

Send Lawyers, Ethics, and Money!

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Ethics

- Yell questions or at end
- Conflicts of interest.
- Competency.
- Communication.
- Reasonable fees.
- A few may seem esoteric, but focus on practical “what do you do?”

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Topics

- *Octane*: Two scary predictions.
- Recent issues with contingent fee agreements.
- Practical ways to address flat fee prosecution.
- Advising your client about inducing or marking:
 - If it had believed a patent was invalid or not infringed, it didn't induce infringement; but if it had believed it will infringe and so marks under a license, but it didn't infringe, it did infringe.
- How IPR can turn a win into defeat.

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Octane

I Predict You, Not Your Clients,
are
Going to Pay a lot of Shifted Fees!

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You Know This

- Section 285 permits fee awards to prevailing party in “exceptional cases.”
- Federal Circuit: Exceptional case is only when frivolous both objectively and subjectively.
- Supreme Court: An “exceptional case” is “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.”

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You Could Predict This

- *Pre-Octane*: Very low & probably not a lot of people tried to get fees in light of the standard.
- *Post-Octane*: Around 40% win rate for movants.

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