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Appellate Group Of The Year: Gibson Dunn

By **Lisa Ryan**

Law360, New York (January 12, 2015, 4:40 PM ET) -- Gibson Dunn's appellate group spent 2014 raking in wins before the U.S. Supreme Court, including a game-changing verdict for CLS Bank International that abstract ideas implemented using a computer are not eligible for a patent, earning the law firm a spot among Law360's Appellate Groups of the Year.

The firm's appellate group, comprising 65 attorneys across the globe, has played a major role at Gibson Dunn for the past three decades, according to Theodore J. Boutrous Jr., co-chair of the firm's appellate and constitutional law group. The group was founded in Washington, D.C., by former U.S. Solicitor General Theodore B. Olson in 1984. With the help of Boutrous, who joined the firm shortly thereafter, Gibson Dunn's appellate team grew from a two-partner practice to the thriving group it is today, with additional hubs in Los Angeles, San Francisco, Dallas and New York City.

"It's one of the major practice groups in the firm, in terms of significant high-stakes litigation, client development and business development," Boutrous said. "It's a practice that really allows us to forge strong bonds with clients that leads to expanding relationships and becoming trusted advisers."

The firm's key 2014 victories came in the form of high-profile suits heard before the country's highest court. In June, Gibson Dunn was victorious in its quest to get the Supreme Court to rule that abstract ideas implemented by a computer are not eligible for a patent, while representing CLS Bank in an infringement suit lodged by Alice Corp Pty. Ltd.

Gibson Dunn was recruited to represent CLS Bank after the Federal Circuit in May 2012 reversed a lower court's invalidation of Alice's patents for a computerized trading platform. At the time, the three-judge panel held in a 2-1 decision that a patent can only be found invalid for claiming an abstract idea if it's "manifestly evident" that the claims cover the idea and nothing else.

Mark A. Perry, a partner in Gibson Dunn's D.C. office, said the firm was tasked with getting the appellate court to agree to an en banc rehearing of its decision. Since the court only agrees to a handful of en banc rehearings each year, the firm was faced with the significant hurdle of trying to convince the panel that their colleagues made the wrong decision.

"The reason they took it en banc, and what we had going for us at the time, was that the Federal Circuit had issued a series of panel decisions that were inconsistent in their approach on computer inventions. Similar inventions were being sustained or struck down largely dependent on what panel in the Federal

Circuit got the case," Perry said. "It was five or six cases, but it was enough to see a pattern of confusion in the Federal Circuit."

Perry and the team at Gibson Dunn were able to get the en banc panel to strike down the appellate court's previous ruling in a deeply divided July 2013 opinion. The appellate court issued a one-paragraph per curiam decision affirming a trial court's decision that each of the four patents Alice asserted against CLS Bank were negligible — followed by six strongly conflicting opinions on how much protection the U.S. patent system should afford software.

Alice then took the matter to the Supreme Court, telling the justices in January 2014 that the Federal Circuit decision overlooked the fact that Alice's patents actually covered complex computer infrastructure, not a mere idea that would be ineligible for a patent.

"More generally, going from any Court of Appeals to the Supreme Court, there's an increased scrutiny. They take cases in order to decide issues with widespread ramifications and to announce decisions that resolve those issues. The level of scrutiny is greater, and the eventual importance of the decision is likely to be greater," Perry said.

In June, Gibson Dunn was able to convince the high court to uphold the appellate court's decision, in a unanimous opinion penned by Justice Clarence Thomas.

"It's very significant," Perry said. "There was no majority opinion in the Federal Circuit, so for the Supreme Court to come out with a clear, unanimous decision announcing clear, workable rules in this area is very important. There are no losers from this opinion, as far as I can tell."

Boutrous says the firm's work representing CLS Bank "really exemplifies" the kind of cases the appellate group handles. The practice's patent litigation has always been very active, and the group is made up of very strong appellate attorneys who are eager to take on such challenging cases.

"It was a cutting-edge issue of great significance that is in the Supreme Court — those are the bread-and-butter issues for our practice group," he said.

--Additional reporting by Bill Donahue and Ryan Davis. Editing by Edrienne Su.
