

April 16, 2015

## Glaser Weil Attorneys Scored Another Victory for VIZIO Before the Federal Circuit Court of Appeals In “Vexatious” IP Case

Oplus Technologies Ltd. v. VIZIO, Inc. (Fed. Cir. 2015)

**Related Attorney(s):** Adrian Pruetz, Dan Liu

**Related Practice(s):** Intellectual Property



In a precedential opinion, the Federal Circuit Court of Appeals—Judge Moore writing—vacated and remanded U.S. District Court Judge Mariana R. Pfaelzer’s 2014 decision denying fees, finding that it “cannot find a basis to support the court’s refusal to award fees” and instructing the district court to reconsider its earlier decision under the recent *Octane Fitness* case. The Federal Circuit also found that VIZIO had incurred additional fees caused by Oplus’ litigation misconduct.

On April 10, 2015, the Federal Circuit held that the district court judge had abused her discretion by not awarding VIZIO its attorneys’ fees where VIZIO prevailed in a patent suit filed by Oplus Technologies Ltd. and the judge had issued a 19 page order detailing Oplus’ many transgressions, ultimately finding that Oplus and its attorneys from Niro Haller & Niro Ltd. had engaged in “vexatious” litigation misconduct. In the district court’s order, the court reprimanded Oplus’ attorneys for “flout[ing] the standards of appropriate conduct and professional behavior,” yet did not find that VIZIO had incurred any additional costs during litigation.

The Federal Circuit stated that “[g]iven that the district court found counsel’s behavior ‘inappropriate,’ ‘unprofessional,’ ‘vexatious,’ and ‘harassing,’ it is difficult to imagine how [VIZIO] had not incurred additional expenses defending against such filings.”

The Federal Circuit also noted that the U.S. Supreme Court’s recent *Octane Fitness* decision, issued three months after the district court’s decision denying VIZIO’s fees, made it easier for judges to award attorneys’ fees to prevailing parties under Section 285 of the Patent Act. “In light of the court’s fact findings regarding the extent of harassing, unprofessional, and vexatious litigation, the change in legal standard by the Supreme Court, and the lack of sufficient basis to deny fees under Section 285, we vacate and remand for the district court to consider whether and the extent to which fees are warranted,” it said.

VIZIO’s attorney, Adrian M. Pruetz, Partner and Chair of the Intellectual Property Department at Glaser Weil Fink Howard Avchen & Shapiro LLP, said that the company is pleased with the decision and looks forward to further proceedings.

VIZIO is represented by Adrian M. Pruetz, Charles C. Koole, Mieke K. Malmberg and Dan Liu of Glaser Weil Fink Howard Avchen & Shapiro LLP. A copy of the Federal Circuit decision is attached.