

# Daily Journal

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## TOP INTELLECTUAL PROPERTY LAWYERS 2019

### Douglas E. Lumish

FIRM

**Latham & Watkins LLP**

CITY

**Menlo Park**

SPECIALTY

**Patent litigation**

Lumish still recalls how and why he got involved in high-stakes intellectual property litigation — and the lessons he’s learned along the way.

“I was hoping to be a trial lawyer,” Lumish reminisced. “It was all about being in the courtroom for me.”

Early in his career, Lumish crossed paths with noted attorney Matthew D. Powers — then at Weil, Gotshal & Manges LLP, now of Tensegrity Law Group LLP — who “just so happened to do IP litigation,” Lumish said. He learned a lot from Powers, and not only about how to carry himself in the courtroom.

“You’re dealing with the smartest minds in the world, talking about bleeding-edge technology that isn’t available in the market yet,” Lumish said of those early years. “It’s a real window into Silicon Valley.”

Lumish would go on to become instrumental in the legal teams for powerhouses like Amazon.com Inc. and Arista Networks Inc., cementing his reputation as a top intellectual property litigator.

For Arista, Lumish and a Latham team successfully defended the Santa Clara-based cloud networking company in one of the biggest IP cases last year, in litigation against its rival, technology giant Cisco Systems Inc. After Arista received



adverse rulings in the U.S. International Trade Commission when represented by other counsel, Lumish and his team were able to reverse the tide.

Chief among their victories was obtaining noninfringement rulings from the U.S. Customs and Border Patrol that cleared the way for Arista to import its revolutionary ethernet switches. *In the Matter of Certain Network Devices, Related Software,*

*and Components Thereof (II)*, 337-TA-945 (ITC, filed September 14, 2018).

“IP litigation is changing constantly, but it must always be about finding the human story,” Lumish said, citing the thread he tries to find when strategizing his cases.

Another win for Lumish was the widely-seen WhatsApp-TriPlay verdict last year. Facebook Inc.-owned WhatsApp was sued by TriPlay, an Israeli-based company, of infringing its patents on using a server to translate messages from one format to another during transmission. Latham secured a victory for WhatsApp in March 2018, invalidating the two patents and winning a motion to dismiss. *Triplay Inc. v. WhatsApp Inc.*, 13-1703 (D. of Delaware, filed Oct. 15, 2013).

When asked what clinched the case, Lumish stressed that simplicity is key.

“You have to step out of the acronyms, step away from the algorithms and the equations,” he said. Of course, you still need to build a strong record, “but not at the expense of trying to get the juror to root for you.”

“It boils down to storytelling,” Lumish continued. “Jurors want to decide who to vote for. There’s good and evil in every trial, even an IP case.”

— Dan Heching