

Denial of Attorneys' Fees Is Reversed for Abuse of Discretion

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ADJUSTACAM, LLC v. NEWEGG, INC.: July 5, 2017. Before Reyna, Mayer, Hughes.

Takeaway:

- Denial of attorneys' fees under § 285 is reviewed under an abuse of discretion standard.
- While district courts are owed deference in deciding fees motions, that deference is not absolute, and the CAFC will not defer to conclusions based on a clear error of judgment.
- A weak infringement case that became baseless after *Markman*, low and erratic settlements, and repeatedly serving expert reports and declarations at the last minute support a conclusion of unreasonableness under a totality of the circumstances analysis under *Octane Fitness*.

Procedural Posture:

Defendant-Appellant Newegg appealed E.D. Tex.'s denial of a motion for attorney fees. CAFC reversed and remanded.

Synopsis:

- **Standard of Review:** The CAFC held that, per its recent decision in *University of Utah*, it will continue to defer to a district court's § 285 ruling that is based on independent evaluation of the evidence before it. The CAFC will not defer, however, to conclusions based on a clear error of judgment in weighing relevant factors, as was the case in *AdjustaCam*. The lower court's analysis did not follow the CAFC's instructions on remand to evaluate in the first instance whether the case was exceptional under the totality of the circumstances.

- **Attorney Fees – Totality of the Circumstances:** A weak infringement case that became baseless after the *Markman* order, irregular damages model, and last-minute filing of expert reports and declarations collectively support a conclusion of unreasonableness denoting an exceptional case. AdjustaCam asserted nuisance-value damages against many defendants, settling with individual defendants for widely varied royalty rates. AdjustaCam unreasonably litigated the case by repeatedly serving expert reports and declarations at the last minute. Based on these circumstances, the lower court's denial of Newegg's motion for fees was an abuse of discretion based on clearly erroneous findings.

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