

Winston Litigation Team Secures Attorneys' Fees in "Exceptional" Win for SAP America

DECEMBER 5, 2018

Winston & Strawn delivered an "exceptional" victory for client SAP America, Inc. (SAP) when a Texas federal district court judge granted SAP's motion for attorneys' fees under U.S.C. Section 285.

The judge found that InvestPic, LLC (InvestPic), who was threatening SAP with a patent directed to a statistical technique, did not heed the warning of the U.S. Patent and Trademark Office (USPTO) that "it looked very unlikely that its claims were directed toward patentable subject matter and very likely that its claims were invalid," instead continuing to vigorously "assert its patent against companies like SAP." The judge also recognized that two of InvestPic's owners (one of whom is the inventor listed on the patent) engaged in spurious actions and conduct under Section 285 by pretending to be interested potential purchasers of SAP's product in an attempt to collect evidence for the lawsuit. The judge exercised his discretion in determining that the totality of the circumstances merited an award of attorneys' fees.

The December 4 Order cites the U.S. Supreme Court's *Octane Fitness* decision, which reset the bar for awarding attorneys' fees. As Justice Sotomayor noted in *Octane Fitness*, "the text of §285 that '[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party,' is 'patently clear.' The case need only be one that 'stands out from others with respect to the substantive strength of a party's litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated.'"

Tom Melsheimer, managing partner of Winston's Dallas office and attorney for SAP, was pleased that the judge recognized that "section 285 is meant to discourage spurious actions and the very type of conduct we saw in this case." He noted that "while SAP is grateful for Judge Kinkeade swiftly disposing of this case on the merits, SAP is even more pleased not to have to front the bill to respond to InvestPic's meritless allegations. For our client's sake and the sake of our already overly-burdened court system, we hope this decision sends a firm message."

"We don't bring motions like this lightly and tried every measure to resolve this matter prior to seeking court intervention," added Kathi Vidal, managing partner of Winston's Silicon Valley office and attorney for SAP. "InvestPic's actions independently and quite prominently satisfied both bases on which to find this case exceptional."

The attorneys' fees award follows Winston's May 2017 win for SAP, when the same judge invalidated all claims of the asserted patent under 35 U.S.C. 101, finding the patent to be directed to a "patent ineligible abstract concept" and thus patent-ineligible. The asserted patent claimed the use of a computer program and network to apply to a

statistical technique known as resampling to financial investment data. The Winston team argued that the InvestPic’s patent claimed the implementation of basic math principles on generic computer hardware as an invention. The court agreed that the patent was invalid under the Supreme Court’s *Alice* decision and its progeny, which held that such abstract ideas are not eligible for a patent under the Patent Act Section 101.

The Winston team included Silicon Valley Office Managing Partner Kathi Vidal, Dallas Office Managing Partner Tom Melsheimer, and Partner Michael Bittner. SAP in-house counsel who were instrumental to these successes included Samir Pandya and Kevin Hamel.

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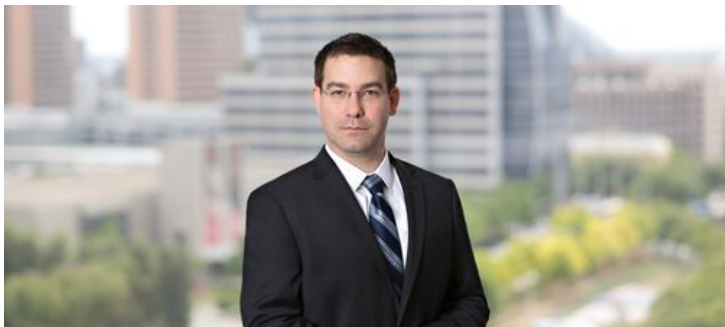
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