

Litigators of the Week: Cooley and Mayer Brown Team to Win Oculus Rift Ownership Dispute for Palmer Luckey and Facebook

A team led by Michael Rhodes at Cooley and Lauren Goldman at Mayer Brown fought off a \$400 million claim at trial in an ownership dispute brought by a Hawaii partnership that hired Luckey to build a prototype of a head-mounted 3D camera around the same time he was developing the first version of the popular Rift virtual reality gaming headset.

By Ross Todd
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Before Palmer Luckey, the cofounder of the virtual reality gaming company Oculus, built his first prototype for the company's "Rift" headset, he did work for a two-man Hawaii partnership called Total Recall Technologies. TRT paid Luckey \$798 to buy parts to build prototypes for its own head-mounted displays for a 3D 360-degree camera, promising Luckey, who was a teenager at the time, royalties from any TRT devices that might make it to market.

The TRT devices never took off. The Rift did. And after Facebook paid billions for Oculus, TRT sued Luckey and the company in 2015, claiming Luckey's work on the Rift drew on design features, confidential information and materials provided by TRT.

Last week, after two prior trips to the Ninth Circuit and a seven-day jury trial in front of U.S. District Judge William Alsup, a San Francisco federal jury [sided with Luckey](#) in the \$400 million ownership dispute.

Michael Rhodes at **Cooley** handled the entire trial, from the opening statement, to witnesses,



Courtesy photos

(L-R) Michael Rhodes from Cooley and Lauren Goldman from Mayer Brown.

including Luckey and the two TRT partners, to closing argument. Thanks to some nifty lawyering by **Lauren Goldman** at **Mayer Brown**, Facebook was [out of the case](#) before it even went to the jury.

Litigation Daily: Who did you represent and what was at stake?

Mike Rhodes of Cooley: We defended Facebook Technologies, LLC as successor in interest to Oculus, Inc. and Palmer Luckey. The central claim advanced by plaintiff Total Recall Technologies was that Palmer Luckey, the inventor of the virtual reality headset the "Rift," breached an August 1, 2011

contract under which he developed two prototype head-mounted displays for TRT's 3D 360-degree camera then under development. TRT claimed that the Rift, a device that Mr. Luckey developed around the same time, should have been, but wasn't, delivered to TRT for its evaluation. TRT was seeking to recover approximately \$400 million in damages and unjust enrichment representing the amount that Mr. Luckey received when Facebook acquired Oculus in March 2014 for up to \$3 billion in total value.

Who all was on your team and how did you divide the work?

Rhodes: The Cooley team also included partners **Mark Lambert** and **Kristine Forderer**, and associates **Ellie Barczak**, **Alex Kasner** and **Jessie Simpson LaGoy**. I have worked closely with Mark and Kristine on this case and other Facebook matters for several years, and the entire Cooley team was instrumental throughout the litigation and in developing all of the evidence for the trial. Partners Lauren Goldman and **Michael Rayfield** from Mayer Brown handled the core legal issues presented (pretrial and trial-related briefings, motions in limine, jury instructions and verdict forms, and JMOL motions) and I handled the entire trial, including the jury selection, opening and closing statements, and examining all of the witnesses.

You had knocked this case out a couple of times at the District Court only to see it revived again at the Ninth Circuit. Briefly walk me through what happened there.

Lauren Goldman of Mayer Brown: We twice obtained summary judgment on the issue of whether the TRT partnership could bring the suit since the two partners did not both support the suit when it

was filed. Ultimately the Ninth Circuit disagreed and one of the two TRT partners (Tom Seidl) entered into an agreement by which he left the partnership in exchange for 30% of any recovery from the case and agreed also to cooperate with the remaining partner (Ron Igra) in pursuing the case. When the case was remanded a second time, Judge Alsup quickly set it for trial.

How were you able to get Facebook out of this case before it went to the jury?

Goldman: We moved for a directed verdict on the ground that there was no evidence that the Oculus entity had anything to do with Mr. Luckey's alleged constructive fraud. The Court agreed and dismissed the corporate defendant on the final day of trial shortly before closing arguments commenced.

What was the setup like in Judge Alsup's courtroom and how did that affect your presentation?

Rhodes: Everyone had to be vaccinated and wear masks in court. When attorneys, the court or witnesses were speaking, they were allowed to take their masks off. The jury (10 people) was physically spaced apart to comply with social distancing rules and thus occupied part of the public gallery. We also did not use a central podium, and hence I addressed the jury and examined witnesses from a greater distance than typical. All told, I did not feel that any of these conditions imposed any constraints and felt very comfortable in Judge Alsup's courtroom.

What role did the prototypes of these headsets play at trial? Were the jurors able to inspect or handle them?

Rhodes: The main prototypes were physically present in the courtroom and were admitted as exhibits such that the jurors could physically examine them. This was important because one of the central issues

in the case was whether the Rift prototype that Palmer Luckey sent to John Carmack (a famed video game developer whose emphatic public endorsement of the product at a trade show gave fuel to the meteoric rise of Oculus and the Rift) was the same as the two prototypes that Mr. Luckey developed for TRT. The jury would conclude by their verdict that they were not the same.

What do you think the keys were to persuade the jury to go your way on all four questions on the jury form?

Rhodes: We had a very clear message that the Rift was designed specifically for video gaming and the two TRT prototypes were designed to view HD video photography. These very different purposes, in turn, drove different design choices. And TRT was clear from the get-go that their desired head-mounted display was “not for gaming” (in its words). We also exposed that the TRT partners had lied to Palmer Luckey about who they were and what their business was and that one of them (Ron Igra) wanted to leverage the threat of litigation to (in his words) “get rich.” Last, we married these main themes with the fact that Palmer Luckey did all of his work for TRT for free and never really had any chance to get paid under the one-sided deal that TRT struck with him. We emphasized those themes

in both the opening statement and closing argument and with each of the live witnesses.

Mike, I think you’ve represented Facebook and its affiliates at trial more than anyone at this point. How does this case compare to your prior trial work for the company? And what are they like as a client?

Rhodes: I’ve acted as lead trial counsel for Facebook four times – once we settled mid-trial and the three times we went to verdict, we won. I’ve done a lot of work for the company over the years and so there is a deep trust and partnership between my firm and Facebook Legal – that years-long relationship means that there is a common style and approach that we collectively pursue as we work cases up for trial. Facebook Legal is staffed with very smart and sophisticated lawyers and I’m grateful that they entrust important cases to me and my firm.

What will you remember most about this matter?

Rhodes: It was my first jury trial and extended in-person court experience since the pandemic, so that made it memorable. I sat alone in the gallery by myself for about an hour before the verdict came in. I thought to myself, now 37 years into the practice of law, how incredibly fortunate I am to do this for a living – that is, stand in the well of federal courtrooms around the country and plead on behalf of the world’s leading technology companies, like Facebook.

Cooley