IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TANGELO IP, LLC, Plaintiff, v. TUPPERWARE BRANDS CORP., Defendant.	No. 18-cv-692-RGA

MEMORANDUM ORDER

Presently before the Court is Defendant's motion for exceptional case. (D.I. 20). I have reviewed the parties' briefing. (D.I. 21, 23, 24).

I. BACKGROUND

On May 7, 2018, Plaintiff brought this action against Defendant alleging infringement of U.S. Patent No. 8,429,005 ("the '005 patent"). (D.I. 1). Defendant subsequently filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) on the basis that the '005 patent is invalid under 35 U.S.C. § 101. (D.I. 7, 8). I held a hearing on November 15, 2018 and granted Defendant's motion on November 26, 2018. *Tangelo IP, LLC v. Tupperware Brands Corp.*, 2018 WL 6168083 (D. Del. Nov. 26, 2018). I found the '005 patent claims "directed to the abstract idea of using an identifier to allow a reader of a printed publication to access related information not in a printed publication." *Id.* at *2. I further found the claims do not have an inventive concept, but merely apply the abstract idea in a generic computer environment. *Id.* at *4. Defendant now moves for a finding that this is an exceptional case warranting attorneys' fees under 35 U.S.C. § 285. (D.I. 20, 21).

II. LEGAL STANDARD

The Patent Act provides that "in exceptional cases [the court] may award reasonable attorney fees to the prevailing party." 35 U.S.C. § 285. Under the statute there are two basic requirements: (1) that the case is "exceptional" and (2) that the party seeking fees is a "prevailing party." The Supreme Court defines an "exceptional" case as "simply one that stands out from others with respect to the substantive strength of a party's litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014). Section 285 is governed by a preponderance of the evidence standard. *Id.* at 1758.

III. ANALYSIS

I do not think this is an exceptional case. Although I found the '005 patent invalid under § 101, that does not mean Plaintiff's contrary position was unreasonable. "[I]t is the substantive *strength* of the party's litigating position that is relevant to an exceptional case determination, not the *correctness* or eventual success of that position. A party's position on issues of law ultimately need not be correct for them to not stand out, or be found reasonable." *SFA Sys., LLC v. Newegg Inc.*, 793 F.3d 1344, 1348 (Fed. Cir. 2015) (internal quotation marks and citations omitted).

Defendant argues that Plaintiff "ignored substantial precedent dismissing analogous claims directed to concepts long-practiced in society." (D.I. 21 at 7). Defendant assumes that it was so obvious the '005 patent was directed to "concepts long-practiced in society" that it was objectively unreasonable for Plaintiff to believe the patent was valid under § 101. I disagree. Defendant identifies no precedent addressing claims analogous to those in the '005 patent, at least beyond the broad category of claims directed to "concepts long-practiced in society." (*See*

D.I. 21, 24). In my order granting Defendant's motion to dismiss, I found the '005 patent directed to a fairly specific concept—"the abstract idea of using an identifier to allow a reader of a printed publication to access related information not in a printed publication." *Tangelo*, 2018 WL 6168083, at *2. I distinguished the '005 patent claims from those that the Federal Circuit has found to be patent-eligible. *Id.* at *2-3. I did not identify any cases that found analogous claims to be patent-ineligible. *Id.*

This case stands in contrast to *Finnavations LLC v. Payoneer, Inc.*, 2019 WL 1236358 (D. Del. Mar. 18, 2019). In *Finnavations*, I granted motions for exceptional case and attorneys' fees based on claims that were "plainly directed at a patent ineligible concept." *Id.* at *2. There was "no question" that the patent was invalid because the claims were analogous to those struck down in *Alice*. *Id.* at *1. This is clearly a different situation. I am not aware of any precedent that leaves "no question" as to the '005 patent's validity, particularly in view of the somewhat opaque nature of § 101. Although I ultimately agreed with Defendant that the '005 patent is invalid, I think there is room for argument. Therefore, Defendant has failed to show that this case is exceptional under § 285.

IV. CONCLUSION

For the foregoing reasons, Defendant's motion (D.I. 20) is **DENIED**.

IT IS SO ORDERED this 24 day of May 2019.

Richard G. Andrews
United States District Judge