

## White and Williams Represents Gust in Landmark Patent Troll Litigation

12.27.16

In a landmark decision, Judge Denise Cote of the Southern District of New York awarded Gust, a crowdfunding software platform, a judgment for attorneys' fees and costs against AlphaCap Ventures, LLC and its lawyers at Gutride Safier LLP. Gust was awarded over \$550,000 plus pre-judgment interest at 9%.

The court's decision is significant because it found lawyers for a patent troll jointly and severally liable for attorneys' fees after determining the lawyers pursued the case in bad faith. This ruling may discourage lawyers from representing non-practicing entities seeking to bring frivolous patent lawsuits for the purpose of extorting settlements from legitimate businesses, especially when the asserted patents are invalid under the Supreme Court's *Alice* decision and Section 101 of the Patent Act.

### Summary of the Case and Judge Cote's Decision

AlphaCap sued Gust and nine other defendants in the online crowdfunding industry in the Eastern District of Texas, alleging infringement of three U.S. patents. AlphaCap is a non-practicing entity, sometimes called a "patent troll," whose sole assets are the asserted patents and only business is suing operating companies for patent infringement. The nine other defendants settled quickly for nuisance value sums, while Gust refused. From the outset, Gust argued the asserted patents were invalid and demanded AlphaCap pay its attorneys' fees for bringing such a frivolous lawsuit.

Our team successfully argued to have the case transferred from the Eastern District of Texas to the Southern District of New York, where Gust and its employees are located. The Eastern District of Texas is seen as patent-friendly, and motions to transfer out of that District are rarely granted. However, neither AlphaCap nor Gust had any ties to Texas. In this case, the Texas court found there were no parties or evidence, such as documents or witnesses, present in that district and, therefore, no reason to keep the case there.

Once in New York, Gust prevailed and convinced the court the case was exceptional under 35 U.S.C. § 285. Judge Cote deemed AlphaCap's lawsuit frivolous and objectively unreasonable, because the asserted patents were clearly invalid under 35 U.S.C. § 101 in light of the Supreme Court's decision in *Alice v. CLS Bank*, which came down months before AlphaCap initiated its lawsuit. In further support of finding the case exceptional, Judge Cote found AlphaCap's motivation in bringing the case inappropriate, relying on AlphaCap's demand for paltry settlement amounts with the other defendants, bringing the case in the Eastern District of Texas, and needlessly extending the case while admitting it was "not worth litigating."

Finally, we proved AlphaCap's attorneys were complicit in this unsubstantiated litigation and brought the case in bad faith. As a result, the court awarded the attorneys' fees against AlphaCap's attorneys at Gutride Safier LLP jointly and severally under 28 U.S.C. § 1927. The court also ordered AlphaCap and its attorneys to pay prejudgment interest of 9% from the date Gust incurred those expenses along with post-judgment interest.

The cases are captioned *Gust, Inc. v. AlphaCap Ventures, LLC and Richard Juarez*, 16-cv-1784-DLC (S.D.N.Y.) and *AlphaCap Ventures, LLC v. Gust, Inc.*, 15-cv-6192-DLC (S.D.N.Y.)