

## Technology MVP: Latham & Watkins' Douglas E. Lumish

By **Sophia Morris**

*Law360, New York (December 20, 2016, 1:45 PM EST)* -- Latham & Watkins' Douglas E. Lumish saved Symantec Corp. from potential damages of up to \$300 million in an infringement case over Symantec's antivirus software, and won a favorable ruling for Arista Networks in a contentious trade secrets suit, earning him a spot as one of Law360's Technology MVPs.

Symantec's battle with Intellectual Ventures I LLC presented the Menlo Park, California-based partner with an opportunity to utilize his skills in breaking down complex technology concepts to a jury. The long-running suit involved "multiple patents across multiple product lines, which is always more difficult to explain to a jury," Lumish told Law360.

When he litigates a technology patent trial, Lumish said he looks for analogies that will allow jurors to understand the complexities of the case.

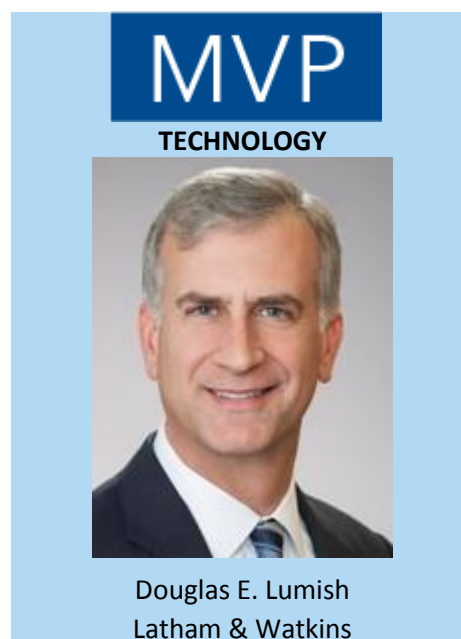
"We're really looking for something in our everyday lives that people who aren't engineers or scientists can grasp and use as an either an analogy or comparator," he said.

A Delaware federal court jury was persuaded by Lumish's arguments, and he obtained a verdict of non-infringement for Symantec on a patent that accounted for more than 95 percent of the up to \$300 million in damages claimed by Intellectual Ventures.

Lumish said that one of the challenges of the complex, multi-stage trial was his cross-examination of Nathan Myhrvold, the founder of Intellectual Ventures and former chief technology officer at Microsoft.

Questioning someone who is well-known and an expert in their field "is always something that adds risks and challenges to a jury trial," he said, describing the experience as an attempt to match wits with someone twice as smart as himself

Lumish fought for Symantec in post-trial motions, leading the court to invalidate one of the two



remaining patents and further slash the damages award.

His tenaciousness continued as the case headed to the Federal Circuit Court of Appeals where, in September, a panel of the court found the last remaining patent was invalid, tossing an \$8 million damages award in favor of Intellectual Ventures. Intellectual Ventures is seeking an en banc rehearing of the ruling.

Another significant case for Lumish in the last year was his representation of cloud networking company Arista Networks Inc. in an intellectual property case of a different kind — a trade secrets and licensing suit brought against it by software company OptumSoft Inc. in California state court.

OptumSoft is owned by Arista co-founder David Cheriton, and the suit was at times contentious, with Arista filing a cross-complaint that accused OptumSoft of being bitter because of Arista's success, according to court documents.

The Arista case was split into two parts, and the first phase ended in December 2015 with a bench trial ruling in favor of Arista. The judge found that it is the owner of the licenses for the disputed files at the center of the suit. The trade secrets part of the case is ongoing, but after defending Symantec for six years, Lumish doesn't mind a wait.

Lumish said the personal nature of trade secrets suits marks them as different from patent cases. The cases can be equally as complicated, but the in trade secret suits individuals often take precedence over the technology.

Still, his focus is always on ensuring the jury has a full understanding of the technical aspects of a case.

"I'm not an engineer, I'm not a scientist," he said. "I have to learn these things from scratch, and so for me that process of having to figure out what it means and to put it in my own way — that's probably one that makes the engineers and scientists look at me a little cross-eyed but helps me understand it — and gets [me] to a place where I can teach it and articulate it, is a big part of the process."

--Editing by Orlando Lorenzo.