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TOP INTELLECTUAL PROPERTY ATTORNEYS in California for 2016

When we're listening to pre-1972 music on rotation in our smartphones or reaching for a ketchup bottle at lunch, intellectual property doesn't come to mind. But these are just a few examples of the work behind the California attorneys we chose on our list for their efforts protecting the intellectual property belonging to companies of all sizes across the country and around the world.

As technology makes vast improvements year after year across the industry spectrum, intellectual property attorneys — litigators and patent prosecutors — are rolling up their sleeves to stay ahead of the game. In California, established Silicon Valley and booming Silicon Beach have created global hubs for such innovation to take place in on-demand services, social media, health care, consumer technology and other various fields. But the fight to protect patents, copyrights and trademarks can start on a local court level and move to the appellate courts, while also heading to the U.S. Patent and Trademark Office, the U.S. International Trade Commission and the U.S. Supreme Court.

Intellectual property attorneys face many hurdles as they try to protect the branding of companies for consumers and a range of venues for those who want to protect their innovations. The attorneys in this issue took those challenges head-on and pushed technological progress forward.

—The Editors

Douglas E. Lumish

FIRM

Latham & Watkins LLP

CITY

Menlo Park , San Francisco

SPECIALTY

IP litigation



As global vice chair of Latham's litigation and trial department, Lumish faced a delicate courtroom management problem when he successfully defended cloud-networking company Arista Networks Inc. from claims by rival OptumSoft Inc. over trade secrets, computer file ownership and licensing terms.

The dispute pitted Silicon Valley legends and one-time collaborators Andy Bechtolsheim, founder of Sun Microsystems Inc. and Arista, and a Stanford professor, David Cheriton, who co-founded Arista and founded OptumSoft Inc.

Their duel was over the ownership of major components of Arista's software and the terms of its licensing agreement. The men had been among the first to fund Google in its earliest stages with \$100,000 apiece, but found themselves on the opposite sides of this high-profile trial.

One media outlet described them as warring billionaires with Cheriton, in effect, suing himself. *OptumSoft Inc. v. Arista Networks Inc.*, 1-14-CV-263257 (Santa Clara Super. Ct., filed April 4, 2014)

In August 2014, Arista replaced Wilson Sonsini Goodrich & Rosati PC with Latham as its trial counsel.

"The challenge was to keep centered on the licensing agreement," Lumish said. "With all the star-power personalities involved, you wanted to diminish the emotion and not let the drama take over. We wanted anti-drama."

Both Bechtolsheim and Cheriton testified extensively during the two-and-a-half week bench trial before Santa Clara County Superior Court Judge Peter H. Kirwan.

"They were cordial and polite to each other," Lumish said. "Professor Cheriton helped build Arista and moved on, and now he was competing with Arista and suing it."

Lumish strove to maintain focus on the terms of the agreement.

"It was very much an exercise in deconstructing the contract," he said. "Our view was that there was really no mystery to it — that the other side was trying to take a revisionist history view and claiming ownership that wasn't there."

In December 2015, Kirwan rejected OptumSoft's interpretation of the parties' license agreement, adopted Lumish's theory of the case and declared Arista the owner of all disputed files. The second phase of the case, concerning allegedly misappropriated trade secrets, remains in litigation.

"The parties are trying to cooperate and streamline this phase," Lumish said.

So he has a happy client? "I hope so," Lumish said. "They haven't fired me yet."

— John Roemer