

Determination of an Exceptional Case and Entitlement to Attorneys' Fees Is Not a Reviewable Final Decision Until Quantification of the Fee Award

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Elbit Systems Land & C4I Ltd. v. Hughes Network Systems, LLC, No. 2018-1910 (Fed. Cir. June 25, 2019)

The patentee brought suit for patent infringement relating to the accused infringer's satellite communication system. After trial, a jury found one patent valid and infringed, found no infringement of a second patent, and awarded damages. The district court found the case exceptional and that the patentee is entitled to attorneys' fees, but did not quantify those fees. The district court also denied the accused infringer's JMOL motion for a finding of noninfringement and for a new trial on damages. The accused infringer appealed those denials relating to infringement and damages, as well as the exceptionality determination.

The Federal Circuit affirmed the denial of the JMOL motion seeking a finding of noninfringement because substantial evidence supported the jury's findings. Specifically, there was substantial evidence that the accused products included both the claimed means for "continuous transmission of data" and a "switching means." The Federal Circuit also affirmed the district court's denial of a new trial on damages. The patentee's damages expert provided substantial evidence to support the damages award, and there was no expert testimony from the accused infringer on this subject. The evidence also did not violate the requirement that damages be apportioned for the value of the patented features.

Finally, the Federal Circuit dismissed the appeal of the exceptionality finding because it lacked jurisdiction to hear the issue. An exceptionality determination is a "separately appealable judgment which itself must be final," viewed separately from the final judgment on the merits. Accordingly, "a determination of entitlement to fees is not a reviewable final decision until quantification of the fee award." This principle holds despite the statutory provision at 35 U.S.C. § 1292(c)(2), which allows review of a judgment that would be final except that certain "accounting" issues are undecided. The Federal Circuit made clear that fees are not part of such an "accounting" and are not to be treated as merits issues.

[A copy of the opinion can be found here.](#)

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Ivan Poullaos

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