

# Seyfarth PTAB Blog

A legal look at Patent Trial and Appeal Board decisions and trends



## The Effect of *Alice* on Attorneys' Fees Motions

By Patrick T. Muffo

Software patent litigation can often involve non-practicing entities (“NPEs”) and other plaintiffs that some have accused of asserting weak patents to extract royalties. It is no surprise, then, that defendants move for attorneys’ fees now that *Alice* has resulted in so many software patents being declared invalid. As discussed previously [here](#), one defendant argued it was entitled to attorneys’ fees simply because a plaintiff asserted a software patent post-*Alice*. While that motion was unsuccessful, a recent decision shows the broad discretion given to district courts when determining attorneys’ fees post-*Alice*.

The case of *YYZ, LLC v. Pegasystems, Inc.*, Civ. No. 13-581-SLR (D. Del. May 2, 2016) involved an NPE plaintiff asserting a software patent against several defendants. The patent was declared invalid by the court and the defendants moved for attorneys’ fees.

The court denied the motion and held the ever-changing landscape of *Alice*-based decisions made YYZ’s litigation conduct at least not “reckless.” That is, the court was not persuaded that the claims were “clearly invalid” under §101 because software-based patent eligibility is an “evolving state of the law and a difficult exercise, which does not lend itself to, e.g., shifting fees pursuant to 35 U.S.C. § 285.”

Interestingly, the court explicitly stated the plaintiff’s NPE status was irrelevant to its decision on attorneys’ fees:

[I]t is of no consequence that plaintiff is a non-practicing entity. Many businesses and academic institution enforce their patent rights through private companies and such a business strategy is not nefarious. The court declines to treat such non-practicing entities as anything less than holders of constitutionally protected property rights, those rights having been legitimized by the Patent and Trademark Office.

## Takeaway

This case is a good example of the broad discretion district courts have to decide whether a case is “exceptional” and therefore whether attorneys’ fees should be awarded. The court’s views (or lack thereof) on NPEs and the determination of no attorneys’ fees is not broadly applicable due to the discretion given to district courts. Rather, this case shows the unpredictability of attorneys’ fees motions due to a court’s broad discretion given on the unique facts of the case.

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