

Trials MVP: Gibson Dunn's Jeffrey T. Thomas

By Kat Sieniuc

Law360, New York (December 21, 2016, 1:27 PM EST) -- Gibson Dunn & Crutcher LLP partner Jeffrey T. Thomas recently helped Hewlett-Packard win a \$3 billion jury verdict in a dispute related to Oracle's poaching of HP's CEO and the phasing out of HP software, earning him a spot on Law360's 2016 list of Trial MVPs.

The suit, ending with one of the largest single-plaintiff jury verdicts ever won in the United States, alleged Oracle's decision to stop offering new versions of its software to customers running HP's Itanium servers breached a settlement deal that resolved a previous dispute between the two companies over Oracle's hiring of former HP CEO Mark Hurd.

Oracle said in 2011 it would phase out HP computer servers based on Intel Corp.'s Itanium processors, a move HP claimed was counter to the contract the parties struck in the wake of the Hurd scandal.

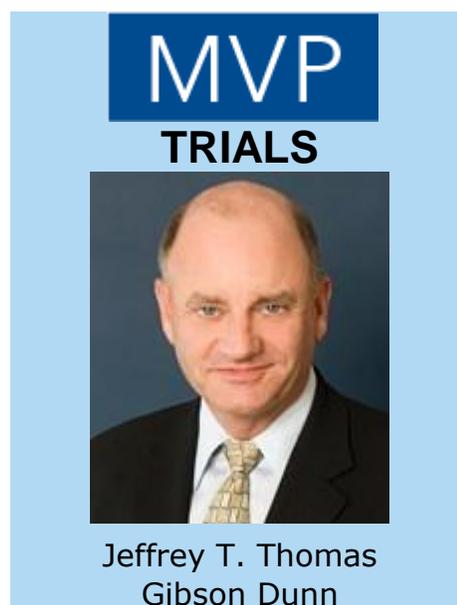
Thomas and his team were able to get the jury on HP's side during trial, reeling in 100 percent of the damages requested — an award that is now accruing at almost \$1 million a day while the appeal is underway.

The jury also rejected Oracle's claim that HP violated the Lanham Act.

The multibillion-dollar suit is not the only time HP and Oracle have sparred with Thomas at the former's side. Thomas, who's been at Gibson for 33 years, is currently defending the software company against copyright infringement claims brought by Oracle in a suit alleging HP support companies distributed copyrighted Oracle code.

Of course, HP is not Thomas' only high-profile client. He's been doing work for pharmaceutical giant Allergan for 30 years, for whom he's never lost a case.

In a recent win for the drug company, Thomas secured summary judgment in a \$600 million patent licensing dispute initiated by Miotox, which sought royalties from Allergan for its use of Botox for



treatment of migraines. The judge in that case held that the pharmaceutical giant need not pay Miotox certain royalties under the terms of a license agreement.

Also for Allergan, Thomas won the dismissal of patent inventorship claims from Ferring Pharmaceuticals for a patent related to desmopressin, a urology drug that Allergan currently has in clinical trials and that the company hopes will soon be approved.

As for how he gets it done, the Northern California native says he likes to litigate with four or five themes in mind, of which he hopes will resonate with the jury.

In the \$3 billion HP-Oracle case, for example, Thomas honed in on the two companies' long-running relationship, highlighting how Oracle's breach of contract was inconsistent with their past relations. He also highlighted the fact that Oracle was allegedly dishonest about its reasons for phasing out the software, and that the phase-out harmed HP's highly successful business.

"You really have to boil your case down to a handful of themes like that, and try your case in a thematic way so that everything you're doing fits in and supports those themes," Thomas said.

Thomas also said credibility is crucial in a courtroom, especially when it comes to witnesses.

"You don't ever want to be telling the judge or jury anything that isn't right and that you can't support with the evidence and the facts, because once you lose your credibility in a trial then you're in deep trouble," he said, adding that's when "the judge and jury starts wondering about everything you're telling them."

"I would much rather have a witness admit something that's not so good for your case than to not be completely 100 percent straightforward and honest," he said.

--Editing by Emily Kokoll.