

**A COMPARISON OF PRE *OCTANE* AND POST *OCTANE* DISTRICT COURT DECISIONS ON MOTIONS FOR ATTORNEYS’ FEES UNDER SECTION 285**

We reviewed district court decisions granting or denying motions for fees under section 285<sup>1</sup> in the 365 day period before the Supreme Court decided *Octane Fitness LLC v. Icon Health & Fitness, Inc.* and *Highmark, Inc. v. Allcare Health Mgmt. Sys.* (collectively, “*Octane*”).<sup>2</sup> We also reviewed district court decisions granting or denying motions for fees under section 285 that were decided after *Octane*. In order to collect the cases, we ran a search on the DocketNavigator database.<sup>3</sup>

The following table summarizes our findings. In brief, district courts have awarded fees to prevailing accused infringers in over four times as many cases in the eleven months post *Octane* than in the 12 months pre *Octane*. Contrary to certain information provided in House and Senate hearings, which also relied on DocketNavigator,<sup>4</sup> the percentage of awards to accused infringers has risen since the first of this year, not declined.

Table of Defendants’ Motions Decided by District Courts Before and After <i>Octane</i>	365 Days Pre <i>Octane</i>	Post- <i>Octane</i> Decisions Broken Down in Four Month Periods <sup>5</sup>			
	5/1/13 – 4/29/14	5/1/14 -- 8/31/14	9/1/14 – 12/31/14	1/1/15 – 3/30/15	Total
Accused infringers’ motions granted	6	8	11	12	31
Accused infringers’ motions denied	40	18	24	12	54
Total motions filed	46	26	35	24	85
Percentage granted	13%	31%	31%	50%	36%

## **1. Search Methodology**

We searched “type of document” for “U.S. District Court filing,” “post trial,” and “motion for attorney fees” within specific date ranges. The raw search for the 365 days preceding the *Octane* and *Highmark* decisions yielded 119 results. Of those, we eliminated cases where the courts did not actually decide the issue because it was stayed for further briefing, or for an appeal on the merits. We also excluded motions decided under Rule 41(a)(2), which permits courts to award fees for dismissals without prejudice after a responsive pleading has been filed.<sup>6</sup> We also eliminated cases in which fees were awarded as part of default judgments, and cases reported in duplicate.<sup>7</sup>

## **2. District Court Section 285 Decisions in the One-Year Period Pre *Octane***

We found 71 district court decisions that actually decided motions under section 285 in the 365 days immediately preceding the *Octane* decision. Of those, there were 46 cases in which district courts ruled on motions filed by prevailing accused infringers:<sup>8</sup> six motions were granted<sup>9</sup> and 40 motions were denied.<sup>10</sup>

During the same period of time, district courts ruled on 25 motions filed by patent owners, granting motions in 8 cases (most of which involved findings of willful infringement)<sup>11</sup> and denying motions in 17 cases.<sup>12</sup>

### **3. District Court Section 285 Decisions Post *Octane***

We used the same search methodology as in the search for pre *Octane* district court decisions. The search yielded 171 raw results. After eliminating the same type of cases that were not relevant, we found 96 relevant district court decisions. In those decisions, district courts decided a total of 85 cases in which accused infringers had moved for fees, of which 31 were granted<sup>13</sup> and 54 were denied.<sup>14</sup> During the same period of time, district court granted 11 motions<sup>15</sup> filed by patent owners and denied five.<sup>16</sup>

### **4. Analysis**

The raw number of fee awards to prevailing accused infringers has more than quadrupled in the 11 months since *Octane* was decided, as compared with decisions in the 12 months preceding *Octane*. The rate at which district courts have granted fees to prevailing accused infringers has nearly tripled post *Octane*. And, the rate at which prevailing accused infringers have moved for fees has almost doubled.

Testimony before the Senate and House subcommittees relied on DocketNavigator searches for the proposition that in the three months

preceding the testimony, “the rate of full denials of attorneys’ fees motions is about the same as it was before the Supreme Court decided *Highmark* and *Octane*.” We ran searches in DocketNavigator and reviewed each of the decisions collected in the searches. The decisions actually deciding fee motions do not support this testimony<sup>17</sup>; in fact, the data – once corrected for irrelevant entries as discussed above – supports the opposite conclusion. In the first three months of 2015, 50% of accused infringers’ motions have been granted, at least in part. In contrast, in the 365 days prior to *Octane*, only 13% of accused infringers motions were granted. Overall, the data for the first 11 months after *Octane* was decided shows that courts have granted over four times as many fee motions filed by accused infringers post *Octane* as in the 365 days preceding it. The decisions we reviewed are either cited in end notes or attached as exhibits to this paper so that a transparent comparison may be made with statistics offered by others.

Courts have granted fee motions post-*Octane* for at least five different reasons: (1) finding that the plaintiff failed to conduct an adequate pre-filing investigation or to exercise due diligence before filing suit<sup>18</sup>; (2) finding that the plaintiff should have known its claim was meritless and/or lacked substantive strength<sup>19</sup>; (3) evidence that the plaintiff initiated litigation to

extract settlements from defendants who want to avoid costly litigation<sup>20</sup>: (4) a finding that the plaintiff proceeded in bad faith<sup>21</sup>; and (5) litigation misconduct.<sup>22</sup> Almost uniformly, district court post *Octane* decisions refusing to grant fees under section 285 to accused infringers have found the patent owner's litigation position reasonable and have also concluded that the patent owner did not engage in litigation misconduct.<sup>23</sup>

---

<sup>1</sup> 35 U.S.C. § 285.

<sup>2</sup> *Octane Fitness LLC v. Icon Health & Fitness, Inc.*, \_\_\_ U.S. \_\_\_, 134 S. Ct. 1749, 188 L.Ed. 2d 816 (2014); *Highmark, Inc. v. Allcare Health Mgmt. Sys.*, 134 S.Ct. 1744, 188 L.Ed. 2d 829 (2014).

<sup>3</sup> The search is described in the next section. DocketNavigator.com is a website that collects and reports on patent cases, obtaining data from the courts' ECF filing systems.

<sup>4</sup> DocketNavigator includes templates for searches. The testimony before the House and Senate subcommittees referred to DocketNavigator as the source of its conclusion, but apparently only relied on raw results from the searches.

<sup>5</sup> See Appendix A, Appendix B, attached.

<sup>6</sup> *Cauley v. Wilson*, 754 F.2d 769 (7<sup>th</sup> Cir. 1985); see also, *Davenport by Fowlkes v. Gerber Prod. Co.*, Civ. A. No. 87-3198, 1989 WL 147550, \*1 (E.D. Pa., Dec. 6, 1989) (Courts generally award costs and attorney's fees in cases where a voluntary dismissal has been granted without prejudice "to compensate the defendant for having incurred the expense of trial preparation without the benefit of a final determination of the controversy.").

<sup>7</sup> The last search was conducted on April 1, 2015. Some cases decided in March 2015 may not have been docketed by April 1, 2015. Thus, the search captured decisions that were decided and docketed by March 31, 2015.

<sup>8</sup> Accused infringers sometimes file declaratory judgment actions, in which they are prevailing parties.

<sup>9</sup> *Kim Laube & Co. v. Wahl Clipper Corp.*, 09-cv-914 (C.D. Cal.) (granting defendant's motion for fees after finding that patent was obtained through inequitable conduct); *Homeland Housewares, LLC v. Sorensen Research & Development Trust*, 11-cv-3720 (C.D. Cal. 2013)(fees awarded against patent owner who failed to perform adequate pre-filing investigation, made objectively baseless infringement claims, and for other litigation misconduct); *Transweb, LLC v. 3M Innovative Properties Company*, et. al., 2-10-cv-04413 (DNJ 2014)(inequitable conduct); *Touchtunes Music Corp. v. Rowe International Corp.* et al 1-07-cv-11450 (S.D.N.Y. 2014); *Walters v. Hoover & Strong, Inc.*, 4-11-cv-03562 (S.D. Tx. 2013); *Taylor v. Taylor Made Plastics, Inc.*, 8-12-cv-00746 (M.D. Fla.)(unopposed motion – fees awarded \$31,277).

<sup>10</sup> *Medtrica Solutions Ltd. v. Cygnus Medical LLC*, 2-12-cv-00538 (W.D. Wash. 2014); *Enel Company, LLC v. Schaefer et al*, 3:12-cv-01369 (S.D. Cal. 2014); *Gilead Sciences, Inc. v. Sigmapharm Laboratories, LLC*, 2:10-cv-04931 (D.N.J. 2014); *Shieldmark, Inc. v. Insite Solutions, LLC*, 1:12-cv-00223 (N.D. Ohio 2014); *Calyпсо Wireless v. T-Mobile USA Inc.*, 2:08-cv-00441 (E.D. Tex. 2014); *Spencer, et. al. v. Taco Bell, Corp., et. al.*, 8:12-cv-00387 (M.D. Fla. 2014); *Sound Design Technologies Limited v. Oticon Incorporated*, 2:11-cv-01375 (D. Ariz. 2014); *Mauna Kea Technologies v. Anticancer, Inc.*, 3:11-cv-

---

01407 (S.D. Cal. 2014); *Aspex Eyewear, Inc., et al. v. Laczay, et al.*, 0:09-cv-61468 (S.D. Fla. 2014); *ABT Systems, LLC, et al. v. Emerson Climate Technologies, Inc., et al.*, 4:11-cv-00374 (E.D. Mo. 2014); *Oplus Technologies, Ltd. v. Sears Holdings Corporation, et al.*, 2:12-cv-05707 (C.D. Cal. 2014); **vacated, OPlus Technologies, Ltd. v. Vizio, Inc., 2014-1297, slip. op. (Fed. Cir., April 10, 2015)(applying Octane standard)**; *WI-LAN Inc. v. Alcatel-Lucent USA Inc., et al.*, 6:10-cv-00521 (E.D. Tex. 2014); *Orbis Corporation v. Rehrig Pacific Company*; 2:12-cv-01073 (E.D. Wis. 2014); *TQP Development, LLC v. Branch Banking and Trust Company*, 2:12-cv-00055 (E.D. Tex. 2014); *Wireless Ink Corporation v. Facebook, Inc. et al.*, 1:10-cv-01841 (S.D.N.Y. 2013); *NYKO Technologies, Inc. v. Energizer Holdings, Inc. et al.*, 2:12-cv-03001 (C.D. Cal. 2013); *Thermolife International, LLC v. Better Body Sports, LLC, et al.*, 2:12-cv-09229 (C.D. Cal. 2013); *Thermapure Inc. v. Just Right Cleaning & Construction Inc.*, 2:11-cv-00431 (E. D. Wash. 2013); *ICON Internet Competence Network B.V. v. Travelocity.com, LP*, 3-11-cv-01131 (N.D. Tex. 2013); *Walker Digital LLC v. Fandango Inc., et al.*, 1:11-cv-00313 (D. De. 2013); *Digitech Image Technologies, LLC v. Newegg, Inc., et al.*, 8:12-cv-01688 (C.D. Cal. 2013); *Chrimar Systems, Inc. v. Foundry Networks, Inc.*, 2:06-cv-13936 (E.D. Mich. 2013); *Multimedia Patent Trust v. LG Electronics, Inc., et al.*, 3:12-cv-02731 (S.D. Cal. 2013); *e.Digital Corporation v. Creative Labs, Inc. et al.*, 3:12-cv-02879 (S.D. Cal. 2013); *Draper, Inc. v. Mechoshade Systems, Inc. et al.*, 1:10-cv-01443 (S.D. Ind. 2013); *Finjan Inc. v. McAfee Inc., et al.*, 1:10-cv-00593 (D. Del. 2013); *Effingo Wireless, Inc. v. Motorola Mobility Holdings, Inc., et al.*, 5:11-cv-00649 (W.D. Tex. 2013); *Adjustacam LLC v. Amazon.com, Inc., et al.*, 6:10-cv-00329 (E.D. Tex. 2013); *Potts v. Cur-Tech LLC*, 3:09-cv-00065 (D. Ct. 2013); *Senju Pharmaceutical Co. Ltd., et al. v. Lupin Limited, et al.*, 1:11-cv-00271 (D. Del. 2013); *Gaymar Industries, Inc. v. Cincinnati Sub-Zero Products, Inc. et al.*, 1:08-cv-00299 (W.D. N.Y. 2013); *Avocet Sports Technology, Inc. v. Polar Electro, Inc.*, 3:12-cv-02234 (N.D. Cal. 2013); *Mike's Train House, Inc. v. Broadway Limited Imports, LLC et al.*, 1:09-cv-02657 (D. Md. 2013); *Alzheimer's Institute of America, Inc. v. Avid Radiopharmaceuticals, et al.*, 2:10-cv-06908 (E.D. Pa. 2013); *AntiCancer, Inc. v. Leica Microsystems, Inc., et al.*, 3:11-cv-02756 (S.D. Cal. 2013); *HR Technology, Inc. v. Imura International U.S.A., Inc., et al.*, 2:08-cv-02220 (S.D. Kan. 2013); *NorthMobileTech LLC v. Simon Property Group, Inc.*, 3:11-cv-00287 (W.D. Wis. 2013); *Site Update Solutions LLC v. Accor North America Inc., et al.*, 5:11-cv-03306 (N.D. Cal. 2013); *Wi-Lan Inc. v. LG Electronics, Inc., et al.* 1:10-cv-00432 (S.D.N.Y. 2013); *Implicit Networks, Inc. v. F5 Networks, Inc.*, 3:10-cv-03365 (N.D. Cal. 2013).

<sup>11</sup> *Hypertherm, Inc. v. Profile Cutting Technologies Ltd. et al.*, 2:12-cv-01952 (D. Nev. 2014); *Innovention Toys, LLC v. MGA Entertainment, Inc., et al.*, 2:07-cv-06510 (E.D. La. 2014); *Fleming v. Escort Inc., et al.*, 1:09-cv-00105 (D. Id. 2014); *WBIP, LLC v. Kohler Co.*, 1:11-cv-10374 (D. Mass. 2014); *PactXPP Tech., AG v. Xilinx, Inc.*, 2:07-cv-563 (E. D. Tex. 2013); *Stryker Corporation, et al. v. Zimmer Inc., et al.*, 1:10-cv-01223 (W.D. Mich. 2013); *Innovention Toys, LLC v. MGA Entertainment, Inc., et al.*, 2:07-cv-06510 (E.D. La. 2013); *ALPS South, LLC v. The Ohio Willow Wood Company*, 8:08-cv-01893 (M.D. Fla. 2013).

<sup>12</sup> *Golden Hour Data Systems, Inc. v. emsCharts, Inc., et al.*, 2:06-cv-00381 (E.D. Tex. 2014); *SynQor, Inc., et al. v. Artesyn Technologies, Inc., et al.*, 2:11-cv-00444 (E.D. Tex. 2014); *DePuy Synthes Products Inc. v. Globus Medical Inc.*, 1:11-cv-00652 (D. Del. 2014); *Accessories Marketing, Inc. v. Tek Corporation*, 5:11-cv-00774 (N.D. Cal. 2014); *IP Power Holdings Limited v. Bam Brokerage Inc et al.*, 8:11-cv-01234 (C.D. Cal. 2014); *Endo Pharmaceuticals Inc. v. Mylan Pharmaceuticals Inc. et al.*, 1:11-cv-00717 (D. Del. 1024); *Briese Lichttechnik Verttriebs GmbH v. Langton, et al.*, 1:09-cv-09790 (S.D.N.Y. 2013); *XpertUniverse Inc. v. Cisco Systems Inc.*, 1:09-cv-00157 (D. Del. 2013); *Illinois Tool Works Inc. v. MOC Products Company, Inc.*, 3:09-cv-01887 (S.D. Cal. 2013); *Electro-Mechanical Corporation v. Power Distribution Products, Inc., et al.*, 1:11-cv-00071 (W.D. Va. 2013); *Parallel Networks, LLC v. Outspark Inc.*, 1:13-cv-00181 (D. Del. 2013); *W.Y. Industries, Inc. v. Kari-Out Club LLC, et al.*, 2:08-cv-05349 (D.N.Y. 2013); *Aqua Shield v. Interpool Pool Cover Team*, 2:09-cv-00013 (D. Utah 2013); *Internet Machines LLC v. Alienware Corporation, et al.*, 6:10-cv-00023 (E.D. Tex. 2013); *WesternGeco LLC v. ION Geophysical Corporation*, 4:09-cv-01827 (S.D. Tex. 2013); *Medisim Ltd. v. BestMed, LLC*, 1:10-cv-02463 (S.D.N.Y. 2013); *Shire Development LLC, et al. v. Watson Pharmaceuticals, Inc., et al.*, 0:12-cv-60862 (S.D. Fla. 2013).

<sup>13</sup> See Appendix A, attached.

<sup>14</sup> See Appendix B, attached.

---

<sup>15</sup> See Appendix C, attached.

<sup>16</sup> See Appendix D, Attached.

<sup>17</sup> Docket Navigator was cited as the basis for this conclusion. We found, however, that raw data from searches conducted on Docket Navigator did not yield accurate results.

<sup>18</sup> See, e.g., *Yufa v. TSI Inc.*, No. 09-01315, 2014 WL 4071902, at \*3 (N.D. Cal. Aug. 14, 2014).

<sup>19</sup> Id.

<sup>20</sup> E.g., *Summit Data Sys., LLC v. EMC Corp.*, No. 10-749, 2014 WL 4955689, at \*3-4 (D. Del. Sept. 25, 2014)

<sup>21</sup> *Pure Fishing, Inc. v. Normark Corp.*, No. 10-2140, 2014 WL 5474589, at \*4 (D.S.C. Oct. 28, 2014) (noting that bad faith is no longer required to support an award of fees but finding the plaintiff's position was not reasonable).

<sup>22</sup> *Logic Devices, Inc. v. Apple Inc.*, No. 13-02943, 2014 WL 6844821, at \*4 (N.D. Cal. Dec. 4, 2014)

<sup>23</sup> See cases cited in Appendix B.

## Appendix A

### Table of Post *Octane* District Court Decisions Granting Accused Infringers' Motions for Fees Under 35 U.S.C. §285

Date	Decision
5/14/14	<i>Classen Immunotherapies, Inc. v. Biogen IDEC</i> , 04-cv-2607-WDQ (D. Md. 2014) (plaintiff's infringement claim was objectively baseless).
5/22/14	<i>Home Gambling Network Inc. v. Piche</i> , 2:05-cv-610 (D. Nev. 2014)(finding a case exceptional because plaintiff knew that one step in a method claim was performed outside of the U.S., precluding infringement, and because prosecution history disclaimer precluded plaintiff's infringement theory).
5/30/14	<i>Intellect Wireless, Inc. v. Sharp Corp.</i> , 10-cv-6763 (N.D. Ill. 2014) (fees awarded because patent held unenforceable for inequitable conduct).
6/24/14	<i>Precision Links, Inc. v. USA Prods. Group, Inc.</i> , 3:08-cv-576 (W.D.N.C. 2014)(on remand after Federal Circuit denied prior fee petition under Brooks standard, court granted fee petition under Octane standard, finding plaintiff's infringement theories were frivolous and plaintiff engaged in litigation misconduct).
7/7/14	<i>Action Star Enterprise v. Kaijet Tech. Int'l</i> , 12-cv-8074 (BRO) (C.D. Cal. 2014) (awarding fees because plaintiff litigated the case in an unreasonable manner).
7/10/14	<i>Medtrica Solutions Ltd. v. Cygnus Medical LLC</i> , 12-cv-538 (W.D. Wash. 2014)(no evidence to support infringement contentions).
8/12/14	<i>Kilopass Tech., Inc. v. Sidense Corp.</i> , 10-cv-2066 (N.D. Cal. 2014) (in a case between competitors, the court found the case exceptional because plaintiff had no basis for alleging infringement, noting, among other things, a clear disavowal in a reexamination proceeding).
8/14/14	<i>Yufa v. TSI, Inc.</i> , 09-cv-1315 (N.D. Cal. 2014)(pro-se litigant liable for fees where he conducted inadequate pre-filing investigation and continued prosecution of the action with no evidence of infringement: "Given Plaintiff's history of prosecuting patent infringement cases, it would be improper to entirely relieve him from paying TSI's attorney's fees, which would only encourage additional litigation.").
9/12/14	<i>Parallel Iron LLC v. NetApp Inc.</i> , 12-cv-769 (D. Del. 2014)(plaintiff litigated case in bad faith, vexatiously and wantonly, and failed to conduct a suitable pre-filing investigation).
9/24/14	<i>The Ohio Willow Wood Co. v. ALPS South LLC</i> , 2:04-cv-1223 (S. D. Ohio 2014) (fees awarded to defendant after court found that patent was unenforceable for inequitable conduct).
9/25/14	<i>Summit Data Systems, LLC v. EMC Corp.</i> , 10-cv-749 (D. Del. 2014) (infringement suit filed two months after plaintiff licensed Microsoft, where infringement claim was based on NetApp's products interacting with Microsoft software, noting that "Summit's practice of extracting settlements worth a fraction of what the case would cost to litigate supports a finding of exceptionality").

## Appendix A

### Table of Post *Octane* District Court Decisions Granting Accused Infringers' Motions for Fees Under 35 U.S.C. §285

Date	Decision
10/22/14	<i>Technology Innovations LLC v. Amazon.com, Inc.</i> , 1:11-cv-690 (D. Del., Oct. 22, 2014) (modifying reasons for fee award to defendant in decision issued July 23, 2014 where plaintiff's position on claim construction was baseless).
10/28/14	<i>Pure Fishing, Inc. v. Normark Corp.</i> , 10-cv-2140 (D.S.C. 2014)(noting shifting theories of claim construction and total lack of support for claim construction position).
11/4/14	<i>TNS Media Research, LLC v. Tivo Research &amp; Analytics, Inc.</i> , 11-cv-4039 (S.D.N.Y. 2014)(plaintiff made frivolous claim construction and infringement arguments).
11/6/14	<i>Chalumeau Power Sys. LLC v. Alcatel-Lucent</i> , 11-cv-1175-RGA (D. Del. 2014)("Chalumeau filed a frivolous lawsuit with the sole purpose of extorting a settlement fee. When it realized that was not going to happen, it dropped the case. Chalumeau's entire litigation strategy was devoted to stringing out the case in the hopes that Alcatel would incur fees while Chalumeau would not.").
11/6/14	<i>IPVX Patent Holdings, Inc. v. Voexernet LLC</i> , 5:13-cv-1708 (N.D. Cal.) (unreasonable claim construction and infringement contentions).
11/12/14	<i>Lumen View Tech., LLC v. Findthebest.com, Inc.</i> , 1:13-cv-3599, D.I. 83, D.I. 112 (S.D.N.Y. 2014) (awarding fees to defendant after granting judgment on pleadings because basic investigation would have revealed defendant's non-infringement; court noted plaintiff's boilerplate complaint, and commencement of several lawsuits in short time frame suggesting a desire to extract a nuisance settlement).
12/4/14	<i>Logic Devices, Inc. v. Apple, Inc.</i> , No. 13-2943 (N.D. Cal. 2014)(plaintiff failed to comply with local patent rules and misrepresented that a terminal disclaimer had been filed in response to a defense of double patenting").
12/10/14	<i>Chicago Board Options Exchange, Inc. v. International Securities Exchange, Inc.</i> , No. 07-cv-623 (N.D. Ill. 2014)(conduct after remand warranted fee award).
1/6/15	<i>Cambrian Science Corporation v. Cox Communications Inc.</i> , 8:11-cv-01011 (C.D. Cal. 2015) (Defendant's motion granted. Court awarded partial fees in favor of one defendant for defending claims of infringement as to two of three accused devices, finding that two of the infringement claims were meritless, but not the third. Court granted fees to a customer defendant for its defense of the entire case based on the the plaintiff's litigation misconduct, which included overly broad and burdensome discovery requests.)

**Appendix A**

**Table of Post *Octane* District Court Decisions Granting Accused Infringers' Motions for Fees Under 35 U.S.C. §285**

Date	Decision
1/8/15	<i>Intellect Wireless, Inc. v. HTC Corp.</i> 09-C-2495 (N.D. Ill. 2015) (Fees awarded against law firm as well as plaintiff after patent was held unenforceable for inequitable conduct where plaintiff's firm was found to have been aware of the false statements prior to filing the lawsuit).
1/26/15	<i>Wave Loch, Inc. et al v. American Wave Machines, Inc.</i> , 3:08-cv-00928 (S.D. Cal. 2015) (Defendant's motion granted. Court found that plaintiff's motion to amend the complaint was made in bad faith. Court awarded fees from the date of the motion for leave to amend.)
2/27/15	<i>TechRadium Inc v. FirstCall Network, Inc.</i> , 4:13-cv-02487 (S.D. Tex.) (Court found case exceptional because plaintiff filed second action against defendant as leverage for settlement negotiations after obtaining claim construction in first action that precluded infringement. Court found that the second lawsuit was filed for an improper purpose.)
3/2/15	<i>Odorstar Technology, LLC et al v. SMM Distributors LLC</i> , 0-13-cv-60136 (S.D. Fla. 2015) (Defendant's motion denied. Court did not find plaintiff's conduct or litigation position warranted a finding that the case was exceptional).
3/9/15	<i>Digital Reg. of Texas LLC v. Adobe Systems Inc.</i> , 4:12-cv-1971 (N.D. Cal. 2015) (Court found the case exceptional due to litigation misconduct by virtue of the plaintiff's failure to produce relevant documents in discovery, which led to a deposition of a witness during trial when the witness changed his testimony. The Court rejected defendant's arguments that the litigation position and other litigation tactics were unreasonable. The Court awarded fees that were limited to dealing with the specific litigation tactic that the court found exceptional.
3/10/15	<i>Universal Electronics, Inc. v. Universal Remote Control, Inc.</i> , 12-cv-329 (C.D. Cal. 2015)(Guilford, J.)(The court held that plaintiff failed to comply with the patent marking statute. The plaintiff sued on an expired patent, so no relief was available. The court held that plaintiff failed to conduct an adequate pre-filing investigation as to the expired patent. As to the other patents, plaintiff's conduct was marginal, but not exceptional. Thus, the court awarded fees only as to the portion of the case that was deemed exceptional.)

## Appendix A

### Table of Post *Octane* District Court Decisions Granting Accused Infringers' Motions for Fees Under 35 U.S.C. §285

Date	Decision
3/11/15	<i>UltimatePointer, L.L.C. v. Nintendo Co., Ltd.</i> , 2-14-cv-00865 (W.D. Wash. 2015) (Motion for fees granted because the patent owner's pre-filing investigation was inadequate. Patent owner identified over 1,912 Wii games but had acquired only 203 games. Patent owner assumed, without any evidence, that the remaining game were substantially similar. The Court found "that the unnecessary and unsupported addition of over 1,700 accused products with no attempt to substantiate the accusations was in bad faith, vexatious, wanton, and, in the absence of any reasonable justification for the expansion, deemed to be for oppressive reasons." It awarded the portion of defense counsel's fees attributable to the unnecessary presence of the 1,700+ products identified by the patent owner.)
3/13/15	<i>Bayer Cropscience AG v. Dow Agrosciences LLC</i> , No. 12-256 (D.Del. 2015)(adopting report and recommendation that fees be awarded because case was "exceptionally meritless," finding the patent owner's position "fallacious." The Court held that the patent owner's "conduct in litigating this case in the face of evidence that contradicted its contorted reading of the [license agreement] was objectively unreasonable.").
3/26/15	<i>Lugus IP, LLC v. Volvo Car Corp.</i> , 12-cv-2906 (D.N.J., March 26, 2015) (The court found that the plaintiff's infringement arguments were objectively unreasonable and awarded defendants' their fees under section 285)
3/27/15	<i>Brilliant Optical Solutions, LLC v. Comcast Corp.</i> , 13-cv-886 (D. Colo., March 27, 2015) (A wholly owned subsidiary of Acacia sued Comcast for infringement of a patent under which Comcast had a pre-existing license. About two weeks after Comcast notified the plaintiff of the license and that Comcast intended to file an IPR, the plaintiff filed an unopposed motion to dismiss with prejudice. The court found the case exceptional because the license provided a clear defense, and that prosecution of the infringement claim was objectively unreasonable. The court applied the lodestar amount to calculate fees.)
3/30/15	<i>Alzheimer's Institute of America, Inc. v. Avid Radiopharmaceuticals</i> , 10-cv-6908 (E.D. Pa., March 30, 2015) (Jury found that plaintiff was not the owner of the rights to the patent; court found that the plaintiff's principle had conspired to defraud the University of South Florida of its rights to the invention and that a co-inventor was not disclosed in the patent application; court cited the need for deterrence as a reason justifying the fee award).

**Appendix B**

**Table of Post *Octane* District Court Decisions Denying Accused Infringers’  
Motions for Fees Under 35 U.S.C. §285**

<b>Date</b>	<b>Decision</b>
5/12/14	<i>Alexsam, Inc. v. The Gap, Inc.</i> , 2:13-cv-4 (E. D. Tex. 2014)(DI 278) (defendant’s motion for fees denied even though same system was found not to infringe by two juries in two previous trials, where defendant had requested separate trial. “Alexsam indeed should have recognized that its chances of prevailing on infringement were severely weakened after two unsuccessful jury trials involving similar theories. But it was not unjustified or frivolous in pursuing its claims against The Gap, especially given The Gap’s insistence that “[w]hile their systems are similar [to Pier 1], the evidence is specific to each defendant” (2:13-cv-3, Doc. No. 135 at 3–4). The Gap adamantly opposed a consolidated infringement trial and argued that it would be severely prejudiced if they were not allowed to call its “own corporate witnesses to address the technical, contractual, and managerial aspects of their gift card programs, as well as witnesses to address their financial information relevant to damages” (2:13-cv-3, Doc. No. 135 at 3–4).”).
5/23/14	<i>Kaneka Corp. v. Zhejiang Medicine Co., Ltd.</i> , 2:11-cv-2389 (C.D. Cal. 2014)(court denied defendant’s motion for fees following court’s grant of summary judgment of non-infringement, after the ITC had found non-infringement of the same claims, and after it had construed claims in a manner that precluded infringement; court held that plaintiff was not required to stipulate to non-infringement following claim construction, and that plaintiff had “presented reasonable, but unconvincing arguments.”).
5/27/14	<i>Eon Corp. IP Holdings, LLC v. Flo TV Inc.</i> , 10-cv-812 (D. Del. 2014) (defendant’s motion for fees denied even though means-plus-function claims held invalid for indefiniteness; court rejected defendants’ argument that the case should have been dropped “because the potential recover. . . would be dwarfed by the costs of litigation” where liability and damages had been bifurcated).
6/3/14	<i>Creagri, Inc. v. Pinnaclife, Inc.</i> , 5:11-cv-6635 (N.D. Cal., June 3, 2014) (accused infringer’s motion denied because the court found that the patent owner performed an adequate pre-filing investigation under F.R. Civ. P. 11, prevailed on some claim construction issues, had a reasonable basis for alleging infringement based on at least some evidence, and did not litigate the case unreasonably).
6/3/14	<i>Robinson v. Bartlow</i> , 3:12-cv-24 (D.W.Va. 2014) (defendant’s motion for fees denied because defendant was not a prevailing party after claim was dismissed for plaintiff’s failure to prosecute).
6/30/14	<i>Elite Lighting v. DMF, Inc.</i> , 13-cv-1920 (C.D. Cal. 2014) (denying fees even though plaintiff’s position was weak, but reserving the issue until after all appeals exhausted whether plaintiff’s attorney should be sanctioned under 28 U.S.C. § 1927).

**Appendix B**

**Table of Post *Octane* District Court Decisions Denying Accused Infringers’  
Motions for Fees Under 35 U.S.C. §285**

<b>Date</b>	<b>Decision</b>
7/3/14	<i>Gaymar Indus., Inc. v. Cincinnatti Sub-Zero Prods., Inc.</i> , 08-cv-299 (W.D.N.Y. 2014) (report and recommendation) (recommended denial of defendant’s motion for fees because prevailing defendant did not have “clean hands,” having itself committed litigation misconduct).
7/8/14	<i>SFA Systems, LLC v. 1-800-Flowers.com, Inc.</i> , 6:09-cv-340 (E.D. Tex. 2014)(defendant’s motion for fees denied where court denied defendant’s motion for summary judgment and rejected some of defendant’s claim construction arguments; fact that plaintiff had filed lawsuits against numerous defendants, alone, was insufficient to render the case exceptional).
7/15/14	<i>Abbvie Inc. v. The Mathilda and Terence Kennedy Institute of Rheumatology Trust</i> , 11-cv-2541 (S.D.N.Y. 2014) (DI 141) (motion for fees by declaratory judgment plaintiff denied where patent owner’s defense to invalidity based was not frivolous or made in bad faith and patent owner’s conduct not sanctionable because patent owner “could reasonably pursue various legal theories in defense of its presumptively valid patent. Even though [patent owner’s] positions were at times inconsistent, that does not mean they were ‘exceptional[ly]’ meritless.”).
7/24/14	<i>Realtime Data LLC v. CME Group Inc.</i> , 11-cv-6697 (S.D.N.Y. 2014) (defendants motion for fees premised on theory that plaintiff should have stipulated to dismissal after claim construction ruling denied, citing <i>Kaneka Corp. v. Zhejiang Medicine Co., supra</i> ).
7/25/14	<i>Eon Corp. IP Holdings LLC v. Cisco Sys. Inc.</i> , 12-cv-1011 (N. D. Cal. 2014) (defendant’s motion for fees denied even though plaintiff continued to litigate after court’s claim construction rendered plaintiff’s infringement theory untenable, where plaintiff had achieved favorable results in other cases based on the same construction; court characterized motion for fees as a “close case”).
7/25/14	<i>Pragmatus Telecom LLC v. Newegg, Inc.</i> , 12-1533 (D. Del. 2014) (defendant’s motion for fees denied after case dismissed because defendant’s supplier acquired a license through settlement; defendant was not the prevailing party).
7/28/14	<i>Meyer Intellectual Properties Ltd. v. Bodum USA, Inc.</i> , 6-cv-6329 (N.D. Ill. 2014)(defendant’s fee motion denied after court granted summary judgment of invalidity; unproven allegations of inequitable conduct insufficient to render the case exceptional).
8/6/14	<i>Stragent, LLC v. Intel Corp.</i> , 6:11-cv-421 (E.D. Tex. 2014)(Dyk, J., sitting by designation) (defendant’s motion for fees denied after defendant prevailed in a jury trial, where defendant never moved for summary judgment).

**Appendix B**

**Table of Post *Octane* District Court Decisions Denying Accused Infringers’  
Motions for Fees Under 35 U.S.C. §285**

<b>Date</b>	<b>Decision</b>
8/25/14	<i>Charge Lion LLC v. Linear Tech. Corp.</i> , 6:12-cv-769 (E.D. Tex. 2014) (defendant’s motion for fees denied against alleged “‘ secretive ‘shell’ corporation that exists for th[e] sole purpose of using the ‘702 patent to extract [nuisance] settlements”” where defendant failed to substantiate its claim that the plaintiff was engaged in “extortive litigation tactics;” error in accusing certain devices in complaint “shows inattentiveness—and even carelessness . . . [but] is not sufficient to render this case exceptional;” claim construction arguments were not frivolous).
8/26/14	<i>Gevo, Inc. v. Butamax Advanced Biofuels LLC</i> , 13-cv-576 (D. Del. 2014)(defendants’ motion for fees denied in case between competitors where court had granted defendants’ motion for non-infringement and found certain claims invalid and entered judgment for defendants; court found that the technology was unpredictable and that the nature of the defendants’ contentions supported plaintiff’s skepticism of defendants’ position).
8/27/14	<i>Smartwater, Ltd. v. Applied DNA Sciences, Inc.</i> 12-cv-5731 (E.D.N.Y. 2014) (defendant’s motion for fees denied after court granted plaintiff’s motion for voluntary dismissal under Rule 41(a)(2)).
8/29/14	<i>Dixon v. Alexander Elnekaveh</i> , 13-cv-80949 (S. D. Fla. 2014)(defendant’s motion for fees denied where plaintiff failed to disclose all of his income when filing <i>in forma pauperis</i> ).
9/2/14	<i>Gametek LLC v. Zynga, Inc.</i> , 13-cv-2546 (N. D. Cal. 2014)(court granted motion for judgment on pleadings against PAE that claims were directed to unpatentable subject matter under section 101; court denied defendant’s fee motion because it found that plaintiff’s position was not frivolous, especially in view of recent <i>Alice</i> decision; court found that plaintiff’s aggressive litigation strategy fell short of conduct that justified fee shifting).
9/3/14	<i>H-W Tech., L.C. v. Overstock.com, Inc.</i> , 3:12-cv-636 (N.D. Tex. 2014)(report and recommendation) (defendant’s motion for fees denied because plaintiff’s losing arguments did not warrant fee award).
9/4/14	<i>The Taunsa Group, LLC v. Maximum Human Performance, LLC</i> 12-cv-7189(C.D. Cal. 2014)(defendants’ motion for fees denied after court granted summary judgment that patent was invalid; there was no evidence that plaintiff knew that inventor withheld prior art, and case was litigated in a cooperative and efficient manner).
9/15/14	<i>Enel Co., LLC v. Schaefer</i> , 12-cv-1369 (S. D. Cal. 2014) (defendant’s fee motion untimely; but even if it were timely, court found case was not exceptional where defendant refused to dismiss case after court’s finding that plaintiff’s claim against another defendant was barred by laches, and defendant continued to litigate the case).

## Appendix B

### Table of Post *Octane* District Court Decisions Denying Accused Infringers' Motions for Fees Under 35 U.S.C. §285

Date	Decision
9/18/14	<i>Chao Tai Electronics Co. Ltd. v. Ledup Enterprise, Inc.</i> , 12-10137 (C.D. Cal. 2014) (defendant's motion for fees denied where plaintiff offered a walkaway settlement case after plaintiff filed a motion for summary judgment).
9/22/14	<i>TQP Dev., LLC. v. Branch Banking &amp; Trust Co.</i> , 2:12-cv-055 (E.D. Tex. 2014)(defendant's motion for fees denied after plaintiff moved to dismiss the case with prejudice; plaintiff contended that defendant's late disclosure of damages discovery revealed that damages were too small to justify continued prosecution).
9/23/14	<i>Young v. Anne Stone, Inc.</i> , 1:13-cv-4920 (N.D. Ill., Sept. 23, 2014) (Defendant's motion for fees for defending allegations of design patent infringement denied without opinion in case where court had granted defendant's motion for judgment on the pleadings).
9/25/14	<i>Robert Bosch LLC v. Snap-On Inc.</i> , 12-cv-11503 (E.D. Mich. 2014) (report and recommendation) (defendant's motion for fees denied where indefiniteness argument, although successful, was not made until 17 months after the case was filed, and patent owner's argument that the claims were valid was not unreasonable; no fees based on failure of German parent company to provide discovery where plaintiff failed to utilize procedures under Hague convention).
9/30/14	<i>Western Holdings, LLC v. Summers</i> , 2:13-cv-144 (D. Utah)(defendant's motion for fees denied where plaintiff voluntarily dismissed its claim after defendant filed a motion to dismiss).
9/30/14	<i>Wiley v. Rocktenn CP, LLC.</i> , 4:12-cv-226 (E.D. Ark. 2014) (court denied defendant's motion for fees because plaintiff's position was not unreasonable, in a case where defendant was a licensee who admittedly underpaid the plaintiff on the license, and where defendant's counsel threatened to press for attorneys' fees and attempted to negotiate a walkaway in exchange for waiving a motion for fees).
9/30/14	<i>Oplus Tech., Ltd. v. Sears Holdings Corp.</i> , 11-cv-8539 ((E.D. Ill. 2014) (report and recommendation) (defendant customer's motion for fees denied where manufacturer's motion for fees was denied by another court)
10/4/14	<i>ThermoLife Int'l LLC v. Better Body Sports LLC</i> , 12-cv-9229 (C.D. Cal. 2014)(defendant's motion for attorneys' fees denied after court granted summary judgment of invalidity, finding that plaintiff's claim construction arguments were not frivolous, and plaintiff's arguments concerning validity were of sufficient substance).
10/7/14	<i>Rates Tech. Inc. v. Broadvox Holding Co. LLC</i> , 13-cv-152 (S.D. N.Y. 2014) (defendant's motion for fees denied where court had dismissed the case after plaintiff's former counsel withdrew for lack of payment and plaintiff corporation did not secure new counsel).

**Appendix B**

**Table of Post *Octane* District Court Decisions Denying Accused Infringers' Motions for Fees Under 35 U.S.C. §285**

<b>Date</b>	<b>Decision</b>
10/16/14	<i>Macrosolve, Inc. v. Antenna Software, Inc.</i> , 6:11-cv-287 (E.D. Tex. 2014)(defendant's fee motion denied where plaintiff voluntarily dismissed case with prejudice against defendant and settled against other defendants after PTO issued final office action rejecting all asserted claims; court found that settlements for significantly less than litigation costs did not alone show bad faith and that defendant's shifting claim construction positions refute its argument that plaintiff's positions were frivolous).
10/23/14	<i>CTP Innovations, LLC v. Original Impressions, LLC</i> , 1:14-cv-21498 (S.D. Fla., October 23, 2014) (Court denied defendant's motion for fees under section 285 in same order granting defendant's motion to dismiss claims of indirect infringement with leave to amend).
10/23/14	<i>Small v. Implant Direct Mfg. LLC</i> , 06-cv-683 (S.D.N.Y. 2014)(defendant's motion for fees denied even though patent had been held invalid on summary judgment because plaintiff's arguments were not baseless and the invalidity of the patent was "not readily apparent at the time [plaintiff] initiated the action," and there was no evidence that plaintiff engaged in litigation misconduct or brought case in bad faith).
11/6/14	<i>Inventio AG v. Thyssenkrupp Elevator Corp.</i> , 08:cv-874 (D. Del. 2014) (case not exceptional where defendant failed to prove inequitable conduct).
11/14/14	<i>Cogent Medicine, Inc. v. Physicians Interactive Holdings, Inc.</i> , 13-4483 (N.D. Cal. 2014) (defendants' motion denied because court found that the totality of circumstances did not warrant finding that case was exceptional).
11/17/14	<i>Applied Medical Resources Corp. v. Tyco Healthcare Group LP</i> , 11-cv-1406 (C.D. Cal. 2014) (Court held that the non-prevailing party's position on inventorship issue was not unreasonable).
11/18/14	<i>Sound Design Tech., Ltd. f. Oticon, Inc.</i> , 11-cv-1375 (D. Ariz. 2014) (accused infringer failed to demonstrate that the case was exceptional with respect to the substantive strength of the patent owner's litigation position and failed to demonstrate litigation misconduct).
11/20/14	<i>Momenta Pharm., Inc. v. Teva Pharm. USA, Inc.</i> , 10-cv-12079 (D. Mass. 2014) (Court found plaintiff's position was reasonable, and found that plaintiff did not engage in litigation misconduct).
12/16/14	<i>Resh v. Hetzner</i> , 5:13-cv-00830 (C.D. Cal. 2014) (Defendant's motion denied. Court found that plaintiff's litigation position was reasonable.)
12/17/14	<i>The University of Manitoba v. Dragerwerk AG &amp; Co. KGaA</i> , 2:13-cv-00048 (D. N.D. 2014) (Defendant's motion for fees denied because plaintiff's litigation position regarding claim construction was reasonable and plaintiff stipulated to a judgment of non-infringement, which it appealed).

**Appendix B**

**Table of Post *Octane* District Court Decisions Denying Accused Infringers' Motions for Fees Under 35 U.S.C. §285**

<b>Date</b>	<b>Decision</b>
12/22/14	<i>JS Products, Inc. v. Kabo Tool Co.</i> , 2:11-cv-01856 (D. Nev. 2014) (Declaratory judgment plaintiff's motion for fees against patent owner denied where neither patent owner's infringement positions nor litigation conduct provided any basis for fee award.)
1/11/15	<i>Calypso Wireless v. T-Mobile USA Inc.</i> , 2:08-cv-00441 (E.D. Tex. 2015) (Defendant's motion denied. Court found that the patent owner's litigation position was not unreasonable, given that it took the court 15 pages of analysis to conclude, based on a totality of the evidence, that the defendant had the better side of the argument).
1/18/15	<i>Alpha Technology U.S.A. Corporation v. MLSNA Dairy Supply, Inc.</i> , 3:13-cv-00870 (W.D. Wis. 2015) (Defendants' motion for fees under section 285 denied, after plaintiff executed covenants not to sue. Court found that the case was not exceptional.)
1/23/15	<i>e-Watch, Inc. v. Mobotix Corp.</i> , 5:12-cv-00492 (W.D. Tex. 2015) (Defendant's motion for attorneys' fees denied. Magistrate judge's R&R adopted. Magistrate judge found that plaintiff's voluntary dismissal of its claims after a warning by the court did not cause the case to be exceptional. Court noted a parallel IPR proceeding.)
1/27/15	<i>Aviva Sports, Inc. v. Fingerhut Direct Marketing, Inc.</i> , 09-cv-01091 (D. Minn. 2015) (Defendant's motion denied. The Court found that nothing about the case stood out from others with respect to the substantive strength of the plaintiff's litigation position or the manner in which the case was litigated.)
1/29/15	<i>Advanced Steel Recovery, LLC v. X-Body Equipment, Inc.</i> , 2:12-cv-01004 (E.D. Cal. 2015)( Defendant's motion denied with a cursory explanation that the defendants had not met the Octane standard.)
2/11/15	<i>Site Update Solutions LLC v. Accor North America Inc.</i> , 5:11-cv-03306 (N.D. Cal. 2015) (Defendant's motion denied on reconsideration in view of Octane standard. Case not exceptional because plaintiff's case on the merits was not entirely frivolous or objectively unreasonable.)
2/14/15	<i>Stretchline Intellectual Properties Ltd. v. H &amp; M Hennes &amp; Mauritz LP</i> , 2:10-cv-00371 (E.D. Va. 2015) (Defendant's motion denied. Court did not find case exceptional when plaintiff filed a motion to dismiss with prejudice. The case had previously been settled. Then, plaintiff filed a motion to enforce settlement. Thereafter, plaintiff voluntarily moved to dismiss.)
2/27/15	<i>Maxim Integrated Products, Inc. v. Bank of the West</i> , 2:12-cv-00880 (W.D. Pa. 2015)( Defendant's motion denied. Defendant failed to prove that the case was exceptional, even assuming that defendant was a prevailing party (a fact that was in dispute). The court found that plaintiff may have prevailed on its claims before it entered into a license agreement with the provider of the accused product that was used by defendant bank.)

**Appendix B**

**Table of Post *Octane* District Court Decisions Denying Accused Infringers' Motions for Fees Under 35 U.S.C. §285**

<b>Date</b>	<b>Decision</b>
3/16/15	<i>Collectors Universe, Inc. v. Blake</i> , 8:14-cv-333 (C.D. Cal. 2015) (Declaratory judgment plaintiff, counterclaim defendant's motion for fees denied. Court found that patent owner had a reasonable belief that his patent was valid.).
3/16/15	<i>Waterton Polymer Products USA, et. al. v. Edizone</i> , 2:12-cv-00017 (D. Utah 2015) (Declaratory judgment defendant's motion for attorneys' fees denied. Court found that the accused infringer's non-infringement position was reasonable, given its reliance on an opinion of counsel).
3/20/15	<i>DietGoal Innovations LLC v. Chipotle Mexican Grill, Inc.</i> , 2:12-cv-00764 (E.D. Tex.) (Bryson, J.) (Defendant's motion for fees denied. Judge Bryson found that Defendant's belief that its claims were valid was not unreasonable given the flux in the law relating to section 101, that its litigation position was not unreasonable and that plaintiff did not engage in litigation misconduct).
3/25/15	<i>SmartMetric, Inc. v. MasterCard Int'l, Inc.</i> , 11-cv-7126 (C.D. Cal., March 25, 2015) (Court found that although plaintiff's infringement case was weak, it did not completely lack legal or factual basis and that plaintiff did not take an unreasonable litigation position).

**Appendix C**

**Table of Post *Octane* District Court Decisions Granting Patent Owners’  
Motions for Fees Under 35 U.S.C. §285**

<b>Date</b>	<b>Decision</b>
6/24/14	<i>Ultimate Combustion Co., Inc. v. Fuecotech, Inc.</i> , 12-cv-60545 (S.D. Fla. 2014) (report and recommendation) ( fees awarded to plaintiff where defendant was willful infringer, and had waived its claim construction argument because it had failed to adhere to deadlines in the case management order)
6/30/14	<i>Cognex Corp. v. Microscan Sys., Inc.</i> , 13-CV-2027 JSR, 2014 WL 2989975 (S.D.N.Y. June 30, 2014) (defendants, who had willfully infringed, "engaged in unreasonable litigation tactics, such as making post-trial motions that sought purely to relitigate issues decided at trial)
7/14/14	<i>Comaper Corp. v. Antec, Inc.</i> , 05-cv-1103 (E.D. Pa. 2014)(plaintiff awarded fees after jury found willful infringement).
7/31/14	<i>Falana v. Kent State University</i> , 5:08-cv-720 (N.D. Ohio 2014) (court found plaintiff should have been named as inventor in university-owned patent, where other inventors initially refused to agree to name plaintiff as additional inventor but did so after months of litigation, where contemporaneous documentary evidence indicated that plaintiff was an inventor, and court found other “inventors” testimony not credible).
8/8/14	<i>Integrated Tech. Corp. v. Rudolph Tech., Inc.</i> , 06-cv-2182 (D. Ariz. 2014) (fees awarded to plaintiff where jury found defendant to be a willful infringer and defendant provided false discovery responses: “The striking weakness of Rudolph’s position . . . as well as the unreasonable manner in which it litigated the case through trial and post-trial motions, satisfy the Supreme Court’s standard”).
8/14/14	<i>Romag Fastners, Inc. v. Fossil, Inc.</i> 3:10-cv-1827 (D. Conn. 2014) (fees awarded to plaintiff where defendants pursued meritless invalidity defenses and to deter large defendants: “there is a risk that plaintiffs similar to Romag could be discouraged from bringing claims that may garner only small awards but are nonetheless vital to the survival of their businesses where defendants, as was the case here, aggressively pursue invalidity counterclaims in an attempt to prolong litigation and exponentially increase the cost and risk of pursuing a lawsuit.”).
8/18/14	<i>Deckers Outdoor Corp. v. Superstar Int’l, Inc.</i> , 13-cv-566 (C.D. Cal. 2014)(plaintiff awarded fees where defendant defaulted; court noted defendant’s failure to respond to discovery or otherwise participate in this case was so egregious that court struck defendant’s answer).
8/22/14	<i>Rubbermaid Commercial Prods., LLC v. Trust Commercial Prods.</i> , 2:13-2144 (D. Nev. 2014) (report and recommendation) (court awarded fees to plaintiff after court held defendant in default after defendant discharged its counsel and failed to retain new counsel).
12/16/14	<i>Rawcar Group, LLC. v. Grace Medical, Inc.</i> , 13-cv-1105 (S.D. Cal. 2014)(court awarded fees to plaintiff against willful infringer, and also found that case was exceptional based on the unreasonable manner in which it was litigated).

**Appendix C**

**Table of Post *Octane* District Court Decisions Granting Patent Owners’  
Motions for Fees Under 35 U.S.C. §285**

<b>Date</b>	<b>Decision</b>
12/19/14	<i>Forever Foundations &amp; Frame, LLC v. Optional Products LLC</i> , 13-cv-1779 (C.D. Cal. 2014)(fees awarded against defaulting defendant who employed plaintiff’s former employees; court found defendants committed willful infringement).
1/9/15	<i>Intex Recreation Corp. v. Team Worldwide Corp.</i> , 1:04-cv-01785 (D.D.C. 2015) (Plaintiff’s motion granted. Court awarded fees for summary judgment briefing after defendant insisted on summary judgment briefing following a claim construction that precluded defendant’s non-infringement theory. Court held that defendant “filed a conclusory expert report and advanced flawed, nonsensical, and baseless arguments, which lacked factual support, seeking only to re-litigate this Court’s construction of the term ‘socket.’”)

**Appendix D**

**Table of Post *Octane* District Court Decisions Denying Patent Owners' Motions for Fees Under 35 U.S.C. §285**

<b>Date</b>	<b>Decision</b>
3/30/15	<i>Ateliers de la Haute-Garonne v. Broetje Automation-USA, Inc.</i> , 09-cv-598 (D. Del., March 30, 2015) (Court found that the case was not exceptional after it granted a motion for JMOL that the defendants' infringement was not willful).
3/20/2015	<i>Luv N' Care, Ltd. et al v. Royal King Infant Products Co., Ltd.</i> , 2:10-cv-00461 (E.D. Tex. 2015) (Plaintiff's motion for fees denied without explanation).
1/16/2015	<i>Keystone Global LLC v. Auto Essentials, Inc.</i> , 12-cv-9077 (S.D.N.Y., January 16, 2015) (Plaintiff who proved willful infringement denied fees for failure to provide supporting documentation required by Second Circuit. Plaintiff would otherwise have been entitled to fees).
11/13/2014	<i>Transperfect Global, Inc. v. Motionpoint Corp.</i> , 10-cv-2590 (N.D. Cal. 2014) (court did not find defendants' position or conduct exceptional).
9/23/2014	<i>L.C. Eldridge Sales Co., Ltd. v. Jurong Shipyards PTE., Ltd.</i> , 6:11-cv-599 (E.D. Tex. 2014) (following jury trial where jury rejected defendant's positions, plaintiff's fee motion denied where both parties shifted their positions throughout case).
7/14/2014	<i>Jake Lee v. Mike's Novelties, Inc.</i> , 10-cv-2225 (C. D. Cal. 2014)(plaintiff's motion for fees denied after jury found infringement where defendant's litigation misconduct was "modest" and defendants' position was not unreasonable).