

## THE NATIONAL LAW JOURNAL



### WINNING LITIGATOR—DEFENSE

**Brian Rosenthal,  
Gibson, Dunn & Crutcher**



**Gibson, Dunn & Crutcher partner Brian Rosenthal**

Brian Rosenthal, partner with Gibson, Dunn & Crutcher, was named the National Law Journal Awards' Winning Litigator—Defense. Read a Q&A with him below.

**Tell us about your biggest win from Jan. 1, 2024, through June 1, 2025, and how you achieved the result for your client.**

Between January and June 2025, I led Cisco to a trifecta of big patent trial victories that

showcased our team's precision strategy and creativity in the courtroom. In *Corrigent v. Cisco* (W.D. Tex.), our team obtained a rare Rule 50(a) directed verdict—only the third ever granted by U.S. District Judge Alan Albright—ending a \$376 million case before closing arguments.

# WINNING LITIGATOR—DEFENSE

Just two weeks later, I was back before Albright again in *WSOU v. Cisco*, where we secured what's believed to be the first-ever jury verdict under 35 U.S.C. §273, the prior commercial use defense. The jury found no infringement and invalidated the asserted claims in under an hour. We presented a compelling narrative centered on noninfringement and Cisco's independent development. Using innovative demonstratives—including foreign language dictionaries to illustrate key technical distinctions—and historical product documentation, we proved that Cisco had commercialized the accused features more than a year before the patent's priority date. After three days of evidence, the jury returned a complete defense verdict for Cisco within an hour: no infringement, invalid claims, and—most notably—a finding under 35 U.S.C. §273 that Cisco had engaged in prior commercial use more than a year before the filing date.

That momentum carried into *CosmoKey v. Duo Security* (D. Del.), a \$140 million multifactor authentication case where we achieved a clean-sweep trifecta jury win. The jury concluded that Duo did not infringe, that Duo had commercially used the accused system more than a year before the patent's priority date—triggering §273—and

that all asserted claims were anticipated by prior art, including Duo's own patent filings and early documentation. The case had survived both §101 and IPR challenges before we were hired, making the invalidity verdict especially remarkable. We focused the trial on Duo's innovations, dropped other prior art defenses, and even waived our damages rebuttal midtrial to drive home a simple message: no liability, no damages.

The first half of this year delivered a really important lesson to me. If you want to make one of your best clients happy, deliver a three-peat of trial victories in significant patent cases!

**Share two trial tips that have been key to your success.**

1. Simplicity at all costs. Don't chase rabbits. Find your story and stick to it. Be disciplined enough to leave the noise on the cutting-room floor. If it doesn't fit the simple narrative, don't sell it.

2. Credibility is king. From the start of the trial to the jury verdict, it's critical to earn and maintain credibility with the jury (and the Judge!). Don't make stretch arguments. Don't deny undeniable facts. Tell the truth and only the truth, and the jury will know it's true.