

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GOLDEN BRIDGE TECHNOLOGY, INC.,
Plaintiff,
v.
APPLE INC.,
Defendant.

Case No. [5:12-cv-04882-PSG](#)

**ORDER GRANTING REVIEW OF
TAXATION OF COSTS**

(Re: Docket No. 622)

After every trial, there is cleanup work. As part of its post-trial housekeeping, Defendant Apple Inc. requests review of the Clerk’s taxation of costs against Plaintiff Golden Bridge Technology, Inc. Apple’s motion is GRANTED.

I.

After a nine-day trial in June 2014, the jury found that Apple had not infringed GBT’s patent and awarded no damages to GBT, but also found that Apple had not proved its invalidity defense.¹ The court entered judgment in favor of Apple,² and Apple sought taxation of costs against GBT.³ GBT objected to several of the costs⁴ and Apple accordingly waived a portion of them.⁵ But GBT objected again,⁶ and the Clerk taxed \$30,686.13 in costs as follows:

¹ See Docket No. 548 at 2-3.

² See Docket No. 609.

³ See Docket No. 611.

⁴ See Docket No. 612-4.

⁵ See Docket Nos. 615, 616.

Fees for printed or electronically recorded transcripts necessarily obtained for use in the case.	\$24,331.07
Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case.	\$3,911.06
Witness fees	\$2,444.00
Total	\$30,686.13⁷

Apple now moves for review and seeks the following costs:

Category	Sub-category	Clerk's taxation	Total costs sought on review
Transcripts	Hearing & trial transcripts	\$24,331.07	\$22,251.35
	Deposition transcripts		\$25,351.07
	Deposition video recordings		\$13,763.25
	Subtotal	\$24,331.07	\$61,365.67

Category	Sub-category	Clerk's taxation	Total costs sought on review
Witness Fees	Witness Fees	\$2,444.00	\$2,444.00
	Subtotal	\$2,444.00	\$2,444.00

Category	Sub-category	Clerk's taxation	Total costs sought on review
Exemplification & copies	Trial exhibits & witness binders	\$3,911.06	\$60,997.90
	Trial graphics		\$17,617.61
	Electronic discovery		\$44,635.52
	Subtotal	\$3,911.06	\$123,251.03

TOTAL	\$30,686.13	\$187,060.70⁸
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II.

This court has jurisdiction under 28 U.S.C. §§ 1331 and 1338. The parties further consented to the jurisdiction of the undersigned magistrate judge under 28 U.S.C. § 636(c) and

⁶ See Docket No. 620.

⁷ See Docket No. 621.

⁸ See Docket No. 622 at 3.

1 Fed. R. Civ. P. 72(a).⁹

2 **III.**

3 The court may exercise its discretion to award costs to the prevailing party.¹⁰ A party
4 “prevails when actual relief on the merits of [its] claim materially alters the legal relationship
5 between the parties,”¹¹ and there can only be one prevailing party within the meaning of Rule
6 54(d).¹² “Determination of the prevailing party is based on the relation of the litigation result to
7 the overall objective of the litigation, and not on the count of the number of claims and defenses”
8 on which each party succeeded.¹³ In patent infringement cases, a party that establishes non-
9 infringement and avoids liability may be the prevailing party even though it is unsuccessful on an
10 invalidity defense.¹⁴

11 Whether the Clerk’s taxation of costs was appropriate must be analyzed according to the
12 law of the regional circuit.¹⁵ In the Ninth Circuit, there is a “strong presumption” in favor of
13 awarding costs to the prevailing party.¹⁶ By contrast, the burden is on the non-prevailing party to
14 show why taxable costs should not be awarded.¹⁷ To deny such an award, the district court must

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16 ⁹ See Docket Nos. 256, 257.

17 ¹⁰ See *Manildra Mill Corp. v. Ogilvie Mills, Inc.*, 76 F.3d 1178, 1183 (Fed. Cir. 1996) (“As the
18 Supreme Court noted in *Farrar*, even if a party satisfies the definition of prevailing party, the
district court judge retains broad discretion as to how much to award, if anything.”).

19 ¹¹ *Manildra Mill Corp.*, 76 F.3d at 1182 (internal quotation marks omitted).

20 ¹² See *Shum v. Intel Corp*, 629 F.3d 1360, 1367 (Fed. Cir. 2010).

21 ¹³ *Brooks Furniture Mfg., Inc. v. Dutailier Int’l, Inc.*, 393 F.3d 1378, 1381 (Fed. Cir. 2005)
22 (abrogated on other grounds by *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct.
1749 (2014)).

23 ¹⁴ See, e.g., *Brooks Furniture Mfg., Inc.*, 393 F.3d at 1381; *Kinzenbaw v. Case LLC*, Case No. 05-
24 cv-01483, 2006 WL 1096683, at *3 (Fed. Cir. Apr. 26, 2006); *Emblaze Ltd. v. Apple Inc.*, Case
No. 5:11-cv-01079-PSG, 2015 WL 1304779, at *3-4 (N.D. Cal. March 20, 2015).

25 ¹⁵ See *Manildra*, 76 F.3d at 1183 (“Even if a party satisfies the definition of prevailing party, the
26 district court judge retains broad discretion as to how much to award, if anything.”).

27 ¹⁶ *Apple Inc.*, 2014 WL 4745933, at*5 (citing *Miles v. California*, 320 F.3d 986, 988 (9th Cir.
2003)).

1 provide specific reasons identifying why a particular case is not ordinary and that special
2 circumstances exist.¹⁸ These circumstances are extremely limited.¹⁹

3 **IV.**

4 Applying the above standards, the court finds that Apple was the prevailing party and is
5 entitled to its taxable costs. Although Apple did not invalidate GBT’s patent, it succeeded in its
6 non-infringement defense and achieved its overall litigation objective of avoiding liability.²⁰

7 **First**, Apple requests costs for three categories of transcripts: hearing and trial transcripts,
8 deposition transcripts and deposition video recordings.²¹ Under 28 U.S.C. § 1920, a prevailing
9 party may recover “[f]ees for printed or electronically recorded transcripts necessarily obtained for
10 use in the case.” The hearing transcripts were used for trial briefing and Apple’s motions for
11 judgment as a matter of law, and thus were necessarily incurred for use in this case.²² As for the
12 expedited and realtime costs for the trial transcripts,²³ although this court does not award these

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15 ¹⁷ Id.

16 ¹⁸ *Save Our Valley v. Sound Transit*, 335 F.3d 932, 945 (9th Cir. 2003); *Champion Produce, Inc.*
17 *v. Rudy Robinson Co.*, 342 F.3d 1016, 1022 (9th Cir. 2003).

18 ¹⁹ See *Quan v. Computer Sciences Corp.*, 623 F.3d 870, 888-89 (9th Cir. 2010) (internal citation
and quotation marks omitted); *Emblaze Ltd.*, 2015 WL 1304779 at *4 n.32.

19 While *Emblaze* may try to argue that—as a small company—it falls into the first category, this
20 category typically covers indigent plaintiffs or low-income individuals or groups in civil rights
21 cases who appropriately receive an exception under the Ninth Circuit standard. See, e.g., *Assoc. of*
22 *Mex.-Am. Educators v. State of Cal.*, 231 F.3d 572 (9th Cir. 2000); *Bowoto v. Chevron Corp.*,
23 *Case No. 99-cv-02506*, 2009 WL 1081096 (N.D. Cal. Apr. 22, 2009); *Schaulis v. CTB/McGraw-*
Hill, Inc., 496 F. Supp. 666 (N.D. Cal. 1980). Under this precedent, *Emblaze*’s “limited financial
resources” in the context of a patent case simply do not appear to count.

24 ²⁰ See Docket No. 548 at 2-3.

25 ²¹ See Docket No. 622 at 5-6.

26 ²² See Docket No. 622 at 5.

27 ²³ See *id.*

1 types of costs as a matter of course,²⁴ the undersigned’s experience with patent trials like the one
2 in this case has been that expedited trial transcripts and real-time transcription are in fact
3 “necessarily obtained.” When trial judges push hard on parties at trial to raise objections and
4 motions promptly—so as to minimize the burden on both judge and jury from delay—it is difficult
5 to conclude otherwise.²⁵

6 As for deposition transcripts and video recordings,²⁶ Section 1920 and Civ. L.R. 54-3(c)(1)
7 allow the recovery of the cost, including video recording, of any deposition taken in connection
8 with the case.²⁷ All of the deposed witnesses were named on the parties’ trial witness lists and the
9 majority testified as witnesses at trial.²⁸ Apple does not request any impermissible costs²⁹
10 associated with expediting or shipping the deposition transcripts.³⁰ Apple therefore shall receive
11 its full requested transcript costs: \$22,251.35 for hearing and trial transcripts, \$25,351.07 for
12 deposition transcripts and \$13,763.25 for deposition video recordings.

13 **Second**, Apple requests exemplification and copy costs for its trial exhibits and witness
14 binders, trial graphics and electronic discovery. Under 28 U.S.C. § 1920(4), “[f]ees for
15 exemplification and the costs of making copies of any materials where the copies are necessarily
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18 ²⁴ See, e.g., *TransPerfect Global, Inc. v. MotionPoint Corp.*, Case No. 10-cv-02590, 2014 WL
19 1364792, at *4 (N.D. Cal. Apr. 4, 2014) (denying costs for trial transcripts delivered hourly and
20 costs for RealTime); *Apple Inc.*, 2014 WL 4745933, at *7 (N.D. Cal. Sept. 19, 2014) (awarding
21 only standard daily transcripts, but noting that Apple had withdrawn its costs request for expedited
22 transcripts).

23 ²⁵ See *Kinzenbaw*, 2006 WL 1096683, at *6. Because *Kinzenbaw* originated in the District of
24 Iowa, the district court applied Eighth Circuit rather than Ninth Circuit law. But *GBT* offers no
25 clear Ninth Circuit authority suggesting a different standard.

26 ²⁶ See Docket No. 622 at 5-6.

27 ²⁷ See 28 U.S.C. § 1920; Civ. L.R. 54-3(c)(1).

28 ²⁸ See Docket Nos. 433, 436.

29 ²⁹ See *Emblaze Ltd.*, 2015 WL 1304779 at *5.

30 ³⁰ See Docket No. 622 at 6.

1 obtained for use in the case” are taxable. Civ. L.R. 54-3(d)(4)-(5) specify that “[t]he cost of
2 reproducing trial exhibits is allowable to the extent that a Judge requires copies to be provided”
3 and that “[t]he cost of preparing charts, diagrams, videotapes, and other visual aids to be used as
4 exhibits is allowable if such exhibits are reasonably necessary to assist the jury or the Court in
5 understanding the issues at trial.” Apple’s trial exhibit costs were incurred for presenting evidence
6 at trial, including stamped exhibit copies and copies of the final set of admitted exhibits for both
7 parties.³¹ These costs are necessary and allowable.

8 As for the trial graphics and demonstratives, these also were “reasonably necessary”³²
9 because this case, like many patent cases, “is exactly the type of complex litigation that requires
10 high-quality demonstratives for the edification of the jury.”³³ Apple may recover costs associated
11 with “the physical preparation and supplication of documents.”³⁴ Moreover, these demonstratives
12 did not present themselves, and so Apple also may recover the costs for the “in-court technician
13 time and the equipment” necessary to present the demonstratives.³⁵

14 As for electronic discovery, “only costs incurred specifically to produce documents to the
15 opposing party are recoverable.”³⁶ “[C]ourts in this district have approved a method that
16 calculates what percentage of overall documents were produced to the opposing party and then
17 applies that percentage to production-related costs in the vendor’s invoices.”³⁷ Hosting fees are
18 excluded, however, because “the court does not tax hosting fees.”³⁸ Apple seeks “physical

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20 ³¹ See Docket No. 622 at 7; Docket No. 616-2 at 5-8.

21 ³² Civ. L.R. 54-3(d)(5).

22 ³³ Id. at *6.

23 ³⁴ Emblaze, Ltd., 2015 WL 1304779 at *7.

24 ³⁵ Id. at *7.

25 ³⁶ Id.

26 ³⁷ Id.

27 ³⁸ Id. (quoting eBay Inc. v. Kelora Sys., LLC, Case No. 10-cv-04947 et al., 2013 WL 1402736, at
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1 preparation” costs directly relating to the electronic preparation, duplication and production of
 2 documents that it produced to GBT, and excludes the intellectual effort and hosting costs
 3 associated with this production.³⁹ It also seeks a percentage of its upload copy costs and work for
 4 load file preparations, which reflects the proportion of such costs that were associated with
 5 documents produced to GBT.⁴⁰ Because Apple seeks only costs incurred in producing documents
 6 to GBT, and excludes impermissible fees, it shall receive its full requested costs in this category.

7 In sum, in addition to the \$30,686.13 previously taxed by the Clerk, Apple shall receive the
 8 following additional costs, for a total cost award of \$187,060.70:

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TOTAL		\$30,686.13	\$187,060.70⁴¹
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 24 *17 (N.D. Cal. Apr. 5, 2013).

25 ³⁹ See Docket No. 622 at 9.

26 ⁴⁰ See id. at 9-10.

27 ⁴¹ See Docket No. 622 at 3.

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SO ORDERED.

Dated: December 21, 2015



PAUL S. GREWAL
United States Magistrate Judge