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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERAWAN FARMING, INC.,  
Plaintiff,  
v.  
REHRIG PACIFIC COMPANY,  
Defendant.

Case No. 1:11-cv-1273 LJO BAM  
SECOND ORDER ON DEFENDANTS’  
MOTION FOR ATTORNEYS’ FEES AND  
COSTS  
(Doc. 220)

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By order filed December 10, 2013, the Court granted Rehrig attorney’s fees under 35 U.S.C. § 285 for combatting Gerawan’s misleading representations regarding Ray Gerawan’s assignment of his patent rights. However, because the record was not entirely clear as to how many hours Rehrig spent on this specific issue, the Court deferred ruling on the amount of the fee award and allowed additional briefing on the matter. Now, having received and carefully considered the parties’ additional briefing, the Court awards Rehrig \$10,169.25 in attorney’s fees.

**I. DISCUSSION**

**A. Fees Under 35 U.S.C. § 285**

Rehrig requests \$26,625 in fees for combatting Gerawan’s litigation misconduct. According to Rehrig’s estimates and calculations, Jonathan Hersey (“Mr. Hersey”) spent 24 hours, Scott Lieberman (“Mr. Lieberman”) spent 35 hours, and Neil J. Cooper (“Mr. Cooper”) spent 20 hours on various tasks

1 relating to Ray Gerawan’s assignment of his patent rights and the standing issues that the assignment  
2 posed. Rehrig generally categorizes these tasks as follows: (1) researching and drafting the “Lack of  
3 Standing” affirmative defense in Rehrig’s answer; (2) discussing lack of standing in an early Rule 26  
4 meeting and in the parties’ Joint Rule 26 Report; (3) preparing requests for production of documents  
5 relating to the assignment and to lack of standing; (4) drafting Interrogatory Number 21; (5) preparing  
6 a Rule 30(b)(6) deposition notice on the assignment and standing issue; (6) meeting and conferring  
7 with Gerawan’s counsel on multiple occasions because of Gerawan’s objections to Rehrig’s discovery  
8 requests; (7) reviewing documents produced by Gerawan to ascertain whether an assignment of patent  
9 rights had been produced; (8) drafting and filing a motion to compel regarding assignments of patent  
10 rights to Gerawan; (9) preparing for, traveling to, and taking the depositions of David Dever and Ray  
11 Gerawan; (10) reviewing and investigating the “Confirmation of Assignment” produced by Gerawan;  
12 (11) researching case law related to standing in the absence of a written assignment; and (12) drafting  
13 a motion for summary judgment, including a reply brief.

14 In the Court’s view, Gerawan’s misleading representations regarding the assignment of Ray  
15 Gerawan’s patent rights began with Gerawan’s evasive discovery responses. Therefore, the Court will  
16 allow Rehrig to recover fees for discovery-type tasks relating to Ray Gerawan’s supposed assignment  
17 starting from that point. This includes: (1) reviewing Gerawan’s discovery and discovery responses;  
18 (2) meeting and conferring over disputes regarding Gerawan’s document production; (3) preparing and  
19 drafting Rehrig’s motion to compel the production of documents; and (3) preparing for the deposition  
20 of David Dever, who Gerawan designated as the person most knowledgeable of the assignment issue.  
21 In addition, the Court will also allow Rehrig to recover fees for its summary judgment brief, as well as  
22 its reply brief.

23 The more difficult issue is determining how many hours, specifically, Rehrig spent addressing  
24 and combatting Gerawan’s misconduct in these tasks. For the most part, Rehrig’s billing records do  
25 not reach that level of detail. The Court approaches this problem as follows.

26 First, to the extent that any billing entry explicitly relates to the “Confirmation of Assignment,”  
27 the document at the heart of Gerawan’s misconduct, the Court will credit Rehrig that time in full. For  
28 example, on February 4, 2013, Mr. Cooper recorded 2.5 hours for his work researching the impact of

1 the Confirmation of Assignment. (Doc. 230-1 at 12.) The Court will credit Rehrig the full 2.5 hours  
2 for that entry.

3 Second, the Court will credit Rehrig ten percent of any billing entry that indicates work related  
4 to reviewing Gerawan's discovery production, meeting and conferring due to disputes over discovery,  
5 preparing and drafting Rehrig's motion to compel the production of documents, and preparing for the  
6 deposition of David Dever. The reduced time reflects the fact that the assignment of Ray Gerawan's  
7 patent rights was just one of nine discovery disputes (i.e., approximately ten percent) raised by Rehrig  
8 in its motion to compel. (Doc. 45.) Also, if the billing entry includes work on unrelated matters it will  
9 be further reduced by half in order to ensure that Rehrig is not compensated for unrelated matters. For  
10 example, on December 17, 2013 Mr. Hersey recorded 3.7 hours for preparing a rebuttal expert report  
11 and for reviewing documents and conferring regarding Rehrig's motion to compel. (Doc. 230-1 at 6.)  
12 Because the rebuttal expert report is unrelated to Gerawan's misconduct, and only the time spent on  
13 the discovery documents and the motion to compel is compensable, the entry will be reduced by half.  
14 Ten percent of that amount (0.19 hours) will then be credited to Rehrig for that entry.

15 Third, the Court will credit Rehrig ten percent of any billing entry that indicates work related  
16 to Rehrig's summary judgment *brief*.<sup>1</sup> The reduced time reflects the fact that Rehrig spent only about  
17 ten percent of its summary judgment brief discussing Gerawan's misconduct and the standing problem  
18 it presents. Also, similar to Rehrig's billing entries regarding discovery, any entry that includes work  
19 on unrelated matters will be further reduced by half. Thus, by way of example, although Mr. Hersey  
20 recorded 4.5 hours on February 12, 2013 for working on Rehrig's draft motion for summary judgment  
21 (Doc. 230-1 at 13), Rehrig will be credited only 0.23 of an hour because the entry also includes work  
22 on other unrelated matters.

23 Fourth, the Court will credit Rehrig 0.05 of an hour for any billing entry related to Rehrig's  
24 summary judgment reply brief. This significantly reduced time reflects the minor role that Gerawan's  
25 misconduct played in the brief; Rehrig spent just one short paragraph in its reply on the matter. Thus,

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28 <sup>1</sup> This does *not* include work on Rehrig's statement of undisputed facts since the assignment dispute played such a minor role in that document. (See Doc. 69-3 ¶ 23.)

1 by way of example, although Mr. Lieberman recorded 5.2 hours on March 4, 2013 for working on the  
 2 reply (Doc. 230-1 at 14), Rehrig will be credited only 0.05 of an hour for that entry.

3 Applying the above formula, the Court credits Rehrig time as follows:<sup>2</sup>

<b>Date</b>	<b>Attorney</b>	<b>Compensable Task</b>	<b>Time Awarded</b>
12/17/12	Lieberman	Reviewed Gerawan's discovery responses	0.30 hr.
12/17/12	Hersey	Reviewed documents and conferred re: motion to compel	0.19 hr.
12/18/12	Cooper	Reviewed responses to requests for production	0.31 hr.
12/19/12	Lieberman	Worked on meet and confer letter re: Gerawan's deficient discovery responses	0.26 hr.
12/19/12	Hersey	Drafted letter to court re: motion to compel	0.22 hr.
12/21/12	Lieberman	Reviewed various letters re: discovery issues	0.30 hr.
12/31/12	Lieberman	Conferred re: motion to compel	0.05 hr.
12/31/12	Hersey	Conferred re: depositions and motion to compel	0.05 hr.
01/07/13	Cooper	Began researching and drafting motion for summary judgment	0.25 hr.
01/08/13	Cooper	Continued researching and drafting motion for summary judgment	0.33 hr.
01/08/13	Lieberman	Reviewed and analyzed new documents produced	0.27 hr.
01/08/13	Hersey	Reviewed and analyzed new documents produced	0.21 hr.
01/09/13	Cooper	Continued drafting motion for summary judgment	0.36 hr.
01/10/13	Cooper	Finished initial motion for summary judgment draft	0.20 hr.
01/10/13	Lieberman	Continued reviewing and analyzing new documents recently produced	0.16 hr.
01/10/13	Hersey	Continued reviewing and analyzing documents recently produced	0.12 hr.
01/11/13	Cooper	Began drafting joint statement re: discovery dispute	0.23 hr.
01/11/13	Lieberman	Revised motion to compel	0.15 hr.
01/14/13	Cooper	Finished draft of joint statement re: discovery dispute	0.17 hr.
01/14/13	Hersey	Revised meet and confer letter re: Gerawan's discovery responses and motion to compel	0.30 hr.

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 28 <sup>2</sup> The Court construes any ambiguity in a billing entry against Rehrig since Rehrig is the party seeking fees. Also, the Court will not award any time unless it amounts to more than 0.05 of an hour.

1	01/16/13	Lieberman	Conferred re: discovery motion <sup>3</sup>	0.05 hr.
2	01/16/13	Hersey	Prepared joint statement in support of motion to compel further documents	0.12 hr.
3	01/21/13	Lieberman	Worked on joint statement in connection with motion to compel further discovery responses from Gerawan	0.21 hr.
4	01/21/13	Hersey	Drafted and revised proposed joint statement in support of motion to compel further discovery	0.20 hr.
5	01/22/13	Lieberman	Prepared for Dever deposition	0.27 hr.
6	01/25/13	Lieberman	Finalized joint statement in support of motion to compel further discovery responses from Gerawan	0.29 hr.
7	01/25/13	Hersey	Finalized joint statement in support of motion to compel further discovery responses from Gerawan	0.18 hr.
8	01/28/13	Hersey	Prepared for Dever deposition	0.34 hr.
9	01/30/13	Lieberman	Strategized for motion for summary judgment	0.15 hr.
10	02/04/13	Cooper	Researched impact of Gerawan's confirmation of assignment	2.50 hrs.
11	02/06/13	Cooper	Reviewed deposition of Dever	0.21 hr.
12	02/08/13	Cooper	Worked on motion for summary judgment	0.26 hr.
13	02/09/13	Cooper	Worked on motion for summary judgment	0.27 hr.
14	02/11/13	Cooper	Finished initial motion for summary judgment	0.21 hr.
15	02/11/13	Lieberman	Strategized re: motion for summary judgment	0.17 hr.
16	02/11/13	Hersey	Researched and drafted motion for summary judgment	0.29 hr.
17	02/12/13	Cooper	Worked on motion for summary judgment	0.55 hr.
18	02/12/13	Lieberman	Handled issues re: Gerawan's attempted assignment of rights and worked on motion for summary judgment	3.30 hrs.
19	02/12/13	Hersey	Drafted motion for summary judgment	0.23 hr.
20	02/13/13	Lieberman	Continued working on motion for summary judgment	0.67 hr.
21	02/13/13	Hersey	Drafted motion for summary judgment	0.48 hr.
22	02/14/13	Cooper	Revised and edited motion for summary judgment	0.48 hr.
23	02/14/13	Lieberman	Worked and revised all summary judgment documents	0.70 hr.
24	02/14/13	Hersey	Drafted and finalized motion for summary judgment	0.70 hr.
25	02/28/13	Lieberman	Strategized re: reply brief	0.05 hr.

<sup>3</sup> It is clear that the overwhelming majority of the time spent in this billing entry was devoted to taking a deposition. Therefore, Rehrig will only be credited a *de minimus* amount of time for this task.

1	02/28/13	Hersey	Conferred re: reply brief	0.05 hr.
2	03/01/13	Lieberman	Conferred with Slater re: issues to address on reply	0.05 hr.
3	03/01/13	Cooper	Began research and draft of reply	0.05 hr.
4	03/03/13	Hersey	Conferred re: reply brief	0.05 hr.
5	03/04/13	Cooper	Continued research and began drafting reply	0.05 hr.
6	03/04/13	Lieberman	Worked on reply brief	0.05 hr.
7	03/04/13	Hersey	Researched and drafted reply	0.05 hr.
8	03/05/13	Cooper	Finished draft of reply	0.05 hr.
9	03/05/13	Lieberman	Continued working on reply brief	0.05 hr.
10	03/05/13	Hersey	Researched and drafted reply	0.05 hr.
11	03/06/13	Lieberman	Worked on reply brief	0.05 hr.
12	03/06/13	Hersey	Drafted reply brief	0.05 hr.
13	03/07/13	Lieberman	Worked on reply brief	0.05 hr.
14	03/07/13	Hersey	Finalized reply brief	0.05 hr.

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16 The result is a fee award of \$5,781.75.<sup>4</sup> When broken down by general type of task, 10.66 hours were  
17 spent on tasks related to discovery matters; 6.60 hours were spent on tasks related to Rehrig’s motion  
18 for summary judgment; and 0.75 of an hour was spent on Rehrig’s reply. The Court finds these hours  
19 and the resulting fee award reasonable.

20 **B. Fees on Fees**

21 Rehrig also seeks to recover \$6,825 in fees for preparing and drafting its request for attorney’s  
22 fees, which includes (1) the portion of its initial motion for attorney’s fees that specifically dealt with  
23 Gerawan’s litigation misconduct; and (2) the additional briefing requested by the Court. Although the  
24 Court agrees with Rehrig that it is, as a general matter, entitled to recover some fees for these efforts,  
25 see Camacho v. Bridgeport Financial, Inc., 523 F.3d 973, 981 (9th Cir. 2008) (“In statutory fee cases,

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27 <sup>4</sup> The Court finds Mr. Lieberman’s requested hourly rate of \$375 per hour reasonable in light of his  
28 skill, experience, and reputation. Applying this rate here, as well as the other rates found reasonable  
by the Court in its prior order (Doc. 227 at 15-16), results in the following calculation: 6.48(\$225) +  
7.60(\$375) + 3.93(\$375) = \$5,781.75.

1 federal courts, including our own, have uniformly held that time spent in establishing the entitlement  
2 to and amount of the fee is compensable.”), the Court agrees with Gerawan that Rehrig’s estimate and  
3 request are excessive.

4 First, Rehrig maintains that the portion of its initial motion for attorney’s fees that specifically  
5 dealt with Gerawan’s misconduct consumed approximately four hours of Mr. Lieberman’s time, two  
6 hours of Mr. Hersey’s time, and one hour of Mr. Cooper’s time. Had Rehrig moved for attorney’s fees  
7 based on Gerawan’s misconduct alone, its brief would have been *roughly* five pages. (See Doc. 220-1  
8 at 2:11-19, 6:20-7:9; 9:18-11:2; 19:25-21:23; Doc. 222 at 3:16-4:8.) The Court is fully aware that in  
9 legal writing time spent usually does not neatly correlate with the amount of written work produced,  
10 but Rehrig’s estimate seems high. Therefore, in order to reflect in a reasonable manner the amount of  
11 written work produced, the Court will deduct one and a half hours from Mr. Lieberman and one hour  
12 from Mr. Hersey. This results in a fee award of \$1,537.50 for this matter.<sup>5</sup>

13 Second, Rehrig maintains that its additional briefing consumed approximately one hour of Mr.  
14 Hersey’s and Mr. Cooper’s time, each, and ten hours of Mr. Lieberman’s time. The Court finds that  
15 one hour is a reasonable amount of time for Mr. Hersey and Mr. Cooper to spend reviewing Rehrig’s  
16 billing statements and drafting a declaration estimating the amount of time they spent on Gerawan’s  
17 misconduct. As for Mr. Lieberman, a deduction of one hour is warranted since a portion of Rehrig’s  
18 additional briefing, which Mr. Lieberman drafted, pertains to whether Gerawan has paid the expenses  
19 for Larry Gorman’s second deposition. Although the Court requested Rehrig to provide an update on  
20 those expenses, that matter ultimately is unrelated to Rehrig’s request for attorney’s fees and therefore  
21 time spent on that matter is not recoverable. Of Mr. Lieberman’s remaining nine hours, the Court will  
22 award Mr. Lieberman six hours: three hours for reviewing Rehrig’s billing statements and creating his  
23 spreadsheets, and three hours for drafting a declaration and the brief itself. This results in a fee award  
24 of \$2,850 for this matter.<sup>6</sup>

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27 <sup>5</sup> 2.50(\$375) + 1.00(\$375) + 1.00(\$225) = \$1,537.50

28 <sup>6</sup> 6.00(\$375) + 1.00(\$375) + 1.00(\$225) = \$2,850

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**II. CONCLUSION**

For the reasons set forth above, the Court awards Rehrig: (1) \$5,781.75 in attorney’s fees for combatting Gerawan’s misconduct; (2) \$1,537.50 in attorney’s fees for drafting its initial motion for attorney’s fees; and (3) \$2,850 in attorney’s fees for drafting its additional brief. This results in a total award of \$10,169.25 in attorney’s fees.

IT IS SO ORDERED.

Dated: January 17, 2014

/s/ Lawrence J. O’Neill  
UNITED STATES DISTRICT JUDGE