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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

COGENT MEDICINE, INC.,

Case No. C-13-4483-RMW

Plaintiff,

**ORDER DENYING MOTION FOR
ATTORNEYS' FEES**

v.

PHYSICIANS INTERACTIVE HOLDINGS,
INC., PHYSICIANS INTERACTIVE, INC.,
AND SKYSCAPE.COM, INC.,

Defendants.

Defendants Skyscape.com, Inc., Physicians Interactive Holdings, Inc., and Physicians Interactive, Inc., move for attorneys' fees under 35 U.S.C. § 285. Dkt No. 43.¹ In their motion, defendants contend that this case is exceptional under 35 U.S.C. § 285 because plaintiff Cogent Medicine ("Cogent") never had any evidentiary basis for its infringement claims against defendants. *See* Dkt. No. 43, at 4. The court disagrees, for the following reasons: (1) Skyscape asks the court to infer that Cogent had no evidentiary basis for its infringement claims from conduct which complied with the Patent Local Rules; (2) the court construed none of the asserted patent's terms and made no

¹ When filed, defendants' motion was untimely, as plaintiff Cogent Medicine's claims had not yet been dismissed, nor had judgment been entered. However, at the November 14, 2014 hearing on this motion, the parties agreed to: (1) voluntarily dismiss all claims; and (2) entry of judgment for defendants. The court thereafter dismissed all claims and counterclaims in this case and entered judgment in favor of defendants. Dkt. No. 50.

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determination regarding Cogent’s infringement claims; and (3) the McCrary declaration submitted by Cogent is evidence of that Cogent adequately investigated the asserted patent and its infringement claims against defendants before filing suit. Because the court finds that the totality of the circumstances do not show this case to be exceptional under § 285, the court DENIES defendants’ motion for attorneys’ fees.

Dated: November 14, 2014


RONALD M. WHYTE
United States District Judge