

Intellectual Property Group Of The Year: Gibson Dunn

By Kelly Lienhard

Law360 (February 14, 2024, 3:37 PM EST) -- Gibson Dunn & Crutcher LLP scored a directed verdict of noninfringement for Dell during a \$435 million patent trial in front of U.S. District Judge Alan Albright and shielded SharkNinja from any business interruption during proceedings before the U.S. International Trade Commission, earning the firm a spot in Law360's 2023 Intellectual Property Groups of the Year.

Josh Krevitt, co-chair of Gibson Dunn's IP practice group, said the firm's strength lies in being trial-focused, whether at the federal courts, the Patent Trial and Appeal Board or the ITC, and in building long-term relationships with clients.

"We are always focused on trial — from the start and throughout," Krevitt said. "That's the result not only of who we are in our DNA, and the type of cases we handle — high-impact cases likely to go to trial — but also because that's how you set up a case to win at trial or resolve favorably before."

That line of thinking served Gibson Dunn's representation of tech companies VMware, Dell and EMC in the U.S. District Court for the Western District of Texas, where the firm secured a directed noninfringement ruling from Judge Albright for the first time in a patent case since he took the bench in 2018.

Prolific plaintiff Brazos Licensing & Development, which has filed more than 200 patent cases over the past three years, had accused the companies of infringing cloud computing patents and sought \$435 million in damages.

However, on the third day of the February trial, Judge Albright granted Gibson Dunn's motion for a directed verdict after finding that Brazos' expert had failed to show that the patented elements are found in the VMware products.

The Dell case is a "perfect example" of Gibson Dunn's ability to establish long-term relationships with its clients and go to bat for them again and again, Brian Rosenthal, a partner at Gibson Dunn who co-led the case for Dell alongside Krevitt, told Law360.

"Despite facing down a \$500 million potential verdict, we went to that trial hand-in-hand and we came out victorious, and that, I think, is what earns us the trust and keeps those relationships going for such a



long period of time," Rosenthal said. "We trust our client, our client trusts us, and we partner together to win big cases like that."

Gibson Dunn's partnership with high-profile clients was again visible in a patent infringement case involving global appliances company SharkNinja at the ITC.

The firm represented SharkNinja in a lengthy patent dispute against rival iRobot over robot vacuum cleaner technology.

After more than two years of investigations by the ITC, the commission ruled in March that SharkNinja had infringed only one of the five patents asserted, and the exclusion order issued blocked a single product that had already been discontinued.

Rosenthal, who led the case, told Law360 that iRobot had filed the action with the ITC hoping to block all of SharkNinja's vacuum cleaners from the U.S. market, which would have devastated the company.

Rosenthal said success wasn't just about winning in court every time, but also about leading companies through a complicated case and coming out on the other side unscathed.

"The effect of this gigantic, scary ITC case between these top two competitors was absolutely no business interruption for our clients," Rosenthal said. "At the end of the day, that's what our client was most interested in, getting through this ITC case with no business interruption, and that shepherding of the client through the process is one of the things that we do very, very well."

One of Gibson Dunn's other IP practice group co-chairs, Jane Love, told Law360 that she was proud of the firm's ability to put together a team of lawyers that could navigate complicated issues.

For example, Love pointed to a case she led defending pharmaceutical giant Novartis against an infringement claim from Shilpa Pharma over a molecule sold to treat multiple sclerosis.

Shilpa first filed its complaint in 2021, taking aim at the active ingredient in Novartis' multiple sclerosis drug Gilenya.

However, in September, Love and her team won a challenge at the PTAB over the asserted patent based on arguments that the Shilpa patent was anticipated by Novartis's own earlier, published patent directed to the same molecule, and the patent was invalidated.

"The Shilpa case was one example where we had folks that knew very well some complicated areas of science and we were able to communicate a clear narrative to a board at the PTAB, and were able to invalidate a patent," Love said. "So that was a great win for the client."

Moving into 2024, Rosenthal said, Gibson Dunn is seeing fewer and fewer low-impact cases, and most of the infringement cases the firm gets are very sophisticated and involve high damages.

"From our perspective, it's been a challenge in the sense that every case now gets to the top of the general counsel's ledger," Rosenthal said. "Every patent case that we deal with has the attention of the client in a way that other cases might not. Every move is under a great deal of scrutiny, and every strategic decision we make has a lot of impact."

The increase in high stakes, complex IP cases will only increase the importance of being a trial-focused firm, according to Rosenthal, and Gibson Dunn intends to continue to form relationships with its clients to carry them through the entire trial process.

--Additional reporting by Ryan Davis and Hailey Konnath. Editing by Karin Roberts.

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