

Our Latest Industry Insights

IP File

January 14, 2015

Low Octane Levels? Octane Fitness' Impact in the Trademark and Trade Secret Realms

We have previously addressed the Supreme Court's decision in *Octane Fitness, LLC v. Icon Health & Fitness, Inc.*, 12-1184, Slip Op. at 7 (2014), which relaxed the standard for awarding attorney's fees under Section 285 of the Patent Act ("§285") and ruled that decisions on §285 are entitled to deference on appeal. In the patent litigation realm, the Octane Fitness decision does not seem to have led to an overwhelming trend toward awarding fees. It does, however, beg the question: how has this impacted the standard for awarding attorney's fees in other types of intellectual property cases, such as trademarks and trade secrets?

TAGS: apple inc. v. samsung elects. co., bmw of north america v. cudahar, fair wind sailing v. dempster, intellectual property, lanham act, monster daddy v. monster cable products, ninth circuit, octane fitness, octane fitness llc v. icon health & fitness inc., patent act, patent infringement, patent litigation, patent litigation, premium balloon accessories v. creative ballon mfg., sixth circuit, supreme court, third circuit court of appeals, tivo research, tns, tns media research v. tivo research, trade secret & unfair competition, trade secret statutes, trade secrets, trademark & trade dress, trademark attorney fees, trademarks, uniform trade secrets act, utsa

IP File

November 3, 2014

Half a year since Octane

By: Andrew Choung

It's been nearly half a year since the Supreme Court, in *Octane Fitness*, ostensibly lowered the standard for finding a patent case to be exceptional for purposes of fee-shifting. At the time, *Octane* generated much commentary and speculation, with some predicting a flood of fee awards and others predicting even more confusion at the district court level.

TAGS: attorneys' fees, fee-shifting, Octane Fitness, patent, Patent Law, Patent Litigation, Supreme Court

IP File
June 10, 2014

The Supreme Court Overturns Two More Federal Circuit Decisions

By: Rex Hwang

In a continuing a pattern that has seemingly developed over the past several years, the Supreme Court recently overturned two more Federal Circuit decisions relating to key aspects of patent law.

TAGS: akamai technologies, biosig instruments, limelight networks, medtronic, nautilus, Octane Fitness, Patent Litigation, Supreme Court

IP File
May 7, 2014

The Supreme Court Gave District Courts more Power to Award Attorney's Fees in Patent Litigation

By: Dan Liu

In two related decisions, the Supreme Court relaxed the standard to award attorney's fees under Section 285 of the Patent Act ("§285") and ruled that decisions on §285 are entitled to deference on appeal. In the first case, the Court found that the Federal Circuit's test for §285, as described in *Brooks Furniture Mfg., Inc. v. Dutilleul Int'l, Inc.*, 393 F.3d 1378, 1380 (Fed. Cir. 2005), is "unduly rigid" and inconsistent with the statutory language. *Octane Fitness, LLC v. Icon Health & Fitness, Inc.*, 12-1184, Slip Op. at 7 (2014). The Court reasoned that the only constraint imposed by the text of §285 on a district court's discretion to award attorney's fees is that the case must be exceptional. *Id.* According to its ordinary meaning, the Court held, "an 'exceptional' case is simply one that stands out from others with respect to the substantive strength of a party's litigating position . . . or the unreasonable manner in which the case was litigated." [1] *Id.* at 7-8. Further, district courts should consider the totality of the circumstances and make a case-by-case determination on §285 questions. *Id.* at 8. Finally, the Court held that the evidentiary burden for §285 is a preponderance of the evidence, not clear and convincing evidence as required by the Federal Circuit. *Id.* at 11.

TAGS: Brooks Furniture, Federal Circuit, Octane Fitness, Patent Litigation, Supreme Court
