

ALERTS**Intellectual Property Law Alert - Judge Orders Attorneys' Fees To Be Paid In *eDekka V. 3balls.com, Inc.*, Case**

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On Dec. 17, Judge Rodney Gilstrap of the U.S. District Court for the Eastern District of Texas issued an order awarding attorneys' fees to the defendants in a consolidated case involving allegations of patent infringement against scores of defendants by a non-practicing entity (NPE). Judge Gilstrap held that the plaintiff's unreasonable positions regarding the validity of the patent and its vexatious litigation strategy justify the award of attorneys' fees.

In *eDekka v. 3balls.com, Inc.*, Judge Gilstrap had previously held that the asserted patent was invalid because it was directed to unpatentable subject matter under 35 U.S.C. § 101. The defendants moved for attorneys' fees under 35 U.S.C. § 285. Judge Gilstrap granted defendants' motion for attorneys' fees, finding that the plaintiff's conduct warranted the finding of an exceptional case. First, Judge Gilstrap held that the plaintiff's positions regarding the patent's validity were unreasonable since the patent was "demonstrably weak on its face, despite the initial presumptions created when this patent was issued by the PTO..." Second, Judge Gilstrap held that the plaintiff's litigation strategy "reflects an aggressive strategy that avoids testing its case on the merits and instead aims for early settlement falling below the cost of defense."

Judge Gilstrap's opinion in *eDekka* could have a much broader effect on patent litigation in the Eastern District of Texas since the tactics employed by *eDekka* are not uncommon in patent suits brought by NPEs.

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