Jeffrey T. Thomas

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Orange County

Jeffrey T. Thomas, a partner in the Orange County office of Gibson, Dunn & Crutcher, joined the firm in 1983. A member of the firm's Litigation Department and its IP and Antitrust and Competition Practice Groups, Mr. Thomas has extensive experience in intellectual property, antitrust, unfair competition and general commercial litigation.

Mr. Thomas, a fellow in the American College of Trial Lawyers, is an experienced trial lawyer who has successfully handled numerous significant intellectual property and complex business cases. He has represented major clients of the firm in patent and trade secret litigation, including trials that resulted in verdicts in favor of the firm's clients. He is a co-author of *Ross, Intellectual Property Law, Damages and Remedies* (Law Journal Press, 2000). Mr. Thomas is one of the founding masters of the Orange County IP inn of court. He has also successfully represented clients of the firm in antitrust, breach of contract and business tort cases. He recently served as lead trial counsel for Hewlett-Packard Co. in a significant matter against Oracle Corp. in which HP achieved a complete victory after trial.

Mr. Thomas has twice been named by the *Daily Journal* as one of the Top 100 Lawyers in California. The *Daily Journal* has also named him one of the top 75 intellectual property litigators. *The Best Lawyers in America* has named Mr. Thomas as one of the top lawyers in Southern California every since 2009. *Los Angeles Magazine* has repeatedly recognized him as one of the top 50 lawyers in Orange County and *LMG Life Sciences* has repeatedly recognized Mr. Thomas as a "Life Science Star". In 2016, the *National Law Journal* named Mr. Thomas as one of the top five trial lawyers in the U.S. Also, in 2016, *Law360* selected him as its "MVP" for the year in the trial category.

Mr. Thomas received a Bachelor of Arts degree in political science from the University of California at San Diego in 1979. He graduated *magna cum laude* in 1982 with a law degree from the University of San Diego School of Law, where he served as Comments Editor of the *San Diego Law Review*. Prior to joining Gibson, Dunn & Crutcher, Mr. Thomas served as a law clerk to the Honorable Gerald Brown, Presiding Justice of the California Court of Appeal, Fourth District, from 1982 to 1983.

Mr. Thomas is a member of the Board of Visitors of the University of San Diego School of Law and was the 2007-08 President of the School's Alumni Board of Directors. He has served as a member of the Board of Directors of the Orange County Business Council and is a current Board member of the Federal Bar Association-Orange County Chapter. Mr. Thomas is one of the founders of the Bench and Bar Society of the United Way of Orange County, which encourages charitable giving by attorneys in the County, and he is a member of the Advisory Board of Court Appointed Special Advocates, Orange County Chapter. He is admitted to practice in several federal district courts and circuits, including the Federal Circuit.

The following is a representative sample of Mr. Thomas' cases.

Capabilities

Intellectual Property
Antitrust and Competition
FDA and Health Care
Life Sciences
Litigation

Credentials

Education

University of San Diego - 1982 Juris Doctor
University of California - San Diego - 1979 Bachelor of Arts

Admissions

California Bar

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Intellectual Property

- ***Miotox v. Allergan.*** This was a dispute over interpretation of a patent license agreement in which plaintiff claimed it was entitled to $600 million in additional royalties based on its interpretation of the agreement. Summary judgment was entered in favor of Allergan, our client, pursuant to which the Court accepted Allergan's interpretation of the agreement and dismissed plaintiff's claim for the additional royalties.
- ***Ferring v. Allergan.*** This was a patent inventorship case, in which plaintiff claimed inventorship of patents belonging to our client, Allergan, should be corrected to show plaintiff's employees should be made the sole inventors of the patents. Summary judgment was entered in favor of Allergan, with the Court finding there should be no correction of inventorship of the patents in suit.
- ***Allergan, Inc. v. Sandoz, Lupin, Hi-Tech and Watson.*** This action is a consolidated Hatch-Waxman case in which our client, Allergan, Inc., asserted that defendant generic drug companies had infringed Allergan's patents by filing Abbreviated New Drug Applications seeking FDA approval of a generic version of Allergan's Lumigan 0.01% product. A five-day bench trial was held in July 2013, and in January 2014, the Court issued an opinion finding the asserted patent claims to be valid and infringed by the ANDAs. Defendants' appeal to the Federal Circuit is pending.
- ***Allergan, Inc. v Athena Cosmetics.*** The Central District of California handed significant, consecutive victories to our client, Allergan, Inc., in its long-standing dispute with entities selling illegal and infringing eyelash growth drugs in direct competition with Allergan's FDA-approved drug, Latisse. First, on March 5, 2013, the Court granted Allergan's motion for summary judgment as to infringement against Cosmetic Alchemy LCC, holding that Cosmetic Alchemy infringes Allergan's U.S. Patent No. 6,262,105 through the marketing and sale of its product, LiLash. Second, on March 6, 2013, the Court granted Allergan's motion for permanent injunctions against Cosmetic Alchemy and its co-defendant, Athena Cosmetics, Inc., pursuant to California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (the "UCL"). Among other things, the Court's injunctions prohibit Cosmetic Alchemy and Athena from advertising and selling their products, which are illegal drugs under California and federal law. The injunctions are supported by the Court's previous summary judgment rulings against Cosmetic Alchemy and Athena on Allergan's UCL claim. Allergan settled its claims against Cosmetic Alchemy following the Court's rulings. Allergan also dismissed its remaining infringement and false advertising claims against Athena without prejudice following a separate agreement between the parties. Athena appealed the Court's rulings against it on Allergan's UCL claim to the Federal Circuit, and those rulings were affirmed in December 2013. The permanent injunction was affirmed in part, with the Federal Circuit instructing the district court on remand to geographically narrow the injunction's scope. Athena is filing a writ of certiorari on the UCL claim to the U.S. Supreme Court.
- ***Allergan, Inc. and Duke University v. Apotex, Sandoz, and Hi-Tech.*** These consolidated Hatch-Waxman cases concern two patents covering Latisse®, our client Allergan, Inc.'s drug for treating hypotrichosis of the eyelashes. Latisse® is protected by a U.S. patent owned by Duke University and licensed to Allergan, and by another patent owned by Allergan. Allergan holds the New Drug Application for Latisse®, which has been approved by the FDA. Defendants sought to make and sell generic versions of Latisse® without going through the clinical trial process by filing Abbreviated New Drug Applications with the FDA, as allowed by the Hatch-Waxman Act. Plaintiffs (Allergan and Duke) initiated lawsuits alleging that defendants infringed their patents, and defendants countersued. After a November 2012 bench trial, the Court on January 24, 2013, issued an opinion in favor of plaintiffs, finding that plaintiffs had proven infringement and that defendants had not proven their defenses. Defendants appealed to the Federal Circuit on February 19, 2013. The case was argued in February 2014, and is now under submission.

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- ***Allergan, Inc. v. Barr Laboratories.*** This was a Hatch-Waxman case in which the plaintiff (represented by Mr. Thomas) asserted that the defendant generic drug companies had infringed plaintiff's patents by filing an Abbreviated New Drug Application seeking FDA approval of a generic version of one of plaintiff's pharmaceutical products. Following a one-week trial in the District of Delaware, the Court ruled entirely in plaintiff's favor, finding the patents at issue to be valid and infringed by defendants. As a result, the defendants will not be allowed to launch generic versions of the product in question until the pertinent patents expire. Defendants appealed to the Federal Circuit, and an opinion affirming the District Court's ruling issued on January 28, 2013.
- ***Allergan Medical Optics v. Staar Surgical Co.*** Patent infringement action in which the client was the patentee plaintiff. Mr. Thomas successfully tried the case to a jury, which rendered a verdict in the client's favor.
- ***Callaway Golf Co. v. Dunlop Slazenger Group Americas, Inc., dba Maxfli.*** Trade secret misappropriation and false advertising case that Mr. Thomas successfully tried to a jury, which returned a verdict in the client's favor.
- ***BHGV, LLC v. Inamed, Inc. and Allergan, Inc***. Dispute over technology license agreement, including the amount of royalties due and whether the agreement had been terminated. Our client, the defendant, asserted the agreement had been terminated, while plaintiff asserted $30 million in royalties were due and payable. After a one-week arbitration, the arbitrator ruled in our client's favor, finding the client did have the right to terminate the agreement.
- ***American Bioscience v. Florida State University.*** Action involving infringement, validity and ownership of a patent. Following a bench trial, a judgment was entered in the client's favor, which was subsequently affirmed in part and reversed in part by the Federal Circuit.
- ***McKesson Information Solutions, Inc. v. TriZetto, Inc.*** Patent infringement action in which our client was the accused infringer. Summary judgment of noninfringement was obtained for our client on 15 of the 17 asserted claims. A summary judgment motion based on invalidity was then filed as to the two remaining claims, at which point the plaintiff agreed to settle and grant our client a license.
- ***MacLeod v. Hewlett-Packard Co***. Patent infringement action in which our client was the accused infringer. Action was settled on terms extremely favorable to the client.
- ***Fleetwood Enterprises v. The Coleman Company.*** Dispute over whether our client, the plaintiff, had the right to preclude defendant from using certain trademarks licensed under an agreement between the parties. A one-week bench trial was held. While the matter was under submission following trial, a settlement was reached.
- ***Staar Surgical Company v. Microtech, Inc.*** Action involving ownership of a patent. Summary judgment granted in favor of the client and subsequently affirmed by the Ninth Circuit.
- ***Allergan, Inc. v. Pharmacia.*** Patent infringement action in which the client was the plaintiff patentee. Action settled shortly before trial, pursuant to which defendant agreed to pay substantial royalties to the client.
- ***Allergan, Inc. v. Bausch & Lomb.*** Patent infringement action in which the client was the plaintiff patentee. Action was settled favorably for the client.
- ***Pharmacia v. Allergan, Inc.*** Patent infringement action in which the client was the defendant and alleged infringer. Action settled one day before trial, pursuant to which the client received a license to the patent-in-suit.
- ***OMNI Products, Inc. v. American Concrete Products Co.*** Patent infringement action in which the client was the plaintiff patentee. Settlement agreement reached, pursuant to which defendant agreed to pay royalties to the client.

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- ***Lobob Laboratories, Inc. v. Allergan, Inc.*** Patent infringement action in which the client was the defendant and alleged infringer. Shortly before trial, plaintiff agreed to dismiss its claims.
- ***Perfect Putter Co. v. Callaway Golf Co.*** Patent and trade secrets action in which the client was the defendant. Action settled pursuant to an agreement under which the client acquired all rights to the patents-in-suit for a small fraction of the amount sought by plaintiff.

Complex Business Litigation

- ***Hewlett-Packard Co. v. Oracle Corp.*** HP, represented by Gibson Dunn, claimed Oracle had breached a contract that required it to continue offering its software to HP customers who are using HP servers and the Oracle software. Oracle claimed it had no such obligation, and publicly announced it would no longer make new versions of its software available to those HP customers. HP also asserted that Oracle was obligated under the doctrine of promissory estoppel to continue to offer the software to the customers. After a three-week bench trial, in which Mr. Thomas served as first chair, the Court ruled entirely in HP's favor, finding that the contract in question requires precisely what HP contended and ruling in HP's favor on its promissory estoppel claim.
- In May and June of 2016, there was a second trial on the issues of Oracle's breach of the contract, HP's damages and Oracle's counterclaims against HP. This was a five-week jury trial, at which Mr. Thomas again served as lead trial counsel for HP. That trial resulted in a unanimous jury verdict in favor of HP, with the jury awarding HP over $3 billion in damages. The amount awarded was exactly 100% of the damages HP sought. The jury also unanimously rejected Oracle's counterclaims. This case produced one of the largest jury awards in the history of American jurisprudence.
- ***Lewis Operating Co. v. Chino Valley Unified School District.*** This was a breach of contract case in which the plaintiff (represented by Mr. Thomas) asserted that the defendant had breached a contract by refusing to open a school that had been funded by plaintiff and which was intended to service plaintiff's residential development. Following a two-week arbitration trial, the arbitrator (the Hon. Lourdes Baird) ruled entirely in favor of plaintiff, granting all relief sought and awarding plaintiff 100% of the legal fees it incurred in connection with the action.
- ***Tracker Marine Co. v. Fleetwood Enterprises.*** Breach of contract and fraud action in which the client was defendant. Mr. Thomas successfully tried the case, with judgment being entered in the client's favor.
- ***Security Trust Co. v. Union Federal Bank.*** Breach of contract action, in which plaintiff alleged the client had not honored the payment terms of the agreement. Mr. Thomas successfully tried the case, with a judgment being entered in the client's favor.
- ***Marblehead v. City of San Clemente.*** Action in which the client challenged the constitutionality and legality of land use regulations adopted by the defendant City. Judgment was entered in the client's favor, which was subsequently affirmed by the California Court of Appeal in a published decision.
- ***Lloyd's of London v. American Sterling Co.*** Dispute involving coverage and premiums provided for by reinsurance agreements. Mr. Thomas successfully tried the case, with a judgment being entered in the client's favor.
- ***Underwriters Ins. Co. v. Pro-Guard Int'l.*** Breach of contract and fraud action, which Mr. Thomas tried to a jury. The jury returned a verdict that included partial judgment for both parties, and the action subsequently settled.
- ***Lewis Homes v. City of La Verne.*** Action in which the client challenged the legality of the defendant City's refusal to grant development entitlements. Mr. Thomas successfully tried the case, pursuant to which the City granted the requested entitlements.

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- ***Lewis Homes v. Fontana Unified School District.*** Action in which the client challenged the legality of certain school fees imposed by the defendant. Action was successfully settled when the defendant reduced the fees in question.
- ***Lockheed Martin Co. v. Riverside County Habitat Conservation Agency.*** Action in which the client challenged the legality and constitutionality of actions taken by the defendant pursuant to the Endangered Species Act. Case was successfully settled pursuant to which the client's real property was purchased.
- ***John Laing Homes v. Donald T. Sterling.*** Breach of contract and fraud action. Case settled one day before trial, pursuant to which client received 100% of the amount demanded.

Unfair Competition

- ***Coatings Resource Corp. v. Akzo Coatings.*** Action filed pursuant to California Business & Professions Code Section 17200, in which plaintiff alleged the client's pricing practices constituted unfair competition. Summary judgment was entered in the client's favor, and was subsequently affirmed by the Ninth Circuit.
- ***Fairley v. Fleetwood Enterprises.*** Class action filed against the client, in which plaintiffs alleged that consumers were given misleading information about the client's products, including a claim under California Business & Professions Code Section 17200. Action was successfully mediated and settled.
- ***Bothwell, et al. v. Akorn, Inc., et al.*** Action filed under Business & Professions Code Section 17200, in which plaintiffs allege that the defendants' labeling was incomplete and inaccurate. Allergan successfully demurred to the complaint and was dismissed from the action.

Antitrust

- ***Northwest Airlines v. American Airlines.*** Monopolization case in which the plaintiff sought damages from our client in an amount in excess of $1 billion. Mr. Thomas served on the trial team that successfully tried the case to a jury, which returned a defense verdict in the client's favor.
- ***In re LTL Shipping Services Antitrust Litigation.*** This was a multidistrict antitrust action, in which plaintiffs asserted that defendants (one of whom was represented by Mr. Thomas) had conspired to fix certain charges in the cargo-shipping industry. After extensive briefing and argument, the Court granted defendants' motion to dismiss with prejudice, thus ending the litigation in favor of defendants.
- ***Coatings Resources Corp. v. Akzo Coatings.*** Predatory pricing and unfair competition action in which the client was the defendant. The Court entered summary judgment in favor of the client, which was subsequently affirmed by the Ninth Circuit.
- ***In re Methionine Antitrust Litigation.*** Multidistrict class action and multiple "opt-out" direct purchaser actions involving alleged price-fixing and cartel behavior. Damages against the defendants sought in an amount in excess of $1 billion. Case was successfully mediated and settled.
- ***Clayworth, et al. v. Pfizer, Inc., et al.*** Cartwright Act case in which plaintiffs allege defendants, including Allergan, Inc., Gibson Dunn's client, entered into anticompetitive agreements to maintain artificially high prices. Summary judgment was entered in favor of all defendants and was affirmed on appeal.

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