IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

PI-NET INTERNATIONAL INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 12-282-RGA
	:	
JPMORGAN CHASE & CO.,	:	
	:	
Defendant.	:	

ORDER DENYING MOTIONS TO RECUSE

In this suit, Plaintiff, Pi-Net International, Inc., sued Defendant J.P. Morgan Chase & Co., for patent infringement. The case was assigned to me on March 14, 2012, and I presided over it until April 8, 2014. During that time, I did the sorts of things judges do, including holding a scheduling conference (D.I. 17), hearing argument (November 25, 2013 (D.I. 104)), presiding over discovery disputes (Nov. 10, 2012; Nov. 12, 2013 (D.I. 102), Dec. 18, 2013), and ruling on motions (D.I. 160 & 161). Recognizing that I was likely to acquire involuntarily at some undetermined point in the future J.P. Morgan stock, and not wanting to be in a position where that event occurred at an inopportune time, the case was reassigned on April 8, 2014, from me to one of the other three district judges in this District, namely, Judge Robinson. She thereafter handled the proceedings in this case, which included granting summary judgment against Plaintiff on May 14, 2014. *Pi-Net International, Inc. v. JPMorgan Chase & Co.*, 42 F.Supp. 3d 579 (D.Del. 2014). On May 21, 2014, Plaintiff appealed. (D.I. 170). On June 4, 2014, I involuntarily acquired a financial interest in J.P. Morgan, that is, shares of its common stock,

although as a practical matter I could not sell the stock without going through some amount of paperwork. I did the paperwork, and sold all the common stock on August 27, 2014.[1] Thus, I would have recused myself during this time period, that is, June 4, 2014 to August 27, 2014, had the case not already been assigned to Judge Robinson. Once I sold the stock, however, I had no conflict that required my recusal. The case remained assigned to Judge Robinson, who on October 30, 2014, "denied without prejudice" various pending motions, all but one of which had been filed after the time in which I would have been recused. (D.I. 219).

In due course, Plaintiff's appeal was resolved unfavorably to Plaintiff. *Pi-Net International, Inc. v. JPMorgan Chase & Co.*, 600 F. App'x 774 (Fed. Cir. Apr. 20, 2015), *cert. den.*, 2016 WL 100455 (Jan. 11, 2016). After the Federal Circuit had ruled, on May 15, 2015, the case was reassigned to me.[2] Plaintiff Pi-Net has moved to recuse me "on new grounds." (D.I. 256). This motion was recently filed, and briefing has been completed. (D.I. 257, 258).

I would be justified in striking Plaintiff's motion on multiple grounds. The motion has

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[1] I note that the reason I sold the J.P. Morgan stock was to avoid the necessity of recusals in future cases. Code of Conduct for United States Judges, Canon 4(D)(3).

[2] I do not think that I am required to recuse myself today simply because for two and one-half months during which the case was not assigned to me, I would have had a financial conflict of interest had it then been assigned to me. I note that one option, which I do not recall considering at the time, would have been to take no action to have the case reassigned, and then, when I obtained the JP Morgan stock, divest myself of it. Recusal would not have been required, because "after substantial judicial time has been devoted to the matter, because of the appearance . . ., after the matter was assigned to [the judge] . . ., that he . . . has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the ... judge ... divests himself . . . of the interest that provides the grounds for disqualification." 28 U.S.C. § 455(f). I think three discovery disputes and an argument and ruling on a motion for partial summary judgment would be "substantial judicial time . . . devoted to the matter." Based on the value of the stock at the time, a reasonable estimate of the litigation's maximum potential effect on the value of the holding, *see Pi-Net*, 2015 WL 1283196, *5 n.11, would be about $2, which would mean that "the interest" could not be "substantially affected by the outcome." Thus, it appears to me, in hindsight, that there was an option in which I could have handled this case throughout.

twenty-two pages of text and is thus in violation of the local rule limiting the opening brief in support of a motion to twenty pages. *See* D.Del. L.R. 7.1.3(a)(4). The motion is *pro se*, but Plaintiff is a corporation and cannot proceed *pro se*. (Dr. Arunachalam has earlier moved to substitute herself as a party, but that motion has not yet been resolved.). I will, however, deny the motion on the merits instead. It is basically the same argument as Plaintiff has advanced in other cases I have handled involving her or her companies, and I deny it for the same reasons. *See Pi-Net International, Inc. v. Citizens Financial Group, Inc.*, 2015 WL 1283196 (D.Del. Mar. 18, 2015).

I note additionally that Plaintiff states that I should recuse myself because "Judge Robinson recused herself from this case in a week from the date Dr. Arunachalam filed a motion to recuse Judge Robinson for conflicts of interest in a litigant and set a precedent in this case." (D.I. 256 at 1). There are two reasons why this argument does not help Plaintiff. First, the motion Plaintiff filed to recuse Judge Robinson (D.I. 226) has not been granted, and thus there is no cause and effect between the motion and the reassignment of the case from Judge Robinson to me. Second, the motion seeking to recuse Judge Robinson is frivolous. It generally makes no sense, as it is mostly a rehash of the arguments rejected in *Pi-Net*, 2015 WL 1283196. Indeed, it has even less force than the arguments in *Pi-Net*, since there is no claim that Judge Robinson had any disqualifying financial interest; rather, the claims are in part that she set up the rules that I then cited for why I was not disqualified. This argument has no merit. Generally for the reasons stated in *Pi-Net*, I will deny the motion to recuse Judge Robinson.

The "Patent Owner's Motion to Recuse Judge Andrews on New Grounds" (D.I. 256) is

DENIED. The "Patent Owner's Motion to Recuse Judge Robinson on New Grounds" (D.I. 226) is **DENIED**.

IT IS SO ORDERED this 19 day of February 2016.

United States District Judge

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FOR THE DISTRICT OF DELAWARE

PI-NET INTERNATIONAL INC.,	:	
	:	
Plaintiff,	:	
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v.	:	Civil Action No. 12-282-RGA
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JPMORGAN CHASE & CO.,	:	
	:	
Defendant.	:	

MEMORANDUM ON PENDING MOTIONS

Plaintiff sought a stay in its Answering Brief in regard to the motion for attorneys' fees. (D.I. 229). The Supreme Court has denied certiorari, and therefore there is no need for a stay.[1] Thus, the request for a stay is **DISMISSED** as moot.

Plaintiff, Pi-Net, does not have counsel. It cannot proceed without counsel. Dr. Arunachalam moves to substitute in for Plaintiff. (D.I. 225). Defendant opposes. (D.I. 237).[2] She is an individual; she could proceed *pro se.* I have previously considered a similar motion in other cases. Those I granted. *See Pi-Net International, Inc. v. Citizens Financial Group, Inc.*, 2015 WL 1283196 (D.Del. Mar. 18, 2015). One significant difference between the five cases at issue there and this case is that those five cases were pre-trial. That is, ownership of the patents

[1] I understand that one can seek rehearing of a denial of a petition for certiorari, and that in this case, Dr. Arunachalam intended on doing so by the deadline of February 5, 2016. (*Arunachalam v. SAP America, Inc.*, Fed. Cir. No. 15-1424, D.I. 30.).

[2] Dr. Arunachalam filed a Reply Brief, which has about ten pages of text, but only one paragraph, at p.12, addressing the issue at hand. (D.I. 240).

was transferred in the middle of litigation. Here, the patents have been transferred after Plaintiff lost the case, and had judgment entered against it. I have discretion to decide whether to grant a motion to substitute. *See Luxliner P.L. Export, Co. v. RDI/Luxliner, Inc.*, 13 F.3d 69, 72 (3d Cir. 1993). There are no equities or interests that support allowing Dr. Arunachalam to continue to litigate this case. She used the corporate form to bring the lawsuit.[3] The corporation lost. Dr. Arunachalam *pro se* has a history of ignoring the Court's rules, and, indeed, to her detriment, has ignored the Court of Appeals' rules also. Dr. Arunachalam repetitively files motions that no lawyer would file, such as the motions to recuse just about every judge who is assigned to her cases.[4] Dr. Arunachalam's motion in this case states nothing about whether she would accept the litigation liabilities that Pi-Net might have incurred. (There is a pending section 285 motion). Thus, the motion to substitute (D.I. 225) is **DENIED**.

"Patent Owner's Motion to Void All Judgments and Orders *Ab Initio* and to Re-Hear the Case *De Novo*" (D.I. 231) is **STRUCK**. Dr. Arunachalam is not a party, and she is not a lawyer. She cannot file motions in the case, and she cannot (and does not claim to) represent Pi-Net.[5]

The motion to file electronically (D.I. 232) is **DISMISSED** as moot.

The motion requesting an extension of time to file an answering brief in regard to the section 285 motion (D.I. 234) is **DISMISSED** as moot in view of Dr. Arunachalam's subsequent filing. (*See* D.I. 235).

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[3] Dr. Arunachalam states that the Federal Circuit allowed her to substitute for Pi-Net. (D.I. 225 at 5). She cites Case # 14-1495. The docket in that case reveals, however, that she was joined as an appellant, and not that she substituted for Pi-Net. (D.I. 59).

[4] For example, in the Court of Appeals, Pi-Net v. JP Morgan, No. 14-1495, D.I. 77 (filed May 7, 2015) (motion to recuse three Federal Circuit judges).

[5] If I were to reach the merits of the struck motion, I would deny it.

Defendant's Motion to Strike Portions of Patent Owner's Reply Brief (D.I. 246), while not without some merit, is **DENIED**.

The only other pending motion is Defendant's Renewed Motion for Attorney Fees Pursuant to 35 U.S.C. § 285 and Fed. R. Civ. P. 54(d)(2). (D.I. 221 & 222). The Patent Act provides that "in exceptional cases [the court] may award reasonable attorney fees to the prevailing party." 35 U.S.C. § 285. Thus, under the statute there are two basic requirements: (1) that the case is "exceptional" and (2) that the party seeking fees is a "prevailing party." The Supreme Court recently defined an "exceptional" case as "simply one that 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." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014). District courts should determine whether a case is "exceptional" in the exercise of their discretion on a case-by-case basis, considering the totality of the circumstances. *Id.* Relevant factors for consideration include "frivolousness, motivation, objective unreasonableness (both in the factual and legal components of the case) and the need in particular circumstances to advance considerations of compensation and deterrence." *Id.* at 1756 n.6 (internal quotations marks omitted). A movant must establish its entitlement to attorneys' fees under § 285 by a preponderance of the evidence. *Id.* at 1758.

Defendant is the prevailing party.

Defendant's arguments that this is an exceptional case, however, do not persuade me. Essentially, Defendant summarizes its arguments as, (1) the patent's specification and claims were so "intrinsically defective" that the patent was invalid on multiple grounds, (2) that Dr.Arunachalam should have known the patents were invalid, and (3) Pi-Net was seeking a

nuisance value settlement. (D.I. 222, pp. 2-4). Defendant also states that Plaintiff's claim construction positions were not reasonable.

On the first point, it is true that the patents have been invalidated on multiple grounds by this court, including indefiniteness, written description, and enablement. I do not, however, think this means the case was necessarily exceptional. I do not think the number of winning theories is much of an indicator of exceptionalness. It is also true the PTAB has found the patents invalid on other grounds such as anticipation and obviousness. (D.I. 222, p.12 (citing *Arunachalam v. Citizens Financial Group, Inc.*, No. 12-355, D.I. 111, Exhs. A-C)).

On the second point, nothing cited in Defendant's brief shows me that Dr. Arunachalam knew the patents were invalid. If she had known that the patents were invalid, that would be significant. Her belief that they are valid is not particularly significant, because her briefs tend to support the conclusion that her views are not informed by the facts. In other words, unreasonable subjective belief would not be a factor that weighs in her favor. I think the presumption that patents are valid helps Plaintiff.[6] Further, when the case was assigned to me, I denied Defendant's motion for partial summary judgment of indefiniteness in its entirety, although some of that was because Defendant did not submit expert testimony (which it did later in connection with its successful effort before Judge Robinson). While I was somewhat dubious of some of Plaintiff's arguments, none of them were so poor that I ruled in Defendant's favor. Defendant argues that the PTAB's construction of terms that this Court held indefinite does not undercut this Court's decision (D.I. 238, p.7), because the PTAB's construction was made under

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[6] Defendant cites one case for the proposition that "courts have awarded attorney fees for persisting with patent infringement suits when the patentee knew or should have known that its patents were invalid." (D.I. 222, p.18). I've read the case, and I think the primary driver of that decision was "that this action was litigated in a wholly unreasonable manner." *Logic Devices, Inc. v. Apple Inc.*, 2014 WL 6844821, *4 (N.D. Cal. Dec. 4, 2014).

a different standard. I agree with that, but the fact that the PTAB was able to construe the terms is consistent with Dr. Arunachalam's belief that they could be construed.

Defendant cites to documents filed in connection with Dr. Arunachalam's dispute with counsel who was representing Pi-Net. (D.I. 223-2, ¶20). The gist of this paragraph is that Dr. Arunachalam asserted that Pi-Net did not agree with the constructions that its counsel was proposing to the Court, but asserted them anyway. I am not sure that this pleading (which is not under oath) proves much, other than that Pi-Net and its counsel had a falling out. (There is separate litigation now being pursued in regard to that. *Arunachalam v. Pazuniak*, Civ. Act. No. 15-259-RGA (D.Del.)).

On the third point, Defendant also notes numerous settlements by Plaintiff for values ranging from $1,500,000 to (sometimes much) less, while at the same time Plaintiff was asserting damages of $184.5 million against JP Morgan. (D.I. 222, p.6). Certainly the assertion of damages that are 100 times what plaintiff would accept in a settlement is an indication of bad faith litigation, although it is also not determinative of that fact.

While there are places where Defendant asserts or suggests that the case was litigated in an unreasonable manner, this argument is based on Dr. Arunachalam's litigation conduct after she fired trial counsel, which was after judgment against Pi-Net in this court. Generally speaking, in the litigation I personally oversaw, Pi-Net's counsel took a reasonable approach, both in the discovery disputes and in the partial summary judgment motion.

I try to look at this without hindsight bias. Dr. Arunachalam's *pro se* filings are, at a minimum, duplicative, abusive, and often completely irrelevant. The *pro se* filings, as I have

noted, did not start until after this case was on appeal. The patents were, as Judge Robinson's opinion demonstrated, weak patents, but I do not conclude that they were so weak that Plaintiff's reliance upon the presumption of validity to assert them made this an "exceptional" case.

Richard G. Andrews
United States District Judge