



## TECHNOLOGY LAW UPDATE

***IPXL Holdings,  
L.L.C.  
v.  
Amazon.com, Inc.***

Nos. 05-1009, -1487

Federal Circuit  
Nov. 21, 2005

*[A]ny motion for attorney fees must comply with Fed. R. Civ. P. 54(d)(2)(B), which provides that "[u]nless otherwise provided by statute or order of the court, the motion must be filed no later than 14 days after entry of judgment."*

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On November 21, 2005, the Federal Circuit affirmed the district court's summary judgment that U.S. Patent No. 6,149,055, which related to an electronic funds transfer system, was invalid and not infringed by Amazon's 1-click system, but reversed the award of Amazon's attorney fees and costs under 35 U.S.C. § 285. The Federal Circuit stated:

Amazon filed a motion for attorney fees seeking relief under three different statutory provisions: 28 U.S.C. § 1927, Fed. R. Civ. P. 11, and 35 U.S.C. § 285. IPXL responded with a motion to strike, arguing that any motion for attorney fees must comply with Fed. R. Civ. P. 54(d)(2)(B), which provides that "[u]nless otherwise provided by statute or order of the court, the motion must be filed no later than 14 days after entry of judgment." Because Amazon's motion, filed seventeen days after entry of judgment, was untimely, IPXL contended that the motion must be struck.

[T]he district court held that a claim to attorney fees under section 285 "is not barred by the [14-day] time limit" and that even if attorney fees under that provision were subject to Rule 54, the court would "exercise its discretion and allow Amazon leave to file out of time." Consequently, the district court denied IPXL's motion to strike and, finding the case exceptional, granted Amazon's motion for attorney fees under section 285. . . .

Because the district court determined that this was not a "close case" when deciding that the case was exceptional, Amazon argues that the district court in essence held that the case was legally frivolous such as to warrant sanctions for violation of Rule 11. [A]ccording to Amazon, the attorney fee award was a sanction for violation of one of "these rules" in accordance with Rule 54(d)(2)(E). We [disagree]. The district court did not hold that the case was "frivolous" under Rule 11 [but] awarded attorney fees under 35 U.S.C. § 285.

Amazon's second ground to support the award of attorney fees is that the district court properly exercised its discretion to enlarge the 14-day filing time under Rule 6(b). Even assuming the district court was referring to Rule 6(b) when it allowed Amazon to file out of time, the record is clear that Amazon never made a motion under Rule 6(b)(2), seeking enlargement of time after the 14-day time period had run, based on "excusable neglect," which is the standard the district court must apply in exercising discretion to enlarge time under that subsection of Rule 6. [O]n this record there is no basis for an award of attorney fees under Rule 11 or 28 U.S.C. § 1927. Assuming this is an exceptional case, an issue we do not reach, Amazon's claim to fees under section 285 is viable. [A]ny claim to attorney fees must be processed in compliance with Rule 54(d)(2)(B). No provision in section 285 exempts requests for attorney fees thereunder from compliance with Rule 54(d)(2)(B).

The district court's holding that section 285 itself can support an award of attorney fees without regard to when the relief is requested is legally incorrect. Further, in this case, the 14-day rule of Rule 54 was breached, and Amazon took no steps under Rule 6(b)(2) that could have afforded the district court a basis upon which to exercise discretion to enlarge the 14-day time period. Consequently, the district court abused its discretion in enlarging the applicable time and in denying IPXL's motion to strike. The district court was here obligated to grant IPXL's motion, and the award of attorney fees and costs to Amazon is therefore reversed.