

## CLIENT ALERT

### A Trust Holding Rights To Causes Of Action But Not Patent Title Has No Standing

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In *Morrow vs. Microsoft Corp.* (September 19, 2007), a split Federal Circuit panel reverses a district court's determination that a trust formed for the benefit of a bankrupt patent owner's creditors had standing to sue Microsoft for patent infringement. In the course of liquidating bankrupt company AHC's assets, the creditors set up three trusts. One of these trusts was given the right to pursue "all causes of action" belonging to AHC, while another trust set up to liquidate AHC's assets was given legal title to AHC's intellectual property. The trust with rights to causes of action sued Microsoft for infringement of a patent on generation of links in hypertext documents. In response to a Microsoft summary judgment motion, the district court determined that the trust had standing to sue under "bankruptcy law principles" and based on its "trust beneficiary status." When the trust subsequently appealed a summary judgment of non-infringement, Microsoft also appealed the standing decision.

On appeal, the Federal Circuit panel does not reach the patent infringement issues, based on its finding that the trust with rights to pursue causes of action did not have constitutional standing to sue. Addressing the case as a matter of first impression regarding the intersection of bankruptcy, trust and patent law, the panel provides an extensive discussion of the underlying principles of standing (cited cases dating back to 1832) and focuses in particular on the constitutional standing requirement that there must be an injury-in-fact. While the creditors were free to arrange the trusts in the manner they chose (here, with the rights to sue separate from the patent title), the panel majority observes, such an arrangement would not automatically provide standing. In this case, the trust with the rights to pursue causes of action did not have any of the rights associated with the patent (*i.e.*, the right to make, use or sell or license the patented invention). The majority reasons that because this trust could not establish that it would suffer any injury-in-fact from another's making, use or sale of the patented invention, this trust could never establish standing to assert an infringement claim. The present case is distinguished from cases in which exclusive licensees are permitted to sue with joinder of the patent owner, because even if the trust holding legal title to the patent were joined, the trust having rights to AHC's causes of actions still could not complain of any injury to itself, unlike an exclusive licensee whose exclusive rights would be injured by another's infringement.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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