

MVP: Gibson Dunn's Brian Rosenthal

By **Andrew Karpan**

Law360 (October 18, 2023, 1:08 PM EDT) -- Brian Rosenthal at Gibson Dunn & Crutcher LLP was part of a legal team that convinced West Texas' U.S. District Judge Alan Albright to throw out a lawsuit, midtrial, from one of the patent bar's most prolific plaintiffs, earning him a spot among Law360's 2023 intellectual property MVPs.

One of his biggest accomplishments of the past year:

What does it take for a tech company defense attorney to beat a suit coming from WSOU Investments, an entity that emerged in Waco, Texas, and filed more than 200 patent lawsuits from 2020 to 2022? Rosenthal said he knew he had a strong case before the trial even began.

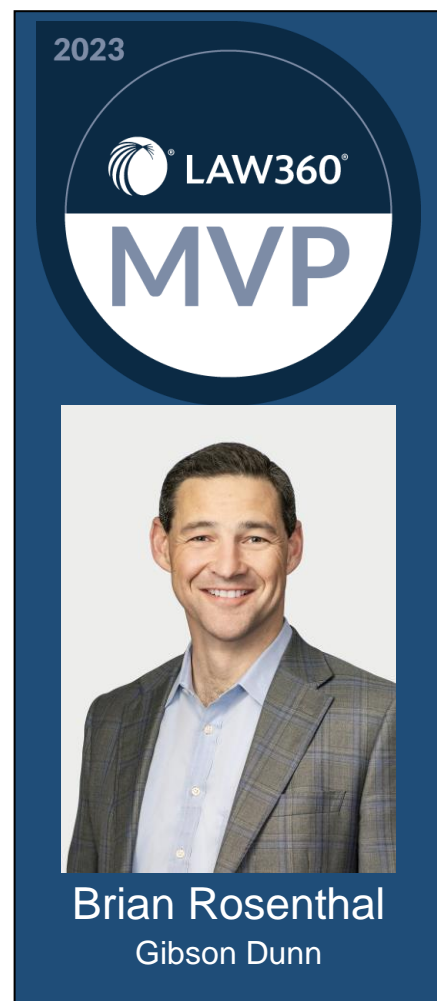
"I had previewed for the judge at the very beginning of the case, before the trial had started, that we were going to have a real substantial, midtrial motion to end the case, and I kept, sort of, referring to it [to the judge], and by the time they finished their case, the judge asked: 'Are you ready to make your motion?' And we did," said Rosenthal.

WSOU Investments, which also operates as Brazos Licensing & Development, has made a name for itself in the patent bar, filing the second-most patent lawsuits in the country during that three-year period. Rosenthal's firm had picked up work defending Dell and VMware in the case, the latter a spinoff of the computer manufacturing brand.

With Rosenthal at the helm, the companies had decided to be the first to bring these patent infringement allegations to trial. In front of a jury in Waco, the Brazos lawyers had asked for \$435 million in damages, a not-untold sum in that courtroom, where jurors have agreed with billion-dollar verdicts against at least one of Dell's fellow tech companies. Other Brazos lawsuits had been settled on the eve of trial, but Rosenthal said Dell wanted to take the case to trial "and stand up for what they believe in."

Judge Albright agreed that the case was meritless.

"It was the first time that Judge Albright has ever granted a directed verdict of noninfringement," said Rosenthal. It wouldn't, however, be the last. Earlier this month, he did the same when a Brazos lawsuit



against Google made it to trial, too.

"There was a real disconnect between the evidence they had and what the patent required," Rosenthal said about the Brazos case against Dell. Brazos has developed what Rosenthal calls a "unique strategy of suing everyone on different patents," something they can do because Nokia unloaded about 9,000 patents on Brazos when the shell company emerged in Waco, led by Craig Etchegoyen, who used to sue companies in California federal court under the name Uniloc Corp.

Another big accomplishment:

Defending one robot vacuum company from another at the U.S. International Trade Commission last year made for a "very, very scary case" for Rosenthal's client.

"This was a full-frontal attack by the No. 1 player in the market on the No. 2 player in the market, trying to exclude our company entirely from the United States from making and selling robotic vacuums," he said about his work defending SharkNinja in its latest intellectual property fight with iRobot, a tangled mess that his law firm has dubbed the "Robot Wars."

"It was unheard of, how quickly we moved," said Rosenthal, whose team of lawyers was able to "put together a design around for all of the patents in time to get put into the case by the time for discovery."

This meant that when the case went before a judge at the ITC, his client would be able to keep selling those vacuums no matter how the case turned out.

"If we were to settle the case, it would have cost tens of millions of dollars," he said, adding that "this is one of the things I do this job for."

What motivates him:

"I have a very competitive nature," Rosenthal said.

He connects his seemingly endless "desire to win" to his days playing hockey, which he still plays from time to time. But unlike recreational sports, the Sisyphean wheels of litigation never stop turning for Rosenthal.

"I take my cases home with me. They're always going on in my head; I never turn the light off, in my office or in my head," he said.

Advice for junior lawyers:

By contrast, Rosenthal said the No. 1 thing he finds himself telling junior lawyers who ask for advice is "to take care of their own mental and physical health."

"I think there's a tendency in this profession to go 150% at all times and not take a break, and there's this sort of reward system that's set up in our industry to reward people for putting their personal needs aside and [devoting] everything to the case, and I don't think that's sustainable," he said.

--As told to Andrew Karpan

Law360's MVPs of the Year are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals, and complex global matters. A team of Law360 editors selected the 2023 MVP winners after reviewing more than 900 submissions.

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