

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

VIAVI SOLUTIONS INC.,
Plaintiff-Appellant

v.

PLATINUM OPTICS TECHNOLOGY INC.,
Defendant-Appellee

2025-1362

Appeal from the United States District Court for the
Northern District of California in No. 5:20-cv-05501-EJD,
Judge Edward J. Davila.

Decided: September 8, 2026

MEGAN S. WOODWORTH, Venable LLP, Washington,
DC, argued for plaintiff-appellant. Also represented by
FRANK C. CIMINO, JR.; WILLIAM HECTOR, San Francisco,
CA.

ANDREW RYAN SOMMER, Greenberg Traurig LLP,
McLean, VA, argued for defendant-appellee. Also repre-
sented by VIVIAN KUO, Washington, DC.

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Before MOORE, *Chief Judge*, STOLL, *Circuit Judge*, and
MOORE, *District Judge*.¹

MOORE, *District Judge*.

Viavi Solutions Inc. (“Viavi”) owns U.S. Patent Nos. 9,354,369; 9,588,269; 10,222,526; and 9,945,995 (collectively, the Patents in Suit), which each describe low angle shift (“LAS”) optical filters that are used in many three-dimensional (“3D”) sensing applications. As relevant here, Viavi accused Platinum Optics Technology Inc. (“PTOT”) of infringing its patents by selling a filter known as the 11246 Filter, “or a filter that is not materially different than that” into the American market. Viavi filed suit in the United States District Court for the Northern District of California. After having its motion to amend denied, Viavi moved to voluntarily dismiss with prejudice. After the District Court granted this motion, PTOT moved for attorney’s fees. The District Court granted in part PTOT’s motion for attorney’s fees pursuant to 35 U.S.C. § 285, finding that the case was exceptional. Viavi now appeals. We *affirm* the District Court’s judgment.

BACKGROUND

I

Viavi is an American company that is a major player in the industry of LAS filters. Appx. 1; Appx. 149–50.² It holds various patents associated with its LAS filters that use hydrogenated silicon for 3D motion sensing. Appx. 1. Viavi litigates the Patents in Suit extensively to protect its

¹ Honorable K. Michael Moore, District Judge, United States District Court for the Southern District of Florida, sitting by designation.

² Citations to “Appx.” refer to the Joint Appendix submitted by Viavi, Dkt. No. 25–26.

innovations, resulting in it securing revenue-generating licenses from other LAS-filter competitors based on their use of Viavi's aforementioned patents. Appx. 164; Appx. 166.

PTOT is one such competitor. PTOT is based in Taiwan, where it also manufactures optical filters that use hydrogenated silicon. Appx. 1–2; Appx. 217. In 2019, Viavi sued PTOT in both Taiwan and the People's Republic of China, alleging that PTOT infringed Viavi's foreign patents that are related to the Patents in Suit here. Appx. 150. The basis of this suit was three PTOT LAS optical filters that were in Viavi's possession, crucially including the "11246 Filter." Appx. 150. This litigation resolved with two licensing agreements that released PTOT of past infringement but did not provide similar protections for filters made and sold after May 1, 2020. Appx. 288–93. As Viavi puts it, this agreement would not release PTOT of liability for any 11246 Filters made and sold after May 1, 2020. Br.³ 8.

Earlier, in 2019, Viavi had begun the process of getting its LAS filters qualified for a major company's new line of mobile devices. Appx. 1135. Viavi's filters did qualify, and its filters were included in the major company's products, including phones, that were sold into the American market. Appx. 1335–38. However, manufacturers and suppliers who work with the major company in Asia informed Viavi that PTOT was also going through the company's qualification process. Appx. 1335.

Viavi alleges that its understanding is that PTOT had met the company's qualifications. Appx. 1335. Eventually, Viavi went from meeting all or nearly all of the company's LAS filter needs to meeting approximately 70% or 80% of those needs. Appx. 1336. Taking this declining market

³ Citations to "Br." refer to Viavi's Principal Opening Brief, Dkt. Nos. 17–18.

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share together with the information it received from the companies, Viavi was apparently convinced that PTOT had entered the market and was responsible for the decline in market share. Viavi sent PTOT a letter to that effect on July 14, 2020, writing:

It has come to our attention that since May 1, 2020, [PTOT] has manufactured and sold additional low angle shift bandpass filters that utilize Viavi's patented technology. It is our understanding that PTOT is supplying these filters to [the major company] for incorporation into downstream products sold in the United States. We believe that PTOT's sales activities directed to the United States market would violate at least certain claims of Viavi's U.S. Patents. If Viavi's understanding of PTOT's sales activities is incorrect, please let us know immediately.

Appx. 170. PTOT did not respond to this letter.

Notably, in this time, Viavi did not possess any devices manufactured by the major company that contained a PTOT filter. What Viavi did have was the three PTOT filters it had previously obtained in connection with its litigation against PTOT in China and Taiwan. It analyzed each of these filters, finding that only the 11246 Filter met the major company's technical requirements. Appx. 795; Br. 11–12.

II

Three weeks after sending PTOT the letter, Viavi sued PTOT for patent infringement in the Northern District of California in August 2020. Appx. 148. Viavi accused PTOT of manufacturing and selling optical filters that utilize Viavi's patented filter designs for use in electronic devices that are being sold in the United States. Specifically, Viavi alleged that PTOT was supplying either the 11246 Filter "or a filter that is not materially different than that" into

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the American market. Appx. 151. In doing so, Viavi included detailed claim charts in the complaint, mapping its own patents against the 11246 Filter. Appx. 172–93.

In its infringement contentions, Viavi described the accused products as “low angle shift optical filters that are components for image sensors and optical lenses” that PTOT had supplied and sold since May 1, 2020 for inclusion in mobile devices in the United States. Appx. 307. Viavi contended that, upon information and belief, the 11246 Filter “or one or more filters substantially similar thereto” were being included in the major company’s devices. Appx. 307. Viavi again included claim charts only comparing its patents to the 11246 Filter. Viavi also served discovery requests at this time, wherein it sought information regarding PTOT’s other filters. Appx. 1305–43.

The next month, PTOT moved for summary judgment. It asserted that summary judgment was warranted because Viavi’s infringement contentions identified only the 11246 Filter, which had been released of any pre-May 1, 2020 infringement and that had not been manufactured or sold since May 1, 2020. Appx. 449–51. PTOT attached a declaration from its employee Yu-Yun Wu (the “Wu Declaration”) to the summary judgment motion. Appx. 439. Therein, she declared that PTOT did not design the 11246 Filter for inclusion in the major company’s devices and that PTOT had not manufactured or sold the 11246 Filter since May 2020. Even though it did not contest PTOT’s representation that the 11246 Filter had not been sold since May 1, 2020, Viavi opposed the summary judgment motion. Appx. 793–806. It contended that the scope of the case went beyond the 11246 Filter, even as that was the only filter included in the claim charts accompanying Viavi’s complaint. Further, Viavi contended it was entitled to reasonable discovery from PTOT so that it could obtain information about any of PTOT’s filters that *were* incorporated into the major company’s devices.

On May 11, 2021, the case was stayed, pending the resolution of ultimately unsuccessful *inter partes* review (IPR) petitions that PTOT filed to challenge the Patents in Suit. Appx. 2207–10, 4777. Crucially, during this stay, Viavi finally obtained one of the major company’s devices that contained a LAS filter (“Filter #25”) that had not been produced by Viavi itself. Appx. 4720. This was the first time Viavi obtained such evidence.⁴ When the IPR decisions were finalized, Viavi moved both to lift the stay of the case⁵ and to amend its infringement contentions such that it could add Filter #25. Appx. 2228–35; Appx. 2392–2404. In the proposed amended infringement contentions, Viavi still did not plan to remove the 11246 charts it had included to begin with. Appx. 2492. At the same time, Viavi also filed a second suit in the Northern District of California and explained that it would only proceed with that case if the District Court in this case denied Viavi’s motion to amend. Appx. 2677–79; Appx. 4470. In the other case, Viavi sued PTOT for infringing the same patents, based only on Filter #25 and without reference to the 11246 Filter. Appx. 4470.

The District Court lifted the stay and a magistrate judge denied Viavi’s motion to amend its infringement contentions. Appx. 4590–91. In denying the motion to amend,

⁴ PTOT contends that Filter #25 is not one of its filters, but this is not an issue currently before the Court.

⁵ Viavi moved to lift the stay after the Patent Trial and Appeal Board (Board) rejected PTOT’s first two IPR petitions. Appx. 2230–31. It noted that, in the case the Board does not reject PTOT’s third IPR petition, Viavi would dismiss that third patent (the ’369 patent) from the case. *Id.* The parties later stipulated to voluntarily dismiss the ’369 patent after the third IPR was instituted. Appx. 4204–05; Appx. 4777.

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the magistrate judge explained that “Filter #25 is an entirely different product than the 11246 [F]ilter, which has been the focus of the case up to this point in time.” Appx. 4591. Further, she explained that her denial was based on findings that Viavi had not been sufficiently diligent in discovering a basis for the proposed amendments and that the amendments would unduly prejudice PTOT. Viavi did not object to this denial. After unsuccessfully attempting to resolve the dispute with PTOT, Viavi ultimately moved to voluntarily dismiss the instant case with prejudice. Appx. 4619–28. The District Court granted the motion on May 2, 2023. Appx. 4718–27.

III

On June 16, 2023, PTOT filed a Motion for Attorney’s Fees, wherein it requested that the District Court find the case exceptional under 35 U.S.C. § 285 and sanction Viavi and its counsel under the District Court’s inherent power to do so and 28 U.S.C. § 1927. Appx. 144; Appx. 4883–84, 4898, 4901–02. PTOT sought \$826,654 in attorneys’ fees and \$8,400 in costs. Appx. 1.

The District Court granted the motion in part, awarding PTOT fees under 35 U.S.C. § 285 because the case was an “exceptional” case. Appx. 14–15. The District Court found that Viavi filed suit without evidence as to any of the following: that the 11246 Filter was being used in devices that were sold in the United States; that any PTOT filter was being sold in the United States; or that the major company’s technical specifications necessarily practice any claim of Viavi’s Patents in Suit. Appx. 7–10. The District Court explained that Viavi’s reliance on “rumor to form the foundation of [its] infringement theory was insufficient,” regardless of whether the rumors turned out to be true. Appx. 9. Finally, the District Court found that “it remains unclear why Viavi could not obtain and inspect a mobile device as it had in other litigations” before filing suit. Appx. 9. In light of all of these considerations, the District

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Court found that Viavi’s lack of diligence in its pre-suit investigation weighed toward a finding that this case was “exceptional.” Appx. 10.

The District Court also considered Viavi’s reliance on the 11246 Filter in particular, given that Viavi had already licensed any pre-May 1, 2020 sales of that filter to PTOT in connection with the litigation in Asia. Although Viavi repeatedly emphasized that it was only accusing 11246 Filters sold after May 1, 2020, its filings compared the Viavi patents to a 11246 Filter it acquired before May 1, 2020. Therefore, the District Court held that, to the extent Viavi “relied on the expressly licensed 11246 Filter to assert infringement, doing so was unreasonable.” Appx. 11.

Finally, the District Court considered Viavi’s “post-filing conduct,” or its manner of litigation. It found that Viavi failed to drop its claims against the 11246 Filter even after the Wu Declaration was decisive and fatal to those claims. This failure to abandon all claims with respect to the 11246 Filter “support[ed] a finding of exceptionality.” Appx. 11–12. The same was true for Viavi’s discovery strategy. Specifically, the District Court found that Viavi’s position that it was entitled to discovery beyond the 11246 Filter was weak, given that local patent rules required a plaintiff’s identification of accused products to be “as specific as possible.” Appx. 13. Viavi did not meet this standard by simply asserting that the accused product is either the 11246 Filter or “one or more filters substantially similar thereto.” Appx. 13–14. After receiving the Wu Declaration, Viavi was on notice that PTOT had not sold or manufactured the 11246 Filter since May 2020, making it “objectively unreasonable” for Viavi “to maintain its contentions as to filters *substantially similar* to the 11246 Filter—a filter that was no longer at issue.” Appx. 14 (emphasis in original).

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In sum, the District Court found that, in light of the totality of circumstances, the case was exceptional “in certain respects.” Appx. 14. Although Viavi should have conducted a more fulsome investigation, it still had “a weak, but not objectively baseless, belief that it could accuse the filters it did by description as compared to the 11246 Filter and later supplement its contentions through information revealed in discovery.” Appx. 14. However, after receiving the Wu Declaration that “conclusively shut[] the door on its infringement claims as to the 11246 Filter, Viavi should have recognized its claims against the 11246 Filter were clearly untenable and dropped them.” Appx. 14. By failing to do so, Viavi unnecessarily prolonged the litigation and caused PTOT “to expend unnecessary fees.” Appx. 14. In stipulating to non-infringement as to the 11246 Filter, as it should have done, Viavi would be left with only claims “against a category of uncharted filters accused by comparison to the 11246 Filter,” making it “objectively unreasonable for Viavi to maintain its claims beyond this point in the case.” Appx. 15.

The District Court denied PTOT’s request for sanctions under § 1927 and the Court’s inherent power, because Viavi and its counsel did not act with subjective bad faith, or knowingly/recklessly raise a frivolous argument. Appx. 15–16. However, under § 285, the District Court found it “appropriate to award some of PTOT’s attorneys’ fees incurred from January 20, 2021,” the date PTOT submitted the Wu Declaration. Appx. 15.

Viavi timely appealed. This Court has jurisdiction under 28 U.S.C. § 1295(a)(1).

DISCUSSION

In exceptional cases, a court “may award reasonable attorney fees to the prevailing party.” 35 U.S.C. § 285. Exceptional cases are those “that stand[] out from others with respect to the substantive strength of a party’s litigating position (considering both the governing law and the facts

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of the case) or the unreasonable manner in which the case was litigated.” *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014). This determination should be made by district courts “in the case-by-case exercise of their discretion, considering the totality of the circumstances.” *Id.*

The Court reviews district courts’ factual findings underlying an exceptional case determination for clear error. *Gaymar Indus. v. Cincinnati Sub-Zero Prods.*, 790 F.3d 1369, 1372 (Fed. Cir. 2015). The exceptionality determination is then reviewed under an abuse of discretion standard. *Realtime Adaptive Streaming L.L.C. v. Sling TV, L.L.C.*, 113 F.4th 1348, 1354 (Fed. Cir. 2024) (citations omitted). “A district court abuses its discretion when it bases its ruling on an erroneous view of the law or a clearly erroneous assessment of the evidence.” *Checkpoint Sys., Inc. v. All-Tag Sec. S.A.*, 858 F.3d 1371, 1374–75 (Fed. Cir. 2017) (internal quotes and citations omitted).

Viavi argues in pertinent part that the District Court abused its discretion for the following reasons: (1) the District Court’s standard for pre-suit investigation required more than a reasonable belief, representing an inappropriately heightened pleading standard; (2) the District Court clearly erred in analyzing the substantive strength of Viavi’s case when it found that Viavi relied on a rumor as the basis for its pre-suit belief, and when it found that Viavi accused a licensed filter of infringement; and (3) the District Court abused its discretion in holding that Viavi had to drop its claim after being informed that the 11246 Filter had not been made for the major company’s products, because there was still an outstanding legal dispute about whether its infringement contentions were limited to the 11246 Filter and because Viavi did not continue to litigate infringement of the 11246 Filter. We first analyze Viavi’s contentions regarding the diligence of its pre-suit investigation, before turning to Viavi’s contention that it acted reasonably after litigation had commenced, including by

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not immediately dismissing its claim after receiving the Wu Declaration.

I

Pre-suit diligence is a factor to be considered under *Octane Fitness's* totality-of-the-circumstances approach. *Bayer CropScience AG v. Dow AgroSciences LLC*, 851 F.3d 1302, 1307 (Fed. Cir. 2017) (citation omitted). Here, the District Court neither applied an improperly heightened standard nor clearly erred when analyzing the substantive strength of Viavi's case.

Viavi contends that its pre-suit diligence exceeds the standards required by the Federal Circuit. Br. 28. As evidence, Viavi states that the following considerations informed its decision to file suit:

- Viavi had been a qualified supplier of LAS filters for the major company's products since 2017;
- PTOT produced LAS filters and had received a limited release from Viavi for any pre-April 30, 2020 infringement of Viavi's patents;
- PTOT held itself out as one of the few manufacturers that provided optical filters for 3D motion sensing modules to electronic device manufacturers;
- Viavi began trying to qualify its LAS filters for the major's company new products in 2019;
- Up until then, Viavi supplied all, or nearly all, of the LAS filters for the major company's products but that its share dropped to approximately 80%;
- Viavi learned directly from "companies in the [major company's] supply chain" that PTOT had become a qualified supplier for the major company's new product series in 2020;

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- PTOT's filters must have been designed in a specific, specialized way that would meet the major company's strict technical requirements;
- The LAS filters provided to the major company all used hydrogenated silicon material;
- LAS filters are not commercially available off the shelf and never have any identifying information about the supplier on them;
- PTOT's 11246 Filter met the major company's technical requirements, so Viavi prepared claim charts mapping claims of its patents to the 11246 Filter;
- and that PTOT never responded to Viavi's letter asking if it had misunderstood any critical facts.

Br. 28–31. Viavi argues that these facts evidence a pre-suit investigation that did not “f[a]ll short,” as the District Court held. *Id.* at 32–33. Instead, Viavi argues that this pre-suit diligence follows this Court's guidance in *Q-Pharma, Inc. v. Andrew Jergens Co.*, 360 F.3d 1295, 1302 (Fed. Cir. 2004).

Viavi points to language indicating that “the key factor in determining whether a patentee performed a reasonable pre-filing inquiry is the presence of an infringement analysis.” *Q-Pharma, Inc.*, 360 F.3d at 1302. *Q-Pharma* clarifies that “an infringement analysis can simply consist of a good faith, informed comparison of the claims of a patent against the accused subject matter.” *Id.* Here, Viavi compared the claims of its patents against the 11246 Filter. However, the District Court did not hold this was an exceptional case based off a mistaken belief that Viavi had failed to conduct an infringement analysis. Instead, it found that Viavi's investigation was not diligent in choosing to center its lawsuit and infringement analysis around the 11246 Filter in

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particular. Appx. 8–10. Therefore, the fact that Viavi conducted an infringement analysis is not sufficient to find its pre-suit investigation was diligent.

Viavi argues that the District Court’s pleading standard was too strict, erecting too high a pre-filing hurdle by “seemingly—and erroneously—requir[ing] that Viavi reverse engineer a specific filter from [the major company’s] device in the United States to satisfy its pre-filing obligations.” Br. 34. Even at trial, “tests or experiments on the actual accused products are not always necessary. . . . circumstantial evidence alone may suffice.” *Id.* at 34–35 (quoting *Checkpoint Sys., Inc. v. All-Tag Sec. S.A.*, 572 F. App’x 988, 989 (Fed. Cir. 2014) (non-precedential)). Viavi argues that its position is supported by this Court’s decision in *Intamin Limited v. Magnetar Technologies, Corporation*, where we held that the District Court had not abused its discretion in holding Intamin did not need to test Magnetar’s product before suing. 483 F.3d 1328, 1338 (Fed. Cir. 2007).

In *Magnetar*, we considered a magnetic braking system for amusement park rides. *Id.* at 1330. There, the district court found that Intamin, in conducting its pre-suit investigation, “evaluated the patent portfolio, analyzed the patent’s validity, determined the scope of the patent’s claims, . . . performed an infringement analysis, . . . reviewed publicly available documents on [Magnetar’s] brakes, inspected [Magnetar’s] brakes as installed on a roller coaster, took photos of the brakes, and reviewed the brakes with experts.” *Id.* at 1338 (citations omitted) (alterations in original). On appeal, we held that the district court had not abused its discretion in finding that Intamin “had conducted a reasonable and competent inquiry at the time it filed its infringement complaint” even where “it did not obtain and physically cut open” Magnetar’s accused product. *Id.* We explained that there is no “blanket rule that a patentee must obtain and thoroughly deconstruct a sample of a defendant’s product” to avoid sanctions. *Id.*

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Instead, because the “technology presented the patentee with unreasonable obstacles to any effort to obtain a sample of Magnetar’s amusement ride brake system, let alone the difficulty of opening the casing,” the district court did not abuse its discretion in finding that Intamin’s pre-filing inquiry was reasonable. *Id.*

Magnetar is a useful analogue, but it does not command that the Court find an abuse of discretion took place here for a few reasons. First, *Magnetar* applied Ninth Circuit law, as that appeal involved the denial of Rule 11 sanctions, while we apply our own law here to the issue of exceptionality under § 285. Next, Viavi could purchase and examine the major company’s products (readily accessible mobile devices) with relative ease, as evidenced by Viavi going on to do just that in this case. Further, Viavi’s pre-suit investigation falls far short in terms of diligence compared to Intamin’s extensive review in *Magnetar*.⁶ So while Viavi is correct that there is no blanket rule requiring “reverse engineering” as part of a pre-suit investigation, the District Court did not apply an improperly high standard in finding that Viavi specifically came up short in its investigation here.

While not a case directly about reverse engineering, the Court takes *Bayer* as an analogue. There, we held that a district court had not abused its discretion in finding

⁶ Further, our finding that the district court in *Magnetar* had not abused its discretion in declining to sanction Intamin does not mean it would have abused its discretion by sanctioning Intamin. See *Heat & Control, Inc. v. Hester Indus., Inc.*, 785 F.2d 1017, 1022 (Fed. Cir. 1986) (explaining that abuse of discretion means the district court “has a range of choice, and that its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law” (quoting *Kern v. TXO Prod. Corp.*, 738 F.2d 968, 970 (8th Cir. 1984))).

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Bayer’s pre-suit investigation was not diligent, because “had Bayer conducted a more searching pre-suit investigation—at least of its own easily-obtainable evidence—it would have not filed suit.” *Bayer*, 851 F.3d at 1307. Here, the District Court did not abuse its discretion, as a more thorough investigation would have prevented Viavi from invoking the 11246 Filter in its suit against PTOT. In fact, as soon as Viavi finally purchased several of the major company’s devices, it discovered that the only non-Viavi filter being used in one of these devices was not the 11246 Filter. Appx. 4720; Appx. 3139. After learning this, Viavi even initiated a new action wherein it sued based only on Filter #25, not on the 11246 Filter. Therefore, Viavi’s own actions indicate that, with a more searching pre-suit investigation, it “would have not filed” the suit it ended up filing here. *See Bayer*, 851 F.3d at 1307.

Next, Viavi argues that the District Court clearly erred in saying that the foundation of Viavi’s infringement theory was a “rumor,” and that it was not sufficient to make filing suit reasonable. Br. 36–37. Viavi argues that the information it obtained—that PTOT had successfully qualified for the new line of the major company’s products for U.S. sale—did not come from the ether; it came from employees at various companies down the major company’s supply chain. In fact, this information came from companies to which both Viavi and PTOT supply LAS filters for incorporation into the major company’s products.

However, we cannot hold that the District Court clearly erred in calling the source of this information a “rumor.” At a hearing before the District Court, Viavi’s counsel stated: “I guess, first, my opponent mentioned that our good-faith belief is based on a rumor. And I guess in a broad sense of the word, that’s kind of correct.” Appx. 4815. At a different hearing, concerning the § 285 motion we are now reviewing, Viavi’s counsel also stated that “we are okay calling it a rumor, but that’s got negative connotation.” Appx. 5393. He also stated “So was it a rumor? It’s

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from their customer. So I call it corporate intelligence, but whatever.” Appx. 5393.

We decline to hold that the District Court erred based on the semantic difference between a “rumor” and “corporate intelligence.” In calling it a rumor, the District Court did not disregard that Viavi obtained information from corporate sources. In fact, the District Court’s opinion specifically refers to Viavi “relying on its sources” instead of other indicators that the 11246 Filter was being incorporated into the major company’s mobile devices and being sold into the United States. Appx. 9. In doing so, the District Court was explaining that reliance on such information does not make up for the lack of diligence that characterized the rest of Viavi’s pre-suit investigation. Therefore, although the District Court characterized the information as a rumor and did not lend it much weight, it did not disregard Viavi’s “corporate intelligence.” This is not a basis for clear error, and clear error review is not an avenue for this Court to reweigh evidence that the District Court considered. *See Impax Labs., Inc. v. Lannett Holdings Inc.*, 893 F.3d 1372, 1382 (Fed. Cir. 2018) (“We do not and should not reweigh evidence or make factual findings anew on appeal.”).

Finally, we note that the District Court did not base its decision entirely on Viavi’s pre-suit investigation. In fact, the District Court specifically awarded only attorneys’ fees accrued after PTOT filed the Wu Declaration. In doing so, and in declining to sanction Viavi pursuant to its inherent power, the District Court went less far than it credibly could have gone in light of Viavi’s lack of diligence. Viavi is a company that is no stranger to litigating to protect its patents and it is also no stranger to actually buying accused products before filing suit. Its failure to do so—a failure that was easily remedied by buying and taking apart mass-produced consumer products as it had done many times—is entirely unreasonable given the circumstances.

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Therefore, the District Court not only did not abuse its discretion in its analysis of Viavi's pre-suit investigation, but it used that discretion to give Viavi a more favorable outcome than it needed to.

II

Viavi also argues that the District Court abused its discretion in determining that Viavi's matter of litigation made the case exceptional under § 285. First, Viavi argues that the District Court legally erred when it held that Viavi should have dropped its case after receiving the Wu Declaration. Br. 43–44. Rather than dismiss its case upon receipt of the Wu Declaration, Viavi opposed summary judgment. Appx. 789, 793–806. Viavi argued that its case was still alive because its allegations were based not just on the 11246 Filter, but also those materially similar to it that were sold after May 1, 2020, for inclusion in the major company's devices. Now, Viavi argues that it did not need to voluntarily dismiss its case because the Wu Declaration did not clarify whether PTOT had manufactured LAS filters materially similar to the 11246 Filter for inclusion in the major company's devices. It also did not clarify whether PTOT had renamed the 11246 Filter and continued selling it under a different name.

The District Court did not abuse its discretion in holding that Viavi should have voluntarily dismissed its claims. Viavi has never opposed the truth of the Wu Declaration, nor presented evidence to the contrary. It was undisputed that the 11246 Filter had not been sold for inclusion in the major company's devices, nor had it been sold after May 1, 2020. As such, after the Wu Declaration, Viavi's allegations against the 11246 Filter became untenable and should have been withdrawn. *See O2 Micro Int'l. Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d 1355, 1366 (Fed. Cir. 2006) ("If the parties were not required to amend their contentions promptly after discovering new information, the contentions requirement would be virtually meaningless as

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a mechanism for shaping the conduct of discovery and trial preparation.”). There was no longer any basis for Viavi’s allegations against the 11246 Filter. *AdjustaCam, LLC v. Newegg, Inc.*, 861 F.3d 1353, 1361 (Fed. Cir. 2017) (finding party’s litigation position baseless where no reasonable factfinder could conclude it should win).

Following the Wu Declaration, Viavi’s attorney stated “I, you know, have no reason to disbelieve them I don’t know if it’s the same design under a different commercial name for the customer.” Appx. 4801. In as much as Viavi argues it did not need to dismiss its claim against the 11246 Filter because it was possible PTOT sold the same filter under a different name, that argument stretches credulity. “11246” was not a name PTOT actually gave to the filter. Instead, 11246 was a number assigned to the filter by a notary who was logging the PTOT samples into evidence during the Parties’ litigation in Asia. Appx. 495.

Viavi also argues that it should not have been required to dismiss its claim as to the 11246 Filter because, to oppose summary judgment, it was entitled to reasonable discovery about PTOT’s filters incorporated into the major company’s mobile devices after May 1, 2020. Br. 44. In support, Viavi argues that requiring Viavi to drop its case upon receipt of the Wu Declaration “is antithetical to our system of justice, especially at the early stage of the case where virtually no discovery had occurred.” Br. 46. However, Viavi’s requests for discovery did not seek information about the 11246 Filter; nor did Viavi seek to depose Ms. Wu. Appx. 806. Viavi sought discovery not as a way to maintain its case against the 11246 Filter, but as a way to amend its allegations and “update its Infringement Contentions.” Appx. 806. Therefore, the case law Viavi cites about premature summary judgment is inapposite, as those cases speak to allowing nonmovants to discover information that is essential to their opposition. Br. 46 (citing *Burnside-Ott Aviation Training Ctr., Inc. v. United States*, 985 F.2d 1574, 1582 (Fed. Cir. 1993)). “Summary

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judgment need not be denied merely to satisfy a litigant's speculative hope of finding some evidence [through discovery] that might tend to support a complaint." *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1566 (Fed. Cir. 1987) (alterations in original); *see also Martin-Alvarez v. Merit Sys. Prot. Bd.*, No. 86-1492, 1987 WL 37473, at *2 (Fed. Cir. Apr. 10, 1987) (non-precedential) ("Discovery is intended to be a tool for obtaining evidence in support of a claim which one has already pleaded with reasonable specificity. Discovery is not a fishing expedition to determine if one has any possible basis for a claim.").

Finally, Viavi argues that even though the District Court erred in holding that it was required to drop its claim against the 11246 Filter, it also clearly erred in finding that Viavi did not, in fact, drop the claim against the 11246 Filter. Br. 49. Specifically, Viavi argues that it was clear that it was not pursuing claims against any filters that were not actually being sold. Rather, it was refusing to drop the claims against the 11246 Filter as "belt and suspenders." Br. 49; Appx. 4825. In other words, Viavi argues that it did not drop the claim against the 11246 Filter so that it could continue seeking discovery from PTOT as to whatever of its filters were actually going to the major company. Viavi further argues that it stopped pursuing discovery as to the 11246 Filter after receiving the Wu Declaration and did not even refute Wu's statement that the 11246 Filter was not being supplied to the major company.

We determine that the District Court did not clearly err in finding that Viavi had not dropped its claims against the 11246 Filter. No matter Viavi's statements and the discovery it did (and did not) seek, it was not clearly erroneous for the District Court to find it was still litigating the 11246 Filter when that was the *only filter* that remained in its infringement contentions. Viavi planned to keep the 11246 Filter in its contentions, even if the District Court had granted its motion to amend so it could include Filter #25. Appx. 4507. This is an inexplicable decision. Viavi's

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attempts to explain it led it down an aimless road of legal cliché. Its invocation of belt and suspenders does nothing to assuage our concerns. There is no right to sue a party based on a nonmeritorious claim in hope of finding material that could be the basis of an actual meritorious claim. The district courts are “not expected to, nor should [they], simply allow plaintiffs to embark on a wide-ranging fishing expedition in hopes that there may be gold out there somewhere.”⁷ *Monarch Assur. P.L.C. v. United States*, 244 F.3d 1356, 1365 (Fed. Cir. 2001); *see also Moore U.S.A. v. Std. Register Co.*, 229 F.3d 1091, 1116 (Fed. Cir. 2000).

Further, as stated, Viavi’s argument that it could not drop the 11246 Filter until PTOT confirmed it had not simply renamed it is not compelling in the slightest, in light of the fact that the filter was not actually named the 11246 Filter at all. Therefore, we conclude that the District Court did not abuse its discretion in determining that Viavi’s manner of litigation supports a finding of exceptionality.

Viavi also argues that the District Court clearly erred in concluding that it was accusing a licensed filter of infringement. Br. 39. The District Court stated that “[t]o the extent Viavi relied on the expressly licensed 11246 Filter to assert infringement, doing so was unreasonable.” Appx. 11. This directly followed its finding that “Viavi presented no evidence that the 11246 Filter was being sold post-May 1, 2020, such that those sales would fall outside the scope” of the licensing agreement between Viavi and PTOT. Viavi

⁷ In considering Viavi’s desire for an open-ended search through PTOT’s business for evidence that may not even exist, we are reminded of the intruders in the film, *The Big Lebowski*, who drown the Dude in search of money he does not have. *The Big Lebowski* (Polygram Filmed Entertainment, Working Title Films 1998) (“It’s down there somewhere, let me take another look.”).

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argues that the District Court was ignoring its repeated disclaimer that it alleged infringement only as to sales of the 11246 Filter after May 1, 2020. Br. 40. Viavi argues that it included a claim chart with the 11246 Filter not to accuse licensed filters of infringement, but because it believed at the time of filing its complaint that PTOT was selling 11246 Filters, or ones substantially similar to them, to the major company *after May 1, 2020*. We again determine that the District Court did not clearly err. The District Court did not ignore Viavi's disclaimers; in fact, the District Court explicitly recited these disclaimers, before finding they were "at odds with the claim chart Viavi attached to its complaint," because that chart compares a 11246 Filter PTOT sold before May 1, 2020, to Viavi's patents. Appx. 10. Therefore, the District Court did not ignore Viavi's disclaimers. Further, we note that Viavi did not identify any filters that PTOT sold after May 1, 2020. Therefore, in building its claim chart around the 11246 Filter, Viavi was inherently relying on a product it only knew to be sold during a period where it was licensed. Its disclaimers do not change this.

In sum, the District Court did not clearly err in its interpretation of the facts in this case and it did not abuse its discretion in determining that this case was an exceptional one under § 285 and *Octane Fitness*.

CONCLUSION

We have considered Viavi's remaining arguments and find them unpersuasive. For the foregoing reasons, we affirm the judgment of the District Court.

AFFIRMED

COSTS

Costs to PTOT.