

TOP INTELLECTUAL PROPERTY LAWYERS 2017

Douglas E. Lumish

FIRM

Latham & Watkins LLP

CITY

Menlo Park

SPECIALTY

Litigation

Lumish is vice chair of Latham's litigation and trial department and former global co-chair of the firm's intellectual property litigation practice. As technology evolves, Lumish and his clients have kept pace with updated responses to new challenges for clients like Arista Networks Inc., Symantec Corp., Western Digital Corp., Hitachi Ltd., Amazon.com Inc., Codexis Inc., ThermoFisher Scientific Inc., Life Technologies Corp., and Cornell University.

"The industry has moved to software-defined networking, as parts of switching go from hardware to software, changing the way software is done," he said, explaining how his strategies also have progressed. "That's where the genius is."

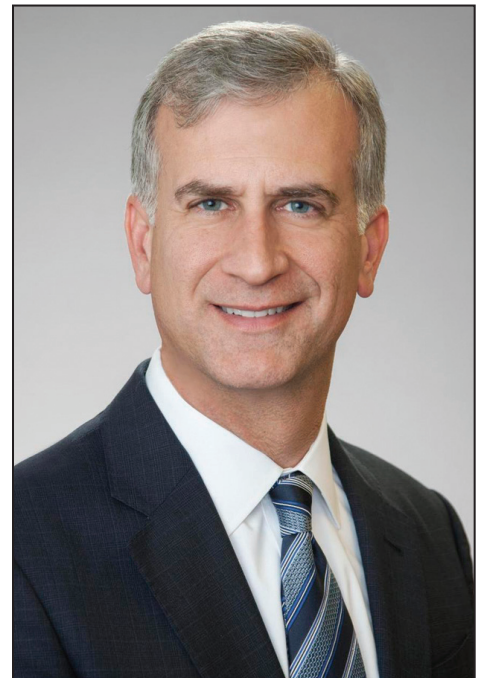
In a path-breaking case for Arista, a Santa Clara-based cloud networking company, Lumish was brought on after other counsel obtained adverse rulings from the International Trade Commission in bet the company litigation against rival Cisco Systems Inc. "Cisco has dominated the market for a long time, but now it's falling behind," he said. "They used to say they never sued anyone before, but that has changed."

Cisco's attack on Arista's switches

spans two separate district court cases and two ITC investigations. The basic allegation is that Arista's products infringed 14 patents. The outcome as of May has been favorable decisions on 10 of the patents and a favorable jury verdict against Cisco's copyright claims.

When Lumish took over the challenge, he and colleagues quickly strung together a series of decisive reversals that turned the tables on Cisco. Chief among these was taking part of the case to the U.S. Customs and Border Protection to contend that an extensive Arista redesign to modify its switches would satisfy the Federal Trade Commission.

"I've done patent litigation for 21 years and never interacted with Customs before," Lumish said. "They have an IP branch, and we asked them to see whether our switches fall within an exclusion order issued by the ITC. That became a separate infringement proceeding." He used discovery from the ITC litigation. "We fought it out before a Customs board in a mini-trial that we won. That cleared the way for Arista to import its revolutionary switches." *In the Matter of Certain Network Devices, Related Software, and Components Thereof (II)*, 337-TA-945 (U.S. ITC, filed Dec. 19, 2014).



"The initial decision from the administrative law judge found no infringement," Lumish said. "We won everything, but they have appealed to the full commission."

"I never thought going in that I'd be doing patent litigation," Lumish said. "I thought it was kind of boring, but I have learned that the puzzles are so interesting. I love my work."

— John Roemer