

IP Group Of The Year: Gibson Dunn

By Ben James



Law360, New York (January 27, 2015, 8:13 PM ET) -- Gibson Dunn's intellectual property group convinced the U.S. Supreme Court to side with Nautilus Inc. in a ruling that made it easier to prove patent claims invalid for indefiniteness and scored another high court win for CLS Bank International in 2014, landing the team its second consecutive spot among Law360's IP Practice Groups of the Year.

In addition to the high court's Nautilus decision and its CLS opinion — which said that abstract ideas implemented using a computer are not eligible for a patent — Gibson Dunn secured victories for clients including Lawson Software Inc., Roamware Inc. and Danisco US at the Federal Circuit and trial court wins for St. Jude Medical and Allergan Inc.

Gibson Dunn IP group co-chair Josh Krevitt attributed the practice's recent success in part to the quality of its lawyers, their ability to tackle trial work and a commitment to putting a lot of strategic thinking into disputes very early in the process.

“There is no other firm, of which I am aware, which from top to bottom and across the country has as uniformly high caliber, experienced, talented and smart IP litigators,” Krevitt said. “There are lots of lawyers that practice in this area that I wouldn't say are first and foremost trial lawyers, but we really have put together a team of extraordinarily talented IP lawyers who are also trial lawyers.”

Krevitt also pointed out that the 125-attorney IP team works closely with Gibson Dunn's first-rate appellate practice, which can step in when cases ascend to the circuit or Supreme Court level as well as help the lawyers understand how to properly preserve issues for potential appeals court battles.

“All of that comes together, I think, to allow us to represent clients in a manner that sets us apart from other firms,” Krevitt said.

The intellectual property area in general is fertile ground for appeals, noted veteran appellate lawyer and Gibson Dunn partner Mark Perry. The cases often have high stakes, which can work against potential settlements, and there's been an increased interest in IP cases at the Supreme Court recently, with a “modern record” of 10 IP suits at the high court last term and a smaller but still healthy crop of cases this term, he said.

Perry also cited the strategic relationship between Gibson Dunn's appellate team and other practice groups, including the IP practice.

“We integrate the trial and appellate practices so that we’re keeping an eye on the legal issues,” Perry said. “The worst-case scenario for an appellate lawyer is that you’ve got a beautiful issue presented in a case, but it hasn’t been preserved properly at the trial court level.”

That integrated approach was very important in the CLS case because the patent eligibility issues in play were highly technical, according to Perry. In that case, nonpracticing entity Alice Corp. accused CLS, which settled trillions of dollars’ worth of foreign currency transactions daily, of infringing business method patents. After CLS obtained an en banc federal circuit ruling that Alice’s claims weren’t patent eligible, Alice petitioned the U.S. Supreme Court for review.

The high court ruled unanimously on June 19 that the abstract idea of an intermediated settlement wasn’t patent eligible.

“It was very much an integrated team effort, drawing on expertise from throughout the system to challenge these patents,” Perry said.

The Nautilus case marked another high-profile win in a patent case for Gibson Dunn. In that opinion — also unanimous and also handed down in June — the high court cast aside the Federal Circuit’s standard for proving that a patent is indefinite.

In light of the new standard, the justices ordered the Federal Circuit to reconsider its decision that a Biosig Instruments Inc. heart rate monitor patent asserted against Nautilus was not indefinite.

That marked a win not just for Nautilus but for patent infringement defendants generally because the high court ruling “makes it easier to kill a patent,” Krevitt said.

Other noteworthy achievements for the Gibson Dunn IP team over the past year include getting the Federal Circuit to reverse an injunction and contempt citation against Lawson Software in July, and winning a motion to dismiss St. Jude Medical from a patent suit in which St. Jude argued that it was improperly joined with competitor Medtronic Inc. The St. Jude ruling was a novel one under the Leahy-Smith America Invents Act, which requires that defendants provide the same accused product to be joined in a suit for infringement, the firm said.

Gibson Dunn also represented Allergan in a four-day bench trial over proposed generic versions of Allergan’s Lumigan X glaucoma drug, after which a Texas federal court ruled that the generics would infringe five Allergan patents.

“At this point we’re handling some of the biggest cases in the country for some of the most significant companies in the country, and have the good fortune of working with amazing clients, and have been successful over the past year,” Krevitt said.

Gibson Dunn’s IP practice, which is spread across offices in New York, Washington, D.C., California and Dallas, is expanding and taking what Krevitt called an opportunistic approach to adding new talent.

“We’re incredibly excited about that,” he said, “but we’re doing that, as always at this firm, in a deliberate and methodical way to ensure that our quality remains unrivaled.”

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