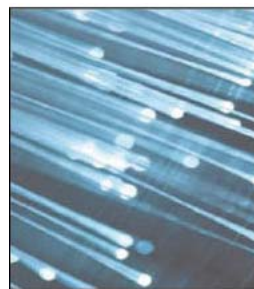


# **Octane Requires More Fitness**

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## **35 USC § 285**

“The court in exceptional cases may award reasonable attorney fees to the prevailing party”

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## Requirements for Fees

- Prevailing Party
- Exceptional Case
- Exercise of Discretion to Award Fees

## Genesis of “Exceptional” in § 285

- **Pre-1946** ▪ American Rule Governed
- **1946** ▪ 70 Gave Courts Discretion to Award Fees
- **1952** ▪ 285 Added Term “Exception

## **“Exceptional” Pre-Octane**

*Brooks Furniture Mfg., Inc. v. Dutailier Int'l Inc.*, 393 F. 3d 1378 (Fed. Cir. 2005)

- Exceptional case either:
  - Material inappropriate conduct related to the matter in litigation

**OR**

- Objectively baseless & brought in subjective bad faith

## **Evidentiary Standard Pre-Octane**

“Clear and Convincing  
Evidence”

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