

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AMERANTH, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 20-518-VAC
)	
OLO INC.,)	
)	
Defendant.)	

**DEFENDANT’S REPLY BRIEF IN SUPPORT OF ITS
MOTION FOR RECOVERY OF ATTORNEYS’ FEES UNDER 35 U.S.C. § 285**

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I. INTRODUCTION

Ameranth's opposition (D.I. 40, "Opp.") does not meaningfully dispute the key reason why this case stands out from others: the Federal Circuit's reasoning in *Apple* and *Domino's Pizza* clearly doomed the related '651 patent, whose specification shares the same dispositive admissions as the four related patents held invalid in *Apple* and *Domino's Pizza*. No new content in the related '651 patent meaningfully distinguished the Federal Circuit's on-point rulings. This is a highly unusual case where the Federal Circuit had already spoken not just once, but twice, with two different panels unanimously explaining why claims like these are invalid under § 101 and *Alice*. Any reasonable patent litigant would have accepted the Federal Circuit's rulings and appreciated that the related '651 patent suffered from the same incurable § 101 defect as the related patents.

Ameranth now points to its submission of paid expert opinions, but that submission only made this case more exceptional because, as the Court noted, those opinions contradicted the patent itself in "many material respects." D.I. 29 at 14-16. The declaration from Ameranth's principal, Mr. McNally, also changes nothing about the extraordinary lack of merit in this case.

All that remains is to award fees under § 285 for this exceptional case, both to compensate Olo for having to incur substantial attorneys' fees in defending this meritless case through appeal (despite Olo's repeated warnings to Ameranth that it would seek fees) and to deter Ameranth and similarly-situated plaintiffs from pursuing baseless litigation in the future.

II. REPLY ARGUMENT

A. Ameranth Misstates the Law Governing § 285 Fees Awards.

Ameranth mischaracterizes the law when it argues that its alleged subjective "good faith" shields it from liability. Opp. at 6-7. As the Supreme Court held in *Octane Fitness*, an exceptional case under § 285 is "simply one that stands out from others with respect to the substantive strength of a party's litigating position (considering both the governing law and the facts of the case) or the

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