

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MEDTRICA SOLUTIONS LTD.,

Plaintiff,

v.

CYGNUS MEDICAL LLC, a Connecticut
limited liability company,

Defendant.

Case No. C12-538RSL

ORDER DENYING MOTION
FOR ATTORNEY'S FEES

This matter comes before the Court on “Medtrica’s and Steris’ Joint Motion for Finding of Exceptional Case and Award of Attorneys’ Fees.” Dkt. # 131. Declaratory plaintiff and counterdefendant Medtrica Solutions Ltd. (“Medtrica”) and third-party defendant STERIS Corp. (“Steris”) (collectively “Defendants”) seek a determination that this case is exceptional and they are entitled to an award of attorney’s fees and costs pursuant to 35 U.S.C. § 285. Having considered the parties’ memoranda, supporting documents, and the remainder of the record, the Court finds the following:¹

¹ The Court finds this matter suitable for decision on the papers submitted. Defendants’ request for oral argument is DENIED.

Defendants’ request to defer ruling on this motion until the Supreme Court has issued its decisions in Highmark, Inc. v. Allcare Health Mgmt. Sys., Inc., No. 12-1163 (2014) and Octane Fitness, LLC v. Icon Health & Fitness, LLC, No. 12-1184 (2014) is DENIED.

BACKGROUND

This patent litigation concerns U.S. Patent No. 7,648,023 (“the ‘023 Patent”), which relates to a pre-cleaning kit for an endoscope that can be used immediately after surgery to clear debris from the channel and insertion tube of the endoscope before a more thorough cleaning can be completed. ‘023 Patent (Dkt. # 111-1 at 2), col. 1, lines 5-10. In March 2012, defendant and counterclaimant Cygnus Medical LLC (“Cygnus”), the owner of the ‘023 Patent, sent Medtrica a cease and desist letter. Dkt. # 132-1 at 2. Cygnus alleged that Medtrica’s endoscope pre-cleaning kit, the “Appli-Kit,” infringes the ‘023 Patent and demanded that Medtrica stop manufacturing and selling the product. Id. In response, Medtrica filed the complaint in the above-captioned matter, seeking a declaration of non-infringement and invalidity. Dkt. # 24 at 5. Shortly thereafter, Cygnus sent a cease and desist letter to Steris, the largest purchaser of Medtrica’s endoscope pre-cleaning kits. Dkt. # 139 at 18. Steris sells the kits under the name, “Revital-Ox.” Dkt. # 112 ¶ 2.

Cygnus filed a counterclaim against Medtrica and a third-party complaint against Steris. Dkt. # 74; Dkt. # 75. Cygnus alleged that the “Appli-Kit” and “Revital-Ox” (the “Accused Products”) infringed Claims 1-4, 10, and 11 of the ‘023 Patent and sought injunctive relief and damages. Id. The Accused Products are stand-up pouches that contain pre-diluted enzymatic detergent and a sponge. Dkt. # 41 ¶ 2; Dkt. # 112 ¶ 2. Each pouch contains v-shaped “notches” on both sides approximately two inches below the top of the pouch. Dkt. # 41 at 4-7; Dkt. # 112 ¶ 3; Dkt. # 110 at 3. The ‘023 Patent describes an endoscope pre-cleaning kit that includes a pouch containing a “weakened line” just below the top of the pouch. ‘023 Patent, col. 7, lines 13-15.

In its order construing the patent terms, the Court construed the term “weakened line” to mean “a physical, identifiable segment of material that is less strong than the surrounding material.” Dkt. # 108 at 8. The Court based this construction in part on the

1 prosecution history, which included Cygnus's explanation that "the at least one
2 weakened line" "is an important aspect of the present invention because it provides a
3 user with a quick and convenient access [to] the detergent in order to clean the
4 endoscope." Dkt. # 96-6 at 11-12. The Court granted Defendant's motion for summary
5 judgment of non-infringement in March 2014. Dkt. # 128.

6 DISCUSSION

7 35 U.S.C. § 285 permits the Court to award "reasonable attorney fees to the
8 prevailing party" in "exceptional cases." When determining whether to award fees
9 under § 285, the Court must engage in a two-step inquiry. First, the Court determines
10 whether the prevailing party has established by clear and convincing evidence that the
11 case is exceptional. MarcTec, LLC v. Johnson & Johnson, 664 F.3d 907, 915 (Fed. Cir.
12 2012). If the Court finds the case exceptional, the Court then decides whether an award
13 of attorney's fees is justified and if so, the amount of that award. Id. at 916.

14 A case may be considered exceptional if it involves "willful infringement, fraud
15 or inequitable conduct in procuring the patent, misconduct during litigation, vexatious or
16 unjustified litigation, conduct that violates Federal Rule of Civil Procedure 11, or like
17 infractions." Serio-US Indus., Inc. v. Plastic Recovery Techs. Corp., 459 F.3d 1311,
18 1321-22 (Fed. Cir. 2006). Where the alleged infringer prevails in the underlying action,
19 factors relevant to determining whether a case is exceptional include "the closeness of
20 the question, pre-filing investigation and discussions with the defendant, and litigation
21 behavior." MarcTec, LLC, 664 F.3d at 916 (quoting Computer Docking Station Corp.
22 v. Dell, Inc., 519 F.3d 1366, 1379 (Fed. Cir. 2008)). "If the patentee prolongs litigation
23 in bad faith, an exceptional finding may be warranted." Computer Docking Station
24 Corp., 519 F.3d at 1379.

1 In the absence of litigation misconduct or misconduct in securing the patent, the
2 Court may only award fees if the litigation (1) is brought in subjective bad faith and (2)
3 is objectively baseless. Id. The former requires a showing that “lack of objective
4 foundation for the claim was either known or so obvious that it should have been known
5 by the party asserting the claim.” Highmark, Inc. v. Allcare Health Mgmt. Sys., Inc.,
6 687 F.3d 1300, 1309 (Fed. Cir. 2012). With respect to the latter, the infringement
7 claims “must be such that no reasonable litigant could reasonably expect success on the
8 merits.” Taurus IP, LLC v. DaimlerChrysler Corp., 726 F.3d 1306, 1327 (Fed. Cir.
9 2013) (quoting Dominant Semiconductors Sdn. Bhd. v. OSRAM GmbH, 524 F.3d 1254,
10 1260 (Fed. Cir. 2008)).

11 Defendants argue that the case is exceptional because Cygnus failed to conduct
12 an adequate investigation before or after filing suit, the question of infringement was not
13 a close call, and Cygnus prolonged the litigation in bad faith. Dkt. # 131 at 8-11. From
14 the outset of the litigation, Defendants claim, Cygnus could not provide an explanation
15 of how the Accused Products met the “weakened line” limitation in each of the asserted
16 claims. Cygnus responds in opposition that it attempted to resolve the dispute
17 informally before Medtrica filed this action and it did not pursue its claims or prolong
the litigation in bad faith. Dkt. # 139 at 6-8, 10-11.

18 Reviewing the record in this case, Defendants have not met the high standard
19 required for finding this case exceptional. Defendants’ allegation that Cygnus could not
20 articulate its theory of infringement during the course of the litigation does not
21 constitute clear and convincing evidence that the claims were objectively baseless.
22 Cygnus complied with the Court’s scheduling order and disclosed its claim construction
23 and infringement contentions pursuant to that schedule. Moreover, Cygnus’s decision
24 not to engage in a full discussion of its theory of infringement after the litigation was
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1 filed does not provide any insight into the objective merit of the claims. Whether the
2 litigation was objectively baseless “does not depend on the state of mind of the plaintiff
3 at the time the action was commenced, but rather requires an objective assessment of the
4 merits.” Brooks Furniture Mfg., Inc. v. Dutailier Intern., Inc., 393 F.3d 1378, 1382
5 (Fed. Cir. 2005).

6 Although the Court ultimately disagreed, Cygnus justifiably argued that the term
7 “weakened line” should be construed to mean “a line that creates a weakness to ease
8 opening of the pouch,” dkt. # 94 at 6, in part based on the use of “weakness” in the
9 specification. This proposed construction was not entirely frivolous. Similarly,
10 Cygnus’s claims of literal infringement and infringement by equivalents were not
11 objectively baseless. The notches in the Accused Products are physically distinct
12 elements on the sidewall panels and one could, in good faith, argue that they constitute
13 areas of weakness. Although the Court ultimately rejected Cygnus’s argument of
14 equivalency because a finding of equivalency would read “weakened line” out of the
15 claims of the ‘023 Patent, dkt. # 128 at 9, Cygnus provided evidence that the notches
16 perform the same function as the “weakened line” and achieve a substantially similar
17 result, dkt. # 116 at 5-6, 9. These arguments were not frivolous at the outset of the
18 litigation or after the Court determined that the weakened line limitation required a
19 physically distinct segment of material.

20 Finally, there is no evidence that Cygnus engaged in vexatious or unjustified
21 litigation conduct that prolonged this case unnecessarily. As explained by the Federal
22 Circuit, “[i]nfringement is often difficult to determine, and a patentee’s ultimately
23 incorrect view of how a court will find does not of itself establish bad faith.” iLOR,
24 LLC v. Google, Inc., 631 F.3d 1372, 1377 (Fed. Cir. 2011). The undisputed evidence
25 shows that Cygnus attempted to engage in negotiations before filing infringement
26 claims, but Defendants did not respond to these efforts, choosing instead to file an action

1 for declaratory judgment. Dkt. # 132-1 at 2-3; Dkt. # 132-2 at 2; Dkt. # 139 at 18, 21,
2 25. Cygnus relied on its patent counsel's opinions before sending the cease and desist
3 letters to Defendants, and attempted to negotiate in good faith to avoid filing an action
4 for infringement. Id. Considering these circumstances, Plaintiff has not shown that
5 Cygnus pursued its claims in bad faith and there is no evidence of vexatious or frivolous
6 litigation conduct. Serio-US Indus., Inc., 459 F.3d at 1322.

7 **CONCLUSION**

8 For all of the foregoing reasons, Defendants' motion for attorney's fees (Dkt. #
9 131) is DENIED.

10 DATED this 16th day of April, 2014.

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13 Robert S. Lasnik
14 United States District Judge
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