

IP Group Of The Year: Latham

By **Tiffany Hu**

Law360 (January 25, 2022, 2:04 PM EST) -- Latham & Watkins LLP helped LG Energy Solution reach a \$1.8 billion settlement in a trade secrets dispute against SK Innovation and represented indoor cycling behemoth Peloton in its ongoing fight with Mad Dogg Athletics, earning it a spot as one of Law360's 2021 Intellectual Property Groups of the Year.

Latham's intellectual property team represented LG Energy Solution, which in 2019 accused South Korean rival SK Innovation Co. of engaging in a "multicompany, international conspiracy" to poach LG's employees and steal the trade secrets behind its electric vehicle batteries. The complaints were filed in Delaware federal court and before the U.S. International Trade Commission.

LG Energy claimed in the ITC case that it lost \$1 billion because SK Innovation poached employees and stole electric battery trade secrets. In February 2020, Latham's attorneys helped LG Energy win a rare default judgment after an administrative law judge said evidence destruction by SK Innovation undermined his ability to decide the case on the merits.

The full commission upheld the default judgment and issued an exclusion order banning the importation of SK Innovation's electric vehicle batteries for 10 years. The companies ultimately settled for \$1.8 billion, hours before the White House was set to decide whether to uphold the import ban.

Aside from the "vast and clear" commercial implications, the case is significant because the default penalty against SK Innovation for the spoliation of documents shows that "if it wasn't clear before, it's certainly clear now that the ITC is just not going to tolerate that kind of behavior," according to Bert Reiser, a partner in Latham's Washington, D.C., office, who also leads the firm's ITC practice.

With 119 intellectual property attorneys across Latham's U.S. offices, the group offers a broad set of trial skills that sets it apart from other firms that have a few "superstars" backed by a support team, according to Jennifer Barry, the global vice chair of Latham's intellectual property litigation practice and deputy office managing partner for the firm's San Diego office.

Latham represented Peloton in a patent lawsuit brought by Mad Dogg Athletics Inc. over its programmed exercise bikes — part of the companies' "multipronged fight" in federal court and at the Trademark Trial and Appeal Board, Barry noted.



Filed in the Eastern District of Texas, the suit claimed that Peloton's whole business was created "to exploit the indoor cycling market that [Mad Dogg Athletics] created" and alleged that Peloton "built a multi-billion dollar business based in large part on MDA's pioneering patented invention."

In September, U.S. District Judge Rodney Gilstrap found that the patents were abstract, though he opted not to invalidate them under the U.S. Supreme Court's *Alice Corp. v. CLS Bank* ruling. Barry said that no appeal has been filed, leading the team to believe that "at this point, that patent case is probably put to bed, with a really exceptional and exciting win for us."

But Mad Dogg has elsewhere continued to "poke the Peloton bear," according to Barry, by sending cease-and-desist communications over what Mad Dogg claimed was Peloton's infringement of its trademarks for the terms "spin" and "spinning."

"Peloton made the decision that for its own benefit and for the benefit of the industry, they're now challenging the validity of those 'spin' and 'spinning' trademarks for exercise bikes themselves and the classes that are held using those types of exercise bikes," Barry said.

Latham also represented the Astellas Institute for Regenerative Medicine in its Massachusetts federal court suit against researchers who claimed to have invented a patent for the production of human stem cells. Last February, a judge ruled in Astellas' favor, finding that the scientists did not make inventive contributions.

A jury trial was scheduled for April 2020, but was later changed to a virtual bench trial due to the COVID-19 pandemic. Though the trial was remote, Latham set up a "virtual courtroom" in Washington, D.C., anyway, creating a podium and obtaining a high-quality camera — and even sending the judge both virtual and hard copies of the exhibits for each day in trial — to emulate the in-court experience, according to David Frazier, one of the lead partners who tried the case.

"We brought our whole Washington, D.C., team, even though it was a remote trial, and so we were able to get the benefit of that team chemistry," Frazier said. "That's the way we work together and count on each other and draw out each other's ideas ... [it's] how we succeed on these teams, even in this virtual environment."

--Additional reporting by Britain Eakin. Editing by Daniel King.