

Trio of IP Attorneys Author *Intellectual Property & Technology Law Journal* Article on Attorney Fee Awards in 'Exceptional' Cases

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Intellectual Property (IP) Partner Christopher Ferenc and Associates Lauren Eiten and Sara Pistilli authored an *Intellectual Property & Technology Law Journal* article about a recent Delaware district court's decision regarding the award of attorneys' fees in patent litigation according to 35 U.S.C. § 285, under which courts have the discretion to award attorneys' fees in patent cases to the prevailing party only in exceptional cases.

The ruling determined the plaintiffs' case was not exceptional, therefore denying the motion for attorneys' fees, and also included a detailed analysis of when a party may be considered a prevailing party and what a court considers "typical litigation" versus objectionable behavior. The authors noted that the decision offers important guidance on what constitutes an "exceptional case," determined on a case-by-case basis and "considering the totality-of-the-circumstances," including certain behaviors — such as withholding infringement testing results by a testifying expert or repeatedly making untimely infringement contentions.

However, the court clarified that not all questionable conduct rises to this level, e.g., where the use of expired or mishandled samples affects the quality of the evidence but does not amount to litigation misconduct. The authors went on to highlight the court's emphasis on the conduct of the party seeking fees, such as failure to disclose relevant evidence in a timely manner, which can weigh against a finding of exceptionality. Ultimately, this decision serves as a reminder of the complexities and high stakes of patent litigation, as well as the careful balance that attorneys must maintain in their litigation strategies and expert disclosures.

["Delaware Court Finds Totality of Circumstances Weighs Against Exceptionality Under 35 U.S.C. § 285,"](#) *Intellectual Property & Technology Law Journal*, June 2025

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