

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MANDY N. HABERMAN,

Plaintiff,

v.

GERBER PRODUCTS COMPANY,

Defendant.

MEMORANDUM AND ORDER
05-C-224-S

Defendant Gerber Products Company prevailed in this patent infringement action and was awarded costs by the clerk pursuant to Rule 54, Fed. R. Civ. P., and 28 U.S.C. § 1920 in the amount of \$53,781.87. Plaintiff Haberman now seeks review of the amount of the costs taxed by the clerk.

Plaintiff advances three arguments in support of her motion: (1) that a transposition error resulted in an inadvertent \$360 overcharge for copying costs; (2) that the amount taxed for copying costs was excessive and not "necessarily obtained for use in the case" as required by § 1920(4); (3) that the costs awarded for the production of demonstrative trial exhibits, were not necessarily obtained for use in the case. Defendant offers no response to the first position and opposes the second two, asserting that the clerk's determination was appropriate and consistent with § 1920.

Copying Costs

Plaintiff is entitled to a \$360 reduction to copying costs resulting from the transposition error. Plaintiff is not entitled to further reduction. Defendant's counsel provided invoices for the claimed costs and indicated by affidavit that all duplication costs were incurred for copies necessarily obtained for use in the case. Plaintiff's only basis for objection is that these copies significantly exceed the number of documents it produced in discovery. In a case of this nature, however, it is reasonable to assume that documents other than those obtained in discovery might be necessarily obtained for use in the case. Based on this limited argument the Court finds no basis to alter the clerk's determination.

Demonstrative Exhibits

Plaintiff seeks a further reduction of \$13,004.70 expended to develop graphics and prepare trial demonstrative exhibits for use at trial. Plaintiff objects on the grounds that fees to develop graphics are not recoverable and that many of the prepared exhibits were not used at trial. Concerning the first argument, the Seventh Circuit has reached the opposite conclusion, indicating that "... graphics charges fall squarely within [the language of § 1920(4)]." Haroco v. American Nat. Bank and Trust Co. of Chicago, 38 F.3d 1429, 1441 (7th Cir. 1994).

However, there is no basis to conclude that the demonstrative exhibits not used at trial were "necessarily obtained for use in the case." Although copies of documents might very well be necessary for use in case preparation even though they are not physically used at trial, See Id. at 1441 (copies of all discovery and pleadings are reasonable), the same can hardly be said of demonstrative exhibits whose only purpose is for presentation of evidence at trial. When a significant number of such exhibits are unused it can hardly be said that they were "vital to the presentation of information to the jury." Cefalu v. Village of Elk Grove, 211 F.3d 416, 428 (7th Cir. 2000). Defendant suggests that it used "many trial boards during the presentation of evidence" but does not dispute plaintiff's contention that it failed to use a majority of them. The Court concludes that no more than half of the demonstrative exhibits could qualify as "necessarily obtained for use in the case" and therefore plaintiff should recover only half the cost of preparing them.

The amount paid to 3B Studio to develop the graphics and produce the demonstrative exhibits was approximately \$13,000. Although this total may also include certain unrelated copies of other documents, it appears reasonable based on the fact that substantially less than half of the prepared demonstrative exhibits were used and the lack of billing detail makes precisely separating the two impossible. Accordingly, in addition to the \$360 reduction

in costs relating to the transposition error, the cost award is further reduced by \$6,500 for a total reduction of \$6,860 and a total cost award of \$46,921.87.

ORDER

IT IS ORDERED that costs taxed by the clerk are reduced by \$6860 to a total of \$46,921.87 and that judgment be amended accordingly.

Entered this 26th day of July, 2006.

BY THE COURT:
S/

JOHN C. SHABAZ
District Judge