

## Judge Albright Dismisses Case on Summary Judgment, Citing Lack of Constitutional Standing

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On May 20, 2022, in *Intellectual Tech LLC v. Zebra Techs. Corp.*, Judge Albright granted Zebra's Motion for Summary Judgment for Lack of Standing pursuant to Fed. R. Civ. P. 56, and granted Zebra's Motion to Dismiss, dismissing all claims without prejudice.

Plaintiffs in patent infringement cases must have both constitutional and statutory standing. To satisfy constitutional standing, a plaintiff must have an exclusionary right; to satisfy statutory standing, a plaintiff must have all substantial rights to the asserted patent(s). In this case, the patent owner Intellectual Tech LLC (IT) entered into two agreements with a creditor, Main Street, which granted Main Street the right to enforce, sell, assign, transfer, pledge, encumber or otherwise dispose of the patent-in-suit should IT default on its obligations under the agreements. Prior to initiating this action, IT had defaulted on several obligations under the agreements.

Citing *WiAV Solutions LLC v. Motorola*, 631 F.3d 1257 (Fed. Cir. 2010), Judge Albright explained that an exclusive licensee lacks constitutional standing to sue *anyone* if a third party has an unconditional right to license the asserted patent to *everyone*. Because Main Street had an unfettered right to license the patent-in-suit when IT filed the action, Judge Albright ruled that IT lacked an exclusionary right, and therefore lacked constitutional standing.

Because a defect in constitutional standing cannot be cured by the addition of a party with standing nor a purchase of an interest in the patent-in-suit, Judge Albright determined the action could not "proceed in view of an incurable standing defect." Because of this holding, the Court declined to address the statutory standing argument.

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