

Skilled in the Art

By Scott Graham

► Four months ago the Federal Circuit heard arguments in *Pacific Coast Building Products v. CertainTeed Gypsum*, an appeal from an indefiniteness ruling by U.S. District Judge Lucy Koh. I was surprised for an indefiniteness case how much the questioning focused on expert testimony, and thought that might be a bad sign for **Latham & Watkins partner Matt Moore**, who was defending the judgment on behalf of drywall competitor Saint Gobain. It turns out I was wrong—the court affirmed Koh's ruling last week, along the way lauding the "detailed testing and analysis" from expert D. Paul Miller. Latham partners **Rick Frenkel**, **Adam Greenfield** and **Gabriel Bell** assisted Moore, along with associates **Reba Rabenstein**, **Gabrielle LaHatte**, **Diane Ghrist** and **Ashley Finger**.

► Earlier this year CardioNet and Sidley Austin scored a patent eligibility win by persuading the Federal Circuit that an automated process for identifying atrial fibrillation and flutter is eligible for protection. Now opponent **InfoBionic** and **Latham & Watkins** have returned the favor, persuading a different panel that another CardioNet patent—this one combining machine and physician monitoring—is ineligible. "Spot-checking systems for quality control is the sort of longstanding practice that courts have consistently held to be an abstract idea and is performed here using generic hardware," Judge Alan Lourie wrote for the court July 1 in *CardioNet v. InfoBionic*.

During the June 4 telephonic arguments, Latham partner **Max Grant** emphasized a Federal Circuit decision that had issued just a few weeks earlier, *Electric Communications Technology v. ShoppersChoice*. Judge Raymond Chen asked Grant to repeat the case name, adding, "you may know Federal Circuit case law better than I do." Asked about it this week, Grant said, "It is a really nice compliment. It is absolutely false." He credited his partners **Gabriel Bell** and **Charles Sanders** with spotting the case and preparing a supplementary filing so it would be part of the record.