

McCombs, Goryunov and Bowser in *Westlaw Today* and *Reuters Legal News* on Federal Circuit Restrictions on Attorney Fees

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PRACTICES Intellectual Property, Patents, Patent Prosecution and Counseling, Patent Office Trials

Haynes Boone Partners [David McCombs](#), [Eugene Goryunov](#) and [Jonathan Bowser](#) authored an article in *Westlaw Today* and *Reuters Legal News* discussing a Federal Circuit decision relating to whether a district court may award attorney fees incurred during an *inter partes* review.

Read an excerpt below:

A party accused of infringing a patent in U.S. district court may challenge the validity of the asserted patent in an *inter partes* review (IPR) before the Patent Trial and Appeal Board (PTAB). Some district court defendants have sought to recover attorney fees when the plaintiff's case was litigated in an unreasonable manner.

As a general matter, a prevailing party may only recover attorney fees under 35 U.S.C. § 285 if the other party's conduct renders the case "exceptional." In *Dragon Intellectual Property LLC v. DISH Network, L.L.C.*, Nos. 2022-1621, 2022-1777, 3 (Fed. Cir. May 20, 2024), the U.S. Court of Appeals for the Federal Circuit raised the bar, deciding for the first time that a district court may not award attorney fees incurred during an IPR, because a parallel IPR before the PTAB is a separate and "voluntary" proceeding from the district court litigation.

In patent litigation, district court litigants may seek to recover attorney fees under § 285 in exceptional cases. The Supreme Court has defined an "exceptional" case as one that "stands out from others with respect to the strength of the party's litigation position" or there was an "unreasonable manner in which the case was litigated." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014).

Read the full article in [Westlaw Today here](#).

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