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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
8

9 DEERPOINT GROUP, INC.,

10 Plaintiff,

11 v.

12 ACQUA CONCEPTS, INC., et al.,

13 Defendants.
14

Case No. 1:14-cv-01503-SAB

ORDER GRANTING IN PART
DEFENDANT'S MOTION FOR
ATTORNEY FEES

(ECF Nos. 59-62, 63-65, 66)

15 Currently before the Court is Defendant Acqua Concepts Inc.'s motion for attorney fees
16 following settlement of this action. The matter was found suitable for decision without oral
17 argument and was taken under submission.

18 **I.**

19 **PROCEDURAL HISTORY**

20 On September 25, 2014, Plaintiff Deerpoint Group, Inc. filed the complaint in this action
21 against Defendants Acqua Concepts, Inc., Andres Barrera, and Eduardo Erenas alleging patent
22 infringement, misappropriation of trade secrets, and breach of confidentiality agreements.¹ On
23 October 25, 2014, Acqua Concepts, Inc. filed a counterclaim against Deerpoint Group, Inc.
24 seeking declaratory relief finding the patents to be invalid.

25 On October 6, 2015, Defendant Acqua Concepts filed a motion for partial summary
26 judgment. On October 7, 2015, Plaintiff filed a motion to dismiss the complaint. Defendant
27 Acqua Concepts filed a motion for summary judgment seeking declaratory relief on the

28 ¹ The parties have consented to the jurisdiction of the Magistrate Judge. (ECF Nos. 19, 20, 21.)

1 counterclaim.

2 On October 23, 2015, the parties filed a stipulation for dismissal due to settlement of the
3 claims in this action. Defendant Acqua Concepts filed a motion for attorney fees on October 27,
4 2015. Plaintiff filed an opposition on November 10, 2015, and Defendant filed a reply on
5 November 14, 2015.

6 II.

7 LEGAL STANDARD

8 Ordinarily under the “American Rule”, each party to a lawsuit bears its own attorney
9 fees. Hensley v. Eckerhart, 461 U.S. 424, 429 (1983). An exception exists where a statute
10 expressly authorizes an award of attorney fees to the prevailing party in a lawsuit. Behne v.
11 Microtouch Systems, Inc., 58 F.Supp.2d 1096, 1098 (N.D. Cal. 1999).

12 The parties have stipulated to reasonable attorney fees pursuant to 35 U.S.C. § 285 which
13 provides that the court may award reasonable attorney fees to the prevailing parties in
14 exceptional cases of infringement of patent and other actions. Recently, the Supreme Court held
15 “an ‘exceptional’ case is simply one that stands out from others with respect to the substantive
16 strength of a party’s litigating position (considering both the governing law and the facts of the
17 case) or the unreasonable manner in which the case was litigated.” Octane Fitness, LLC v.
18 ICON Health & Fitness, Inc., 134 S. Ct. 1749, 1756 (2014). The district court has discretion to
19 determine if the case is exceptional in a case by case basis considering the totality of the
20 circumstances. Octane Fitness, LLC, 134 S. Ct. at 1756.

21 Trial courts have broad discretion in determining the reasonableness of attorney fees.
22 Gates v. Deukmejian, 987 F.2d 1392, 1398 (9th Cir. 1992). The Ninth Circuit and California
23 both utilize the “lodestar” approach for assessing reasonable attorneys’ fees, where the number
24 of hours reasonably expended is multiplied by a reasonable hourly rate. Gonzalez v. City of
25 Maywood, 729 F.3d 1196, 1202 (9th Cir. 2013) (federal law); Camacho v. Bridgeport Fin., Inc.,
26 523 F.3d 973, 978 (9th Cir. 2008) (federal law); Ketchum v. Moses, 24 Cal. 4th 1122, 1132
27 (2001) (California law). The court then may adjust the lodestar upward or downward based upon
28 a variety of factors. Gonzalez, 729 F.3d at 1202.

1 In determining a reasonable fee, the Court takes into account the factors set forth in Kerr
2 v. Screen Extras Guild, Inc., 526 F.2d 67, 69-70 (9th Cir. 1975): (1) the time and labor required,
3 (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal
4 service properly, (4) the preclusion of other employment by the attorney due to acceptance of the
5 case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations
6 imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9)
7 the experience, reputation and ability of the attorneys, (10) the “undesirability” of the case, (11)
8 the nature and length of the professional relationship with the client and (12) awards in similar
9 cases (hereinafter referred to as the “Kerr factors”). McGrath v. County of Nevada, 67 F.3d 248,
10 252 (9th Cir. 1995). The district court may also make upward or downward adjustments to the
11 lodestar based on consideration of the Kerr factors. Gates, 987 F.2d at 1402.

12 III.

13 DISCUSSION

14 The parties have settled this action; and Plaintiff Deerpoint Group has agreed to pay
15 reasonable attorney fees to Defendant Acqua Concepts in an amount to be determined by the
16 Court. Defendant Acqua Concepts is seeking \$111,220.50 in attorney fees for defending the
17 litigation. The parties have stipulated that this is an exceptional case entitling Acqua Concepts to
18 attorney fees, so the Court need only determine if the requested fees are reasonable.

19 Defendant seeks attorney fees of \$12,226.50 for 42.9 hours billed by Richard A. Ryan
20 and \$98,994 for 110.8 hours billed by Charles Doerksen, 136.35 hours billed by Travis Stokes,
21 and 112.00 hours billed by Chad Snyder. In determining if the amount sought is reasonable, the
22 Court applies the lodestar method.

23 A. Reasonable Hourly Rate

24 The lodestar amount is to be determined based upon the prevailing market rate in the
25 relevant community. Blum v. Stenson, 465 U.S. 886, 896 (1984). The “relevant legal
26 community” for the purposes of the lodestar calculation is generally the forum in which the
27 district court sits. Gonzalez, 729 F.3d at 1205. It is the moving party’s burden to establish that
28 requested rates are in line with those prevailing in the community for similar services by

1 attorneys of reasonably comparable skill, experience, and reputation. Jadwin v. County of Kern,
2 767 F.Supp.2d 1069, 1124 (E.D. Cal. 2011). “Affidavits of the plaintiffs’ attorney and other
3 attorneys regarding prevailing fees in the community, and rate determinations in other cases,
4 particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of the
5 prevailing market rate.” Chaudhry v. City of Los Angeles, 751 F.3d 1096, 1110-11 (9th Cir.
6 2014) cert. denied sub nom. City of Los Angeles, Cal. v. Chaudhry, 135 S. Ct. 295, 190 L. Ed.
7 2d 141 (2014) (quoting United Steelworkers of Am. v. Phelps Dodge Corp., 896 F.2d 403, 407
8 (9th Cir.1990)). “Once a fee applicant presents such evidence, the opposing party ‘has a burden
9 of rebuttal that requires submission of evidence . . . challenging the accuracy and reasonableness
10 of the . . . facts asserted by the prevailing party in its submitted affidavits.’ ” Chaudhry, 751 F.3d
11 at 1110-111 (quoting Camacho, 523 F.3d at 980).

12 Mr. Doerksen graduated from the University of British Columbia Faculty of Law in May
13 of 1987 and has been practicing since 1988. (Decl. of Charles L. Doerksen ¶ 2, ECF No. 62.)
14 Mr. Doerksen was a shareholder at Lang, Richert, and Patch from 1988 to January of 1997 when
15 he began a solo practice. (Id.) Since November of 2007 Mr. Doerksen has been a partner at
16 Doerksen Taylor LLP. (Id.) Mr. Doerksen has devoted his practice to business litigation. (Id.)
17 Defendant seeks \$315.00 per hour for the services of Mr. Doerksen in this action.

18 Richard Ryan has been licensed to practice law since 1991 and has been a registered
19 patent attorney since 1995. (Dec. of Richard A. Ryan ¶ 1, ECF No. 61.) Mr. Ryan practices in
20 the area of patent, trademark, copyright, trade secret and intellectual property law. (Id.) Mr.
21 Ryan was retained to provide patent expertise to lead counsel in this action. (Id. at ¶ 2.)
22 Defendant seeks \$285.00 per hour for the services of Mr. Ryan in this action.

23 The only information included on Mr. Stokes is that he became a partner at Doerksen
24 Taylor LLP in May 2015. (Id. at ¶ 7(e).) Plaintiff seeks \$275.00 per hour through April 2015
25 and \$290.00 per hour after May 2015 for Mr. Stokes services in this action.

26 Defendant has provided no information on Mr. Snyder’s qualifications and is seeking
27 \$225.00 per hour for his services.

28 While Defendant does not provide any information to justify the rates of Mr. Stokes or

1 Mr. Snyder, Plaintiff does not contest the hourly rates charged. (ECF No. 63 at 2.²) Hourly rates
2 in the Fresno division for a competent experienced attorney range between \$250.00 to \$380.00
3 per hour. Verduzco v. Ford Motor Co., No. 1:13-cv-01437-LJO-BAM, 2015 WL 4131384, at *4
4 (E.D. Cal. July 9, 2015). Therefore, since Plaintiff does not contest the rates sought, the Court
5 finds that \$285.00 per hour for Mr. Ryan, \$275.00 per hour for Mr. Doerksen, and \$225.00 per
6 hour for Mr. Snyder is reasonable compensation. The Court will award a blended rate of
7 \$282.50 for the services of Mr. Stokes due to the request for two different rates during the
8 pendency of this action.

9 **B. Reasonable Number of Hours**

10 After determining the reasonable hourly rate for the time sought, the Court next considers
11 whether the number of hours are reasonable. Defendant seeks 42.9 hours billed by Richard A.
12 Ryan, 110.8 hours billed by Charles Doerksen, 136.35 hours billed by Travis Stokes, and 112.00
13 hours billed by Chad Snyder. Plaintiff contends that a large portion of the fees billed were
14 unreasonable and unnecessary as they were billed after Plaintiff notified Defendant that it would
15 dismiss claims in this action.

16 1. Defendant's Motion for Partial Summary Judgment

17 Plaintiff states that Defendant spent almost 160 hours preparing a motion for summary
18 judgment that was filed on October 6, 2015. Plaintiff contends that this motion was premature as
19 the deadline to file dispositive motions was not until May 20, 2016.³ Plaintiff also argues that
20 the amount of time spent on this motion was excessive and it was unreasonable to prepare the
21 motion. Plaintiff states that Defendant began preparing this motion on the date that Plaintiff
22 informed counsel that they would be filing an amended complaint dismissing the first cause of
23 action. Plaintiff takes the position that it was frivolous for Defendant to prepare the motion for
24
25

26 ² All references to pagination of specific documents pertain to those as indicated on the upper right corners via the
27 CM/ECF electronic court docketing system.

28 ³ The Court notes that the moving papers state May 20, 2015, however this appears to be a typographical error.

1 summary judgement and the motion was prepared solely to “rack up” additional legal fees.⁴

2 Defendant counters that the time spent on the motion for summary judgment was
3 necessary because Plaintiff refused to dismiss the first cause of action with prejudice. Defendant
4 argues that Plaintiff did not file their motion to dismiss the complaint until after the first motion
5 for summary judgment was filed. Additionally, Defendant contends that since Plaintiff refused
6 to dismiss all claims with prejudice they were entitled to seek the requested declaratory relief.

7 Plaintiff has submitted a declaration of counsel stating that on September 3, 2015,
8 defense counsel was informed that Plaintiff intended to dismiss the first cause of action and
9 Defendant was provided with a first amended complaint and a stipulation to dismiss the first
10 cause of action. (Decl. of Shawn VanWagenen ¶ 2, ECF No. 64.) Defendant’s billing records
11 show that on this date counsel received the e-mail and reviewed the amended complaint. (ECF
12 No. 62-2 at 6.) On September 24, 2015, Defendant was informed that Plaintiff intended to
13 dismiss both the first and second cause of action. (Id. at ¶ 3.) Defendant replies that no motion
14 to amend was ever filed.

15 On October 6, 2015, Defendant filed the motion for partial summary judgement seeking
16 summary adjudication of the first and second causes of action. (ECF No. 42.) Plaintiff objects
17 to hours spent preparing this motion for summary judgment. Review of the time records show
18 that Defendant first billed for hours analyzing a potential motion for summary judgment on
19 September 3, 2015. (ECF No. 62-2 at 6.) The same date that Plaintiff indicated they wanted to
20 dismiss the first cause of action and file an amended complaint. (ECF No. 64 at ¶ 2.) However,
21 rather than agreeing to have the amended complaint filed, Defendant did not respond to the
22 request and proceeded to prepare a motion for summary judgment addressing both cause of
23 action one and two.

24 The Court finds that Defendant unnecessarily prepared and filed the motion for summary
25 judgment on claim one. The Court finds no merit to Defendant’s argument that a motion for
26 summary judgment was necessary since Plaintiff had not indicated that the dismissal would be

27 ⁴ The Court finds no merit to Plaintiff’s argument that the motion was premature or frivolous. While the motion was
28 filed prior to the dispositive motion deadline, if successful Defendant would have saved additional costs of
continuing to litigate the action.

1 with prejudice. Defendant filed a summary judgment motion seeking declaratory relief on the
 2 counterclaim and the motion for summary judgment on the complaint was therefore unnecessary.
 3 Defendant's motion for partial summary judgment sought adjudication of the first cause of
 4 action, the 573 patent, and the second cause of action, the 064 patent. (ECF No. 42.) Review of
 5 the motion shows that the motion addressed the 573 slightly more than the 064 patent, however
 6 the Court considers that research on the issues would be similar. Therefore, the Court shall find
 7 that the time spent on the motion for partial summary judgment should be reduced by half to
 8 account for the time spent in unnecessarily preparing the motion for summary judgment on the
 9 claim with Plaintiff had indicated would be dismissed. The Court shall make the following
 10 reductions to account for time spent in preparing the motion for partial summary judgment which
 11 the Court finds to be unreasonable:

Date	Reduction	Attorney
September 4, 2015	.65 hours	CLD
September 4, 2015	3.60 hours	CTS
September 8, 2015	.85 hours	CLD
September 8, 2015	3.35 hours	CTS
September 9, 2015	3.60 hours	CTS
September 10, 2015	2.85 hours	CTS
September 11, 2015	1.90 hours	CTS
September 11, 2015	.30 hours	TRS
September 14, 2015	1.45 hours	CLD
September 15, 2015	2.95 hours	CLD
September 15, 2015	.40 hours	TRS
September 16, 2015	2.25 hours	CLD
September 16, 2015	.70 hours	CTS
September 17, 2015	3.60 hours	CLD

September 17, 2015	1.20 hours	CTS
September 18, 2015	.30 hours	CTS
September 21, 2015	2.50 hours	CLD
September 21, 2015	.40 hours	CLD
September 22, 2015	2.90 hours	CTS
September 25, 2015	1.40 hours	CTS
September 28, 2015	.15 hours	CLD
September 28, 2015	.70 hours	TRS
September 29, 2015	.90 hours	TRS
September 29, 2015	.25 hours	CTS
September 30, 2015	.95 hours	CLD
September 30, 2015	1.05 hours	CTS
October 1, 2015	1.40 hours	CLD
October 1, 2015	2.45 hours	CTS
October 2, 2015	.20 hours	CTS
October 5, 2015	.20	CTS
October 6, 2015	.80 hours	CLD

Accordingly, the time spent on preparing Defendant's motion for partial summary judgment shall be reduced by a total of 46.2 hours (17.95 hours for Charles Doerksen; 25.95 hours for Chad Snyder; and 2.3 hours for Travis Stokes).

2. Defendant's Counterclaim

Plaintiff also argues that Defendant should not be able to receive fees for preparing a defective counterclaim and then unsuccessfully defending Plaintiff's motion to dismiss. Defendant argues that since a successful result was obtained it is entitled to all reasonable attorney fees.

In this instance, Defendant filed a counter claim on October 25, 2014. (ECF No. 154.) Plaintiff moved to dismiss the counter claim for failure to state a claim and the Court granted the

1 motion on December 16, 2014, finding that Defendant merely set forth conclusory allegations
2 that were insufficient to state a claim for relief. (ECF Nos. 15, 28.) Plaintiff argues that
3 requiring Plaintiff to reimburse Defendant for opposing the motion to dismiss would be
4 punishing Plaintiff for prevailing on the motion. (ECF No. 63 at 3.)

5 Plaintiff relies on Hensley, which stated that “[t]he congressional intent to limit awards to
6 prevailing parties requires that [] unrelated claims be treated as if they had been raised in
7 separate lawsuits, and therefore no fee may be awarded for services on the unsuccessful claim.”
8 461 U.S. at 435. It is true that a prevailing litigant is not entitled to receive attorney fees for
9 unsuccessful claims that are unrelated to the claims on which the party prevailed. O’Neal v. City
10 of Seattle, 66 F.3d 1064, 1068-69 (9th Cir. 1995).

11 However, the Ninth Circuit has held that “a [party] who is unsuccessful at a stage of
12 litigation that was a necessary step to her ultimate victory is entitled to attorney’s fees even for
13 the unsuccessful stage.” Cabrales v. Cty. of Los Angeles, 935 F.2d 1050, 1053 (9th Cir. 1991).
14 Therefore, “time spent unsuccessfully opposing motions or requests on the way to prevailing in a
15 case may be compensable.” Pierce v. Cty. of Orange, 905 F. Supp. 2d 1017, 1032 (C.D. Cal.
16 2012).

17 Here, Defendant filed a counterclaim to receive a declaratory judgment that Defendant
18 had not infringed on a patent. This claim was clearly related to the underlying claims brought by
19 Plaintiff. The general rule is that a prevailing party is to be compensated for attorney’s fees that
20 contribute to the ultimate victory in the lawsuit. Cabrales, 935 F.2d at 1053. The Court does not
21 find that the claims raised in the counterclaim did not contribute to the ultimate victory in this
22 action. Therefore, the attorney fees for opposing the motion to dismiss the counterclaim were
23 reasonably incurred in defending this action.

24 3. Defendant’s Motion for Summary Judgment on Counterclaim

25 Plaintiff also contends that Defendant continued to incur unnecessary expenses after
26 Plaintiff agreed to dismiss both the first and second causes of action. Defendant argues that it
27 was necessary to file the second motion for summary judgment because Plaintiff had not agreed
28 to dismiss the second cause of action with prejudice and therefore could have filed another

1 action.

2 On September 24, 2015, Plaintiff's counsel sent an e-mail informing Defendant that
3 Plaintiff intended to dismiss both the first and second causes of action. (ECF No. 64 at ¶ 3.) The
4 billing records show that Mr. Doerksen reviewed Plaintiff's offer on that date. (ECF No. 62-2 at
5 8.) Defendant argues that even though Plaintiff agreed to dismiss the infringement claims, they
6 needed to file the motion for declaratory relief to avoid another complaint being filed for
7 misappropriation of trade secrets and breach of contract. However, neither the misappropriation
8 of trade secret nor breach of contract claims were raised in the motion for summary judgement.
9 Further, the motion for summary judgment acknowledges that Plaintiff has agreed to dismiss the
10 patent infringement claims with prejudice and is therefore estopped from asserting the patent
11 infringement claims as a matter of law. (ECF No. 51 at 8.)

12 The Court finds that the time spent in preparing the second motion for summary
13 judgment was unreasonable for the following reasons. While Defendant may reasonably have
14 researched the issue of whether the claims would survive the motion to dismiss, at the time that
15 Defendant began working on the second motion for summary judgment, Plaintiff had agreed to
16 dismiss both causes of action. Even if the parties were still discussing whether both claims
17 would be dismissed without prejudice, the dispositive motion deadline in this action was May 20,
18 2016. Given that the parties were seriously engaged in settlement discussions at the time that
19 Defendant began working on the motion, there would have been ample opportunity to file a
20 motion for declaratory judgment had such discussions not resolved in settlement of the action.
21 Finally, the notice of settlement was signed the same date that Defendant filed the motion for
22 summary judgment further supporting Plaintiff's position that Defendant prepared the motion
23 after the parties had agreed to settle the action.

24 The Court finds that any time expended on the motion dismiss after the parties exchanged
25 correspondence regarding settlement on October 7, 2015 was unreasonably expended and such
26 time shall be excluded. Therefore, the following deductions shall be made from the hours
27 requested:

28

Date	Reduction	Attorney
October 8, 2015	1.90 hours	CLD
October 8, 2015	4.30 hours	CTS
October 9, 2015	2.7 hours	CTS
October 12, 2015	1.10 hours	CTS
October 13, 2015	2.50 hours	CLD
October 13, 2015	2.20 hours	CTS
October 15, 2015	.50 hours	CLD
October 16, 2015	.40 hours	CLD

Accordingly, the time spent on preparing Defendant’s motion for partial summary judgment shall be reduced by a total of 15.60 hours (5.30 hours for Charles Doerksen and 10.30 hours for Chad Snyder).

4. Excessive, Redundant, or Unnecessary Hours

The Court has considered Plaintiff’s additional arguments that the requested hours should be further reduced. Defendant has submitted a declaration stating that the time billed includes only those hours which relate to the patent and non-infringement claims. (ECF No. 62 at ¶ 7(c).) No further deductions shall be made for this reason. Further, Plaintiff challenges Plaintiff’s litigation strategy and the amount of time spent on this action without pointing to specific time entries that are alleged to be excessive. However, the Ninth Circuit has directed that “the court should defer to the winning lawyer’s professional judgment as to how much time he was required to spend on the case. “Moreno v. City of Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008). The Court finds that the requested hours are reasonable with the exception of those identified above.

5. Conclusion

Defendant is entitled to an award of attorney fees in the amount of \$91,215.63 calculated as follows.

Attorney	Hours	Rate	Total
Mr. Doerksen	87.55	\$275.00	\$24,076.25
Mr. Ryan	42.9	\$285.00	\$12,226.50
Mr. Snyder	75.75	\$225.00	\$17,043.75
Mr. Stokes	134.05	\$282.50	\$37,869.13

III

ORDER

Based on the foregoing, IT IS HEREBY ORDERED that:

1. Defendant's motion for attorney fees is GRANTED in the amount of \$91,215.63;
2. All pending motions are terminated;
3. The complaint and counterclaim are DISMISSED WITH PREJUDICE; and
4. The Clerk of the Court is DIRECTED to close this action.

IT IS SO ORDERED.

Dated: December 2, 2015



 UNITED STATES MAGISTRATE JUDGE