

Daily Journal

SEPTEMBER 6, 2023

Daily Journal's Top 100 Lawyers



Robert Van Nest

**Keker, Van Nest
& Peters LLP**

San Francisco
Intellectual Property
Litigation

As he often is, Robert Van Nest is headed to trial soon in significant patent cases on behalf of major clients.

In November, he and a large team will be in Delaware to defend the patents of a pioneer in continuous glucose monitoring technology against infringement claims by medical device giant Abbott. *Abbott Diabetes Care Inc. v. Dexcom, Inc.*, 1:21-cv-00977 (D. Del., filed July 1, 2021).

Then, in January, Van Nest and his team will be in Boston to defend Google against allegations that its superfast data center chips infringe two patents owned by a small Massachusetts company. *Singular Computing LLC v. Google LLC*, 1:19-cv-12551 (D. Mass., filed Dec. 20, 2019).

"That's the rest of my year right there," Van Nest said.

The Dexcom case is part of an international struggle between the two companies over the devices that have created a multibillion-dollar market for continuous glucose monitoring.

Abbott is asserting 12 patents from seven separate technology families. To defend against that, "the jurors are going to hear the invention story of Dexcom," Van Nest said. "It's very important health technology, and Dexcom is the pioneer."

In the case for Google, a Boston inventor alleges Google's powerful machine-learning chips infringe his patents on approximate computing. His claims could potentially be worth billions.

An interesting legal issue turns on Singular's effort to prevent Google from presenting evidence of prior art by relying on a tricky patent law doctrine called IPR estoppel.

Google had invalidated one of the Singular patents in the PTAB. Under the estoppel doctrine, it can't now use any of the documents or publications it relied on there in the district court. But that rule doesn't apply to tangible, nondocumentary evidence, such as a product or software, which can't be presented in the PTAB.

"There is a gray area between systems and publications about systems, and that's where the source of the debate arises," Van Nest said. Plaintiffs argue a defendant is estopped from presenting a system if it was described in a publication. "But the law is the publication is estopped, not the system itself."

The issue is showing up in many matters in many venues, he said.

— Don DeBenedictis