

Single Isolated Act of Litigation Misconduct May Support Attorneys' Fees if the Case in Totality Is Exceptional

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The '050 patent is directed to systems and methods for filtering data files based on content and/or "characteristic." During claim construction, the parties disputed the meaning of terms containing the word "characteristic." In a separate and co-pending trial against a different defendant, the patentee took the position that a "characteristic" included bulk email, which the courts in both cases adopted. During trial in the co-pending case, the patentee's expert changed his opinion and testified that bulk email was not a characteristic. Following completion of the co-pending trial, the alleged infringer moved for clarification of the court's claim construction, given the expert's changed opinion in the co-pending case. The patentee argued at this hearing that its expert had not, in fact, changed his opinion, but that bulk email was never within the court's claim construction. The court granted the motion for clarification and included "bulk email" as an example of a characteristic, noting that this was "inconsistent with the representations from" the patentee's counsel. Following the grant of the alleged infringer's judgment as a matter of law, the district court canceled the trial, and the alleged infringer moved for attorneys' fees under Section 285. The district court concluded that although the patentee's conduct was "exceptional solely with respect to this collection of circumstances regarding [its expert's] changed testimony," it "would be wrong to say that [the patentee's] case was objectively unreasonable." The Federal Circuit vacated and remanded "for an analysis under the proper legal standard."

Under Section 285, the court "in exceptional cases may award reasonable attorney fees to the prevailing party." An exceptional case "stands out from others with respect to the substantive strength of a party's litigating position (considering both the governing law and facts of the case) or the unreasonable manner in which the case was litigated." The Federal Circuit applied an abuse of discretion standard, and held that the district court should have determined "whether the circumstances surrounding the expert's changed opinion were such that, when considered as part of the totality of circumstances in the case, the case stands out as exceptional." The Federal Circuit noted that the district court instead appeared to determine "whether one discrete portion of the case stood out." The Federal Circuit also rejected the patentee's argument that a "single isolated act" could never support a finding of exceptionality, stating that "[w]hether the conduct is a single, isolated act, or otherwise, the relevant question for the district court is the same." Thus, the Federal Circuit vacated the district court's ruling and remanded. [A copy of the opinion can be found here.](#)

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