

Federal Circuit Upholds Winston's Attorneys' Fees Award in Seminal *SAP v. InvestPic* Patent Dispute

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The Federal Circuit affirmed Winston & Strawn's 2018 win for client SAP America, Inc. (SAP) before Judge Ed Kinkeade of the Federal District Court for the Northern District of Texas, in which SAP was awarded recovery of \$679,420 in attorneys' fees necessary in defending itself against a threatened infringement suit from Investpic. In awarding the fee, the District Court found the original infringement dispute "exceptional"—a standard that was clarified in the Supreme Court's 2014 ruling in the *Octane Fitness* case—due to the "unusually weak validity position" of Investpic's asserted patent under Section 101, which governs patent eligibility. The court went on to say that the Federal Circuit's subsequent affirmation of the Section 101 invalidity order made the weakness of Investpic's case "readily apparent" and that SAP's actions were necessary only due to Investpic's "failure to recognize" those weaknesses.

"The Federal Circuit's affirmation without a written opinion of SAP's recovery of attorney fees confirms that it's a new era for patent litigation" commented Kathi Vidal, managing partner of Winston's Silicon Valley office, who argued the appeal. "Before, bringing an infringement suit carried little downside to a party willing to expend the resources. Now, however, plaintiffs with a weak eligibility case may end up bearing the burden of the defendant's legal costs in addition to its own—a much-needed disincentive to spurious threats of infringement."

In addition to Kathi Vidal, the Winston team included Dallas Office Managing Partner Tom Melsheimer, Partner Michael Bittner and appellate lawyer Sean Suber. SAP in-house counsel who were instrumental to these successes included Samir Pandya and Kevin Hamel.

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