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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 CLINICOMP INTERNATIONAL, INC.,
12 Plaintiff,
13 v.
14 CERNER CORPORATION,
15 Defendant.

Case No.: 17-cv-02479-GPC (DEB)

**ORDER GRANTING DEFENDANT'S
MOTION FOR ATTORNEY'S FEES
PURSUANT TO 35 U.S.C. § 285**

[Dkt. No. 124.]

16
17 On November 30, 2022, Defendant Cerner Corporation (“Cerner”) filed a motion
18 for attorney’s fees pursuant to 35 U.S.C. § 285. (Dkt. No. 124.) On December 16, 2022,
19 Plaintiff CliniComp International, Inc. (“CliniComp”) filed a response in opposition to
20 Cerner’s motion for attorney’s fees. (Dkt. No. 127.) On December 30, 2022, Cerner filed
21 a reply. (Dkt. No. 130.) On February 2, 2023, the Court took the motion under submission.
22 (Dkt. No. 132.) For the reasons set forth below, the Court grants Cerner’s motion for
23 attorney’s fees.

24 **I. BACKGROUND**

25 CliniComp is the owner of U.S. Patent No. 6,665,647 (“the ’647 Patent”) by
26 assignment. (Dkt. No. 1, Compl. ¶ 2.) In the present action, CliniComp alleged that Cerner
27 directly infringes claims 1, 2, 5, 10-13, 15-18, and 20-23 of the ’647 Patent by making,
28 using, selling, and/or offering to sell within the United States Cerner’s CommunityWorks,

1 PowerWorks, and Lights on Network services (collectively “the accused services”). (Dkt.
2 No. 103, Ex. 2 at 21; see also Dkt. No. 1, Compl. ¶¶ 15-16.)

3 The ’647 Patent is entitled “Enterprise Healthcare Management System and Method
4 of Using Same.” U.S. Patent No. 6,665,647, at [54] (filed Dec. 16, 2003). The Federal
5 Circuit described the ’647 Patent as follows:

6 The ’647 patent describes a healthcare management system for
7 healthcare enterprises. The purpose of the ’647 patent is to allow healthcare
8 enterprises to consolidate legacy software applications and new software
9 applications together on one software platform. Many healthcare enterprises
10 utilize legacy systems for managing data related to a variety of uses, including
11 patient care, accounting, insurance, and administrative functions. These
12 established systems are often outdated and too inflexible to support healthcare
13 enterprises in the “modern managed care environment.” ’647 patent at col. 1
14 ll. 58–62. The healthcare management system described in the ’647 patent
15 allows healthcare enterprises to preserve existing legacy applications while
16 simultaneously phasing in new or updated applications on the same system.

17 The enterprise healthcare management system in the ’647 patent allows
18 enterprises to “remotely host[] . . . turnkey health care applications” and
19 “provide[s] . . . enterprise users access to the turnkey applications via a public
20 network.” Id. at col. 2 ll. 61–65. Enterprises can upgrade existing capabilities
21 and add functionality not available in their current system without significant
22 capital investments. Because the applications are hosted on a public network
23 (*i.e.*, the internet), the healthcare enterprise only needs computing resources
24 sufficient to allow secure, quality access to the internet. The “turnkey”
25 management system adjusts to changes within the enterprise as the system
26 “easily and cost-effectively scales” to respond to an enterprise’s needs. Id. at
27 col. 3 ll. 19–23.

28 The information collected by the enterprise from its applications may
be stored in a searchable database. Specifically, the ’647 patent discloses a
clinical data repository that stores information from applications within the
suite of applications on the system. The clinical data repository stores
“multidisciplinary information on a wide variety of enterprise functions.” Id.
at col. 6 ll. 31–40. For example, the clinical data repository stores
pharmaceutical, radiology, laboratory, and clinical information data utilized
by other applications of the application suite.

The ’647 patent discloses that “the clinical data repository is a database
that is partitioned” and that “the database portion may be configured as either
a logical partition or a physical partition.” Id. at col. 9 ll. 60–64. The

1 healthcare management system is also capable of supporting multiple
2 enterprises, in which case “the information related to each of the separate
3 healthcare enterprises is stored in a separate partition of the database.” Id. at
4 col. 10 ll. 6–10. As such, when multiple enterprises are involved with using
5 the system, the clinical data repository may have multiple partitions, with each
6 partition holding healthcare management information for the respective
7 enterprise.

8 Among other things, the ’647 patent describes the partitioning of data
9 for multiple enterprises so as to allow the storing of “[the] first healthcare data
10 in a first portion of the database associated with the first healthcare enterprise
11 facility” and separately storing “[the] second healthcare data in a second
12 portion of the database associated with the second healthcare enterprise
13 facility.” Id. at col. 14 ll. 24–29. The system allows two (or more)
14 independent healthcare enterprises to share access to certain applications
15 while maintaining sole access to their respective unique healthcare
16 applications. The databases are effectively “partitioned” or “portioned” in this
17 way.

18 Cerner Corp. v. Clinicomp Int’l, Inc., 852 F. App’x 532, 532–33 (Fed. Cir. 2021).

19 Independent claim 1 of the ’647 Patent, the only independent claim asserted by
20 CliniComp in this action,¹ recites:

21 1. A method of operating an enterprise healthcare management system for a
22 first healthcare enterprise facility and a second healthcare enterprise facility
23 independent of the first healthcare enterprise facility, comprising:

24 establishing a first secure communication channel via a public network
25 between an application server and a first end user device in the first enterprise
26 facility and establishing a second secure communication channel via the
27 public network between the application server and a second end user device
28 in the second enterprise facility, the application server remotely hosting a
healthcare application and having a database;

receiving first healthcare data from the first end user and second healthcare
data from the second end user;

processing the first healthcare data and the second healthcare data with the
healthcare application;

storing the processed first healthcare data in a first portion of the database

¹ (See Dkt. No. 103, Ex. 2 at 2.)

1 associated with the first healthcare enterprise facility and storing the
2 processed second healthcare data in a second portion of the database
associated with the second healthcare enterprise facility;

3 configuring the database to accept legacy information derived from a legacy
4 application operating at each of the first and second healthcare enterprise
5 facilities, wherein the functions in the healthcare application are not
duplicative of the legacy application; and

6 generating a query to extract information from the database relevant to a
7 respective one of the first and second healthcare enterprise facilities derived
8 from the healthcare data and the legacy information for managing and tracking
9 a performance of the respective one of the first and second healthcare
enterprise facilities,

10 wherein healthcare data in the first portion of the database is only accessible
11 to the first end user device and healthcare data in the second portion of the
database is only accessible to the second end user device.

12 '647 Patent col. 14 ll. 8-45.

13 On December 11, 2017, CliniComp filed a complaint for patent infringement against
14 Cerner, alleging infringement of the '647 Patent. (Dkt. No. 1, Compl.) On May 16, 2018,
15 the Court granted Cerner's motion to dismiss CliniComp's claims for willful infringement
16 and indirect infringement as well as the relief sought in connection with these claims of
17 injunctive relief, treble damages, and exceptionality damages. (Dkt. No. 18 at 21.) On
18 June 25, 2018, Cerner filed an answer to CliniComp's complaint. (Dkt. No. 19.)

19 On March 5, 2019, the Patent Trial and Appeal Board ("PTAB") instituted an *inter*
20 *partes* review ("IPR") as to claims 1-25 and 50-55 of the '647 Patent. (Dkt. No. 30-1, Ex.
21 A.) On March 7, 2019, the Court granted a stay of the action pending completion of the
22 IPR proceedings. (Dkt. No. 31.) On March 26, 2020, the PTAB issued a final written
23 decision, determining that claims 50-55 of the '647 Patent are not patentable in light of the
24 prior art, but that claims 1-25 of the '647 Patent are patentable.² (Dkt. No. 32, Ex. A at 93-
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27 ² Specifically, the PTAB concluded that Cerner had shown by a preponderance of the
28 evidence that: (1) claims 50-52 are not patentable based on Evans; (2) claims 53 and 54 are
not patentable based on Evans and Rai; (3) claims 50-53, and 55 are not patentable based

1 94.) On April 20, 2021, the Federal Circuit affirmed the PTAB’s determination that claims
2 1-25 of the ’647 Patent are patentable.³ (Dkt. No. 38-2, Ex. B at 10.) On June 24, 2021,
3 the Court granted the parties’ joint motion to lift the stay of the action. (Dkt. No. 44.)

4 On July 23, 2021, Cerner filed an amended answer to CliniComp’s complaint. (Dkt.
5 No. 52.) On October 7, 2021, the Court issued a scheduling order for the action. (Dkt. No.
6 55.)

7 On July 28, 2022, the Court issued a claim construction order, construing the
8 disputed claim terms from the ’647 Patent. (Dkt. No. 91.) On November 15, 2022, the
9 Court granted Cerner’s motion for summary judgment of non-infringement. (Dkt. No. 120.)
10 Specifically, the Court held that Cerner had demonstrated that the accused services do not
11 infringe the asserted claims of the ’647 Patent as a matter of law. (Id. at 44.) On November
12 16, 2022, the Court entered a judgment in the action in favor of Defendant Cerner and
13 against Plaintiff CliniComp. (Dkt. No. 121.) On December 30, 2022, the Clerk of Court
14 taxed costs in favor of Cerner in the amount of \$8,265.80. (Dkt. No. 131 at 3.)

15 By the present motion, Cerner moves for attorney’s fees pursuant to 35 U.S.C. §
16 285. (Dkt. No. 124-1.) Specifically, Cerner requests that the Court award Cerner its
17 attorneys’ fees incurred since July 28, 2022 – the date the Court issued its claim
18 construction order.⁴ (Id. at 1, 17.)

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22 on Johnson and Evans; and (4) claim 54 is not patentable based on Johnson, Evans, and
23 Rai. (Dkt. No. 32, Ex. A at 93-94.) The PTAB further concluded that Cerner had not
24 shown by a preponderance of the evidence: (1) that claims 1-5, 10-13, and 15-25 are
25 unpatentable based on Johnson and Evans; or (2) that claims 6-9, and 14 are unpatentable
26 based on Johnson, Evans, and Rai. (Id. at 93.)

27 ³ On November 15, 2021, the PTO issued an *inter partes* review certificate for the
28 ’647 Patent, stating: “Claims 1-25 are found patentable” and “Claims 50-55 are cancelled.”
(Dkt. No. 71-2, Ex. A at A-20–A-21.)

⁴ Pursuant to Federal Rule of Civil Procedure 54(d)(2)(B)(iii), Cerner estimates that
the amount of fees sought by its motion for attorney’s fees is “approximately \$925,000.”

II. DISCUSSION

I. Legal Standards

A. Legal Standards Governing Attorney’s Fees Under 35 U.S.C. § 285

“Section 285 of the Patent Act authorizes a district court to award attorney’s fees in patent litigation.” Octane Fitness, LLC v. ICON Health & Fitness, Inc., 572 U.S. 545, 548 (2014). Section 285 provides: “The court in exceptional cases may award reasonable attorney fees to the prevailing party.” 35 U.S.C. § 285.

The Supreme Court has held that “an ‘exceptional’ case is simply one that stands out from others with respect to the substantive strength of a party’s litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated.” Octane Fitness, 572 U.S. at 554; accord Energy Heating, LLC v. Heat On-The-Fly, LLC, 15 F.4th 1378, 1382 (Fed. Cir. 2021). “[A] case presenting either subjective bad faith or exceptionally meritless claims may sufficiently set itself apart from mine-run cases to warrant a fee award.” Octane Fitness, 572 U.S. at 555. But “fee awards are not to be used ‘as a penalty for failure to win a patent infringement suit.’” Checkpoint Sys., Inc. v. All-Tag Sec. S.A., 858 F.3d 1371, 1376 (Fed. Cir. 2017) (quoting Octane Fitness, 572 U.S. at 548); see Universal Stabilization Techs., Inc. v. Advanced Bionutrition Corp., No. 17CV87-GPC(MDD), 2018 WL 6181479, at *4 (S.D. Cal. Nov. 27, 2018) (“Failure to win on summary judgment is not a basis for an attorney’s fee award under § 285.”); see also FireBlok IP Holdings, LLC v. Hilti, Inc., 855 F. App’x 735, 739 (Fed. Cir. 2021) (“The strength of a party’s litigation position is what is relevant to an exceptional case determination, not the correctness or success of that position.” (citing SFA Sys., LLC v. Newegg Inc., 793 F.3d 1344, 1348 (Fed. Cir. 2015))).

“[A] district court makes the exceptional-case determination on a case-by-case basis considering the totality of the circumstances.” Energy Heating, 15 F.4th at 1382 (citing

(Dkt. No. 124-1 at 17.) See Fed. R. Civ. P. 54(d)(2)(B)(iii) (stating that a motion for attorney’s fees must “state the amount sought or provide a fair estimate of it”).

1 Octane Fitness, 572 U.S. at 554); see Intell. Ventures I LLC v. Trend Micro Inc., 944 F.3d
2 1380, 1384 (Fed. Cir. 2019) (explaining that a district court must determine whether “the
3 case overall was exceptional”). In determining whether to award fees, district courts may
4 consider a nonexclusive list of factors, including ““frivolousness, motivation, objective
5 unreasonableness (both in the factual and legal components of the case) and the need in
6 particular circumstances to advance considerations of compensation and deterrence.””
7 Octane Fitness, 572 U.S. at 554 n.6 (quoting Fogerty v. Fantasy, Inc., 510 U.S. 517, 534
8 n.19 (1994)). There is no precise rule or formula for determining whether to award
9 attorney’s fees, but instead equitable discretion should be exercised in light of the above
10 considerations. Id. at 554 (quoting Fogerty, 510 U.S. at 534); see Blackbird Tech LLC v.
11 Health In Motion LLC, 944 F.3d 910, 914 (Fed. Cir. 2019).

12 The determination of whether a case is “exceptional” under § 285 is committed “to
13 the discretion of the district court.” Highmark Inc. v. Allcare Health Mgmt. Sys., Inc., 572
14 U.S. 559, 563 (2014); see Thermolife Int’l LLC v. GNC Corp., 922 F.3d 1347, 1356 (Fed.
15 Cir. 2019) (“We generally ‘give great deference to the district court’s exercise of discretion
16 in awarding fees.’” (quoting Energy Heating, 889 F.3d at 1307)); Spineology, 910 F.3d at
17 1229 (“We review all aspects of a district court’s § 285 determination for abuse of
18 discretion, keeping in mind that the district court is better positioned to decide whether a
19 case is exceptional, because it lives with the case over a prolonged period of time.” (quoting
20 Highmark, 572 U.S. at 560, 564)). “A district court must ‘provide a concise but clear
21 explanation of its reasons for the fee award.’” Thermolife, 922 F.3d at 1356 (quoting
22 Hensley v. Eckerhart, 461 U.S. 424, 437 (1983)). The party seeking fees must prove that
23 the case is exceptional by a preponderance of the evidence. Energy Heating, 15 F.4th at
24 1382; see Octane Fitness, 572 U.S. at 557–58.

25 B. Legal Standards Governing Patent Infringement

26 Because the exceptionality determination in this case involves an assessment of the
27 strength of CliniComp’s claim for patent infringement, the Court sets forth the relevant
28 legal standards governing patent infringement claims. See Octane Fitness, 572 U.S. at 554

1 (explaining that an exceptionality determination requires an examination of the substantive
2 strength of a party’s litigating position under “the governing law”). A patent infringement
3 analysis proceeds in two steps. Niazi Licensing Corp. v. St. Jude Med. S.C., Inc., 30 F.4th
4 1339, 1350 (Fed. Cir. 2022); JVW Enterprises, Inc. v. Interact Accessories, Inc., 424 F.3d
5 1324, 1329 (Fed. Cir. 2005). In the first step, the court construes the asserted claims as a
6 matter of law. See Niazi, 30 F.4th at 1351; JVW, 424 F.3d at 1329. In the second step,
7 the factfinder compares the properly construed claims to the accused method or device.
8 See id.

9 “The patentee bears the burden of proving infringement by a preponderance of the
10 evidence.” Creative Compounds, LLC v. Starmark Labs., 651 F.3d 1303, 1314 (Fed. Cir.
11 2011). To establish infringement of a method claim, “a patentee must prove that each and
12 every step of the method or process was performed.” Aristocrat Techs. Australia Pty Ltd.
13 v. Int’l Game Tech., 709 F.3d 1348, 1362 (Fed. Cir. 2013); see Akamai Techs., Inc. v.
14 Limelight Networks, Inc., 797 F.3d 1020, 1022 (Fed. Cir. 2015) (en banc) (“Direct
15 infringement under § 271(a) occurs where all steps of a claimed method are performed by
16 or attributable to a single entity.”); Star Sci., Inc. v. R.J. Reynolds Tobacco Co., 655 F.3d
17 1364, 1378 (Fed. Cir. 2011) (“To prove infringement, a plaintiff must prove the presence
18 of each and every claim element or its equivalent in the accused method or device.”).

19 **II. Analysis**

20 Cerner argues that it is entitled to its reasonable attorney’s fees under 35 U.S.C. §
21 285 because this case stands out as an exceptional one. (Dkt. No. 124-1 at 1-3.) The Court
22 agrees with Cerner. The Federal Circuit has “frequently held that a case is exceptional
23 when a party continues to litigate claims that have become baseless in view of a district
24 court’s claim construction opinion.” Innovation Scis., LLC v. Amazon.com, Inc., 842 F.
25 App’x 555, 557 (Fed. Cir. 2021) (citing AdjustaCam, LLC v. Newegg, Inc., 861 F.3d 1353,
26 1360 (Fed. Cir. 2017); Taurus IP, LLC v. DaimlerChrysler Corp., 726 F.3d 1306, 1326–29
27 (Fed. Cir. 2013)); see also Taurus IP, 726 F.3d at 1328 (“[A] party cannot assert baseless
28 infringement claims and must continually assess the soundness of pending infringement

1 claims, especially after an adverse claim construction.”). That is precisely what happened
2 in the present action.

3 Independent claim 1 of the ’646 Patent recites the following “storing . . .” claim
4 limitation:

5 storing the processed first healthcare data in a first portion of the database
6 associated with the first healthcare enterprise facility and storing the
7 processed second healthcare data in a second portion of the database
8 associated with the second healthcare enterprise facility;

’647 Patent col. 14 ll. 25-30.

9 During the IPR proceedings as to the ’647 Patent, CliniComp made several clear and
10 detailed arguments to the PTAB regarding the scope of this “storing . . .” limitation in claim
11 1 of the ’647 Patent. Specifically, in an effort to distinguish the claimed invention from
12 one of the prior art references at issue, the Johnson reference, during the oral hearing before
13 the PTAB on December 3, 2019, CliniComp argued to the PTAB that the “storing . . .”
14 limitation requires a very specific type of partitioning. (See, e.g., Dkt. No. 71-2, Ex. E at
15 E-7 (“So Step 1 is, you go into the database, you partition it so it is associated with an
16 enterprise. And that’s what the claim term says ‘associated’. Once that partition is done,
17 and it’s associated with that particular enterprise, only then do you . . . store that data in the
18 portion of the database. So this partition is an essential element of how it’s done to create
19 these portions”), E-11-12 (“JUDGE GROSSMAN: . . . And you’re saying that in
20 Claim 1, you put the information from the different sources in separate compartments, and
21 you search only each – you have to search each compartment individually. [CliniComp’s
22 Counsel]: I’m saying one step further. You have to create that compartment for a particular
23 service provider before you can put the data in, before you can do that search.”), E-17
24 (“[Partitions] means separate and distinct and having your own management.”), E-21 (“I
25 think we explained that the patent language requires first portion to be created through
26 partitioning.”), E-23 (“The claim limitation says, ‘Storing the limitation in a first portion.’
27 When you take a subcomponent of [the database] and copy it elsewhere, you haven’t
28 changed the database at all, and that cannot possibly be a basis for meeting this claim

1 limitation.”); see also Dkt. No. 71-2, Ex. K at K-9 (“[T]he term ‘portion’ as used in claim
2 1 requires a specific arrangement of data structures and is not satisfied by indexing.”); Dkt.
3 No. 71-2 Ex. F at F-32 (“A POSITA would understand that Johnson’s disclosure of
4 indexing is not a disclosure of partitioning the database.”.) These clear and unmistakable
5 statements to the PTAB during the IPR proceedings constitute prosecution disclaimers.
6 (See Dkt. No. 91 at 12-16 (holding CliniComp’s statements to the PTAB constitute
7 prosecution disclaimers); Dkt. No. 120 at 36-37 (holding additional statements made by
8 CliniComp to the PTAB constitute prosecution disclaimers).) See Aylus Networks, Inc. v.
9 Apple Inc., 856 F.3d 1353, 1361 (Fed. Cir. 2017) (explaining that “statements made by a
10 patent owner during an IPR proceeding” can constitute prosecution disclaimer so long as
11 the statements are “both clear and unmistakable”); MBO Lab’ys, Inc. v. Becton,
12 Dickinson & Co., 474 F.3d 1323, 1330 (Fed. Cir. 2007) (“Prosecution arguments like this
13 one which draw distinctions between the patented invention and the prior art are useful for
14 determining whether the patentee intended to surrender territory, since they indicate in the
15 inventor’s own words what the invention is not.”); Purdue Pharma L.P. v. Endo Pharms.
16 Inc., 438 F.3d 1123, 1136 (Fed. Cir. 2006) (explaining that prosecution disclaimer “may
17 occur, for example, when the patentee explicitly characterizes an aspect of his invention in
18 a specific manner to overcome prior art”); Computer Docking Station Corp. v. Dell, Inc.,
19 519 F.3d 1366, 1374 (Fed. Cir. 2008) (explaining that a patentee may limit the scope of a
20 claim term “by clearly characterizing the invention in a way to try to overcome rejections
21 based on prior art”). At the conclusion of the IPR proceedings, the PTAB – relying on
22 CliniComp’s arguments regarding the scope of the term “portion” in the “storing . . .”
23 limitation – upheld the patentability of claims 1-25 of the ’647 Patent, and the Federal
24 Circuit affirmed that decision. (See Dkt. No. 71-2, Ex. D at D-81–D-87, D-94–D-95
25 (“[W]e agree with [CliniComp] and its supporting testimony of Dr. Bergeron that merely
26 identifying data or associating subsets of data with common values (i.e., indexing by
27 provider ID) does not constitute partitioning.”.) See Cerner, 852 F. App’x at 536 (“The
28 Board carefully considered the expert testimony of both parties when reaching [its]

1 conclusion and expressly credited Patent Owner’s expert that Johnson fails to disclose
2 storing the data associated with *two healthcare facilities* in *separate portions* of a database.
3 . . . Though the provider IDs may keep track of who accesses which application on the
4 database for that single facility, it does not partition the database, either logically or
5 physically.” (emphasis in original)).

6 At the claim construction phase of the case, the parties disputed the scope of the
7 claim term “[first/second] portion of the database associated with the [first/second]
8 healthcare enterprise facility” in the “storing . . .” limitation of claim 1. (See Dkt. No. 63-
9 1 at A2; Dkt. No. 70 at 5-8; Dkt. No. 71 at 4-12.) CliniComp asserted that the claim term
10 “[first/second] portion of the database associated with the [first/second] healthcare
11 enterprise facility” should be given its plain and ordinary meaning and no construction was
12 necessary for that claim term. (Dkt. No. 63-1 at A2; Dkt. No. 70 at 5, 7.) Notably,
13 CliniComp asserted that the claim term should be given its plain and ordinary meaning
14 despite the numerous statements it made to the PTAB regarding the scope of the term
15 “portion” and the “storing . . .” limitation as noted above in the preceding paragraph. And,
16 notably, CliniComp asserted that the claim term should be given its plain and ordinary
17 meaning even though in its own claim construction briefing, CliniComp conceded that it
18 made certain prosecution disclaimers to the PTAB during the IPR proceedings.⁵ (See Dkt.
19 No. 70 at 7 (“CliniComp recognizes that by making certain arguments during the IPR, it
20 limited, to a degree, the scope of the claim language at issue.”); Dkt. No. 71 at 4
21 (“CliniComp might have disclaimed indexing alone as the mechanism for creating the
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23
24 ⁵ CliniComp contends that in its proposed construction for the claim term, it expressly
25 acknowledged that independent claim 1 excludes merely indexing. (Dkt. No. 127 at 6.)
26 The Court acknowledges that at claim construction, CliniComp conceded that claim 1
27 excludes merely indexing. (See Dkt. No. 63-1 at A2). Nevertheless, despite that
28 concession, CliniComp still contended that the claim term “[first/second] portion of the
database associated with the [first/second] healthcare enterprise facility” should simply be
given its plain and ordinary meaning and no construction was necessary. (See *id.*)

1 database portions, but it did not disclaim”); see also Dkt. No. 63-1 at A2 (stating
2 “CliniComp does not dispute that the claimed ‘portions’ do not include data groupings
3 created exclusively by indexing – the process disclosed in Johnson”).)

4 On July 28, 2022, the Court issued its claim construction order for this case. (Dkt.
5 No. 91.) In the claim construction order, the Court construed the claim term “[first/second]
6 portion of the database associated with the [first/second] healthcare enterprise facility” as
7 “a specific arrangement of data structures of the database that separates the data associated
8 with the [first/second] healthcare enterprise facility from data associated with any other
9 healthcare enterprise facility, wherein the claimed [first/second] ‘portion’ is not created by
10 merely identifying data or associating subsets of data with common values (*i.e.*, indexing
11 by an identifier), and the [first/second] portion of the database is created before the claimed
12 ‘storing’ of ‘data’ occurs, and restricts access to data therein to protect data associated with
13 the [first/second] healthcare enterprise facility from access by any other healthcare
14 enterprise facility.” (Id. at 17-18.) The Court’s construction for this claim term was
15 primarily based on the multiple clear and unmistakable prosecution disclaimers that
16 CliniComp made during the IPR proceedings as to the ’647 Patent.⁶ (See id. at 12-16
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19 ⁶ The Court notes that even though the Court’s construction for the claim term
20 “[first/second] portion of the database associated with the [first/second] healthcare
21 enterprise facility” included several prosecution disclaimers made by CliniComp during
22 the IPR proceedings, the Court’s construction for the claim term could have properly
23 included additional prosecution disclaimers made by CliniComp. For example, in the
24 claim construction order, the Court also held that CliniComp made clear and unmistakable
25 disclaimers during the IPR proceedings requiring that the claimed “portion” be “‘separate
26 and distinct and having [its] own management.’” (Dkt. No. 91 at 16 (quoting Dkt. No. 71-
27 2, Ex. E at E-17).) The Court declined to include this additional requirement into the
28 Court’s claim construction because, at the time, it was unclear as to why it was needed.
(See id. at 16-17.) In addition, in the summary judgment order, the Court held that
CliniComp also made clear and unmistakable disclaimers during the IPR proceedings
distinguishing the “storing” limitation in claim 1 from what CliniComp referred to as
“replication.” (See Dkt. No. 120 at 36-37.)

1 (detailing the prosecution disclaimers made by CliniComp during the PTAB proceedings).)

2 During the claim construction phase of the case, CliniComp also took discovery on
3 how the accused services operate. Cerner started producing technical documents in
4 December 2021 and substantially completed production of them in June 2022. (Dkt. No.
5 99-3, Yu Decl. ¶ 2.) CliniComp’s technical expert reviewed Cerner’s source code multiple
6 times in March 2022. (Dkt. No. 124-4, Ex. 2.) And, by July 8, 2022, CliniComp had
7 deposed three of Cerner’s technical witnesses regarding the operation of the accused
8 services. (See, e.g., Dkt. No. 103, Exs. 3-5.)

9 Following the Court’s issuance of the claim construction order, CliniComp served
10 Cerner with its amended final infringement contentions on August 29, 2022, asserting that
11 Cerner infringed the ’647 Patent under the Court’s claim constructions. (See Dkt. No. 103,
12 Ex. 2.) In those contentions, CliniComp asserted that the Cerner’s accused services satisfy
13 the “storing . . .” limitation in claim 1 because:

14 Cerner’s “Active Data Security” and “Reference Data Security” “allow
15 Cerner to partition data into private groups.” More specifically, Cerner
16 created partitions for each client of [the accused services] before storing any
17 client data in the database by programming database query restrictions that use
18 each client’s logical domain ID to create a specific arrangement of data
19 structures for each client. These partitions were used to separate each client’s
20 data from the other clients’ data and restrict access to that data to prevent other
21 clients from having access to a client’s data.

22 (Id. at 11-12, 22 (citations omitted); see also id. at 31.) Here, CliniComp asserted that the
23 accused services satisfy the “storing . . .” limitation through their use of programed
24 database query restrictions and logical domain IDs. (See id.)

25 After receiving CliniComp’s amended infringement contentions, Cerner filed a
26 motion for summary judgment of non-infringement on September 19, 2022. (Dkt. No. 99.)
27 Shortly after filing its motion for summary judgment, on September 28, 2022, Cerner
28 served CliniComp with “an Octane Fitness letter.” (Dkt. No. 124-5, Ex. 3.) In the letter,
Cerner stated:

[CliniComp’s] claims, as spelled out in CliniComp’s Final Infringement

1 Contentions, are objectively meritless and inconsistent with the Court’s claim
2 construction rulings. If CliniComp does not immediately dismiss this action,
3 Cerner will seek to recover the fees it has incurred and will incur in defending
4 this baseless lawsuit. See Octane Fitness, LLC v. ICON Health & Fitness,
5 Inc., 572 U.S. 545, 554 (2014); 35 U.S.C. § 285.

6 . . .

7 . . . To the extent CliniComp does dismiss its claims with prejudice by October
8 7, 2022, Cerner is prepared to waive its claim for attorneys’ fees incurred to
9 date.

10 (Id. at 1.) CliniComp never responded to Cerner’s September 28, 2022 letter.⁷ (See Dkt.
11 No. 124-1 at 2, 9; Dkt. No. 130 at 4.)

12 CliniComp contends that in response to Cerner’s motion for summary judgment that

13 ⁷ CliniComp contends that Cerner improper delayed sending its Octane Fitness letter
14 by waiting until nine weeks after the Court’s claim construction order and more than a
15 week after filing its motion for summary judgment to send the letter. (Dkt. No. 127 at 1,
16 3-4.) CliniComp contends that Cerner’s delay in sending its Octane Fitness letter is alone
17 a sufficient reason to deny Cerner’s motion for attorney’s fees, citing Stone Basket
18 Innovations, LLC v. Cook Med. LLC, 892 F.3d 1175, 1181 (Fed. Cir. 2018). (Dkt. No.
19 127 at 4-5.) In Stone Basket, the Federal Circuit affirmed a district court’s denial of
20 attorney’s fees under § 285 and held that the district court did not abuse its discretion in
21 determining that the case was not exceptional. See 892 F.3d at 1183. In so doing, the
22 Federal Circuit held that the district court “was well within its discretion to factor in [the
23 accused infringer]’s litigation conduct” under the totality of the circumstances, including
24 the accused infringer’s failure to provide notice of its belief that the case was exceptional.
25 Id. at 1181. In Stone Basket, the Federal Circuit explained that an accused infringer’s
26 failure to send or delay in sending an Octane Fitness letter is a “factor” that a district court
27 may consider under the totality of the circumstances in making an exceptionality
28 determination. See id.; see also Thermolife, 922 F.3d at 1358 (“We have held that the lack
of the early notice described in Stone Basket can support a denial of attorney’s fees, and
that the presence of such notice, followed by continuation of litigation, can be a factor in
justifying an award of attorney’s fees. But we have not held that such notice is rigidly
required.” (citations omitted)). As such, in accordance with Stone Basket and Thermolife,
the Court factors in the presence and timing of Cerner’s Octane Fitness letter to CliniComp
under the totality of the circumstances as part of its exceptionality determination in this
case. In addition, the Court factors in CliniComp’s decision to not respond to the letter and
to proceed with the litigation.

1 it “made a reasonable and good faith attempt to show that Cerner’s use of data blobs
2 distinguished the accused products from mere ‘indexing’ and satisfied the other
3 requirements of the Court’s claim construction Order.” (Dkt. No. 127 at 7.) The Court
4 disagrees.

5 As an initial matter, the Court notes that CliniComp’s August 29, 2022 amended
6 final infringement contention made no reference at all to “data blobs.” (See generally Dkt.
7 No. 103, Ex. 2.) Indeed, the term “data blobs” or even the word “blob” is not contained
8 anywhere in those infringement contentions. (See id.) Thus, CliniComp’s theory of
9 infringement based on Cerner’s purported use of “data blobs” was improper from the start
10 because CliniComp did not disclose that specific theory of infringement in its amended
11 final infringement contentions. See S.D. Cal. Pat. L.R. 3-1; Wi-LAN Inc. v. LG Elecs.,
12 Inc., No. 18-CV-01577-H-BGS, 2019 WL 5790999, at *2 (S.D. Cal. Sept. 18, 2019) (““In
13 a lawsuit for patent infringement in the Southern District of California, a patentee is limited
14 to the infringement theories it sets forth in its infringement contentions.””); LookSmart
15 Grp., Inc. v. Microsoft Corp., No. 17-CV-04709-JST, 2019 WL 7753444, at *2 (N.D. Cal.
16 Oct. 17, 2019) (“Once served, the infringement contentions constitute the universe of
17 infringement theories.”). Further, a review of CliniComp’s arguments at summary
18 judgment – both in its briefing and at the hearing – demonstrate that CliniComp did not
19 have reasonable and good faith theory of infringement based on Cerner’s purported use of
20 data blobs.

21 On October 14, 2022, CliniComp filed a response in opposition to Cerner’s motion
22 for summary judgment. (Dkt. No. 106.) CliniComp’s opposition was vague and
23 inconsistent as to how precisely the accused services satisfy the Court’s claim construction
24 for the claim term “[first/second] portion of the database associated with the [first/second]
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1 healthcare enterprise facility.”⁸ For example, the Court’s claim construction requires that
2 the claimed “portion” be “a specific arrangement of data structures of the database that
3 separates the data associated with the [first/second] healthcare enterprise facility from data
4 associated with any other healthcare enterprise facility.” (Dkt. No. 91 at 17.) In its
5 opposition brief, CliniComp never identified what precisely it considered to be “a specific
6 arrangement of data structures of the database that separates the data.” (See generally Dkt.
7 No. 106 at 11-13.) CliniComp simply repeated this part of the Court’s claim construction
8 without identifying anything from the accused services or providing any analysis.⁹ (See
9 id. at 12.) Further, CliniComp’s opposition brief failed to present a consistent and coherent
10 theory of infringement that satisfied the Court’s claim construction and the relevant claim
11 language. At times, CliniComp appeared to contend that the data blobs were the claimed
12 “portion[s],” and, at other times, CliniComp appeared to contend that the code for imposing
13 the proper database query restrictions were the claimed “portion.” (See id. at 12-13; see
14 also Dkt. No. 120 at 31-34.) Further, although CliniComp’s opposition brief clearly
15 asserted that the data blobs satisfied at least two of the requirements set forth in the Court’s
16 construction of the relevant claim term, (see Dkt. No. 106 at 13), and despite CliniComp’s
17 current assertion that it had a reasonable and good faith theory of infringement based on
18 the data blobs, at the hearing on Cerner’s motion for summary judgment, CliniComp
19 abandoned that theory of infringement and conceded that the data blobs do not satisfy the
20 Court’s claim construction for the claim term “[first/second] portion of the database
21 associated with the [first/second] healthcare enterprise facility.” (See Dkt. No. 128 at 16.)
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24 ⁸ Indeed, at the hearing on Cerner’s motion for summary judgment, CliniComp’s own
25 counsel described CliniComp’s opposition brief as “inartful.” (Dkt. No. 128 at 23, 24.)

26 ⁹ In light of this complete failure by CliniComp to identify the purported “specific
27 arrangement of data structures” in its opposition brief, the Court rejects CliniComp’s
28 contention that its arguments at summary judgment “tracked the Court’s claim construction
order.” (Doc. No. 127 at 2.)

1 On October 28, 2022, CliniComp filed a motion for leave to file a sur-reply. (Dkt.
2 No. 112.) CliniComp’s proposed sur-reply was improper for several reasons, but most
3 importantly, it was improper because it contained a brand new never-before-disclosed
4 theory of infringement. (See Dkt. No. 120 at 39-41.) In the proposed sur-reply, CliniComp
5 abandoned its “data blobs” theory of infringement and, instead, argued that “*the database*
6 *schema* and the programmed database query restrictions” within the accused services
7 satisfy the Court’s construction for the claim term “[first/second] portion of the database
8 associated with the [first/second] healthcare enterprise facility.” (See Dkt. No. 112 at 2
9 (emphasis added).) This was a brand-new theory of infringement because CliniComp had
10 never previously identified the “database schema” as satisfying the Court’s construction
11 for the claim term “[first/second] portion of the database associated with the [first/second]
12 healthcare enterprise facility.” Indeed, CliniComp’s opposition to Cerner’s motion for
13 summary judgment never referenced “database schema” anywhere, and the opposition
14 brief did not even contain the word “schema.”¹⁰ (See generally Dkt. No. 106.) Further,
15 “database schema” was never mentioned in CliniComp’s August 29, 2022 amended final
16 infringement contentions in regards to the “storing . . .” limitation. (See generally Dkt. No.
17 103, Ex. 2 at 10-12, 21-23, 31.) As such, CliniComp’s attempt to assert a brand-new theory
18 of infringement in its proposed sur-reply was entirely improper.¹¹ See Toung et v. Valley-
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21 ¹⁰ In addition, CliniComp’s Statement of Disputed Material Facts and the supporting
22 declaration from CliniComp’s expert Mr. Davis also did not contain the word “schema.”
23 (See generally Dkt. Nos. 108, 108-16.) The Court acknowledges that paragraphs 9 and 13
24 of the supporting declaration from CliniComp’s other expert Mr. Hendryx referred to
25 “database schema.” (Dkt. No. 106-20, Hendryx Decl. ¶¶ 9, 13.) But CliniComp never
26 cited to or otherwise relied on paragraph 9 or 13 of Mr. Hendryx’s declaration anywhere
27 in its opposition brief to Cerner’s motion for summary judgment. (See generally Dkt. No.
28 106.)

26 ¹¹ The Court notes that CliniComp’s motion for leave to file the proposed sur-reply
27 also contained the following bold assertion: “Cerner’s Reply falsely asserts CliniComp has
28 identified the data blobs created by the accused Cerner systems as the claimed ‘portions.’”
(Dkt. No. 112 at 1.) Here, CliniComp accused Cerner of making a false representation to

1 Wide Recreation & Park Dist., No. EDCV 16-88 JGB (KKX), 2020 WL 8410456, at *3
2 (C.D. Cal. Feb. 20, 2020) (“[D]efendant’s attempt to introduce [in a sur-reply] new legal
3 arguments and the declaration of an undisclosed expert is clearly improper.”); Chris-Leef
4 Gen. Agency, Inc. v. Rising Star Ins. Inc., No. 11-CV-2409-JAR, 2011 WL 5039141, at
5 *1 (D. Kan. Oct. 24, 2011); Wi-LAN, 2019 WL 5790999, at *2 (““In a lawsuit for patent
6 infringement in the Southern District of California, a patentee is limited to the infringement
7 theories it sets forth in its infringement contentions.””).

8 The Court held a hearing on Cerner’s motion for summary judgment on November
9 8, 2022. At the hearing on Cerner’s motion, CliniComp attempted to introduce a third new
10 theory of infringement as to the “storing . . .” limitation based on the database schema, the
11 programmed database query restrictions, and a “Logical Domain table.” (See Dkt. No. 128
12 at 20, 25, 32.) This also was entirely improper. Similar to “database schema,” the term
13 “Logical Domain table” was never referenced in CliniComp’s opposition brief, its
14 Statement of Disputed Material Facts, or even its motion for leave to file a sur-reply. (See
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17 the Court even though CliniComp’s opposition brief contained several statements
18 contending that the data blobs were the claimed “portion[s].” For example, under the
19 Court’s construction for the relevant claim term, the claimed “portion of the database . . .
20 restricts access to data therein to protect data associated with the [first/second] healthcare
21 enterprise facility from access by any other healthcare enterprise facility.” (Dkt. No. 91 at
22 17-18.) In an effort to demonstrate that the accused services satisfied that requirement,
23 CliniComp stated: “the data blob ‘restricts access to the data therein’ from access ‘by any
24 other healthcare facility.’” (Dkt. No. 106 at 13; see also id. at 4 (“This data blob is an
25 arrangement of data structures of the database . . .”), at 13 (““Cerner’s use of data blobs
26 is not merely ‘indexing by an identifier.’”); Dkt. No. 108 at 8 (“extract data into structured
27 portions of the database, referred to as data blobs”), at 11 (“extract data into specific
28 arrangements of data structures, referred to as data blobs”).) And CliniComp made that
accusation even though at the summary judgment hearing CliniComp described its own
opposition brief as “inartful.” (Dkt. No. 128 at 23, 24.) In addition, CliniComp made that
accusation even though it now attempts to rely on Cerner’s purported use of data blobs in
an effort to demonstrate that it had a reasonable and good faith theory of infringement.
(See Dkt. No. 127 at 7.)

1 generally Dkt. Nos. 106, 108, 112.) The term “Logical Domain table” was mentioned in
2 CliniComp’s August 29, 2022 amended infringement contentions, but, again, the term
3 “database scheme” was not. (See generally Dkt. No. 103, Ex. 2 at 10-12, 21-23, 31.)
4 Therefore, CliniComp still failed to properly disclose this particular theory of infringement
5 in its August 29, 2022 amended final infringement contentions, and it was improper for
6 CliniComp to attempt to introduce this new previously undisclosed theory of infringement
7 at the summary judgment hearing. See ABS Glob., Inc. v. Cytonome/ST, LLC, 984 F.3d
8 1017, 1027 (Fed. Cir. 2021) (finding argument waived because it was “raised for the first
9 time during oral argument”); In re LexinFintech Holdings Ltd. Sec. Litig., No. 3:20-CV-
10 1562-SI, 2021 WL 5530949, at *15 (D. Or. Nov. 24, 2021); Wi-LAN, 2019 WL 5790999,
11 at *2 (“In a lawsuit for patent infringement in the Southern District of California, a
12 patentee is limited to the infringement theories it sets forth in its infringement
13 contentions.”).

14 As detailed above, in response to Cerner’s motion for summary judgment,
15 CliniComp repeatedly shifted its theory of infringement as to the “storing . . .” limitation.
16 In total, CliniComp presented four different theories of infringement (three of which were
17 not properly presented in CliniComp’s amended final infringement contentions and two of
18 which were not included anywhere in CliniComp’s opposition brief to Cerner’s motion for
19 summary judgment). And all four of those theories failed, and failed for multiple reasons.
20 (See Dkt. No. 120 at 30-37, 42 n.19.) For example, CliniComp’s final theory of
21 infringement – the one it presented at the hearing on Cerner’s motion for summary
22 judgment based on the database schema, the programmed database query restrictions, and
23 the Logical Domain table – still failed to satisfy the “storing . . .” limitation for four separate
24 reasons. (See id. at 42 n.19.) Indeed, at the hearing, CliniComp’s own demonstrative
25 (Slide 13), showed that the accused services did not satisfy the “storing . . .” limitation
26 because the accused services store the processed healthcare data in persistent storage, and
27 not in any of the items identified by CliniComp at the summary judgment hearing. The
28 weakness of these various theories of infringement is demonstrated not only by the analysis

1 in the Court’s November 15, 2022 order granting Cerner’s motion for summary judgment
2 but also by CliniComp’s own actions. It was clear that CliniComp engaged in this pattern
3 of ever-changing theories of infringement as to the “storing . . .” limitation unsupported by
4 its own infringement contentions because CliniComp itself recognized that it did not have
5 meritorious theory of infringement as to that claim limitation.

6 Considering the totality of the circumstances, the Court concludes that this case is
7 “one that stands out from the others” with respect to the objective unreasonableness and
8 substantive weakness of CliniComp’s litigating position following the conclusion of the
9 IPR proceedings and the issuance of the Court’s claim construction order.¹² In this case,
10 CliniComp pursued a claim for patent infringement that became objectively baseless
11 following the Court’s issuance of the claim construction order in this action – a claim
12 construction order that was based on CliniComp’s own clear and repeated representations
13 to the PTAB regarding the scope of its claimed invention. As such, the Court determines
14 that the case overall is “exceptional,” therefore, an award of attorney’s fees pursuant to 35
15 U.S.C. § 285 is appropriate. See Innovation Scis., 842 F. App’x at 557 (“We have . . .
16 frequently held that a case is exceptional when a party continues to litigate claims that have
17 become baseless in view of a district court’s claim construction opinion.”); see, e.g.,

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20 ¹² In its opposition to Cerner’s motion for attorney’s fees, CliniComp contends that it
21 has litigated this case in an exceptionally reasonable manner and notes certain actions that
22 it has taken in this case, such as the manner in which it conducted discovery in this case.
23 (Dkt. No. 127 at 2, 10-11.) The Court acknowledges these actions by CliniComp and
24 considers them under the totality of the circumstances. Nevertheless, the Court concludes
25 that this case is “exceptional” under § 285.

26 CliniComp asserts that Cerner does not and cannot allege any bad faith conduct on
27 the part of CliniComp or its counsel. (Dkt. No. 127 at 2, 10.) But a finding of subjective
28 bad faith is not necessary for a determination that a case is exceptional under § 285. See
Nat’l Oilwell Varco, L.P. v. Omron Oilfield & Marine, Inc., 676 F. App’x 967, 973 (Fed.
Cir. 2017) (“Bad faith is not necessary because ‘a case presenting *either* subjective bad
faith *or* exceptionally meritless claims may sufficiently set itself apart from mine-run cases
to warrant a fee award.’” (emphasis added) (quoting Octane Fitness, 572 U.S. at 555)).

1 Princeton Digital Image Corp. v. Ubisoft Ent. SA, No. CV 13-335-LPS-CJB, 2021 WL
2 4033220, at *3–5 (D. Del. Sept. 3, 2021) (Stark, J.) (finding case “exceptional” where
3 patentee continued to pursue an infringement claim that became objectively baseless
4 following the district court’s issuance of a claim construction order that found the patentee
5 made prosecution disclaimers during IPR proceedings); Straight Path IP Grp., Inc. v. Cisco
6 Sys., Inc., 411 F. Supp. 3d 1026, 1031–35 (N.D. Cal. 2019) (finding case “exceptional”
7 where patentee “pursued an objectively baseless infringement theory against defendants by
8 attempting to renege on explicit representations made [during IPR proceedings] —
9 representations made repeatedly in order to preserve validity”); Upaid Sys., Ltd. v. Card
10 Concepts, Inc., No. 17 C 8150, 2022 WL 4482762, at *2–4 (N.D. Ill. Sept. 27, 2022)
11 (finding case “exceptional” where patentee continued to pursue infringement claims that
12 became baseless after the district court’s claim construction order); IPS Grp., Inc. v.
13 Duncan Sols., Inc., No. 15-CV-1526-CAB (MDD), 2018 WL 2215418, at *2 (S.D. Cal.
14 May 14, 2018) (finding claim “exceptional” where the patentee’s “opposition to the
15 summary judgment advanced an argument it had not presented in its infringement
16 contentions or could reasonably be supported by the patent”); Intex Recreation Corp. v.
17 Team Worldwide Corp., 77 F. Supp. 3d 212, 217 (D.D.C. 2015) (finding case
18 “exceptional” where the district court’s claim construction foreclosed any reasonable
19 infringement argument and, in response to a motion for summary judgment, the patentee
20 only “advanced flawed, nonsensical, and baseless arguments, which lacked factual
21 support”); see also, e.g., Finjan, Inc. v. Juniper Network, Inc., No. C 17-05659 WHA, 2021
22 WL 75735, at *2 (N.D. Cal. Jan. 9, 2021), aff’d No. 2021-2253, 2022 WL 17576350, at *1
23 (Fed. Cir. Dec. 12, 2022) (finding case “exceptional” where patentee “flip flopped and
24 came up with a new infringement theory” on the eve of trial).¹³

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27 ¹³ The Court rejects CliniComp’s reliance on the Federal Circuit’s decision in Biax
28 Corp. v. Nvidia Corp., 626 F. App’x 968 (Fed. Cir. 2015). (See Dkt. No. 127 at 5-6.) In
Biax, the Federal Circuit reversed a district court’s grant of attorney’s fees under § 285

1 In its motion for attorney’s fees, Cerner specifically requests that the Court award
2 Cerner its attorney’s fees from July 28, 2022 – the date the Court issued its claim
3 construction order in this action. (Dkt. No. 124-1 at 1, 17.) “[C]ourts frequently award
4 attorney fees under § 285 in an amount related to particular conduct and circumstances that
5 stood out and made a case exceptional, even when the entirety of the conduct in the case
6 was not exceptional from start to finish.” Intell. Ventures I, 944 F.3d at 1384. In light of
7 the specific conduct and circumstances in this case that stood out and made it
8 “exceptional,” the Court finds it appropriate to limit Cerner’s attorney’s fees award to the
9 reasonable attorney’s fees it incurred from August 29, 2022 – the date CliniComp served
10 Cerner with its amended final infringement contentions. By that point in time, CliniComp
11 had ample time to assess the strength (or lack thereof) of its claim for patent infringement
12 in light of the Court’s claim constructions and the relevant discovery. And at the point in
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15 where the district court found the case “exceptional” on the grounds that the patentee had
16 no reasonable theory of infringement after claim construction. See 626 F. App’x at 971–
17 73. But in reversing the district court, the Federal Circuit held that “the district court
18 misread [plaintiff’s] expert’s testimony,” id. at 972, and that the district court’s claim
19 construction contained an “uncertainty” that was not resolved until summary judgment
20 despite the patentee’s attempt to resolve that uncertainty earlier through a motion for
21 clarification, see id. at 972–73. CliniComp does not identify any similar misreading of
22 expert testimony by this Court or any similar uncertainty or ambiguity in the Court’s claim
23 construction for the term “[first/second] portion of the database associated with the
24 [first/second] healthcare enterprise facility.” As such, Biax is easily distinguishable from
25 the circumstances in this case.

26 In its opposition, CliniComp also contends: “At least one court has cast doubt on
27 whether a patentee who ‘loses’ on claim construction should ever be sanctioned for
28 opposing summary judgment, given that Markman orders are interlocutory and cannot be
appealed absent final judgment.” (Dkt. No. 127 at 5 n.2 (citing Kaneka Corp. v. Zhejiang
Med. Co., No. 2:11-CV-02389-MRP-SS, 2014 WL 12573845, at *3–4 (C.D. Cal. May 23,
2014)).) Kaneka is a non-binding district court decision. The Court reiterates that the
Federal Circuit – whose decisions are binding on this Court – has “frequently held that a
case is exceptional when a party continues to litigate claims that have become baseless in
view of a district court’s claim construction opinion.” Innovation Scis., 842 F. App’x at
557 (citing AdjustaCam, 861 F.3d at 1360; Taurus IP, 726 F.3d at 1326–29).

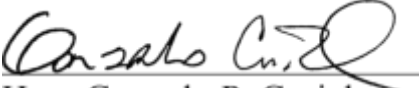
1 time, CliniComp chose to continue with the litigation and assert what became a string of
2 baseless and ever-changing theories of infringement. As such, an award of fees incurred
3 since August 29, 2022 is appropriate in this action and “reflects the unnecessary effort
4 [Cerner] had to expend to continue defending claims that became baseless after claim
5 construction.” Princeton Digital, 2021 WL 4033220, at *5.

6 III. CONCLUSION

7 For the reasons above, the Court grants Defendant Cerner’s motion for attorney’s
8 fees pursuant to 35 U.S.C. § 285; the Court find this case to be “exceptional;” and the Court
9 awards Cerner its reasonable attorneys’ fees incurred since August 29, 2022. Cerner must
10 file a request for its fees and expenses incurred since August 29, 2022 by **February 24,**
11 **2023**. CliniComp must file its opposition to the amount of fees requested by **March 10,**
12 **2023**, and Cerner must file its reply by **March 17, 2023**. The Court will then issue an order
13 as to the amount of the award in due course.

14 IT IS SO ORDERED.

15 Dated: February 3, 2023

16 
17 Hon. Gonzalo P. Curiel
18 United States District Judge
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