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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WORDTECH SYSTEMS, INC.,
a California corporation

No. 2:04-cv-01971-MCE-EFB

Plaintiff,

v.

MEMORANDUM AND ORDER

INTEGRATED NETWORK SOLUTIONS,
INC., a Nevada corporation,
dba INTEGRATED NETWORK
SOLUTIONS, CORP. aka
INTEGRATED NETWORK SOLUTIONS
aka INTEGRATED SYSTEMS aka
INTEGRATED NETWORK STORAGE
COMPANY aka INSC; NASSER
KHATEMI, an individual; HAMID
ASSADIAN, an individual;
EHTERAM GHODSIAN, an
individual; SHOHREH JAVADI, an
individual; MICHAEL F.
ELLSWORTH, an individual;
BRIAN J. DEAN, an individual;
SAN JUAN UNIFIED SCHOOL
DISTRICT; and DOES 1-50,

Defendants.

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1 Plaintiff filed the instant action on September 22, 2004,
2 alleging that Defendants infringed on various of Plaintiff's
3 patent rights. On November 17, 2008, a jury unanimously found
4 for Plaintiff and determined that such infringement was willful.
5 The jury awarded Plaintiff \$250,000.

6 The Court directed the parties to submit simultaneous
7 briefing on the issues of enhanced damages and attorneys' fees.
8 Pursuant to the Court's Order, the parties filed their papers on
9 December 4, 2008. Plaintiff requests enhanced damages pursuant
10 to 35 U.S.C. § 284, a determination that this case is
11 "exceptional" such that attorneys' fees are warranted under
12 35 U.S.C. § 285, pre-judgment and post-judgment interest, and
13 costs. After considering the record in this case, along with the
14 parties' current briefs, the Court hereby grants Plaintiff's
15 requests.¹

17 ANALYSIS

18 I. PLAINTIFF IS ENTITLED TO TREBLE DAMAGES

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20 Pursuant to 35 U.S.C. § 284, "the [C]ourt may increase the
21 damages up to three times the amount found or assessed." "An
22 award of enhanced damages for infringement, as well as the extent
23 of the enhancement, is committed to the discretion of the trial
24 court."

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27 ¹ Because oral argument will not be of material assistance,
28 the Court ordered this matter submitted on the briefing. E.D.
Cal. Local Rule 78-230(h).

1 Informatica Corp. v. Business Objects Data Integration, Inc.,
2 489 F. Supp. 2d 1075, 1084 (N.D. Cal. 2007), quoting Read Corp.
3 v. Portec, Inc., 970 F.2d 816, 826 (Fed. Cir. 1992), abrogated on
4 other grounds by Markman v. Westview Instruments, Inc., 52 F.3d
5 967, 975 (Fed. Cir. 1995) (en banc).

6 "The purpose of so empowering district judges is to provide
7 them with a tool they can use, in their discretion, to punish and
8 to deter conduct that was more threatening to the patent system
9 than naked acts of infringement. A judgment of infringement,
10 without more, is imposed under a standard of strict liability.
11 The purpose of empowering judges to enhance damages is to equip
12 them to respond appropriately when the defendant's conduct moved
13 beyond mere liability and into the zone of culpability." Sharper
14 Image Corp. V. Honeywell Intern., Inc., 222 F.R.D. 621, 628 (N.D.
15 Cal. 2004).

16 "If the Court decides to enhance damages, the Court looks to
17 the totality of circumstances and considers the egregiousness of
18 the defendant's conduct as well as factors that are mitigating or
19 ameliorating to set the amount of enhancement." Informatica, 489
20 F. Supp. 2d at 1084. "Although willful infringement may
21 authorize the award of enhanced damages, 'a finding of willful
22 infringement does not mandate that damages be enhanced, much less
23 mandate treble damages.'" Id., quoting Read Corp., 970 F.2d at
24 826. "Upon a jury finding of willfulness, however, the Court
25 must provide reasons for not increasing a damages award." Id.

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1 _____ The following factors are relevant to the Court's
2 evaluation:

- 3 (1) whether the infringer deliberately copied the ideas
or design of another;
- 4 (2) whether the infringer, when he knew of the other's
patent protection, investigated the scope of the patent
5 and formed a good-faith belief that it was invalid or
that it was not infringed;
- 6 (3) the infringer's behavior as a party to the
litigation;
- 7 (4) Defendant's size and financial condition;
- 8 (5) Closeness of the case;
- 9 (6) Duration of defendant's misconduct;
- 10 (7) Remedial action by the defendant;
- 10 (8) Defendant's motivation for harm;
- 10 (9) Whether defendant attempted to conceal its
misconduct.

11 Id., citing Read at 827. "Inasmuch as a finding of willful
12 infringement does not mandate enhancement of damages, the above
13 factors taken together assist the trial court in evaluating the
14 degree of the infringer's culpability and in determining whether
15 to exercise its discretion to award enhanced damages and how much
16 the damages should be increased." Id., quoting Read at 828.

17 The jury's finding that Defendants willfully infringed
18 Plaintiff's patents is sufficient to support enhanced damages.
19 Moreover, after analysis of the above factors, the Court is
20 satisfied that treble damages are warranted.

21 First, Defendants' products were shown to be essentially
22 carbon copies of Plaintiff's designs, and Defendants were
23 repeatedly notified that their products infringed on Plaintiff's
24 patents. Despite such notice, Defendants made no effort to
25 determine whether the patents were invalid or not infringed, and
26 they continued to engage in their tortious conduct over the
27 course of a number of years.

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1 Additionally, the evidence presented at trial overwhelmingly
2 favored a finding for Plaintiff, as is evidenced by the
3 relatively short deliberations required for the jury to reach a
4 unanimous verdict on all causes of action. Finally, Defendants
5 were less than forthcoming regarding, *inter alia*, their knowledge
6 of any infringement, their familiarity with their own corporate
7 structure, and even their technical knowledge of their own
8 products. Thus, based on the totality of the circumstances, the
9 Court finds Defendants' level of culpability supports an increase
10 in damages to the maximum amount permitted by law.

11 Consistent with their approach to litigation, in opposition
12 to the current Motion, Defendants rely only on a convoluted
13 argument based on dicta in In re Seagate, 497 F.3d 1360 (Fed.
14 Cir. 2007), and their own conclusory assertions that, prior to
15 the filing of this action, Defendants never received the legally
16 requisite notice of their infringement as required by 35 U.S.C.
17 § 287(a). The jury disagreed, found that Defendants willfully
18 infringed on Plaintiff's patents, and awarded Plaintiff \$250,000.
19 Accordingly, based on its above analysis, the Court rejects
20 Defendants' arguments and awards Plaintiff treble damages.

21
22 **II. PLAINTIFF IS ENTITLED TO ATTORNEYS' FEES**

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24 35 U.S.C. § 285 provides that "[t]he court in exceptional
25 cases may award reasonable attorney fees to the prevailing
26 party." "First, the Court must determine that a case is
27 'exceptional.' Then it may exercise its discretion to award fees
28 to the prevailing party." Informatica, 489 F. Supp. 2d at 1085.

1 "Among the types of conduct which can form a basis for finding a
2 case exceptional are willful infringement, inequitable conduct
3 before the [Patent and Trademark Office], misconduct during
4 litigation, vexatious or unjustified litigation, and frivolous
5 suit." Id. at 1086, quoting Beckman Instruments, Inc. v. LKB
6 Produkt AB, 892 F.2d 1547, 1552 (Fed. Cir. 1989).

7 "Willful infringement, the award of enhanced damages, and
8 the award of attorney fees in exceptional cases are all related
9 but independent concepts. As with enhanced damages a finding of
10 willful infringement is sufficient to declare a case exceptional
11 but it does not mandate that conclusion. However, if a court is
12 to declare a case not exceptional in such circumstances it must
13 articulate its reasons for doing so." Id.

14 For the reasons discussed above, as well as the Court's
15 evaluation of "the closeness of the case, the tactics of counsel,
16 the conduct of the parties, and...other factors that...contribute
17 to a fair allocation of the burdens of litigation as between
18 winner and loser," this Court concludes that this case is
19 exceptional within the meaning of 35 U.S.C. § 285. See S.C.
20 Johnson & Son, Inc. v. Carter-Wallace, Inc., 781 F.2d 198, 201
21 (Fed. Cir. 1986). Thus, Plaintiff is entitled to recover its
22 attorneys' fees.

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1 **III. PLAINTIFF IS ENTITLED TO INTEREST AND COSTS**

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3 Finally, Plaintiff is entitled to interest and costs.
4 First, Plaintiff is entitled to prejudgment interest from the
5 time of first infringement until the date of judgment. 35 U.S.C.
6 § 284; see also Informatica, 489 F. Supp. 2d at 1086-1087. Such
7 interest is to be based only on the compensatory damages awarded
8 and not on the above enhanced damages. Beatrice Foods Co. v. New
9 England Printing and Lithographing Co., 923 F.2d 1576, 1580-1581
10 (Fed. Circ. 1991). Additionally, the Court awards Plaintiff both
11 post-judgment interest and costs.
12

13 **CONCLUSION**

14
15 Plaintiff's Motion for Enhanced Damages and Determination of
16 "Exceptional Case" is GRANTED. The jury verdict in favor of
17 Plaintiff is hereby trebled from \$250,000 to \$750,000. Plaintiff
18 is entitled to pre-judgment interest on the compensatory award of
19 \$250,000 and also to attorneys' fees, post-judgment interest, and
20 costs, each for amounts not yet determined. Plaintiff is
21 directed, within twenty (20) days of this Order, to submit
22 further briefing as to the amount of attorneys' fees, costs, and
23 both pre-judgment and post-judgment interest sought.

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1 This matter will be scheduled for hearing on February 20, 2009,
2 and the parties are ordered to file any Opposition or Reply
3 pursuant to the schedule mandated by Local Rule 78-230.
4 Plaintiff's initial filing and any Opposition shall be limited to
5 ten (10) pages and any Reply shall be limited to five (5) pages.

6 IT IS SO ORDERED.

7 Dated: January 14, 2009

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MORRISON C. ENGLAND, JR.
11 UNITED STATES DISTRICT JUDGE
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