

Litigator of the Week Runners-Up and Shout Outs

By Ross Todd
August 21, 2020

Between our winner and these first two runners-up, we can safely say that it's been a big couple of weeks in the patent world.

First up, a team of heavy hitters representing Qualcomm scored a huge win at the Ninth Circuit on August 11 that vacated U.S. District Judge Lucy Koh's judgment in favor of the Federal Trade Commission in its antitrust case targeting the company's licensing practices. The ruling reversed a permanent, worldwide injunction and, as my colleague Scott Graham wrote, provided "vindication" for the in-house lawyers who had been labelled as the "architects" of an anticompetitive licensing campaign in Koh's May 2019 order. Tom Goldstein of Goldstein & Russell handled Ninth Circuit arguments for Qualcomm's team which included lawyers from Cravath Swaine & Moore, Kecker, Van Nest & Peters, Morgan, Lewis & Bockius, and Wilson Sonsini Goodrich & Rosati.

In other big news in the patent world, a Wilmer Cutler Pickering Hale and Dorr team led by Amy Wigmore, Kevin Prussia and Bill Lee scored a huge win for clients Bristol-Myers Squibb Company and Pfizer Inc. on August 6 when U.S. District Judge Leonard Stark in Delaware found that proposed generic versions of the blockbuster drug Eliquis from three defendants in Hatch-Waxman litigation infringed patents held by their clients which don't expire until 2026 and 2031, respectively. Eliquis, a drug prescribed to reduce the risk of stroke and blood clots in people who suffer from atrial fibrillation, had \$7.71 billion dollars in sales last year and ranked fourth in sales growth, according to trade publication Fierce Pharma.

Heading up a long list of shout out-worthy wins over the past two weeks, Carmine Boccuzzi of Cleary Gottlieb Steen & Hamilton got a win for Goldman Sachs at the Second Circuit, which on August 11 upheld rulings by the district court and bankruptcy court below dismissing claims brought on behalf of Lehman Brothers Special Financing Inc. concerning the enforceability of market standard provisions setting payment priorities in structured finance transactions. Cleary was part of a joint defense group representing Lehman counterparties along with Morgan, Lewis, & Bockius and Sidley Austin.

Working alongside lawyers at the **ACLU** and **Legal Voice**, a team at **Cooley** led by **Elizabeth Prelogar** and **Kathleen Hartnett** secured a preliminary injunction on August 17 blocking a state law targeting transgender athletes that made Idaho the first state in the U.S. to ban transgender and intersex students from playing school sports. "While the citizens of Idaho are likely to either vehemently oppose, or fervently support, the Act, the Constitution must always prevail," wrote Chief U.S. District Judge David Nye.

A team from Kirkland & Ellis including David Zott, Martin Roth, and Daniel Siegfried continued the firm's winning streak for BP in cases where states' attorneys general accused the company of double dipping by using

government funds set aside to clean up leaks in underground storage tanks for sites that the AGs claimed were also covered by insurance policies. The South Dakota Supreme Court on August 12 issued a unanimous decision affirming a lower court's ruling for BP finding that the underlying insurance contracts were unambiguous and didn't provide coverage for cleanup. Just two days before the South Dakota decision, the state of Montana dropped its case after BP pointed out it failed to appeal from the lower court's final order resulting in judgment.

Latham & Watkins Chicago partner Matthew Walch and Washington D.C. associate Jessica Saba, working with the support of New York partner Jimmy Brandt, scored a summary judgement victory on August 11 in the Western District of Wisconsin for client Dalton Education in a trade secrets showdown with a subsidiary of Kaplan. U.S. District Judge James Peterson knocked out the bulk of the plaintiff's entire damages model in a case involving Dalton hiring two employees from its competitor.

Also from Latham, a team led by Kevin McDonough including partner Benjamin Naftalis and counsel Thomas Giblin on August 5 scored a win for Funko Inc. and its officers and directors when Judge Susan Amini of the Washington State Superior Court dismissed with prejudice a proposed class action asserting claims under Sections 11, 12, and 15 of the Securities Act of 1933. This consolidated action included all five active state court complaints filed after Funko's November 2017 IPO suffered the largest first-day price drop since 2000.

Barry Landsberg led a team from Manatt, Phelps & Phillips that won a major ruling capping the exposure of HCR ManorCare, an owner and operator of nursing homes across the country. The California Supreme Court ruled in favor of Manatt's client on August 17 finding that statutory damages are capped at \$500 per lawsuit, not \$500 per violation, in lawsuits alleging violations of residents' rights brought under the state's Health and Safety Code.

Also getting shout outs this week are Sean Murphy and Robert Liubicic of Milbank who secured victory after a 11-day January bench trial in Denver before U.S. District

Judge Christine Arguello for Great-West Life & Annuity Insurance Company and Great-West Capital Management LLC, which do business as Empower Retirement, the second-largest retirement plan recordkeeper in the country and operator of mutual funds with more than \$25 billion under management. Plaintiffs claimed that Milbank's client had charged excessive fees. But in an August 7 ruling, Arguello found that even though Milbank didn't have the burden of proof, the defense team "overwhelmingly proved that their fees were reasonable and that they did not breach their fiduciary duties."

A Morrison & Foerster team led by Stacey Sprenkel and Dan Marmalefsky working pro bono alongside attorney Ellen Eggers and the Northern California Innocence Project, won the reversal of a murder conviction for Arturo Jimenez, who was wrongfully convicted in 1995. On August 12, the Los Angeles District Attorney's Office announced that it was dismissing the case after the one witness who identified Jimenez said she had been pressured by police and another man, now dead, confessed to multiple people that he had committed the murder.

A shout out to a team at Quinn Emanuel Urquhart & Sullivan led by Derek Shaffer and Bill Burck who scored yet another victory for New England Patriots owner Robert Kraft on August 19 when Florida's Fourth District Court of Appeal unanimously affirmed the suppression of video recordings made when law enforcement were investigating suspected prostitution at a massage parlor.

Also at Quinn Emanuel, Richard Erwine, Ray Nimrod, and Zach Summers persuaded U.S. District Judge James Selna in Santa Ana, California to grant summary judgment on August 12 in a patent challenge high-definition TV maker Vizio's fraced from Polaris PowerLED over patents related to liquid crystal display.

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