



SHIMOKAJI & ASSOCIATES, P.C.

Intellectual Property Lawyers
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NEWSLETTER

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We specialize in the litigation, registration, and monetization of patent, trademark, and copyright matters. The clients we serve range from start-ups to Fortune 500 companies, government entities, and universities. Though located in the US, our expertise and representation has an emphasis in Asia.

— LATEST NEWS & EVENTS —

Two New US Supreme Court Rulings on Attorney Fees

In one of two cases decided in late April, the US Supreme Court said that appellate review of a lower court award of attorney's fees for an "exceptional" case will only be reviewed for an "abuse of discretion" by the lower court, in *Highmark v. Allcare*.

More information can be obtained at info@shimokaji.com



US Supreme Court Now Makes it Easier to Recover Attorney Fees in Patent Litigation

In *Octane v. ICON*, the US Supreme Court overturned prior Federal Circuit decisions on the standard for awarding attorney fees in patent litigation.

Section 285 of the Patent Act allows a district court to award attorney fees in an "exceptional case." However, the Patent Act does not define "exceptional."

In the past, the Federal Circuit has said that a case can be "exceptional" in only two situations: 1) when there has been "material inappropriate conduct" or 2) when the litigation has been "brought in subjective bad faith" and the lawsuit is "objectively baseless."

The US Supreme Court, in *Octane*, rejected the Federal Circuit standard. Instead, the Supreme Court said the standard is whether the case "stands out from others with respect to the substantive strength of a party's litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated." Whether the standard is met is based on the "totality of the circumstances."

8911 Research Drive, Irvine, California, USA 92618 www.shimokaji.com