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IP CASE OF THE WEEK

Federal Circuit Opens Door to an Award of Attorneys' Fees in Pay-To-Sue Litigation

***Future Link Sys., LLC v. Realtek Semiconductor Corp.*, No. 23-1056 (Fed. Cir. 2025)**

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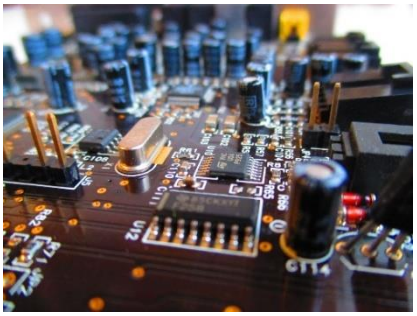
The Federal Circuit's recent decision in *Future Link Systems, LLC v. Realtek Semiconductor Corp.* highlights two important issues in patent litigation: when does a defendant qualify as a prevailing party entitled to seek fees and costs and what are the risks of unconventional litigation funding practices.

Future Link, a non-practicing entity, filed two infringement suits against Realtek in the Western District of Texas concerning circuitry-related patents. In 2022, Future Link and Realtek settled and entered into a license agreement, and Future Link voluntarily dismissed the cases without prejudice.

After dismissal, however, Realtek learned of a 2019 agreement between Future Link and MediaTek, a competitor of Realtek. In its agreement with Future Link, MediaTek promised to pay Future Link a lump-sum amount if Future Link sued Realtek. Armed with the knowledge of that pay-to-sue arrangement, Realtek went back to the district court and requested fees and sanctions under various theories, including Federal Rule of Civil Procedure 54(d) (which provides for cost shifting in favor of a prevailing party) and 35 U.S.C. § 285 (which provides for fee shifting in favor of the prevailing party in exceptional patent cases). Under its inherent authority, the District Court converted Future Link's voluntary dismissals to "with prejudice" as a sanction such that the claims could not be refiled, finding Future link had an "improper motive" and that "[p]ublic policy cuts directly against an agreement of this kind." However, the District Court declined to assess Realtek's claims under § 285 and Rule 54(d), holding that Realtek was not a "prevailing party" and therefore could not recover fees and costs.

The Federal Circuit vacated in part, affirmed in part, and remanded in part. First, it held that a dismissal with prejudice is a judicially sanctioned change in the parties' relationship and makes the defendant a prevailing party as a matter of law, thereby positioning Realtek to recover fees and costs. Because the district court did not address cost shifting under Rule 54(d) at all, the Federal Circuit found that it abused its discretion and remanded for the district court to address Rule 54(d). As for whether the case is exceptions under § 285, the Federal Circuit also vacated and remand for the district court to consider whether the case is exceptional in the first instance and whether Realtek should recover its attorneys' fees. The panel otherwise affirmed the denial of Rule 11 and § 1927 sanctions and upheld rulings relating to protective order issues.



This ruling has immediate implications for patent litigation practice. Patent owners must exercise caution with third-party funding deals, particularly arrangements that pay based on targeting specific competitors. Courts will likely view such arrangements with great skepticism when they resemble business warfare rather than legitimate IP protection. Patent owners will want to keep an eye out for the decision on remand, where the district court could conclude the case is exceptional and award Realtek attorneys' fees and costs. In addition, defendants should recognize that with-prejudice dismissals may lead to fee recovery even when plaintiffs attempt to walk away from weak cases, making it worthwhile for defendants to pursue fee-shifting when litigation appears more strategic than substantive.