

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WEDGETAIL, LTD. and BOBBY D. KING,

Plaintiffs,

v.

HUDDLESTON DELUXE, INC.,

Defendant.

Case No. 2:07-CV-00202 DF

JURY TRIAL DEMANDED

PATENT CASE

HUDDLESTON DELUXE, INC.,

Counterclaimant,

v.

WEDGETAIL, LTD. and BOBBY D. KING,

Counterdefendants.

**DEFENDANT HUDDLESTON DELUXE, INC.'S
PARTIAL OPPOSITION TO PLAINTIFFS' MOTION TO DISMISS**

Defendant and counterclaimant Huddleston Deluxe, Inc. ("Huddleston") files this opposition only because Plaintiffs improperly seek to deny Huddleston its right - under both the Patent Act and the Federal Rules of Civil Procedure - to request an award of attorney's fees and costs. In their motion and proposed order, Plaintiffs request that the Court dismiss "with each party to bear their own costs and attorney's fees." (Plaintiffs' Motion, Dkt. No. 57, at 2; Proposed Order at 1.) Prevailing party Huddleston opposes such an order without an opportunity to inform the Court of the reasons to award attorney's fees and costs to Huddleston.

“The dismissal of a claim with prejudice ... is a judgment on the merits under the law of the Federal Circuit.” *Power Mosfet Techs., L.L.C v. Siemens AG*, 378 F.3d 1396, 1416 (Fed. Cir. 2004). Under Federal Rule of Civil Procedure 54(d), Huddleston has the right to move for recovery of attorney’s fees and costs after entry of judgment. The Patent Act provides for recovery of attorney’s fees in exceptional cases. 35 U.S.C. §285. Huddleston believes this is one of those exceptional and rare cases. Thus, during the meet and confer discussions with Plaintiffs, Huddleston conveyed its intention to file attorney’s fees motion and objected to and requested deletion of Plaintiffs’ request that “each party to bear their own costs and attorney’s fees.” (Plaintiffs’ Motion, Dkt. No. 57, at 2; Proposed Order at 1.) Plaintiffs refused.

Consequently, Huddleston hereby requests that the Court grant in part Plaintiffs’ motion, dismissing Plaintiffs’ claim with prejudice and Huddleston’s counterclaim as moot, and setting a briefing schedule for Huddleston’s motion for attorney’s fees and costs. Huddleston requests that the opening motion be filed thirty (30) days after entry of judgment, with any opposition brief filed a week after that and a reply brief due one week after opposition brief. Plaintiffs will

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not be harmed by recognition of Huddleston's right to seek fees and costs since Plaintiff will have the opportunity to oppose Huddleston's motion.

DATED: August 18, 2008

Respectfully submitted,

TOWNSEND AND TOWNSEND AND CREW LLP

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