

## Steven Lieberman Quoted in IP Law360 Article on Attorneys' Fees in Cases Involving Misconduct

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Partner Steven Lieberman was quoted in an IP Law360 article focusing on a recent Visio Inc. patent case involving litigation misconduct and how litigants can secure fees.

An April 10, 2015, Federal Circuit ruling that a district judge abused her discretion by denying defendant Vizio Inc.'s request for attorneys' fees provides useful guidance on how to secure fees, although it may spark bitter fights in future cases. The patent case involved litigation misconduct by plaintiff Oplus Technologies Ltd.

The Vizio and Octane rulings are going to make attorneys' fees in patent litigation an even more hotly debated issue that will arise in more cases, said Steven Lieberman of Rothwell Figg Ernst & Manbeck PC.

"Lawyers and their clients are going to seek fees at the district court level, and if they're denied, they're going to inject that issue on appeal," he said.

He said he worries that as a result of the decision highlighting that litigation misconduct is grounds for attorneys' fees, "patent litigation will become a mud wrestling match," with attorneys on each side trying to argue that their opponent engaged in misconduct to bolster their chances of winning fees.

"It's going to decrease civility and collegiality, rather than the opposite," he said. "In the course of a case, there are thousands of interactions between attorneys, and every email, every objection in deposition will be potential fodder for an accusation of litigation misconduct."

That has the potential to make patent litigation unpleasant for litigants and judges, since the briefing on such issues can get very personal and "it's very hard to maintain a relationship with someone accusing you of litigation misconduct," he said. "Overall, it's a tremendous detriment to the profession."

### Key Contact

Steven Lieberman

### Related Areas of Practice

Appellate Litigation

Patent Litigation

It will take some time for the courts to find the right balance on when fees are appropriate, but until that happens, it will continue to be a contentious issue, he said.

The article, "Fed. Circ. Rebuke To Fuel Heated Disputes On Attys' Fees," published by IP Law360, can be found [here](#).