

IP MVP: Gibson Dunn's Josh Krevitt

By **Bill Donahue**



Josh Krevitt

Law360, New York (December 06, 2012) -- Gibson Dunn & Crutcher LLP's Josh Krevitt steered Apple Inc., AT&T Inc. and T-Mobile USA out of harm's way in 2012 by fending off major patent infringement cases against the three tech giants, earning himself a spot on Law360's list of Intellectual Property MVPs.

Krevitt — the co-chair of Gibson Dunn's IP practice — was preparing for trial Friday, Oct. 12, getting ready to defend Apple in the U.S. International Trade Commission against accusations that the iPhone infringed four different mobile Internet patents. Patent holder Openwave Systems Inc. wanted an import ban on Apple's phone, and the trial was set for the following Monday.

But it never got there. Following weeks of favorable rulings for Krevitt's team and Apple, including a key claim construction, Openwave asked the ITC to terminate the investigation in its entirety, three days before the case was set to go to trial.

As mentioned by Openwave itself following their request for voluntary dismissal, the claim construction won by Krevitt and his fellow Gibson Dunn attorneys had essentially limited the company's options in the case, and forced it to retreat. Openwave is still proceeding with parallel federal court cases against Apple, but the ITC action had turned into a lost cause.

In cases like the Openwave suit and other tech patent litigation — where so much of the case relies on a judge understanding a client's technology — being clear about often-complex patents is paramount, Krevitt said.

“Ultimately what distinguishes a great patent litigator is an ability to be persuasive and clear, and to make descriptions of the technology accurate and accessible,” said Krevitt, who's been with Gibson Dunn since he left Weil Gotshal & Manges LLP in 2006.

Those talents have made winning cases by securing prohibitively favorable claim constructions something of a recurring theme for Krevitt. In September, a Delaware federal judge handed a noninfringement ruling to AT&T, T-Mobile and Roamware Inc., all of whom patent holder Starhome GmbH had accused of stealing its proprietary mobile roaming technology.

The judge's decision was rooted in an hourslong Markman hearing months earlier, during which Krevitt successfully argued that Starhome was warping the definition of their patent claims to build an infringement case where it didn't belong. The judge eventually adopted a construction so unfavorable to Starhome that it stipulated to the judgment in order to send the case along for Federal Circuit review.

"We made a very compelling argument as to why they were construing the patent in a way that was fundamentally inconsistent with the patents," Krevitt said. "And we were able to show that they were doing that to concoct an infringement argument."

"Once we won that battle — that this was about trying to create an infringement issue with a patent that covered technology that was simply different — the rest fell into place."

Knowing what it takes during a Markman to cleanly and effectively explain an intricate patent to someone who isn't an engineer comes easily to Krevitt — because he isn't one himself. Starting out as a general commercial litigator at Weil Gotshal, Krevitt has an outside perspective that he says can be a real advantage in speaking to judges who are always extremely intelligent but may be untrained in complicated scientific issues.

"I need to understand the technology, and be able to explain it, so that the issues can be broken down in a straight forward and persuasive way," Krevitt said. "Because, ultimately, clarity is convincing, and it's about convincing judges and juries of the positions that we're taking."

Going forward, Krevitt will have plenty of time to use the skill: He's working on a slew of big cases for major players in the tech industry, including one for Sharp Corp. and three more for T-Mobile. And then there's the big fish: He's handling Apple's second enormous patent case against Samsung Electronics America Inc. over smartphone technology, a kind of sequel to the case that culminated in this summer's blockbuster trial between the two heavyweights.

Though money is certainly an issue in these big-name tech cases he works — billion-dollar markets make billion-dollar damage totals a necessity — Krevitt said it's about more than that to him.

"What makes working with these companies so important and so gratifying is that it's not just about winning a case and seeking damages or avoiding damages," the attorney said. "It's about helping to create an environment in which these remarkable technology companies can be protected so they can focus on innovating and bringing to market amazing products and innovations."

--Editing by Lindsay Naylor.

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