

## Technology Group Of The Year: Latham & Watkins

By Daniel Wilson

*Law360, Washington (January 11, 2016, 7:25 PM ET)* -- Victories for a tech client on the International Trade Commission's patent authority and for Apple and Amazon in other prominent cases, plus key roles on major transactions like Avago Technologies' \$37 billion Broadcom acquisition, have earned Latham & Watkins LLP a place among Law360's Technology Practice Groups of the Year.



Work for technology companies — and their financial advisers and investors — involves attorneys from across the firm, including its technology transactions, emerging companies and intellectual property groups, Latham & Watkins said. They cover tax and transactional advice and a gamut of litigation, according to the firm, which boasts communications, information technology, Internet, semiconductor, and "cleantech" companies on its client roster.

Tech clients are drawn to Latham & Watkins' deep bench of professionals, whether the lead attorneys or the highly experienced associates, engineers, paralegals and other support staff, Washington, D.C.-based partner Max Grant, a patent litigator, told Law360.



Max Grant

He related an anecdote about a client pitch to explain: "What the client said to us was, 'Look, you guys are impressive lawyers, but everybody's got impressive lawyers as their lead people ... what really impresses us is everybody else and the depth of the team, because we know those are the people who are going to be doing the majority of the work and it's the quality of those people that has a real impact on how a case gets handled over time.'"

Grant himself was a key player in a major recent victory for client Cross Match Technologies Inc., arguing before an en banc Federal Circuit in a case that ultimately resulted in victory for the company.

In its ITC case, Cross Match had won exclusion and cease-and-desist orders against patent-infringing fingerprint scanners imported by South Korean company Suprema Inc. But a panel of the circuit court later ruled in a 2-1 decision in 2013 that the ITC had no authority to issue an exclusion order based on induced infringement.

The firm then had to convince the appeals court, on the back of a petition chiefly drafted by the firm's Gabriel Bell, to first rehear the case en banc — itself a rare event — then overturn the panel, which the full court did in a 6-4 decision in July, reaffirming the ITC's authority to issue the exclusion order.

“It was satisfying in a lot of respects ... [but] what we really care about is helping these companies,” Grant said. “We have Cross Match, a relatively small company with a few hundred employees ... who really was suffering from the type of unfair competition that the ITC trade statute is all about. To be able to deliver a result for them and see people down at their company who are keeping their jobs because of the work we did, that’s pretty satisfying.”

With expertise at all business sizes, the firm also nabbed significant wins over the past year for industry giants Amazon.com Inc. and Apple Inc.

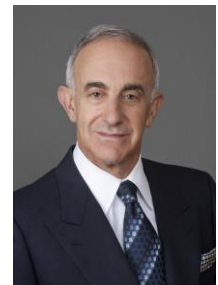
It helped Amazon in June get the Federal Circuit to affirm that the claims of OIP Technologies Inc.'s price optimization patent were invalid as abstract, and in July invalidate several Telebuyer LLC e-commerce patents that had been asserted against Amazon.

Representing Apple, Latham & Watkins secured what is likely the final decision in a long-running proposed class action accusing the tech giant of using its retail stores to attempt to drive independent resellers out of business, with a California appeals court in February upholding a class certification denial.

But Latham & Watkins’ work in the tech space was not limited to litigation.

Other significant efforts include transactional work on several multibillion-dollar deals, headlined by semiconductor company Avago Technologies Ltd.’s \$37 billion acquisition of rival Broadcom Corp., the largest semiconductor industry deal ever, announced in May and expected to close early this year.

The deal required a novel deal structure, said Silicon Valley-based mergers and acquisitions partner Kit Kaufman, co-leader of Latham & Watkins’ semiconductor industry group.



Kit Kaufman

Among other issues that needed to be sorted out were “tax wrinkles,” particularly in the tax treatment if stockholders chose to take equity in the new company instead of cash. The deal structure ultimately chosen, meant to ensure tax-free rollover treatment, includes the formation of a limited partnership in the Cayman Islands that former Broadcom shareholders may elect to receive units in, as well as new holding company incorporated in Singapore, among other provisions.

“This really involved a lot of planning ... to assure a tax-free rollover for those [who wanted it],” Kaufman said. “It’s much more complicated than many transactions in terms of the election process.”

The half-cash, half-equity deal structure also required the firm to help lock down billions of dollars in financing commitments while helping Avago address regulatory requirements across multiple jurisdictions, demonstrating two major strengths of the firm's technology-related work: its broad expertise and cooperative culture, Kaufman claimed.

“You take a deal like the Avago deal, which required all kinds of different debt and financing — we pick up the phone and call people, and they’re on the team,” he said. “They may be in D.C., they may be in New York, they may be overseas, [but] you can get things done in a cooperative manner where everybody treats it as if it were their own [personal] client.”

--Editing by Edrienne Su.