

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

TRAXCELL TECHNOLOGIES, LLC.,)	
Plaintiff,)	
)	Civil Action No. 6:24-cv-00613
v.)	
)	
CELLCO PARTNERSHIP,)	
Defendant.)	

**PLAINTIFF’S ORIGINAL COMPLAINT SEEKING RELIEF FROM JUDGMENT,
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Traxcell Technologies, LLC. (“Traxcell”) files this Original Complaint against Cellco Partnership (“Verizon”) seeking relief from the § 285 Order attached as Exhibit A pursuant to Federal Rule of Civil Procedure 60(b)(4), alleging that the § 285 Order entered on December 22, 2022 (“Verizon Fee Judgment”) is void due to lack of subject matter jurisdiction by the issuing court. Traxcell further seeks the emergency relief of a temporary restraining order enjoining enforcement of the Verizon Fee Award.

I. THE PARTIES

1. Plaintiff Traxcell is a Texas Limited Liability Company, with its principal place of business located at 11125 Pallasite Drive, Lorena, Texas. 76655.

2. Cellco Partnership (“Verizon”) is Delaware partnership with its principal place of business at One Verizon Way, Basking Ridge, New Jersey and a registered agent for service of process at C T Corporation 1999 Bryan Street, Suite 900, Dallas, Texas 75201. Verizon is seeking to enforce the Verizon Fee Award attached as Exhibit A through both the State and Federal courts in the State of Texas.

II. JURISDICTION AND VENUE

3. This is an action to void a judgment. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, and 1367.

4. This Court has personal jurisdiction over Defendant because: Defendant is present within or has minimum contacts within the State of Texas and this judicial district; Defendant have purposefully availed itself of the privileges of conducting business in the State of Texas and in this judicial district; Defendant regularly conducts business within the State of Texas and within this judicial district; and Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Texas and in this judicial district, including the act of attempting to enforce the Judgment through both the Federal and State courts in Texas.

5. Venue is proper in this district under at least 28 U.S.C. § 1391(b).

6. This United States District Court for the Western District of Texas has general and specific personal jurisdiction over Defendant because, directly or through intermediaries, Defendant has committed acts within the District giving rise to this action and are present in and transact and conduct business in and with residents of this District and the State of Texas.

7. Plaintiff's causes of action arise, at least in part, from Defendant's contacts with and activities in this District and the State of Texas, including the act of attempting to enforce the Verizon Fee Award through both the Federal and State courts in Texas.

8. This Court has personal jurisdiction over Defendant pursuant to TEX. CIV. PRAC. & REM. CODE § 17.041 *et seq.* Personal jurisdiction exists over Defendant because Defendant has minimum contacts with this forum as a result of business regularly conducted within the State of Texas and within this district, and, on information and belief, specifically as a result of, at least, enforcing the Verizon Fee Award attached as Exhibit A within Texas and this District. Defendant is subject to personal jurisdiction in this Court because, *inter alia*, Defendant has regular and

established places of business throughout this District, including at least at 500 W 2nd Street, Suite 2900, Austin, Texas 78701, and directly and through agents regularly does, solicits, and transacts business in the Western District of Texas. Also, Defendant has hired and is hiring within this District employees who are residents of the state of Texas. Accordingly, this Court's jurisdiction over the Defendant comports with the constitutional standards of fair play and substantial justice and arises directly from the Defendant's purposeful minimum contacts with the State of Texas.

9. The amount in controversy exceeds \$75,000 exclusive of interests and costs.

III. FACTUAL BACKGROUND

10. Traxcell requests emergency relief because Verizon is attempting to enforce a void order, the Verizon Fee Award, in Texas State Court through a Turnover Order.¹ Verizon seeks to escape accountability for its infringement of Traxcell's patents by enforcing the void Verizon Fee Award through a receiver to sell Traxcell's assets, including its patents. The Turnover Order already resulted in the dismissal of a trial Traxcell had set against Verizon on April 3, 2023, in this Court ("April Trial").²

11. Further, after Traxcell stayed execution of the Verizon Fee Award by posting bond,³ on August 23, 2023, Verizon filed a second Motion for Writ of Execution and for Turnover Against Traxcell, seeking a Second Turnover Order, identical to the First Turnover Order in the Eastern District of Texas likewise based on the void order.⁴ Traxcell stands to lose numerous lawsuits pending in this Court based on the void Verizon Fee Award, including:

1. The April Trial;
2. Traxcell Technologies, LLC v. GoShare, Inc., 6:2022cv00943;
3. Traxcell Technologies, LLC v. AfterShip, Inc., 6:2022cv00929;

¹ Ex. B.

² Ex. C.

³ Ex. I, \$100,000 approved bond to stay execution of Verizon Fee Award.

⁴ Ex. D.

4. Traxcell Technologies, LLC v. Lyft, Inc., 6:2022cv00689;
5. Traxcell Technologies, LLC v. Grubhub, Inc., 6:2022cv00690;
6. Traxcell Technologies, LLC v. Cellco Partnership et al., 6:2022cv00976;
7. Traxcell Technologies, LLC v. T-Mobile USA, Inc. et al., 6:2022cv00991; and,
8. Traxcell Technologies, LLC v. T-Mobile USA, Inc. et al., 6:2022cv00992.

Traxcell requests this Court grant a temporary restraining order enjoining enforcement of the Verizon Fee Award.

A. The Verizon Fee Award is Void

12. Verizon waived obtaining an order ruling on its § 285 Motion⁵ because Verizon did not preserve the issue an appeal of the Final Judgment to the Court of Appeals of the Federal Circuit (“CAFC”), reported at *Traxcell Techs., LLC v. Sprint Commc'ns Co. LP*, 15 F.4th 1121 (Fed. Cir. 2021) (“*Traxcell I*”), the Mandate.⁶ Verizon should have requested that the CAFC not issue its mandate until after a ruling on the § 285 Motion or to send the case back to the district court for a ruling on the § 285 Motion. However, Verizon did not request either and allowed the Mandate from the CAFC to issue which expressly and impliedly decided all issues in the case.⁷ There is nothing left to decide because Verizon did not preserve the § 285 Motion on appeal and allowed the Mandate to issue that resolved all issues in the case.⁸

13. In *Traxcell I*, the CAFC delivered a very detailed opinion, on all issues of infringement of the SON patents for both the Verizon⁹ case, which includes issues of claim construction,¹⁰ claim indefiniteness,¹¹ and issues of infringement under the doctrine of equivalents for both

⁵ Ex. E (redacted version).

⁶ Ex. F.

⁷ Ex. G..

⁸ Ex. F.

⁹ Ex. F at 9-12 and 20-23.

¹⁰ Ex. F at 9-13.

¹¹ Ex. F at 18-19.

the Verizon¹² case, and issues of infringement of the ‘388 patent for the Verizon¹³ case. Thus, as the actual issues considered in *Traxcell I* are many, if not all, of the issues considered for the Verizon Fee Award, the issues from *Traxcell I* are logically and legally antecedent to issues in the Verizon Fee Award and covered by the Mandate from *Traxcell I*. Therefore, Verizon was required to either obtain a ruling on its § 285 Motion or otherwise preserve the issue prior to the issuance of the mandate, such as requesting the CAFC to remand for consideration of the § 285 Motion. Verizon did neither and therefore waived its § 285 Motion. In short, the CAFC determined the prevailing party in *Traxcell I* and therefore, consideration of that issue is closed to further review by a district court, including all issues logically and legally related thereto.

14. Therefore, the CAFC’s mandate in *Traxcell I* foreclosed further consideration of the § 285 issues by the district court.
15. A § 285 award, such as the Verizon Fee Award, is not merely an award of attorneys’ fees at the end of litigation but rather an analysis of the totality of a case. The text of § 285 provides that a “court in exceptional cases may award reasonable attorney fees to the prevailing party.”¹⁴ The Supreme Court has provided guidance that an

exceptional case is 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*. District courts may determine whether a case is “exceptional” in the case-by-case exercise of their discretion, considering the totality of the circumstances.¹⁵

16. Therefore, to determine if a case is exceptional, a district court must first determine (1)

¹² Ex. F at 18.

¹³ Ex. F at 22, 23.

¹⁴ *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 553, 134 S. Ct. 1749, 1755, 188 L. Ed. 2d 816 (2014).

¹⁵ *Octane Fitness, LLC*, 572 U.S. 545, 554 (emphasis added).

who is the prevailing party, which at a minimum includes issues of infringement; (2) issues related to the substantive strength of a party's litigating position, which at a minimum includes issues related to claim construction and infringement, including infringement under the doctrine of equivalents; and, (3) issues related to the unreasonable manner in which the case was litigated, which at a minimum includes the motion practice of a party for issues related to claim construction and infringement, including infringement under the doctrine of equivalents. However, these issues were already considered by the CAFC in *Traxcell I*¹⁶ and thus are antecedent, logically and legally, to any further issues in Verizon's § 285 Motion. Therefore, the Verizon Fee Award is void as the mandate already issued on antecedent issues.¹⁷

IV. CAUSES OF ACTION

A. Temporary Restraining Order - Likelihood Of Success On The Merits, Balance Of Equities, And Need For Relief

17. A void order is a legal nullity which can be attacked at any time, even years later.¹⁸ Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard.¹⁹

18. Because the issues decided in *Traxcell I* were at issue again in the order of the Verizon Fee Award, as the district court was required to reconsider issues both legally and logically related to antecedent issues resolved in *Traxcell I*, this Court exceeded the Mandate from

¹⁶ *Supra* at ¶¶ 12-16.

¹⁷ *See, e.g., Price*, 139 S. Ct. at 1537–38, 204 L. Ed. 2d 238; *Laitram Corp.*, 115 F.3d at 951.

¹⁸ *See, e.g., United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270–71, 130 S. Ct. 1367, 1377, 176 L. Ed. 2d 158 (2010).

¹⁹ *See, e.g., United Student Aid Funds, Inc.*, 559 U.S. at 270–71.

Traxcell I. In addition, allowing a district court to first receive affirmance of its decisions in *Traxcell I* before issuing its decision on a § 285 Motion smacks of procedural unfairness and a due process violation for at least the reason that not having the ruling on the § 285 Motion prior to the CAFC's mandate substantially affected Traxcell's litigation strategy and ability to resolve the case. Under these facts, the subsequent Verizon Fee Award looks more like a penalty for failure to win a case. In this case, with the issues under appeal, when a final judgment issued prior to the consideration of the § 285 Motion, Verizon was required to have the § 285 Motion considered or preserved in *Traxcell I*. Otherwise, the § 285 Motion is waived and the Verizon Fee Award²⁰ void.

B. LEGAL STANDARD FOR A TEMPORARY RESTRAINING ORDER

19. The standard for issuing a TRO is the same as the standard for issuing a preliminary injunction. Injunctive relief is an extraordinary remedy that may be awarded only upon a clear showing that the plaintiff is entitled to such relief.
20. A movant must establish: (1) there is a substantial likelihood that the movant will prevail on the merits; (2) there is a substantial threat that irreparable harm will result if the injunction is not granted; (3) the threatened injury outweighs the threatened harm to the defendant; and (4) the granting of the preliminary injunction will not disserve the public interest.
21. Traxcell has shown that the Mandate from *Traxcell I* already considered many if not all of the issues considered in the Verizon Fees Award, Traxcell has shown a likelihood of success.²¹ Here, Verizon only needed to have preserved the issue of its § 285 Motion with CAFC by either requesting a ruling from the District Court prior to the Mandate or by

²⁰ Ex. H.

²¹ *Supra*, pp. 2-9.

requesting the case be sent back down for consideration of its fee-motion. A § 285 award is not a simple award of attorney's fees but rather a consideration of the totality of the case, which consideration was completed in *Traxcell I*. Therefore, the Verizon Fee Award is void, as the district court lacked jurisdiction to reconsider the issues settled by *Traxcell I*.

22. Traxcell is required to demonstrate a substantial threat of irreparable injury if the injunction is not issued. Traxcell can demonstrate a substantial threat of irreparable injury if the injunction is not issued as Traxcell has already been irreparably harmed by the loss of the April Trial in this Court. The loss of the April Trial depleted Traxcell's resources and forced it into bankruptcy. The April Trial was lost based on Verizon representing that a receiver owned Traxcell's patents. However, that has proven inaccurate to date as the receiver has not taken Traxcell's assets, including its patents. However, absent this Court issuing the TRO, regardless of whether the receiver is able to get Traxcell's assets, it is likely that none of Traxcell's Causes of Action can proceed.

23. Traxcell can establish that that the threatened injury outweighs any harm that may result from the injunction to the non-movant and will not undermine the public interest.

24. As Traxcell can satisfy all four parts, a temporary restraining order is proper to prevent enforcement of the Verizon Fee Award, pending a full hearing on this matter.

C. Permanent Injunction

25. At the expiration of the TRO, Traxcell requests the Court hold as hearing wherein it permanently enjoins Verizon from enforcing the Verizon Fee Award²² by voiding and vacating the Verizon Fee Award for the reasons expressed herein.

V. PRAYER FOR RELIEF

²² Ex. H.

WHEREFORE, Traxcell respectfully requests that this Court:

- i. enter and order temporarily restraining Verizon from enforcing the Verizon Fee Award;
- ii. after a hearing, enter an order permanently enjoining Verizon from enforcing the Verizon Fee Award;
- iii. enter judgment voiding the Verizon Fee Award attached as Exhibit A; and,
- iv. award Traxcell such other and further relief as this Court deems just and proper.

Respectfully submitted,

Ramey LLP

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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that all counsel of record who have appeared in this case are being served on this day of December 2, 2024, with a copy of the foregoing via email.

/s/ William P. Ramey, III
William P. Ramey, III