

Intellectual Property

TOP 75 LEADING IP LITIGATORS



STEVEN M. BAUER
Latham & Watkins LLP
San Francisco
Trade secrets

In a trial last fall in Santa Clara County Superior Court, Bauer led a team that won a defense verdict for Marvell Technology Group Ltd. despite an incriminating voice mail left by its general counsel.

Attorneys representing the company had fought hard to keep the voice mail — left with Virginia Wei, Jasmine Technology Inc.’s director of business and legal affairs during business negotiations — out of the trial.

After Bauer lost the battle to exclude the evidence, he set about trying to minimize its importance. Jasmine emphasized the voice mail during the trial at every turn, treating it as a virtual confession that Marvell plotted to steal Jasmine’s trade secrets. Jasmine originally sought more than \$200 million in damages.

The voice mail was played during the trial. On it, Marvell general counsel Matthew G. Gloss, after failing to hang up the phone, chatted with two other company executives about taking Jasmine’s technology and including it in Marvell’s products as well as the possibility of Marvell executives going to jail over it.

Bauer argued the conversation was the uninformed musings of executives who were new to the company or uninformed about the actions of other officials.

“Our challenge was to make sure the case was about a lot more than a voice mail,” Bauer said. “We wanted to make sure the testimony of the people involved was just as important as the recorded voices.” Gloss testified during the trial, and the jury was so interested that it asked to hear his entire testimony read back to them at one point during the eight days of deliberation.

Juror Casey Neale echoed Bauer’s arguments about the case in an interview after the verdict. “You have a legal team discussing hypothetical situations,” Neale said. “[Jasmine] was trying to use it as a confession and it wasn’t.” *Jasmine Networks Inc. v. Marvell Semiconductor Inc.*, 1-01-CV-901411 [Santa Clara County Superior Court].

— Craig Anderson

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DEAN G. DUNLAVEY

Latham & Watkins LLP
Costa Mesa

Patent and trade secrets

When it comes to intellectual property, timing is key — it matters who created what and when. For Dunlavey, uncovering the truth about timing mattered so much that, besides helping secure a win, it gave his client Monolithic Power Systems Inc. grounds to recover attorney fees from competitor O2Micro International Ltd.. Attorney fee awards in patent cases are reserved for “exceptional” cases involving vexatious litigation or misconduct, and that’s exactly what Judge Claudia Wilken of the Northern District found the O2Micro case to be. *Monolithic Power Systems Inc. v. O2Micro International Ltd.*, CV08-4567 (N.D. Cal).

After O2Micro threatened to sue MPS’ customers for infringing patents related to liquid crystal display monitors, MPS filed a declaratory relief action seeking an order that its products did not infringe any patents. In response, O2Micro filed a complaint against MPS before the International Trade Commission. O2Micro’s fitnesses, including the man claiming to have invented the technology, pointed to a document with a February 1998 date as proof O2Micro had beaten MPS to the punch. O2Micro claimed a computer software program had automatically inserted the date when the document was created.

Dunlavey and his team didn’t buy it, especially since the date on the document contained a curiously placed comma: “Feb., 18, 1998.”

They found a computer expert who testified the program O2Micro used did not insert dates automatically, and eventually the man who claimed to have invented the technology — whom Dunlavey cross-examined — admitted he inserted the date. O2Micro dismissed its claims against MPS and issued a covenant not to sue its competitor over the patent again.

In March, Wilken granted MPS’ motion for fees, finding O2Micro engaged in vexatious litigation and misconduct before the court.

“Rather than straightforwardly admit the truth, O2Micro dissembled and sought, through motion practice, to mask its proffer of false testimony,” Wilken wrote.

— Rebecca Beyer

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MARK A. FLAGEL

Latham & Watkins LLP

Los Angeles

Patent

It was nothing short of a saga.

For a decade, O2Micro International Ltd., has been lobbying patent infringement lawsuits at competitor Monolithic Power Systems Inc. Flagel defended MPS for five years of that legal battle.

The litigation finally came to a rest this summer after the International Trade Commission ruled in favor of MPS, and three weeks before a trial was set to begin in July, O2Micro dismissed its remaining patent infringement claim with prejudice. *O2Micro v. MPS*, 08-04567.

In early March, Flagel and his co-counsel filed a motion for attorneys' fees, which Judge Claudia Wilkin of the Northern District granted.

"It was so satisfying to actually read Judge Wilkin's order," Flagel said. "It's like the light turned on and she got it exactly right."

Over the years, O2Micro had filed more than a half-dozen lawsuits against Flagel's client, alleging the company infringed on O2 Micro's patent for Cold Cathode Florescent Lighting, technology used to illuminate computer laptop screens. In the latest suit, O2 Micro initially accused MPS of infringing on four patents but withdrew three of the claims after Flagel found evidence of similar technology predating O2Micro's patent.

It felt fantastic, Flagel said, when O2Micro dismissed that final claim and agreed not to sue over it.

Saria Tseng, vice president and general counsel for MPS, said Flagel has a high-level vision and the company has worked with him on many cases.

"He's great," she said.

Other recent matters Flagel has been involved in:

- Defended Broadcom in several multi-party patent infringement action in U.S. District Court for the Eastern District of Texas. *Wi-LAN v. Broadcom Corp.*,
- Represented the restaurant reservation website OpenTable in a patent infringement case in the Northern District of California.
- Defended Symantec Corp. in multi-party lawsuit filed in Delaware by Intellectual Ventures, the company launched by former Microsoft Corp. executive Nathan Myhrvold to buy up patents and sell licenses for them.

— Amy Yarbrough

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BOB STEINBERG

Latham & Watkins LLP
Los Angeles
Trademark, copyright

Steinberg, global co-chair of the intellectual property practice group at Latham & Watkins LLP, represented clients ranging from unknown start-up companies to major corporations such as Broadcom Corp., Chevron Corp. and The Walt Disney Co. Recently, Steinberg handled one of the most publicized IP matters of the past year, a trademark-related dispute involving the work — and alleged work — of famed American West landscape photographer

Ansel Adams.

In August 2010, Steinberg filed a civil complaint in federal court on behalf of the Ansel Adams Publishing Rights Trust, which manages the publishing rights to Adams' images, against an individual and a media company. *The Ansel Adams Publishing Rights Trust v. PRS Media Partners, LLC et al*, CV10-03740, N.D. Cal. The defendants, PRS Media Partners LLC and Fresno school building painter Rick Norsigian, were selling products derived from 65 glass plate negatives that Norsigian claimed were long-lost Adams works. The trust disputed that the negatives were created by Adams. The defendants filed a counterclaim in December. The case involved several cutting-edge trademark issues, and challenged Steinberg to choose from many paths how to proceed.

"You have a variety of IP claims you can bring," he said. "Trademark infringement ... unfair competition, right of publicity. We brought all those claims, and you might even bring a copyright claim," though he decided against the latter because the trust did not believe the negatives were authentic.

The parties entered a confidential settlement agreement earlier this month, in which each side assumes its own costs and fees and Norsigian and Media Partners agree not to use Adams' name, likeness or the Ansel Adams trademark to sell, promote or advertise Norsigian's negatives.

Another recent matter Steinberg was involved in:

- Won a complete defense verdict for FTI Consulting Inc. and other defendants in a trade secret misappropriation and copyright action concerning technology related to running clock auction software. The case was resolved in arbitration. *Optimal Markets Inc v. FTI Consulting, Inc. et al*, CV08-05765, N.D. Cal.

— Anna Scott