

## INTELLECTUAL PROPERTY LAW UPDATE: BEWARE PATENT TROLLS

In two recent opinions, the United States Supreme Court clarified the Patent Act's fee-shifting standard for courts to award a prevailing party's attorney's fees in "exceptional" patent cases, including patent infringement lawsuits.

The new lowered standard gives parties wrongly accused of infringement another tool to combat meritless lawsuits, particularly wrongful patent infringement claims by patent trolls. **This now allows courts greater discretion to award attorney's fees against parties that bring baseless patent lawsuits.**

In the recently-decided *Octane Fitness, LLC v. ICON Health & Fitness, Inc.* and *Highmark, Inc. v. Allcare Health Management Systems, Inc.* cases, the Court ruled that the previous standard of "exceptional case" strayed too far from the Patent Act's original intention – to sanction patent litigation abuse. It had been defined as one which "either involved material inappropriate conduct or is both objectively baseless and brought in bad faith."

The Court **redefined** "exceptional case" as one that stands out because of the litigant's substantive position or because of unreasonable litigation tactics. It is anticipated that courts will now exercise their discretion to award attorney's fees more frequently in meritless patent litigation lawsuits based on the recent rulings in *Octane* and *Highmark*.

The Court has made it easier for businesses wrongfully accused of patent infringement to recover attorney's fees. For advice regarding patent infringement demands, claims or lawsuits, or any other intellectual property litigation issue, or for how *Octane* or *Highmark* could impact you, please contact one of the members of Hoge Fenton's Intellectual Property Litigation Team:

### The Fine Print.

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