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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 FUNAI ELECTRIC COMPANY, LTD.,

Case No. C-04-01830 JCS

8 Plaintiff,

9 v.

10 DAEWOO ELECTRONICS CORP., ET AL.,

11 Defendants.
12 _____/

ORDER GRANTING IN PART AND DENYING IN PART WITHOUT PREJUDICE PLAINTIFF FUNAI ELECTRIC COMPANY, LTD.'S APPLICATION FOR ATTORNEYS' FEES AND EXPENSES, AND CALCULATION OF PREJUDGMENT INTEREST [Docket No. 803] AND AMENDING COURT'S APRIL 20, 2009 ORDER TO INCREASE AMOUNT OF BONDS REQUIRED TO STAY EXECUTION OF THE JUDGMENT AGAINST DEC AND DEAM

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16 **I. INTRODUCTION**

17 On January 5, 2009, the Court held that Funai was entitled under 35 U.S.C. § 285 to
18 attorneys' fees and expenses incurred in connection with the three patents on which it prevailed on
19 its infringement claims at trial. In the same order, the Court held that Funai was entitled under 35
20 U.S.C. § 284 to costs and prejudgment interest on the damage award from the date of first
21 infringement. The amounts were to be determined according to proof. The Court noted, however,
22 that it would not resolve the parties' disputes relating to costs until the parties had complied with the
23 procedures set forth in the Local Rules relating to determination of costs. Funai filed a Bill of Costs
24 with the Clerk's Office, pursuant to Local Rule 54-1, on February 4, 2009. The Clerk's Office has
25 not yet taxed Funai's costs.

26 On February 13, 2009, Funai filed an Application for Attorneys' Fees and Expenses, and
27 Calculation of Prejudgment Interest ("the Motion"), in which it requested the following amounts: 1)
28 \$3,473,853.63 in attorneys' fees; 2) \$449,066.46 in expenses ; and 3) \$1,161,789.00 in prejudgment

1 interest on the judgment, with DEC liable for the entire amount and DEAM liable for \$321,921.00 in
2 prejudgment interest. Defendants did not object to Funai’s calculation of prejudgment interest and
3 therefore, the Motion is GRANTED as to Funai’s request for prejudgment interest. In particular,
4 Funai is entitled to \$1,161,789.00 in prejudgment interest, with DEC liable for the entire amount and
5 DEAM liable for \$321,921.00 of that amount. For the reasons stated below, the Motion is DENIED
6 without prejudice as to attorneys’ fees and costs.

7 **II. ATTORNEYS’ FEES**

8 Funai requests over \$3 million in attorneys’ fees and expenses. It has supported its request
9 with copies of invoices showing the fees and expenses that were billed to Funai, a time line of the
10 case listing important motions and rulings, and a study by the American Intellectual Property Law
11 Association (“AIPLA”) Economic Survey reporting the costs of patent infringement litigation by
12 location and amount of risk. Funai has not provided Defendants or the Court with any time sheets in
13 support of its request, however, asserting that it would reveal its litigation strategy on appeal if it
14 were to do so. While time sheet entries may be entitled to protection as work product or under the
15 attorney-client privilege, blanket assertions of privilege are “extremely disfavored.” *See Clark v.*
16 *American Commerce National Bank*, 974 F.2d 127, 129 (9th Cir. 1992) (holding that billing
17 statements that contained only case name, amount of the fee and the general nature of the work
18 performed were not privileged). Funai has cited no authority suggesting that it may withhold *all* of
19 its billing statements from Defendants. Rather, Funai must provide Defendants with redacted time
20 sheets so that Defendants have a meaningful opportunity to challenge the reasonableness of the fees
21 requested by Funai. Accordingly, Funai’s request for attorneys’ fees is DENIED without prejudice
22 to resubmitting its request, supported by redacted time sheets. Funai is cautioned that it may redact
23 *only* the information that is subject to attorney-client privilege or constitutes absolute work product
24 under Rule 26 of the Federal Rules of Civil Procedure. Redaction of information that does not fall
25 within these narrow privileges may result in exclusion of fees for the requested time.

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1 **III. EXPENSES**

2 In its January 5, 2009 Order, the Court awarded Funai its “expenses” under 35 U.S.C. § 285
3 and its “costs” under 35 U.S.C. § 284. To avoid potential inconsistency between the Clerk’s
4 taxation of costs and the Court’s award of expenses, the Court declines to address Funai’s request
5 for expenses until after the Clerk’s Office has taxed costs and Funai has complied with the
6 requirements set forth in the Local Rules for challenging the determination of the Clerk’s Office.
7 Therefore, the Court DENIES Funai’s request for expenses without prejudice to renewing it after the
8 Clerk’s Office has ruled on the Bill of Costs.

9 **IV. CONCLUSION**

10 The Motion is GRANTED in part and DENIED in part as follows: 1) Funai is entitled to
11 \$1,161,789.00 in prejudgment interest, with DEC liable for the full amount and DEAM liable for
12 \$321,921.00 of that amount; 2) Funai’s request for attorneys’ fees and expenses is denied without
13 prejudice to renewing its request as discussed above. Prior to submitting any future request, the
14 parties shall be required to meet and confer, in good faith, to address any disputes relating to
15 attorneys’ fees and costs. Failure to comply with this requirement may result in exclusion of
16 requested amounts or, as to Defendants, waiver of specific objections. The Court also amends its
17 order of April 20, 2009 to increase the amounts of the bonds required in order to stay execution of
18 the judgment to the following amounts: 1) \$10,473,108.75 (DEC); and 2) \$3,275,638.75 (DEAM).

19 IT IS SO ORDERED.

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21 Dated: April 24, 2009

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25 JOSEPH C. SPERO
26 United States Magistrate Judge
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