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# IP Lawyer Is Ruthless–About Simplifying Things

**By Scott Graham**

Julie Holloway is a San Francisco partner at Latham & Watkins who tries patent cases to judges, juries and the International Trade Commission. With a master's degree in electrical engineering, she relishes cross-examining technical experts on make-or-break issues. Earlier this year Holloway played a key role on a Latham trial team that scored a win for Nvidia Corp. against Samsung Electronics Co. in the Eastern District of Virginia. We asked her to share some tips on trying technically complex cases to juries. Her most important: Simplify. Ruthlessly simplify.

**Julie Holloway, Latham & Watkins partner**

***Jason Doiy***

**Q. How do you tell a story that is technically and legally complex under judge-imposed time limits?**

A. What you have to, first of all, is simplify the story. You lay out what you're going to cover in a case, witnesses, opening, closing—sometimes you get a separate time allowance for opening and closing, sometimes you don't. You put down a time allowance for each examination, direct and cross, and you have to stick to it like glue.

**Q. That doesn't sound easy.**

A. It's always a challenge, because you're trying to put something complex into a relatively short period of time. But the fact is it really helps you, because what you have to do for the jury, whether you have time limits or not, is simplify the case. You have to focus on a few key issues, and you have to figure out how to express them so that they're going to be understandable. You really have to focus on the right language, the right graphics, the right analogies to get the case across to the jury.

**Q. You're saying time limits actually help your case?**

A. In the same way page limits do. They may be unwelcome when you're actually dealing with them, but yes, they force you to do what you ought to do, which is simplify.

**Q. How do you put together a short and simple direct examination of a technical expert?**

A. First of all, you have to have a good expert, someone who not only has expertise but is capable of explaining things to lay persons. And you have to work with that person to figure out what are the key issues that you're going to focus on—the very few—what words you're going to use to describe those issues, what analogies are helpful, what graphics are helpful. Then you have to put the entire examination together. You have to check the timing and make sure it's going to work, and if not you're going to have to cut things out.

**Q. How would this work in practice?**

A. I had a case involving cell phone technology. The key issue that we decided to focus on for unifying the direct examination, and really the case as a whole, was the distinction over prior art. Because we had a solid case for infringement, but their key issue was going to be invalidity.

The issue in technical terms was who's responsible for a channel assignment—the base station, or the cell phone? And this depended on new advancements in modulation techniques that made it possible for the cell phone, rather than the base station, to do the assignment. That sounds pretty complicated. But I thought about how this worked in the prior art. The cell phone would basically request channels from the base station. The cell phone might say, "I have a lot of data, could I have four channels?" And maybe the base station says, "Sure, you can have four channels." Or "No, you can have two channels." Or "Sorry, I got nothing."

And it struck me that this was very much like Mother May I, a game I played when I was a very small fry. So that was the analogy that we used, that the prior art was like Mother May I, and boy this [process] was time consuming. Because you have to ask, then you have to receive, and then you send data--whereas in our invention and in the accused products, the cell phone would just say, "Hey, I've got a photo upload to Facebook, I'll just grab four channels and send the data up," so it saves time. And we put that into the opening, into the background of the invention, we explained the invention against the prior art during our case in chief, and then echoed it throughout the case. And it worked really well, it was a compelling analogy. It was simple, but it worked.

**Q. So in that situation you're working with your own expert. How do you keep things short and simple when you're on cross examination?**

A. You want to elicit a series of admissions that show his direct testimony is wrong and your direct testimony is right. Well, sure, people want gold plates of ice cream in heaven too, how do you get that? It's a lot of planning and work. Most often where you get a good cross is from a good expert deposition. And where you get a good deposition expert transcript is from planning the expert deposition.

For example in this cell phone case, the expert on the other side had actually taken the position that in the prior art, the cell phone did select the channels. I spent several hours reviewing the prior art very carefully—it was thousands of pages—and figuring out how I could prove that it was the base station. And so it took me maybe an hour during the deposition, and a day or two before the deposition, but I got a clean, clear admission that, "OK, yes, in the so-and-so prior art, the base station assigns." So that's something you can do on cross in two or three minutes, although it took a lot of planning and a lot of arm-wrestling at the deposition to get it.

**Q. What happens if the expert comes into court and says, "I misspoke when I said that"?**

A. Well, they'll sometimes try to do that, but the fact is that you did say it, you said it under oath. And typically what you can do is not only get the admission, but get some backup that shows why the admission is correct. Things like, "So you not only said X, but you said X is correct for reasons A, B, C?"

**Q. Are there certain types of IP cases that are more likely to go to trial than others?**

A. Sure. First of all, is it a competitor case? Or, if it's an NPE [non-practicing entity], is it a serious NPE that typically does go to trial as opposed to someone who's looking for a quick settlement? And generally the closer cases are more likely to go to trial.

**Q. What was the road to trial like in the Nvidia case?**

A. Samsung came in with eight patents. And by the Friday before trial they dropped four of them. And Friday afternoon, they dropped one of the two I was handling, and we headed into trial with just three. And then it turned out there was a mistrial on two of the patents. So mine was the only one left standing. I mean, we had a whole team of senior people ready to try the case, but I had the only patent left.

**Q. I'm trying to think of the analogous children's game.**

A. There's Battleship [laughs]. You just keep sinking those battleships.