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Small Businesses to Congress: Protect Best Defenses Against Patent Trolls

WASHINGTON — Gust, the New York-based Software as a Service platform for high-growth entrepreneurs and investors, and the National Association of Realtors® today urged Congress to preserve the Supreme Court’s landmark *Alice* decision as well as a critical patent review process created by the America Invents Act, which are two of the best tools available to small American job creators to defend against low-quality patents and the patent trolls who use them in frivolous lawsuits.

“It is critical that Congress takes the side of productive American businesses and protects their ability to defend themselves against those who engage in abusive patent litigation,” said David S. Rose, founder and CEO of Gust, a 50-employee financial technology company who recently won a two-year-long battle with a serial patent troll. “When every other company in our space settled and wrote a check because it was the easy thing to do, Gust stood up and fought back because it was the right thing to do. The courts have validated our decision, and now we need Congress to stand up for all small American businesses like ours.”

Small businesses across the country know better than most that poor quality patents fuel the wasteful litigation that harms their ability to innovate and grow. Patent trolls have weaponized the large number of vague, overly broad patents that should never have been granted by the US Patent and Trademark Office (PTO), and new data shows trolls are turning their attention from larger companies to small businesses and startups with their extortive litigation. Almost two-thirds of new patent lawsuits in 2016 were against small and medium sized businesses, a radical departure from prior years. While most small and medium enterprises cannot shoulder the high costs of these suits and are forced to settle even the most frivolous cases as a result, there are valuable procedures at the PTO and legal defenses that some businesses have been able to leverage to try and fight back.

“It was because of the Supreme Court’s ruling in *Alice Corp. v. CLS Bank International* that we won our case and won a ruling rare in patent cases that held the plaintiff and their lawyers liable for our legal fees,” Gust’s CEO Rose said.

The Supreme Court’s unanimous decision in *Alice* found patent claims that simply add “do it on a computer” to an abstract idea, like many business methods, are not eligible for patent protection under Section 101 of the U.S. Patent Act. This ruling has since become a critical tool in invalidating vague, low-quality patents, which are often the basis of patent troll litigation. As the courts apply *Alice*, they have thrown a lifeline to small and medium sized businesses that are increasingly the target of these frivolous lawsuits.



“This case represents an important victory for small businesses across the country,” said Frank Bruno, a partner at the Philadelphia law firm White and Williams and lead trial counsel for Gust in its case. “While we hope our outcome will protect others from baseless patent troll litigation, the only way to ensure other companies will be protected is to maintain the tools we used to win this case and ensure they continue to be available to others. Section 101 of the Patent Act played a pivotal role in our victory and should be supported by Congress and the PTO.”

Another lifeline for companies facing abusive patent litigation is an administrative process at the PTO – called *Inter Partes* Review (IPR) – that addresses the validity of patent claims. Created as part of the America Invents Act, IPR is important for several reasons: it improves patent quality, allows parties other than those directly involved in a lawsuit to challenge a patent’s validity, and neutralizes patent trolls through proceedings that are less expensive and more timely than a full trial in federal court. Fighting a patent in court is ruinously expensive – an average defense can cost up to \$2 million. For smaller companies, IPR may be the only way it can afford to contest a patent.

“Abusive patent litigation remains a serious threat for real estate professionals and other main street businesses of all sizes across the country,” said Ralph Holmen, Associate General Counsel of the National Association of Realtors® (NAR). “NAR intends to help protect our members and the industry from being forced into cost-of-litigation settlements based on overbroad, invalid patents, and the IPR process has been a valuable asset in achieving this goal. Efforts to weaken the IPR process are underway now by those who oppose patent reform. Such efforts must be defeated.”

The United for Patent Reform Coalition, which hosted today’s event, supports keeping the IPR process as is and opposes any efforts to weaken Section 101 of the Patent Act by invalidating the Supreme Court’s *Alice* decision. Opponents of real patent reform are trying to weaken IPR through administrative procedures at the PTO and Section 101 of the Patent Act by proposing legislation to Congress.

The United for Patent Reform coalition hailed Gust’s victory as a rare win and even rarer recovery of attorney’s fees for a small firm against a serial patent troll. “Most small firms don’t have the resources to stand up like the Gust team chose to when patent trolls show up with extortionate demands for money,” said Beth Provenzano, vice president of government relations and political affairs at the National Retail Federation and co-chair of the United for Patent Reform coalition. The coalition is made up of hundreds of companies, small businesses and industry associations sued every year by patent trolls. “Instead of creating new jobs and investing in new technologies, businesses large and small across many industries – from national realty, construction, and technology companies to Main Street retail shops, hotels, grocers, convenience stores, and restaurants – continue to be forced to divert resources to fighting frivolous lawsuits and overly broad claims made by patent trolls,” Provenzano said.

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About United for Patent Reform

United for Patent Reform is a broad coalition of diverse American businesses—from national realty, construction, and technology businesses to Main Street retail shops, hotels, grocers, convenience stores, and restaurants—pursuing comprehensive solutions to abusive patent litigation. For more information, visit www.UnitedforPatentReform.com and follow us on Twitter at [@U4PatentReform](https://twitter.com/U4PatentReform).

About Gust

Gust is the global Software as a Service platform for founding, operating and investing in scalable, high growth companies. Gust's online tools (launch.gust.com) support all aspects of corporate legal and financial formation and operation for entrepreneurs, as well as deal flow and relationship management for investors, from startup through exit. As the world's largest community of entrepreneurs and early-stage investors from 190 countries, Gust pioneered the equity funding collaboration industry and is the official platform of the world's leading angel investor federations and venture accelerators. More than 450,000 startups have already used Gust to connect with over 60,000 investment professionals in connection with over \$1 billion in early stage funding. Gust powers the official online hubs for the world's largest innovation ecosystems including New York City (Digital.NYC), Boston (StartHub.org) and London (Tech.London). For more information about Gust, please visit gust.com.

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