

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CARNEGIE MELLON UNIVERSITY,)
)
 Plaintiff,)
 v.) Civil Action No. 2:09-cv-00290-NBF
)
 MARVELL TECHNOLOGY GROUP, LTD.,)
 and MARVELL SEMICONDUCTOR, INC.,)
)
 Defendants.)

**PLAINTIFF CARNEGIE MELLON UNIVERSITY'S MOTION FOR ATTORNEYS'
FEES PURSUANT TO 35 U.S.C. § 285**

Plaintiff Carnegie Mellon University (“CMU”), by its undersigned counsel, respectfully moves this Court to enter an Order declaring this case “exceptional” and awarding CMU reasonable attorneys’ fees pursuant to 35 U.S.C. § 285. In support of this Motion, CMU states as follows:

1. On December 26, 2012, after a four-week trial, the jury found that: (1) Marvell directly and indirectly infringed Claim 4 of U.S. Patent 6,201,839 (“the ‘839 patent”) and Claim 2 of U.S. 6,438,180 (“the ‘180 patent”); (2) Marvell did not establish that Claim 4 of the ‘839 patent or Claim 2 of ‘180 patent are invalid; (3) prior to the commencement of this lawsuit, Marvell had actual knowledge of CMU’s patents; (4) prior to the commencement of this lawsuit, Marvell had no objectively reasonable defenses to infringement; and (5) Marvell actually knew or should have known that its actions would infringe CMU’s patents.

2. The jury’s predicate findings of willfulness alone render this case exceptional and justify an award of attorneys’ fees.

3. In addition, Marvell’s pattern of serious litigation misconduct that extended throughout this litigation and at trial provides a second, independent basis for declaring this case exceptional and awarding attorneys’ fees.

4. For the reasons set forth in the Memorandum of Law filed in support of CMU’s Motion, CMU seeks an Order entering a finding that this case is exceptional and awarding CMU, as the prevailing party on all claims, attorneys’ fees based on the lodestar method, which is the preferred method for determining “reasonable” attorneys fees. *See Bywaters v. United States*, 670 F.3d 1221, 1228-29, 1230-31 (Fed. Cir. 2012)..

5. To facilitate the award of attorneys’ fees and limit litigation over the reasonableness of the amounts claimed, CMU seeks an order directing the parties to exchange their respective detailed billing records for the case, with privileged and work product

information redacted, and to reach an agreement regarding the fees award, or in the event that the parties are unable to reach agreement regarding the award, directing the parties to present their respective positions for a Report and Recommendation by a Special Master appointed by the Court.

WHEREFORE, CMU respectfully requests that the Court grant this Motion, and enter the Order attached hereto.

Respectfully submitted,

Dated: February 11, 2013

/s/ Patrick J. McElhinny

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Counsel for Plaintiff, Carnegie Mellon University

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2013 the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

Parties may access this filing through the Court's system.

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[PROPOSED] ORDER

AND NOW, on this ____ day of _____ 2013, upon consideration of Plaintiff Carnegie Mellon University’s Motion for Attorneys’ Fees Pursuant to 35 U.S.C. § 285 (Dkt. __), it is hereby ORDERED that said Motion is GRANTED, and that:

WHEREAS the Court now finds:

1. This is an exceptional case under 35 U.S.C. § 285.
2. An award of attorneys’ fees in this case is necessary to meet the objectives of 35 U.S.C. § 285.

THEREFORE, it is hereby ORDERED that on or before _____, 2013 [14 days after the date of this order], the parties shall exchange their respective detailed billing records (including attorneys’ hours and hourly rates and any other expenses or costs), with information that is privileged or protected by work product doctrine redacted, and that on or before _____, 2013 [21 days after the date of this order], the parties shall file a joint status report setting forth their agreement on the amount of attorneys’ fees to be awarded. In the event that parties’ are unable to reach an agreement as to the fees award, the Court will appoint a Special Master to

promptly consider the parties' competing positions and issue a Report and Recommendation setting forth a recommended fee award based upon the lodestar method..

BY THE COURT:

The Honorable Nora Barry Fischer