IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ANGLO-DANISH FIBRE INDUSTRIES, LTD., and CEMFIBER A/S, Plaintiffs,	)	
vs.	)	No. 01-2133-GV
COLUMBIAN ROPE CO., Defendant.	)	

ORDER ON PLAINTIFFS' REQUEST FOR ATTORNEY FEES

Before the court is the request of the plaintiffs, Anglo-Danish Fibre Industries, Ltd. and Cemfiber A/S, for attorney fees and expenses pursuant to 35 U.S.C. § 285 as the prevailing party in a patent infringement case. The request was referred to the United States Magistrate Judge for determination. For the reasons that follow, it is determined that a reasonable award of attorney fees is $66,707.66.

BACKGROUND

The plaintiffs commenced this action for patent infringement on February 22, 2001, against the defendant, Columbian Rope Company. In their complaint, the plaintiffs alleged that Columbian Rope infringed two or more claims of U.S. Patent No. 5,399,195 (the '195 patent) by the sale of certain concrete-fiber products, particularly Columbian Rope's Super-76-Crack Reducer. By October

31, 2001, some eight months later, a settlement was reached. Various disputes about the settlement agreement arose. All were resolved except the question of whether the settlement agreement would bind Columbian Rope's successors in interest. This dispute led to a motion by Columbian Rope to enforce the settlement agreement. The issue was resolved by the court's ruling of June 21, 2002, granting Columbian Rope's motion to enforce the October 2001 settlement agreement.

As part of the settlement agreement, Columbian Rope agreed to pay the plaintiffs' reasonable attorney fees "in lieu of damages for past infringement." The agreement further provided that the magistrate judge would determine the amount of reasonable attorney fees based on written submissions of the parties. Pursuant to the settlement agreement, an interlocutory consent judgment of validity and infringement, including an injunction against future manufacture and sale of infringing products or fibers, was entered on November 18, 2002, and the plaintiffs' application for reasonable attorney fees was referred to the United States Magistrate Judge for determination.

ANALYSIS

The plaintiffs initially sought an award of attorney fees in the amount of $111,777.00 and an award of expenses in the amount of

$11,522.30, for a total of $123,299.30.[1] (Pls.' Mem. in Supp. of Its Application for Payment of Reasonable Att'y Fees at 15-16.) In their reply memorandum, the plaintiffs have reduced their request to a total amount of $98,450.68 after making certain adjustments. (Pls. Reply Mem. at 19.) In support of their application for attorney fees and expenses, the plaintiffs submitted the declarations of their attorneys, Ted E. Corvette, a member of the Durham, North Carolina law firm of Moore & Van Allen PLLC (MVA), and Matthew Witsil, an associate at MVA, along with MVA's billing statement detailing the work performed by MVA in connection with this case, and the affidavit of John C. Speer, a partner in the Memphis law firm of Baker, Donelson Bearman & Caldwell, who served as co-counsel for the plaintiffs, along with Baker Donelson's billing statements.

Columbian Rope objects to the amount requested by the plaintiffs for fees and expenses on the grounds that (1) the hourly rates requested by the plaintiffs are excessive, and the plaintiffs have failed to substantiate a reasonable hourly rate for this community; (2) Columbian Rope did not agree to pay expenses; and

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[1] See, however, the plaintiffs' memorandum where they request a total of $127,727, (Pls.' Mem. in Supp. of Its Application for Payment of Reasonable Att'y Fees at 5), and the plaintiffs' reply memorandum, where the total amount of fee and expense requests is $123,127, (Pls.' Reply Mem. at 1.). The reason for the discrepancy is unclear.

(3) the plaintiffs' request includes excessive charges and charges for unnecessary work. Columbian Rope asks the court to reduce the plaintiffs' request by approximately 75% to $31,698.90. (Def.'s Resp. to Pls.' Mot. and Application for Payment of Reasonable Att'y Fees at 19.)

A. Calculation of Lodestar Amount

Section 285 of Title 35 governs attorney fees in a patent infringement case. It provides that "[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party." 35 U.S.C. § 285. However, this fee award is made pursuant to settlement rather than an "exceptional case" clause.

The Supreme Court in *Hensley v. Eckhart*, 461 U.S. 424 (1983) laid out general standards to follow in making awards of attorney fees under fee shifting statutes. In deciding what is a reasonable fee, the starting point is the determination of the "lodestar" amount, which is calculated by multiplying the number of reasonable hours expended by a reasonable hourly rate for legal services. *Id.* at 433.

1. Reasonable Hourly Rate

Under the lodestar method, a starting point for calculating fees is the determination of a reasonable hourly rate. The plaintiffs seek fees based on an hourly rate that varies according to each attorney's experience and qualifications. Columbian Rope

objects to the plaintiffs' requested hourly rates for many MVA members (partners) as excessive and unreasonable, although it does not object to the MVA associates' rates.

The Supreme Court has recognized the community market rule as the proper way to determine a reasonable hourly rate. *Blum v. Stenson,* 465 U.S. 886, 895, n.11 (1984). The community market rule has the principal virtue of being the easiest way to cope with the "inherently problematic" task of ascertaining a reasonable fee in a situation where "wide variations in skill and reputation render the usual laws of supply and demand largely inappropriate . . . ." *Hadix v. Johnson*, 65 F.3d 532, 536 (6th Cir. 1995). In applying the community market rule, the court looks to rates for similar services in the community by attorneys with reasonably comparable skills. *See id.* "[T]he burden is on the fee applicant to produce satisfactory evidence--in addition to the attorney's own affidavits--that the requested rates are in line with those prevailing in the community . . . ." *Blum*, 465 U.S. at 895 n.11. Evidence may include affidavits of other attorneys, case precedents, and fee studies. *See Ottis v. Shalala*, No. 1:92cv426, 1994 U.S. Dist. LEXIS 16325, *18 (S.D. Mich. October 20, 1994).

The first inquiry is which "prevailing community rate" should apply: that of MVA's location in Durham, North Carolina, or that of the venue in the Western District of Tennessee. The court finds

that Western Tennessee provides the prevailing rate, because that is where the case would have been tried. See, e.g., *Horace v. Pontiac*, 624 F.2d 765, 770 (6th Cir. 1980) and *Louisville Black Police Officers Org., Inc. v. Louisville*, 700 F.2d 268, 277-78 (6th Cir. 1982) (holding, in both cases, that it was within the court's discretion to calculate fees based on prevailing hourly rate in the venue where the case was tried).

The plaintiff offers no extrinsic proof as to the current market rate for intellectual property attorneys in the Memphis community. It relies solely on affidavits provided by the MVA intellectual property attorneys and by its local counsel, Memphis attorney John C. Speer. Columbian Rope counters with a 2001 "Report of Economic Survey" by the American Intellectual Property Law Association Law Practice Management Committee (the "AIPLA") that shows high, low, median, and average market rates in the United States by geographic area. (Def.'s Resp. to Pls.' Mot. and App. for Payment of Reas. Att'y Fees at Ex. A.) Tennessee falls into the "Other Central" geographic category, while North Carolina falls into the "Southeast Metro" category. According to the AIPLA survey, the average hourly rate for partners in the 75th percentile, the highest percentile reported, in the "Other Central" category was $250 for the year 2000, the latest year for which survey results are available. In addition, the Speer affidavit

indicates that the prevailing rate in the Western District of Tennessee for a partner in the largest law firm in Memphis with 30 years' experience is $275, rather than the $300-320 that the plaintiffs seek for a partner in North Carolina with similar experience. The court finds therefore that the plaintiffs have not met their burden of showing that their requested rates for MVA partners are in line with those prevailing in the Western District of Tennessee. *See Blum*, 465 U.S. at 895 n.11.

Accordingly, taking into consideration the Speer affidavit, the AIPLA survey, and the attorney profiles submitted by the plaintiffs, the court concludes that the following are average reasonable hourly rates for each of the MVA partners during the time period they represented the plaintiffs:

Name	Experience	MVA Title and Requested Hourly Rate	AIPLA Equivalent Title and Hourly Rate	Reasonable Hourly Rate
Cohen	Admitted 1989	MVA Member $205-220	Partner $195/hour (25th percentile)	$195/hour
Corvette	Admitted 1973	MVA Member $265-270	Partner $250/hour (75th percentile)	$275/hour[2]

[2] **The court finds $275 to be a reasonable hourly rate for Corvette even though the rate is slightly higher than the rate actually billed by Corvette.**

Harlow	**Admitted 1968; Admitted USPTO**	**MVA Member $300-320**	**Partner $250/hour (75th percentile)**	**$275/hour**
Johnston	**Admitted 1992; Admitted USPTO**	**MVA Member $205-220**	**Partner $195/hour (25th percentile)**	**$195/hour**

Because Columbian Rope does not object to the AIPLA's average calculation of $160 per hour for associates, that rate is applied to all associates. Similarly, because Columbian Rope does not object to a paralegal rate of $80 per hour, that rate will be used for MVA paralegal time. Baker, Donelson attorneys and paralegals will be compensated at the rates established by the Speer affidavit.

2. Reasonable Hours Expended

Once the court has determined the appropriate hourly rate, the court must then determine what number of hours were reasonable. "[T]he 'lodestar' method of calculation . . . does not solve the problem of excessive hours." ***Coulter v. Tennessee*****, 805 F.2d 146, 150 (6th Cir. 1986). It is within the court's discretion to reduce the total hours if they seem unreasonable. The question is not whether a party prevailed on a particular motion, nor whether, in hindsight, the time expended was strictly necessary to obtain relief achieved; instead, the question is whether a reasonable**

attorney would believe the work to be reasonably expended in pursuit of success at the time when the work was performed. *Wooldridge v. Marlene Industries Corporation*, 898 F.2d 1169, 1177 (6th Cir. 1990); *accord Northcross v. Board of Education*, 611 F.2d 624, 636 (6th Cir. 1980).

> Three very different kinds of issues can arise concerning excessive hours: (1) factual questions about whether the lawyer actually worked the hours claimed or is padding the account; (2) legal questions about whether the work performed is sufficiently related to the points on which the client prevailed as to be compensable; (3) mixed questions about whether the lawyer used poor judgment in spending too many hours on some part of the case or by unnecessarily duplicating the work of co-counsel.

Coulter, 805 F.2d at 150-51. A court's determination on the factual issues will be upheld unless it is clearly erroneous. *Id.* at 151. A court's determination on the legal issues, i.e., questions of compensability, are reviewed for error. *Id.* A court's determination on the mixed issues, i.e., questions of judgment, will be upheld unless the court's interpretation of the profession's reasonable billing practices was arbitrary or irrational. *Id.* at 151, 152.

Columbian Rope challenges the total hours expended by the plaintiffs' attorneys on several grounds. The compensability issues are as follow: (1) whether the plaintiffs are entitled to fees attributed to "W.R. Grace" license issues, i.e., whether "W.R. Grace" issues were within the scope of this litigation; (2) whether

the plaintiffs are entitled to fees attributed to time spent after February 14, 2002, all of it allegedly spent "attempting to repudiate the settlement agreement"; (3) whether the plaintiffs are entitled to fees attributed to time spent preparing this fee application, which Columbian Rope alleges is "totally deficient" in supporting the reasonableness of the plaintiffs' attorney fees; (4) whether the plaintiffs are entitled to professional fees that accrued before the lawsuit was filed; and (5) whether certain billing entries, such as "file work" or "follow-up," are too vague to demonstrate the nature of the work for purposes of determining whether the time was reasonably expended.

In addition, Columbian Rope raises two issues concerning the plaintiffs' billing judgment: (1) whether certain billing items are redundant, with several attorneys billing for the same substantive work, and (2) whether time spent on some items was disproportionate to the work performed.

The applicant for attorney fees has the burden of demonstrating the reasonableness of hours, and the opposing party has the burden of producing evidence against this reasonableness. *See Blum,* 465 U.S. at 897; *Hensley*, 461 U.S. at 437. MVA, the applicant, relies on its billing statements and the declarations of its attorneys. In opposition, Columbian Rope has submitted a twenty-nine page item-by-item review of MVA's billing statements.

The court now adopts the following analysis on each of Columbian Rope's compensability issues, and accordingly adjusts MVA's time records.[3]

a. Compensability of "W.R. Grace" License Issues

Columbian Rope alleges that "W.R. Grace" license issues are unrelated to this litigation, but adduces no evidence to support that claim. Allegations unsupported by evidence cannot justify a favorable ruling. *See United States v. Crescent Amusement Co.*, 323 U.S. 173, 184-85 (1944) (holding that factual findings "must stand or fall depending on whether they are supported by evidence"); *Anderson v. Bessemer City*, 470 U.S. 564, 573-75 (1984) (discussing the role of evidence in the "clearly erroneous" standard of appellate review). Nevertheless, the plaintiffs have withdrawn their requests for compensation on all "W.R. Grace" issues. (Pls.' Reply Mem. at 16.) Therefore, time spent on "W.R. Grace" license issues is not compensable.

b. Compensability of Time Spent after February 14, 2002

Columbian Rope alleges that this time was spent "attempting to repudiate the settlement agreement," and that it is outside the scope of this litigation. Columbian Rope adduces no evidence to

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[3] A detailed summary of MVA's records, showing the reductions and the reasoning therefor, is attached as an Appendix to this ruling.

support this allegation, nor to support its characterization of the plaintiffs' activities. Especially in light of the parties' extreme difficulty in determining whether a settlement agreement existed in the first place, let alone the terms thereof, *see, e.g.*, Order Granting Defendant's Motion to Enforce Settlement Agreement, *Anglo-Danish Fibre Industries, Ltd. v. Columbian Rope Fiber*, Civil Case No. 01-2133GV (W.D. Tenn., June 21, 2002), the court is not persuaded that Columbian Rope has met its burden of proving that these charges are unreasonable. Therefore, the time spent after February 14, 2002, is compensable to the extent that it reflects reasonable billing judgment.

c. Compensability of Time Spent Preparing Fee Application

Columbian Rope alleges that, because the plaintiffs' fee application is "totally deficient" and the time spent preparing it is not documented, fees associated with the fee application are not compensable. (Def.'s Resp. to Pls.' Mot. and Application for Payment of Reasonable Att'y Fees at 16.) The court disagrees. Time spent preparing the fee application is compensable to the extent that it reflects reasonable billing judgment. *Coulter,* 805 F.2d at 151. The fee application provides hourly rates for each attorney and the hours expended by each attorney, for the case in chief as well as the fee application. (Pls.' Mem. in Supp. of Its Application for Payment of Reasonably Att'y Fees, Ex. B, Dec. of

Ted E. Corvette at 5.) In addition, the plaintiffs have included in their reply brief a detailed analysis of services performed. (Pls.' Reply Brief, Ex. 1.) This information is sufficient to enable the court to calculate a lodestar amount.

Columbian Rope correctly observes, however, that the total hours spent preparing a fee application are capped at three percent (3%) "of the hours in the main case when the issue is submitted on the papers without a trial." *Coulter,* 805 F.2d at 151. Because the court finds that the plaintiffs expended 287.74 reasonable hours in the main case, only 8.63 hours are compensable in association with fee agreement preparation.

Four attorneys worked on the fee application: approximately 50% of the reasonable hours were incurred by two associates at $160 per hour. Approximately 50% of the reasonable hours were incurred by two partners at $275 per hour. The 8.63 hours are divided proportionally, resulting in a limit of $1,877.52 for preparing the fee application subject to reasonable billing judgment.

d. Compensability of Fees Accrued before Filing

Columbian Rope alleges that the plaintiffs are not entitled to professional fees that accrued before the complaint was filed. (Def.'s Resp. to Pls.' Mot. and Application for Payment of Reasonable Att'y Fees at 16.) The plaintiffs cite *Central Soya Co., Inc. v. Geo. A. Hormel and Co.*, 723 F.2d 1573, 1577 (Fed. Cir.

1983) for the proposition that attorney fees include all services "in the preparation for and performance of legal services related to the suit." The Supreme Court has held that attorneys' work, even if performed outside the traditional litigation context, is compensable as long as it is "necessary to the attainment of adequate relief for [the] client." *Pennsylvania v. Delaware Valley Citizens' Coun. for Clean Air*, 478 U.S. 546, 558 (1986).[4] A reasonable amount of pre-suit investigation and client communication is necessary before a competent attorney can identify the alleged wrong, identify which of his client's rights were infringed, and craft an appropriate claim for relief. Accordingly, pre-suit hours are compensable to the extent that they reflect reasonable billing judgment.

e. Compensability of Vague Billing Entries

Columbian Rope argues that many of the plaintiffs' billing records are too vague for the court to tell whether the time was

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[4] Because this fee award is made pursuant to settlement rather than statute, this court follows the *Delaware Valley* standard. See *Knop v. Johnson*, 700 F. Supp. 1457, 1465 (W.D. Mich. 1988) (discussing the role of "fairness and equity" in a fee award determination for amicus curiae). Had the parties sought fees pursuant to 35 U.S.C. § 285, the result would be governed by statutory precedent instead. Compare, for example, *Anderson v. P&G*, 220 F.3d 449, 455-456 (6th Cir. 2000) (declining to award fees under ERISA statute when claim settled during administrative proceedings) with *Hanrahan v. Hampton*, 446 U.S. 754, 756-757 (1980) (approving the award of fees to civil rights plaintiffs who "vindicate rights" without "formally obtaining relief").

reasonably expended. (Def.'s Resp. to Pls.' Mot. and Application for Payment of Reasonable Att'y Fees at 15-16.) Specifically, Columbian Rope challenges the plaintiffs' claim to reimbursement for billing entries such as "file work," and "follow-up," as well as billing entries where the plaintiffs recorded that they "received a voicemail, drafted a memorandum, or conversed with another attorney without identifying the substance of their communications." (*Id.*)

Attorneys must "maintain billing time records that are sufficiently detailed to enable the courts to review the reasonableness of the hours expended." *Wooldridge*, 898 F.2d at 1176-1177. Where records are ambiguous, courts should not apply any presumption in favor of the party seeking the fee. *Id.* at 1176. To the contrary, entries that "provide little guidance in ascertaining the purpose of the work during the time claimed do not merit an award." *Black v. Lojac Enterps.*, 1997 U.S. App. LEXIS 17205 (6th Cir. 1997). *See also Reed v. Rhodes*, 934 F. Supp. 1492, 1520 (N.D. Ohio 1996) (refusing to evaluate the merits of vague time records).

The court has reviewed MVA's time records and agrees with Columbian Rope that the following descriptions are too vague for the court to assess the reasonableness of hours expended in association with them:

i. "File Work," "Work in File," or "Work On"

"File Work," "Work in File," and "Work On," without more, is too vague to show whether the hours expended are reasonable. *See Wooldridge,* 898 F.2d at 1176-1177 (declining to assess claims for "general services"). These billing entries are noncompensable.

ii. "Follow-Up," "Monitor Status," "Check Status," or "Check On"

Without any accompanying description of the tasks performed (e.g., a call, email, or office conference), these descriptions are too vague to show whether the hours expended are reasonable. *See Black v. Lojac Enterps.*, 1997 U.S. App. LEXIS 17205, *9-10 (6th Cir. 1997) (declining to award fees for activities such as "research," "pick-up," "revised form," and "office conference" when the activities were not more specifically identified). On the same principle, time entries for "receipt of" information or communications, without more, are too vague to merit an award.

iii. Conferences, Memoranda, Emails, Voicemails, Letters

Billing entries for conferences, memoranda, voicemail, emails, and letters, when the billing entries do not identify the subject matter of the communication, are too vague to show whether the hours expended are reasonable. *See Black*, 1997 U.S. App. LEXIS 17205, *9-10 (declining to award fees for "time entries [that] failed to even identify the general subject matter involved").

Under the same reasoning, "instruct associate," without more, is also too vague for the court to determine whether the hours spent on that activity were reasonably expended.

In this case, some of the vague entries discussed above stand alone. Others are mixed with non-vague billing entries. The plaintiff has not given the court any guidance about the proportional division of a mixed entry. Accordingly, the court strikes vague portions of mixed entries on a straight percentage basis, e.g., if four activities are listed and one is too vague to merit an award of fees, the overall time for that entry is reduced by one-quarter.

f. Billing Judgment and Excessive Hours

Columbian Rope claims that, in an exercise of poor billing judgment, multiple attorneys recorded duplicate time for performing identical work and also, in many cases, recorded more time than the tasks reasonably required. (Def.'s Resp. to Pls.' Mot. and Application for Payment of Reasonable Att'y Fees at 15.) After reviewing the MVA billing records, the court agrees.

The court should exclude from its calculation hours that are "excessive, redundant, or otherwise unnecessary." *Hensley*, 461 U.S. at 433; *Northcross,* 611 F.2d 624; *Singer v. Machining Bd. of Mental Retardation*, 519 F.2d 748 (6th Cir. 1975). A court may deny compensation for redundant records on an item-by-item basis,

Coulter, 805 F.2d at 152, or on an across-the-board percentage basis, _Hudson v. Reno_, 130 F.3d 1193, 1209 (6th Cir. 1997). A court denying compensation for excessive hours, i.e., time disproportionate to the tasks, must identify the hours and state why they are being reduced. _Northcross_, 611 F.2d at 637. These rules apply to the following time entries:

i. Redundant Meetings, Calls, and Conferences

Interoffice conferences are the type of "'inefficiency and duplication of services' that may occur in cases where more than one attorney is used." _Schultz v. Amick_, 955 F. Supp. 1087, 1115 (N.D. Iowa 1997) (internal citation omitted). When multiple attorneys have billed for overlapping meetings, calls, or conferences, the court will permit full reasonable hourly remuneration for the attorney billing at the highest rate. One additional attorney, billing at an equal or lower rate, will be entitled to one-half his reasonable hourly remuneration. The calculation will be made by reducing his time by one-half of the overlapping hours. More than two attorneys' hours in a meeting, call, or conference are non-compensable.

ii. Redundant Research, Review, or Drafting

These duplications most often appear in partner/associate

pairs.[5] Naturally it is within the profession's reasonable billing practice for a partner to guide a less experienced attorney in a task. However, "in a complex matter . . . a more experienced attorney could perform the work in less time than an inexperienced attorney." *Ottis*, 1994 U.S. Dist. LEXIS 16325 at n.1.

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[5] **Examples of duplicate activities billed separately by each attorney include the following:**

> **12/05/2000 - Review and analysis of letter from Columbian Rope counsel by both Harlow and Witsil.**
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> **01/29/2001 - Review, instruction, and analysis of discovery rules by both Harlow and Slaughter.**
>
> **03/29/2001 - Review of Columbian's motion to extend time by both Harlow and Slaughter.**
>
> **04/25/2001 - Review and analysis of Columbian's answer and counterclaim by both Harlow and Slaughter.**
>
> **05/21/2001 - Review of court notice by both Harlow and Slaughter.**
>
> **06/07/2001 - Review of court scheduling notice by Harlow, Corvette, and Slaughter.**
>
> **07/23/2001 - Review of court scheduling order by Harlow, Corvette, and Slaughter.**
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> **08/15/2001 - Review of correspondence and enclosures by both Harlow and Witsil.**
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> **08/21-23/2001 - Review of file history on client patent by both Harlow and Witsil.**
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> **09/10/2001 - Revisions to draft letter by both Harlow and Witsil.**

Accordingly, the court will permit full reasonable hourly remuneration for the attorney who is billing at the highest rate, one-half the reasonable hourly enumeration for the attorney who is billing at the lower hourly rate, and no remuneration for additional attorneys performing redundant work.

In addition, on December 11, 2000 and again on December 13, 2000, MVA's paralegal performed the same work twice, that is, printing out Columbian Rope's entire website. (Def.'s Resp. to Pls.' Mot. and Application for Payment of Reasonable Att'y Fees at 15.) Because the plaintiffs submitted no justification for the duplication, the December 11, 2000 entry is stricken.

iii. Excessive Hours

When the allegation is that attorneys spent too much time on a particular task, the inquiry is whether they complied with the reasonable billing practices of the profession. *Coulter,* 805 F.2d at 151. This requires a fair assessment of the needs of the particular case. *Id.* at 152.

MVA, in its memorandum, divides the underlying case into five "phases," which assists the court in assessing the needs of the case.[6] In addition, the court assesses the propriety of MVA's

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[6] **Phase 1 (June-August 2000) is characterized as an "investigation phase leading up to the cease and desist letter." Phase 2 (September-December 2000) is characterized as an "initial negotiation phase leading up to the preparation of a complaint."**

hours spent preparing this application for fees. After careful review of the billing records, the court finds that a number of billing entries are disproportionate to the tasks at hand.

First, MVA, in its original Application for Fees, apparently used a minimum billing increment of two-tenths of an hour (.20), with additional increments of one-tenth of an hour (.10) added thereafter. The court looks with disfavor on minimum billing increments because they result in padding of time and do not accurately reflect the actual time required to perform a particular service. Padding hours demonstrates lack of billing judgment, and hours may be cut for padding. *See Northcross*, 611 F.2d at 636. Review of the originally submitted billing records showed 38 records (eleven percent of the total records) composed solely of the .20 minimum increment. Another 56 records (sixteen percent of the total records) were composed solely of the .20 minimum increment plus another tenth of an hour.

Because most of these entries reflect brief office conferences, voicemails, and emails, the court finds these records

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Phase 3 (January-February 2001) is characterized as a period "leading up to the filing of" the complaint. Phase 4 (March-June 2001) is identified as the "pleadings phase," from the complaint's filing through the defendant's reply, and both parties' initial Rule 26 disclosures. Phase 5 covers July 2001 through February 2002 and includes the settlement agreement signed on November 18, 2002.

reflect significant padding. Many already have been struck as vague. Those that remain now are reduced by 50% each to compensate for padding. This reduction affects 16 of the .20 increment entries and 30 of the .30 increment entries, for a total reduction of 7.15 hours.[7]

Next, MVA reports significant associate attorney time spent on legal research projects. For example, MVA reported at least nine associate hours in November and December 2000 spent on seeking analogous cases for direct and contributory patent infringement. MVA reported at least 20 associate hours in January and February 2001 researching patent infringement remedies. MVA also reported over 13 associate hours researching legal standards for the fee application. "[U]sing less experienced attorneys at a lower hourly rate actually may increase the total number of hours expended . . . depending on the efficiency of the younger attorneys." *Ottis,* 1994 U.S. Dist. LEXIS 16325 at n.1. Excessive hours are a particular problem when firms use legal research to train relatively new associates. *Id.*

In this case, litigation was in the earliest stages, and the

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[7] **MVA "wrote down" several of these entries in Exhibit 1 of its Reply Memorandum. Because these changes tend to be in line with the court's own adjustment for padding--e.g., several .20 increments submitted in the original Application for Fees were "written down" by MVA to .10 increments in the Reply Memorandum--the court relies on the original exhibits.**

case was resolved through settlement. None of the researched issues appears particularly novel for a firm that regularly practices intellectual property litigation. Accordingly, the court finds that the research time for these three issues is excessive and reduces the associates' research time on these projects by 50%.

Next, in November and December, 2002, MVA billed 26.7 partner-level hours for Corvette's work and 1.6 partner-level hours for Harlow's work drafting and revising documents associated with the plaintiffs' fee application, in addition to 24.9 hours of associates' time. The total amount of attorney fees sought by the plaintiffs for preparing the fee application is $12,423.[8] The fee application consists of a sixteen-page memorandum, time statement printouts, pre-printed attorney profiles, and two attorney declarations that summarize the printout information. The court simply does not see how experienced partners in a law firm could reasonably spend over 28 hours preparing this application, especially when supplied with three days' worth of associate research and a full set of billing printouts. Accordingly,

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[8] **In its Reply Memorandum, MVA reduced its request for time on preparing the Application for Fees to 52.2 total hours and its request for fees to $12,423.(Pls.' Reply Mem. in Supp. of its App. for Payment of Reas. Att'y Fees at 2-3, Ex. 1.) These calculations reflect that revised request.**

Corvette's 26.7 hours are reduced by 75% to 6.68 hours.[9]

Finally, a review of MVA's remaining time entries show many that are simply disproportionate to the work performed. For example:

> **On July 25, 2002, MVA billed 3.10 hours (190 minutes) for a telephone conference, cover letter, and packaging of samples for laboratory testing.**
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> **On July 28, 2001, MVA billed .40 hours (24 minutes) for responding to an email and canceling a flight reservation.**
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> **On August 7, 2001, MVA billed .40 hours (24 minutes) for a telephone call to the lab to check the status of sample testing.**
>
> **On September 20, 2000, MVA billed 1.20 hours (80 minutes) for reading a website, leaving a voicemail, and sending an email.**
>
> **On September 24, 2000, MVA billed 1.10 hours (70 minutes) for checking two online databases and comparing the results.**
>
> **On February 20, 2001, MVA billed 1.30 hours (80 minutes) for drafting a pro hac vice motion and order, which are usually one-page documents.**

These items are difficult to calculate on a line-item basis, because MVA's multiple attorneys are billing at different rates and likely have different levels of experience, skill, and efficiency.

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[9] **The fee petition is also subject to the 3% cap discussed *supra* at p. 11. Even after the hours claimed are reduced for excessive billing, the total amount of fees attributable to preparing the fee petition still exceed the 3% cap. Accordingly, the total amount of the award for attorney fees for preparing the fee petition is $1,877.52.**

In lieu of a line-by-line reduction, therefore, the court reduces the total reasonable fees by 5%, for a total of $3,235.88, in recognition of disproportionate entries not otherwise adjusted.

B. Adjustment of the Lodestar Amount

After determining the lodestar amount, the court in its discretion may adjust the award upward or downward to assess a reasonable award. *Hensley*, 461 U.S. at 434. The most important factor is the "results obtained." *Id.* Because this case was resolved through settlement, in which both sides were represented by counsel and in which both sides participated, the court finds that a discretionary lodestar adjustment is inappropriate.

C. Expenses

Columbian Rope denies an obligation to pay the plaintiffs' out-of-pocket expenses. (Def.'s Resp. to Pls.' Mot. and Application for Payment of Reasonable Attorney Fees at 18.) Although an award of attorney fees made pursuant to statute may include reasonable expenses, *see, e.g., Central Soya,* 723 F.2d at 1578, the court finds no such award is appropriate in this case. Here, the fee award is made pursuant to an agreement, not necessarily pursuant to a statute. During the negotiation of the settlement agreement, the parties were represented by competent litigators. Counsel for plaintiffs knew that they had incurred expenses on the file and had an itemized list available to them, as

demonstrated by the billing records provided to the court. The parties had ample opportunity to explicitly provide for payment of expenses in their settlement agreement during the prolonged negotiations over settlement terms. They did not do so. The parties' settlement agreement simply provides for "attorney fees." It does not provide for "attorney fees and expenses," and it is unclear from the letters supporting the settlement agreement that either party contemplated payment of expenses. *See* Order Granting Defendant's Motion to Enforce Settlement Agreement, *Anglo-Danish Fibre Industries, Ltd. v. Columbian Rope Fiber*, Civil Case No. 01-2133GV (W.D. Tenn., June 21, 2002) (declaring the terms of the settlement agreement); Def.'s Reply Brief in Supp. of Mot. to Enforce the Settlement Agreement at Exs. 1-5, *Anglo-Danish Fibre Industries, Ltd. v. Columbian Rope Fiber*, Civil Case No. 01-2133GV (W.D. Tenn., June 21, 2002) (containing the letters with settlement terms referenced in the June 21, 2002 Order). Accordingly, the award of expenses is denied with one exception. The plaintiffs have included the attorney fees incurred by Baker, Donelson as an expense item. Baker, Donelson's attorney fees will be reimbursed, but the actual out-of-pocket expenses incurred by Baker, Donelson. will not be reimbursed.

CONCLUSION

For the foregoing reasons, the plaintiff is awarded a total of

$66,707.66 in reasonable attorney fees and $0 in expenses. Specific reductions in hours are listed on an appendix attached to this ruling.

IT IS SO ORDERED this 28th day of January, 2003.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE