufficient foundation for a finding of inequitable conduct, and therefore, there was no basis for attorneys' fees under § 285.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Highbark</i> , 134 S. Ct. at 1744	N/A	No (Stretchline - Operating company)

<i>IPVX Patent Holdings, Inc. v. Taridium, LLC</i> <sup>xxxiii</sup>	E.D.N.Y.	No	There were no allegations of willful infringement and Taridium defaulted; therefore, there was no determination of an "exceptional" case.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Lumen View Tech., LLC v. Findthebest.com, Inc.</i> , 24 F. Supp. 3d 329 (S.D.N.Y. 2014); <i>Cognex Corp. v. Microscan Sys., Inc.</i> , 2014 U.S. Dist. LEXIS 91203	N/A	No (IPVX - Individual/family trust)
<i>SmartWater, Ltd. v. Applied DNA Scis., Inc.</i> <sup>xxxiv</sup>	E.D.N.Y.	No	The defendant (SmartWater) did not display bad faith in the course of the litigation and its claims were not "exceptional" in their weakness such that a fee award was considered appropriate.	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	No (Smartwater - Operating company)
<i>SmartWater, Ltd. v. Applied DNA Scis., Inc.</i> <sup>xxxv</sup>	E.D.N.Y.	No	The defendant (SmartWater) did not display bad faith in the course of the litigation and its claims were not "exceptional" in their weakness such that a fee award was considered appropriate.	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	No (Smartwater - Operating company)
<i>CreAgri, Inc. v. Pinnacle, Inc.</i> <sup>xxxvi</sup>	N.D. Cal.	No	"The totality of the circumstances" did not render the case exceptional. The court stated that nothing about the plaintiffs (CreAgri) pleadings suggested bad faith obstructionism and that the record did not suggest that	<i>Octane Fitness</i> , 134 S. Ct. at 1749, <i>Highmark</i> , 134 S. Ct. at 1744.	N/A	N/R

			CreAgri litigated this case so unreasonably as to render it exceptional.			
<i>EON Corp. IP Holdings, LLC v. Cisco Sys. Inc.</i> <sup>xxxvii</sup>	N.D. Cal.	No	The court stated that "no bright-line rules define the parameters of what is exceptional, and no single element (such as baselessness or sanctionability) is dispositive." The court agreed that the plaintiff's infringement contentions lacked merit but that by themselves they were not enough to render a case "extraordinary."	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>CreAgri, Inc. v. Pinnacle, Inc.</i> , No. 11-CV-6635-LHK, 2014 U.S. Dist. LEXIS 77484 (N.D. Cal. June 3, 2014)	N/A	Yes (EON - Patent holding company)
<i>Kilopass Tech. Inc. v. Sidense Corp.</i> <sup>xxxviii</sup>	N.D. Cal.	Yes	The plaintiff's failure to conduct an adequate pre-filing investigation prior to filing the present action theories of infringement was objectively baseless, and the claims for literal infringement were exceptionally meritless. The plaintiff litigated the action in an unreasonable manner including shifting theories of infringement late in litigation and without following proper procedures for the amendment of contentions.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>MarcTec, LLC v. Johnson &amp; Johnson</i> , 664 F.3d 907, 915 (Fed. Cir. 2012)	Not determined yet	No (Kilopass-Operating company)
<i>Yufa v. TSI</i>	N.D.	Yes	The plaintiff did not conduct an adequate	<i>Octane Fitness</i> , 134 S.	\$154702.7	No (Yufa -

<i>Inc.</i> <sup>xxxix</sup>	Cal.		pre-filing investigation, should have known the claim was meritless, and the plaintiff was an experienced pro se litigant.	Ct. at 1749; <i>Highbark</i> , 134 S. Ct. at 1744; <i>Comora v. Thermo Cardiosystems, Inc.</i> , CV 91-5620-WMB, 1992 U.S. Dist. LEXIS 11677 (C.D. Cal. May 5, 1992)	5 <sup>11</sup>	Individual, TSI Inc. - Operating company)
<i>Gametek LLC v. Zynga, Inc.</i> <sup>xi</sup>	N.D. Cal.	No	Despite a judgment of invalidity on the Rule 12(c) motion, the plaintiff's argument did not descend to the level of frivolous argument or objective unreasonableness.	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	Yes (Gametek - Large aggregator)
<i>Linex Techs., Inc. v. Hewlett-Packard Co.</i> <sup>xlii</sup>	N.D. Cal.	Yes	The plaintiff (Linex) should have known that its spread spectrum claims would not succeed against OFDM technology, and its actions suggested that it knew the claims were frivolous. The plaintiff exhibited "an overall vexatious litigation strategy" by continuing to hold the groundless claims over the defendants' heads to increase	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Highbark</i> , 134 S. Ct. at 1744	Not determined yet <sup>12</sup>	N/R

11. Attorney's fees limited to after the patent tutorial so plaintiff obligated to pay reasonable attorney's fees and costs from September 9, 2013 through March 7, 2014.

12. Defendants can only recover the fees fairly attributable to the spread spectrum claims.

			potential settlement amounts and attempted to broaden the reach of its patents to capture technology it knew it did not invent.			
<i>IPVX Patent Holdings, Inc. v. Voxernet, LLC</i> <sup>xiii</sup>	N.D. Cal.	Yes	The plaintiff's (IPVX) position on infringement was objectively baseless at the inception of the lawsuit, and the plaintiff proceeded in this litigation without developing any factual record to support its infringement contentions, either on literal infringement or on infringement under the doctrine of equivalents.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Modine Mfg. Co. v. Allen Group, Inc.</i> , 917 F.2d 538, 543 (Fed. Cir. 1990); <i>S.C. Johnson &amp; Son, Inc. v. Carter-Wallace, Inc.</i> , 781 F.2d 198, 201 (Fed. Cir. 1986).	\$820,642.00 <sup>13</sup>	No (IPVX - Individual/family trust)
<i>TransPerfect Global, Inc. v. Motionpoint Corp.</i> <sup>xiii</sup>	N.D. Cal.	No	The defendant's (MotionPoint) alleged discovery abuses did not appear to have been committed in bad faith, and its alleged misstatements of fact and disclosures of confidential information were relatively minor. Furthermore, defendant's opposition to the plaintiff's (TransPerfect) disqualification motion was not entirely	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	No (TransPerfect - Operating company)

13. Total number of hours billed by attorneys involved in the case including recovery of paralegal and discovery management and review department hours but not including non-taxable costs, library, and IT hours.



			without merit, and its alleged failure to comply with the Court's order on motions in limine appeared to have been inadvertent. Although the defendant asserted some frivolous arguments and filed some frivolous motions during the litigation, the court exercised its discretion to deny the motion for attorneys' fees.			
<i>Logic Devices, Inc. v. Apple Inc.</i> <small>xliv</small>	N.D. Cal.	Yes	The plaintiff's validity position was unsupported by the record, took zero depositions and "little discovery," and the defendant repeatedly warned the plaintiff about the invalidity of the only timely-asserted claim.	<i>Octane Fitness</i> , 134 S. Ct. at 1749	Not determined yet	N/R
<i>Site Update Solutions, LLC v. Accor North America, Inc.</i> <small>xlv</small>	N.D. Cal.	No	Considering the "totality of the circumstances," the case was not one that "stood out from others."	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	Yes (Site Update Solutions - Large aggregator)
<i>Intellect Wireless, Inc. v. Sharp Corp.</i> <small>xlvi</small>	N.D. Ill.	Yes	The patentee plaintiff acquired the patent at issue by engaging in inequitable conduct before the PTO that involved filing materially false declarations about reducing the invention to practice.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Nilssen v. Osram Sylvania, Inc.</i> , 528 F.3d 1352, 1358 (Fed. Cir. 2008);	Not determined yet	Yes (Intellect Wireless - Patent holding company)

				<i>Fogerty v. Fantasy, Inc.</i> , 510 U.S. 517, 534 n.19 (1994); <i>Agfa Corp. v. Creo Prods. Inc.</i> , 451 F.3d 1366 (2006); <i>Torin Corp. v. Philips Indus., Inc.</i> , 625 F. Supp. 1077 (S.D. Ohio 1985); <i>Dodge-Regupol, Inc. v. RB Rubber Prods., Inc.</i> , No. 3:06-CV-236, 2010 U.S. Dist. LEXIS 31838 (M.D. Pa. 2010)		
<i>Falana v. Kent State Univ.</i> <sup>xlvii</sup>	N.D. Ohio	Yes	The case was exceptional because the testimony of the defendants' witnesses at trial was not credible and lacked veracity, the witness and party in case altered and falsified original documents in a case that was highly relevant to the Court's inventorship	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Nilssen</i> , 528 F.3d at 1359	\$207,181.21 <sup>14</sup>	N/R

14. Fees incurred by all the attorney's, disallowing hours solely related to dismissed defendants and 25% of the costs incurred during the defendant's appeal of the case allowed because 25% of the appeal was exceptional.

			determination, and the litigation misconduct of the party and witnesses in the case warranted a conclusion that the case was exceptional.			
<i>H-W Tech., L.C. v. Overstock.com, Inc.</i> <sup>xviii</sup>	N.D. Tex.	No	Because there was a mechanism for correction, and the plaintiff's argument was not unreasonable on its face, its substantive position was "for the most part, meritorious, [and] not frivolous." The plaintiff's argument may have been overbroad, but it did not amount to a material misrepresentation. The losing arguments did not "stand out" from others with respect to the substantive strength of a party's litigating position.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Kilopass Tech., Inc. v. Sidense Corp.</i> , 738 F.3d 1302, 1313 (Fed. Cir. 2013); <i>Motorola, Inc. v. Interdigital Tech. Corp.</i> , 121 F.3d 1461, 1467–68 (Fed. Cir. 1997)	N/A	Yes (H-W Tech. - Patent holding company)
<i>Ohio Willow Wood Co. v. ALPS South, LLC</i> <sup>xix</sup>	S.D. Ohio	Yes	There was a finding of inequitable conduct and the defendant (Alps) prevailed on the plaintiff's (OWW) infringement claims.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Therasense</i> , 649 F.3d at 1285	Not determined yet <sup>15</sup>	N/R
<i>Cognex Corp. v.</i>	S.D.N.Y.	Yes	The defenses offered at trial were particularly weak and lacked support in the	<i>Octane Fitness</i> , 134 S. Ct. at 1749	Not determined	N/R

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15. Fees incurred litigating this case after the BPAI issued its September 30, 2011 decision on the second reexamination.

<i>Microscan Sys., Inc.</i> <sup>1</sup>			evidence presented to the jury and to the court. The defendants engaged in unreasonable litigation tactics that wasted the Court's time and required the plaintiffs to expend significant resources. The defendants' post-trial motions simply relitigated issues that had already been decided by the Court during trial.		yet <sup>16</sup>	
<i>Realtime Data, LLC v. CME Group, Inc.</i> <sup>ii</sup>	S.D.N.Y.	No	While the plaintiff ultimately did not prevail in the underlying litigation, its conduct was not so extreme or unreasonable that the case "[stood] out from others." Not giving up a case following unfavorable claim construction did not itself amount to unreasonable or baseless conduct.	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	No (Realtime - Operating company)
<i>Keystone Global LLC v. Auto Essentials Inc.</i> <sup>iii</sup>	S.D.N.Y.	Yes	The defendant (Décor Essentials) willfully infringed the Patents-In-Suit so the plaintiff (Keystone Global) was entitled to reasonable attorney's fees. An express finding of willful infringement was a sufficient basis for classifying a case as "exceptional."	<i>BIC Corp. v. First Prominence Co.</i> , No. 00 Civ. 7155, 2001 U.S. Dist. LEXIS 20734, at *4 (S.D.N.Y. Dec. 10,	\$124,080	No (Keystone - Operating company)

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16. The court noted, however, that plaintiffs will receive at a minimum the attorney's fees for contesting any motions brought by defendants that have sought to reargue what was already decided by the Court previously.

				2001); <i>Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany</i> , 522 F.3d 182 (2d Cir. 2008)		
<i>Rates Tech., Inc. v. Broadvox Holding Co., LLC</i> <sup>liii</sup>	S.D.N.Y.	No	The plaintiff (RTI) did not commit any wrongdoing that resulted in needless attorneys' fees or costs to the defendant (Broadvox). Furthermore, without a merits determination in this litigation and without evidence of non-infringement in the record, the court could not find that RTI's suit had no merit. Regarding RTI's claim construction positions, the court did not find them baseless. Finally, RTI's status as a hyper-litigious non-practicing entity should not prevent it from bringing suit if the claims had merit.	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	No (Rates Technology - Operating company)
<i>Small v. Implant Direct Mfg. LLC</i> <sup>liiv</sup>	S.D.N.Y.	No	Although the plaintiff's arguments were insufficient to save the patent from invalidity, they were not objectively baseless. That the majority of defendants opted to settle rather than litigate, and that the plaintiff's (Small) case was not determined	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Lumen View Tech., LLC v. Findthebest.com, Inc.</i> , 24 F. Supp. 3d 329 (S.D.N.Y. 2014);	N/A	N/R

			on the pleadings but proceeded through discovery to summary judgment served as further indication that the plaintiff's defense of her patent was not without any good faith basis. There was no evidence that the plaintiff brought the case in bad faith or that she engaged in any misconduct in the course of the litigation.	<i>Kilopass Tech. Inc. v. Sidense Corp.</i> , No. C 10-02066, 2014 U.S. Dist. LEXIS 112321 (N.D. Cal. Aug. 12, 2014)		
<i>Lumen View Tech, LLC v. Findthebest.com, Inc.</i> <sup>17</sup>	S.D.N. Y.	Yes	The plaintiff's (Lumen View Tech) lawsuit against the defendant (FTB) was "frivolous" and "objectively unreasonable." The court held that "no reasonable litigant could have expected success on the merits in Lumen's patent infringement lawsuit against FTB because the '073 Patent claimed a bilateral matchmaking process requiring multiple parties to input preference information, while FTB's "AssistME" feature utilized the preference data of only one party."	<i>Octane Fitness</i> , 134 S. Ct. at 1749	\$302,083.63 <sup>17</sup>	Yes (Lumen View - Patent holding company)
<i>TNS Media</i>	S.D.N.	Yes	The defendant's (TRA) "Matched and	<i>Octane Fitness</i> , 134 S.	Not	N/R

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17. All of the attorneys' fees and costs, as well as an enhancement multiplying the attorney's fees by two to deter similar conduct in the future.

<i>Research, LLC v. TiVo Research &amp; Analytics, Inc.</i> <sup>lvi</sup>	Y.		Stored" argument lacked merit and was frivolous, and the defendant's decision to "flout" the court's claim construction was further evidence that the case was "exceptional."	Ct. at 1749	determined yet <sup>18</sup>	
<i>Techradium, Inc. v. Firstcall Network</i> <sup>lvii</sup>	S.D. Tex.	Yes	The plaintiff was objectively unreasonable in bringing its lawsuit against the two defendants such a short time after losing the same claim-construction arguments it made in a different case, arguments essential to its success in the present lawsuit as well.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Cognex Corp. v. Microscan Sys., Inc.</i> , No. 13-CV-2027 JSR, 2014 WL 2989975, at *4 (S.D.N.Y. June 30, 2014); <i>Precision Links Inc. v. USA Prods. Grp., Inc.</i> , No. 08-576, 2014 U.S. Dist. LEXIS 85694, at *3 (W.D.N.C. June 24, 2014)	\$96,396.12 (to First Call) and \$16,476.00 (to City of Friendswo od) <sup>19</sup>	No (Techradium, Inc. - Operating company)
<i>In re Maxim</i>	W.D.	No	The plaintiff's (Maxim) claims were not	<i>Octane Fitness</i> , 134 S.	N/A	No (Maxim -

18. Only fees incurred for the defense of the patent-related claims, and must demonstrate that it incurred those fees and expenses as a direct result of TRA's litigation misconduct or frivolous arguments.

19. Court awarded all attorney's fees accrued during the case.

<i>Integrated Prods.</i> <sup>lviii</sup>	Pa.		"substantively weak" and the defendant (BOTW) could not assert that Maxim's entire case against BOTW was weak.	Ct. at 1749		Operating company)
<i>Robinson v. Bartlon</i> <sup>lix</sup>	W.D. Va.	No	The defendants' success in obtaining the dismissal against the individual defendants for lack of personal jurisdiction failed to render them as a prevailing party.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Inland Steel</i> , 364 F.3d at 1321.	N/A	No (Robinson - Individual)
<i>Douglas Dynamics, LLC v. Buyers Prods. Co.</i> <sup>lx</sup>	W.D. Wis.	No	The mere fact that the defendant chose not to appeal the infringement findings was not enough to render a case "exceptional,"	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	N/R
<i>Alpha Tech. U.S.A. Corp. v. MLSPA Dairy Supply, Inc.</i> <sup>lxi</sup>	W.D. Wis.	No	The defendant had limited evidence in support of its assertion that the case was "exceptional."	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	N/R
<i>Precision Links, Inc. v. USA Prods.</i>	W.D. N.C.	Yes	The plaintiff's litigating position with respect to certain claims was clearly frivolous and objectively baseless. Furthermore, the case	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Highbark</i> , 134 S. Ct.	\$165,260.70 <sup>20</sup>	N/R

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20. Two-thirds of the original fee award to adequately compensate the Defendants for the extra legal effort expended as a result of the Plaintiff's assertion of baseless claims and assorted litigation misconduct.



<i>Grp., Inc.</i> <sup>lxii</sup>			"stood out" from others because of the "unreasonable manner" in which the case was litigated. The plaintiff sought a preliminary injunction based in large part on a theory that the court concluded was frivolous. The plaintiff engaged in litigation misconduct, such as frivolous and baseless efforts to circumvent a dismissal of its untimely appeal.	at 1744		
<i>LendingTree v. Zillow, Inc.</i> <sup>lxiii</sup>	W.D. N.C.	Yes	(Both parties made motions for attorney's fees, one was partially awarded while the other was denied.) Despite the apparent strength of Defendant Zillow's case, the court repeatedly rejected Zillow's dispositive motions at the summary judgment stage, during trial at the close of Plaintiff Lending Tree's evidence, and at the close of all evidence, instead leaving the jury to resolve the merits. Therefore, LendingTree's pursuit of its infringement claims was not so frivolous or groundless so as to justify an award of attorneys' fees. Furthermore, "being a sore loser" did not make a case exceptional, and the litigation strategy was not uniquely aggressive. However, the court	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Precision Links, Inc. v. USA Prods. Grp., Inc.</i> , No. 08-576, 2014 U.S. Dist. LEXIS 85694 (W.D.N.C. June 24, 2014); <i>Chalumeau Power Sys. LLC v. Alcatel-Lucent</i> , CV 11-1175-RGA, 2014 U.S. Dist. LEXIS 127645 (D. Del. Sept. 12, 2014).	N/A	No (Zillow - Operating company)

			awarded Defendant NexTag all reasonable attorneys' fees incurred from the day the court issued its written order denying summary judgment because LendingTree should have realized the strength of NexTag's defenses at summary judgment.			
<i>ICON Health &amp; Fitness, Inc. v. Octane Fitness, LLC</i> <sup>lxiv</sup>	C.A.F. C.	Vacated and remanded	The appellate court vacated the district's court judgment denying Octane's motion both to find the case exceptional and to award attorney fees under § 285. The issue was remanded to the district court for application in the first instance of the new standard whether, under the totality of the circumstances, the case was exceptional.	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Highbark</i> , 134 S. Ct. at 1744	N/A	No (ICON - Operating company)
<i>Checkpoint Sys., Inc. v. All-Tag Sec. S.A.</i> <sup>lxv</sup>	C.A.F. C.	Vacated and remanded	The case was remanded in light of the <i>Octane</i> and <i>Highbark</i> decisions.	<i>Octane Fitness</i> , 134 S. Ct. at 1749	N/A	N/R
<i>Highbark, Inc. v. Allcare Health Mgmt. Sys.</i> <sup>lxvi</sup>	C.A.F. C.	Vacated and remanded	The appellate court vacated the district court's award of attorney fees and remanded the case for reconsideration under the new standard articulated in <i>Octane</i> .	<i>Octane Fitness</i> , 134 S. Ct. at 1749; <i>Highbark</i> , 134 S. Ct. at 1744	N/A	N/R
<i>Homeland</i>	C.A.F.	Yes	There was no abuse of discretion in the	<i>Octane Fitness</i> , 134 S.	\$253,777.3	No (Homeland

<i>Housewares, LLC v. Sorensen Research &amp; Dev. Trust</i> <sup>lxvii</sup>	C.	(Affirmed)	district court decision to factor in Sorensen's (the patent holder) repetitive and unsolicited filings to find an exceptional case.	Ct. at 1749	7 <sup>21</sup>	- Operating company, Sorensen - Individual)
<i>SSL Servs., LLC v. Citrix Sys.</i> <sup>lxviii</sup>	C.A.F. C.	Vacated and remanded	The appellate court ruled that district court erred in holding that SSL was not the prevailing party, and therefore, the district court's finding was vacated and remanded.	<i>Inland Steel</i> , 364 F.3d at 1321; <i>Manildra Milling Corp. v. Ogilvie Mills, Inc.</i> , 76 F.3d 1178, 1182 (Fed. Cir. 1996)	N/A	N/R
<i>Biax Corp. v. Nvidia Corp.</i> <sup>lxix</sup>	C.A.F. C.	No (Affirmed denial of fees and reversed award of fees)	Neither the expert testimony nor the claim construction orders foreclosed Biax's position, and there was nothing unreasonable about Biax's infringement position, so the defendant's motion for fees was denied.	<i>Octane Fitness</i> , 134 S. Ct. at 1749, <i>Checkpoint Sys., Inc. v. All-Tag Sec. S.A.</i> , 572 F. App'x 988 (Fed. Cir. 2014)	N/A	No (Biax - Failed operating company)

<sup>i</sup> Kaneka Corp. v. Zhejiang Med. Co., No. 2:11-cv-02389-MRP-SS, 2014 U.S. Dist. LEXIS 91659 (C.D. Cal. May 23, 2014).

<sup>ii</sup> Ceiva Logic Inc. v. Frame Media Inc., No. SACV 08-00636-JVS, 2014 U.S. Dist. LEXIS 176328 (C.D. Cal. Dec. 19, 2014).

21. Where the Federal Circuit affirmed the Central District of California's determination.

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- <sup>iii</sup> *Cambrian Sci. Corp. v. Cox Commc'ns, Inc.*, No. CV-13-00627-PHX-NVW, 2014 U.S. Dist. LEXIS 4415 (C.D. Cal. Jan. 6, 2015).
- <sup>iv</sup> *Romag Fasteners, Inc. v. Fossil, Inc.*, No. 3:10cv1827, 2014 U.S. Dist. LEXIS 113061 (D. Conn. Aug. 14, 2014).
- <sup>v</sup> *EON Corp. IP Holdings, LLC v. FLO TV Inc.*, No. 10-812-RGA, 2014 U.S. Dist. LEXIS 71753 (D. Del. May 27, 2014).
- <sup>vi</sup> *Pragmatus Telecom LLC v. Newegg Inc.*, No. 12-1533-RGA, 2014 WL 3724138 (D. Del. July 25, 2014).
- <sup>vii</sup> *Gevo, Inc. v. Butamax Advanced Biofuels, LLC*, No. 13-576-SLR, 2014 WL 4247735 (D. Del. Aug. 26, 2014).
- <sup>viii</sup> *Parallel Iron LLC v. NetApp Inc.*, No. 12-769-RGA, 2014 U.S. Dist. LEXIS 127850 (D. Del. Sept. 12, 2014).
- <sup>ix</sup> *Chalumeau Power Sys. LLC v. Alcatel-Lucent*, No. 11-1175-RGA, 2014 U.S. Dist. LEXIS 127645 (D. Del. Sept. 12, 2014).
- <sup>x</sup> *Summit Data Sys., LLC v. EMC Corp.*, No. 10-749-GMS, 2014 U.S. Dist. LEXIS 138248 (D. Del. Sept. 25, 2014).
- <sup>xi</sup> *Inventio AG v. Thyssenkrupp Elevator Corp.*, No. 08-00874-RGA, 2014 U.S. Dist. LEXIS 157448 (D. Del. Nov. 6, 2014).
- <sup>xii</sup> *Poly-America, L.P. v. API Indus., Inc.*, No. 13-693-SLR, 2014 U.S. Dist. LEXIS 165135 (D. Del. Nov. 25, 2014).
- <sup>xiii</sup> *Bayer CropScience AG v. Dow AgroSciences, LLC*, No. 12-256, 2014 U.S. Dist. LEXIS 176010 (D. Del. Dec. 22, 2014).
- <sup>xiv</sup> *Momenta Pharms., Inc. v. Teva Pharms. USA, Inc.*, No. 10-12079-NMG, 2014 U.S. Dist. LEXIS 162926 (D. Mass. Nov. 20, 2014).
- <sup>xv</sup> *Classen Immunotherapies, Inc. v. Biogen Idec*, No. WDQ-04-2607, 2014 U.S. Dist. LEXIS 67169 (D. Md. May 14, 2014).
- <sup>xvi</sup> *Aviva Sports v. Fingerhut Direct Mktg.*, No. 09-1091, 2015 U.S. Dist. LEXIS 9108 (D. Minn. Jan. 27, 2015).
- <sup>xvii</sup> *Univ. of Manitoba v. Draeger Med., Inc.*, No. 2:13-cv-48, 2014 U.S. Dist. LEXIS 174113 (D. N.D. Dec. 17, 2014).
- <sup>xviii</sup> *Shire LLC v. Amneal Pharms.*, No. 11-3781, 2014 U.S. Dist. LEXIS 85369 (D. N.J. June 23, 2014).
- <sup>xix</sup> *Home Gambling Network, Inc. v. Piche*, No. 2:05-CV-610-DAE, 2014 U.S. Dist. LEXIS 71071 (D. Nev. May 22, 2014).
- <sup>xx</sup> *Rimlinger v. Shenyang 245 Factory*, No. 2:13-cv-2051-JAD-NJK, 2014 U.S. Dist. LEXIS 76099 (D. Nev. June 4, 2014).
- <sup>xxi</sup> *Rubbermaid Commer. Prods., LLC v. Trust Commercial Prods.*, No. 2:13-cv-02144-GMN-GWF, 2014 U.S. Dist. LEXIS 142745 (D. Nev. Aug. 22, 2014).
- <sup>xxii</sup> *JS Prods. v. Kabo Tool Co.*, 2:11-cv-01856-RCJ-GWF, 2014 U.S. Dist. LEXIS 176275 (D. Nev. Dec. 22, 2014).
- <sup>xxiii</sup> *Pure Fishing, Inc. v. Normark Corp.*, No. 10-cv-2140-CMC, 2014 U.S. Dist. LEXIS 153272 (D. S.C. Oct. 28, 2014).
- <sup>xxiv</sup> *Western Holdings, LLC v. Summers*, No. 2:13-CV-144 TS, 2014 U.S. Dist. LEXIS 141129 (D. Utah Sept. 30, 2014).
- <sup>xxv</sup> *Catheter Connections, Inc. v. Ivera Med. Corp.*, No. 2:12-cv-531-DN, 2015 U.S. Dist. LEXIS 8144 (D. Utah Jan. 15, 2015).
- <sup>xxvi</sup> *Intex Rec. Corp. v. Team Worldwide Corp.*, No. 04-1785, 2015 U.S. Dist. LEXIS 2847 (D. D.C. Jan. 9, 2015).
- <sup>xxvii</sup> *Wiley v. RockTenn CP, LLC*, No. 4:12-cv-00226-KGB, 2014 U.S. Dist. LEXIS 138399 (E.D. Ark. Sept. 30, 2014).
- <sup>xxviii</sup> *Chicago Bd. Options Exch., Inc. v. Int'l Sec. Exch., LLC*, No. 07 C 623, 2014 U.S. Dist. LEXIS 170651 (E.D. Ill. Dec. 10, 2014).
- <sup>xxix</sup> *Bianco v. Globus Med., Inc.*, No. 2:12-CV-00147-WCB, 2014 U.S. Dist. LEXIS 64805 (E.D. Tex. May, 12, 2014).
- <sup>xxx</sup> *Stragent LLC v. Intel Corp.*, No. 6:11-cv-421, 2014 U.S. Dist. LEXIS 169080 (E.D. Tex. Aug. 6, 2014).
- <sup>xxxi</sup> *Tech. Advancement Grp., Inc. v. IvySkin, LLC*, No. 2:13cv89, 2014 U.S. Dist. LEXIS 96257 (E.D. Va. July 14, 2014).

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- <sup>xxxiii</sup> *Stretchline Intellectual Props. v. H&M Hennes & Mauritz LP*, NO. 2:10-cv-371, 2015 U.S. Dist. LEXIS 21999 (E.D. Va. Feb. 24, 2015).
- <sup>xxxiiii</sup> *IPVX Patent Holdings, Inc. v. Taridium, LLC*, No. 12-CV-5251, 2014 U.S. Dist. LEXIS 127550 (E.D.N.Y. Aug. 6, 2014).
- <sup>xxxiv</sup> *SmartWater, Ltd. v. Applied DNA Scis., Inc.*, No. 12-cv-05731, 2014 U.S. Dist. LEXIS 120401 (E.D.N.Y. Aug. 27, 2014).
- <sup>xxxv</sup> *SmartWater, Ltd. v. Applied DNA Scis., Inc.*, No. 12-cv-05731, 2014 U.S. Dist. LEXIS 137679 (E.D.N.Y. Sept. 29, 2014).
- <sup>xxxvi</sup> *CreAgri, Inc. v. Pinnacle, Inc.*, No.: 11-CV-6635-LHK, 2014 U.S. Dist. LEXIS 77484 (N.D. Cal. June 3, 2014).
- <sup>xxxvii</sup> *EON Corp. IP Holdings, LLC v. Cisco Sys. Inc.*, No. 12-cv-01011-JST, 2014 U.S. Dist. LEXIS 101923 (N.D. Cal. July 25, 2014).
- <sup>xxxviii</sup> *Kilopass Tech. Inc. v. Sidense Corp.*, No. C 10-02066, 2014 U.S. Dist. LEXIS 112321 (N.D. Cal. Aug. 12, 2014).
- <sup>xxxix</sup> *Yufa v. TSI Inc.*, No. 09-cv-01315-KAW, 2014 U.S. Dist. LEXIS 113148 (N.D. Cal. Aug. 14, 2014).
- <sup>xl</sup> *Gametek LLC v. Zynga, Inc.*, No. CV 13-2546, 2014 U.S. Dist. LEXIS 122834 (N.D. Cal. Sept. 2, 2014).
- <sup>xli</sup> *Linex Techs., Inc. v. Hewlett-Packard Co.*, No. C 13-159, 2014 U.S. Dist. LEXIS 129717 (N.D. Cal. Sept. 15, 2014).
- <sup>xlii</sup> *IPVX Patent Holdings, Inc. v. Voxernet, LLC*, No. 5:13-cv-01708 HRL, 2014 U.S. Dist. LEXIS 158037 (N.D. Cal. Nov. 6, 2014).
- <sup>xliii</sup> *TransPerfect Global, Inc. v. Motionpoint Corp.*, No. C 10-2590, 2014 U.S. Dist. LEXIS 159805 (N.D. Cal. Nov. 13, 2014).
- <sup>xliv</sup> *Logic Devices, Inc. v. Apple Inc.*, No. C 13-02943, 2014 U.S. Dist. LEXIS 168380 (N.D. Cal. Dec. 4, 2014).
- <sup>xlv</sup> *Site Update Solutions, LLC v. Accor N. Am., Inc.*, No. 5:11-cv-3306-PSG, 2015 U.S. Dist. LEXIS 17603 (N.D. Cal. Feb. 11, 2015).
- <sup>xlvi</sup> *Intellect Wireless, Inc. v. Sharp Corp.*, No. 10 C 6763, 2014 U.S. Dist. LEXIS 73653 (N.D. Ill. May 30, 2014).
- <sup>xlvii</sup> *Falana v. Kent State Univ.*, No. 5:08 CV 720, 2014 U.S. Dist. LEXIS 105777 (N.D. Ohio July 31, 2014).
- <sup>xlviii</sup> *H-W Tech., L.C. v. Overstock.com, Inc.*, No. 3:12-CV-636-G, 2014 U.S. Dist. LEXIS 122667 (N.D. Tex. Aug. 15, 2014).
- <sup>xlx</sup> *Ohio Willow Wood Co. v. ALPS South, LLC*, No. 2:04-cv-1223, 2014 U.S. Dist. LEXIS 137485 (S.D. Ohio Sept. 24, 2014).
- <sup>l</sup> *Techradium, Inc. v. Firstcall Network*, Nos. H-13-2487; 13-2641, 2015 U.S. Dist. LEXIS 23796 (S.D. Tex. Feb. 27, 2015).
- <sup>li</sup> *Cognex Corp. v. Microscan Sys., Inc.*, No. 13-CV-2027, 2014 U.S. Dist. LEXIS 91203 (S.D.N.Y. June 29, 2014).
- <sup>lii</sup> *Realtime Data, LLC v. CME Grp., Inc.*, Nos. 11-cv-6697-KBF; 11-cv-6699-KBF; 11-cv-6702-KBF, 2014 U.S. Dist. LEXIS 91051 (S.D.N.Y. June 24, 2014).
- <sup>liiii</sup> *Keystone Global LLC v. Auto Essentials Inc.*, No. 12 Civ. 9077, 2014 U.S. Dist. LEXIS 141044 (S.D.N.Y. Oct. 1, 2014).
- <sup>liv</sup> *Rates Tech., Inc. v. Broadvox Holding Co., LLC*, No. 13 Civ. 0152, 2014 U.S. Dist. LEXIS 142998 (S.D.N.Y. Oct. 7, 2014).
- <sup>lv</sup> *Small v. Implant Direct Mfg. LLC*, No. 06 Civ. 683, 2014 U.S. Dist. LEXIS 154468 (S.D.N.Y. Oct. 23, 2014).
- <sup>lvi</sup> *Lumen View Tech, LLC v. Findthebest.com, Inc.*, 63 F. Supp. 3d 321 (S.D.N.Y. 2014).
- <sup>lvii</sup> *TNS Media Research, LLC v. TiVo Research & Analytics, Inc.*, No. 11 Civ. 4039, 2014 U.S. Dist. LEXIS 155914 (S.D.N.Y. Nov. 4, 2014).
- <sup>lviii</sup> *In re Maxim Integrated Prods.*, Nos. 12-244; MDL No. 2354; 12-880; 12-945, 2015 U.S. Dist. LEXIS 24032 (W.D. Pa. Feb. 27, 2015).
- <sup>lix</sup> *Robinson v. Bartlow*, No. 3:12-cv-00024, 2014 U.S. Dist. LEXIS 75105 (W.D. Va. June 3, 2014).

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- <sup>lx</sup> Douglas Dynamics, LLC v. Buyers Prods. Co., No. 09-cv-261-wmc, 2014 U.S. Dist. LEXIS 178641 (W.D. Wis. Dec. 31, 2014).
- <sup>lxi</sup> Alpha Tech. U.S.A. Corp. v. MLSNA Dairy Supply, Inc., No. 13-cv-870-wmc, 2015 U.S. Dist. LEXIS 2748 (W.D. Wis. Jan. 8, 2015).
- <sup>lxii</sup> Precision Links, Inc. v. USA Prods. Grp., Inc., No. 3:08-cv-00576-MR, 2014 U.S. Dist. LEXIS 85694 (W.D.N.C. June 24, 2014).
- <sup>lxiii</sup> LendingTree v. Zillow, Inc., No. 3:10-cv-00439-FDW-DCK, 2014 U.S. Dist. LEXIS 146336 (W.D.N.C. Oct. 9, 2014).
- <sup>lxiv</sup> ICON Health & Fitness, Inc. v. Octane Fitness, LLC, Nos. 2011-1521, 2011-1636, 2014 U.S. App. LEXIS 16411 (Fed. Cir. Aug. 26, 2014).
- <sup>lxv</sup> Checkpoint Sys., Inc. v. All-Tag Sec. S.A., 572 Fed. Appx. 988 (Mem) (Fed. Cir. Sept. 4, 2014).
- <sup>lxvi</sup> Highmark, Inc. v. Allcare Health Mgmt. Sys., No. 2011-1219, 2014 U.S. App. LEXIS 17194 (Fed. Cir. Sept. 5, 2014).
- <sup>lxvii</sup> Homeland Housewares, LLC v. Sorensen Research & Dev. Trust, No. 2013-1537, 2014 U.S. App. LEXIS 17300 (Fed. Cir. Sept. 8, 2014).
- <sup>lxviii</sup> SSL Servs., LLC v. Citrix Sys., Nos. 2013-1419, 2013-1420, 2014 U.S. App. LEXIS 19672 (Fed. Cir. Oct. 14, 2014).
- <sup>lxix</sup> Biax Corp. v. Nvidia Corp., Nos. 2013-1649, 2013-1653, 2013-1654, 2015 U.S. App. LEXIS 3082 (Fed. Cir. Feb. 24, 2015).