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Computer-Assisted Review Costs Awarded in California Patent Case

Court finds that using technology to undertake more efficient document review is reasonable.

On February 1, Judge Anthony J. Battaglia of the U.S. District Court for the Southern District of California awarded more than \$12 million in attorney fees, including more than \$3 million in electronic discovery costs, to the prevailing defendants in *Gabriel Technologies Corp. v. Qualcomm Inc.*¹ Specifically, the court awarded roughly \$2.8 million to cover the use of computer-assisted review technology and nearly \$400,000 for document review attorney fees.

Background

In *Gabriel Technologies*, a patent infringement case, the defendants prevailed on all claims filed against them when the court dismissed some claims and granted summary judgment in favor of the defendants as to the remaining claims. Upon prevailing, the defendants sought an award of attorney fees for patent-related claims under 35 U.S.C. § 285, which provides that a “court in exceptional cases may award reasonable attorney fees to the prevailing party,” and for misappropriation claims under section 3426.4 of the California Uniform Trade Secret Act (UTSA), which allows for the award of attorney fees if a claim of misappropriation is made in bad faith.

Costs Connected with Document Review Considered Reasonable

The court determined the case was exceptional under the standard set forth in 35 U.S.C. § 285 and brought in bad faith under the UTSA because the plaintiffs brought frivolous claims and engaged in litigation misconduct. The court then addressed the appropriate amount for any attorney fees award. The court looked at three fee components: (1) the fees charged by counsel representing the defendants, (2) the fees associated with computer-assisted review, and (3) the fees charged by attorneys performing document review.

In considering the fees “attributable to computer[-]assisted, algorithm-driven document review,” the court looked at the defendants’ review of nearly 12,000,000 records. Rather than perform a manual review of this large volume of data, the defendants employed a firm whose proprietary computer-assisted review technology sorted the records into responsive and nonresponsive sets. Following the use of the algorithm, contract attorneys reviewed the documents the computer algorithm deemed responsive in order to assess confidentiality, privilege, and relevance. The court found that employing the computer-assisted review technology minimized the overall work of the contract attorneys by reducing the fees and hours required. The court determined that “[the defendants’] decision to undertake a more efficient and less time-consuming method of document review” was “reasonable under the circumstances.”

When addressing the contract attorney fees for document review, the court noted that the defendants “reasonably decided to have [contract attorneys] perform document review in this matter. Had [the defendants’ counsel] performed the document review themselves, the resulting attorneys’ fees would have undoubtedly been exponentially higher.” Considering both the extensive discovery sought and the use of contract attorneys and

1. *Gabriel Techs. Corp. v. Qualcomm Inc.*, No. 08cv1992 AJB (MDD), 2013 WL 410103 (S.D. Cal. Feb. 1, 2013).

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technology to reduce discovery costs, the court concluded that the rate charged and hours spent by the contract attorneys for document review were reasonable.

Implications

This case highlights the reasonableness of litigants incurring costs to use computer-assisted review or predictive coding technology as a means of minimizing the overall costs incurred in responding to discovery. It further underscores the reasonableness of merits counsel employing less expensive attorneys to perform document review. Taking into consideration all factors, when faced with voluminous discovery, it is clear that parties can reasonably consider leveraging technology to reduce the volume of documents actually requiring manual review.

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