

# Daily Journal

FEBRUARY 15, 2017

## TOP VERDICTS OF 2016

The largest and most significant verdicts and appellate reversals handed down in California in 2016

### TOP DEFENSE VERDICTS

# Oracle America Inc. v. Google Inc.

#### case INFO

#### Patent and copyright infringement

Northern District

U.S. District Judge William H. Alsup

**Defense lawyers:** Kecker, Van Nest & Peters LLP, Robert A. Van Nest, Christa M. Anderson, Daniel E. Purcell, Steven P. Ragland, Michael S. Kwun, Eugene M. Paige, Matthias A. Kamber, Kate E. Lazarus, Edward A. Bayley, Maya B. Karwande, Reid P. Mullen

**Plaintiff lawyers:** Orrick, Herrington & Sutcliffe LLP, Peter Bicks, Annette L. Hurst



Sam Attal / Special to the Daily Journal

FROM TOP LEFT TO RIGHT, KECKER, VAN NEST & PETERS LLP OF COUNSEL MICHAEL S. KWUN, PARTNERS STEVEN P. RAGLAND, EUGENE M. PAIGE AND DANIEL E. PURCELL, ASSOCIATES KATE E. LAZARUS AND EDWARD A. BAYLEY, PARTNER MATTHIAS A. KAMBER. FROM BOTTOM LEFT TO RIGHT, ASSOCIATE MAYA B. KARWANDE AND PARTNERS ROBERT A. VAN NEST, CHRISTA M. ANDERSON AND REID P. MULLEN.

**K**ecker, Van Nest & Peters LLP name partner Robert A. Van Nest won a blockbuster jury verdict for Alphabet Inc.-owned Google by persuading a federal panel in San Francisco that Google's inclusion of Oracle's Java programming code in its Android mobile operating system was fair use, not infringement, under copyright law.

To do it, Van Nest got jurors to distinguish between desktop and laptop computers, in which Oracle installs Java, and smartphones and tablets, where Google employs Android. Including parts of Java in Android to produce a separate product was a transformative reworking of Oracle's patented code, Van Nest argued — a key test for fair use that the jury agreed let Google off the hook for patent infringement.

The six-year conflict between the tech titans isn't over yet, because Oracle has again challenged the outcome at the U.S. Court of Appeals for the Federal Circuit. Its opening brief is due this month. Oracle claims Google wrongfully took elements of 37 Java application programming interfaces, known as APIs, to engineer Android without license from Sun Microsystems Inc., which Oracle bought in 2010.

It was the second trial in the high stakes case, and the appeal is the dispute's second trip to the

Federal Circuit. At the first trial in 2012, Van Nest defended Google on Oracle's patent and copyright claims and argued that the damage estimates were excessive. That jury delivered a unanimous verdict rejecting patent infringement. The circuit agreed, but returned the case to U.S. District Judge William H. Alsup for a new trial on the fair use issue, on which the jury had deadlocked. In May, the second jury unanimously favored Google's position.

Oddly, due to a quirk in procedural rules, Van Nest said, "even though there were no patent claims at issue in the [2016] trial, only copyright claims, the Federal Circuit will hear the appeal." Typically, the circuit hears only patent disputes. "That was a surprise even to Judge Alsup, who asked the parties to brief the issue. The reason is that patents were in dispute in the 2012 trial, so the Federal Circuit retains jurisdiction over the

second appeal."

Van Nest said his winning argument was that Java was created for different products: desktops and laptops. "Google used the APIs in new and different ways, and that was one of the big battlegrounds at trial. It was important that no one, including Oracle and Sun, had successfully used Java in smartphones. If it was that easy, it would have happened, and hence, the use by Google was transformative."

"The other key battleground was whether Android had harmed the market for Java — we argued there that Oracle failed to show any impact of Java revenues from Android."

Even so, the second win was no foregone conclusion, Van Nest said. "I was optimistic about the outcome, based on the evidence and the way the trial went. To say I was confident about the verdict would be an overstatement."

— John Roemer

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### TOP DEFENSE VERDICTS

## Cisco Systems Inc. v. Arista Networks Inc.

#### case INFO

#### Patent and copyright infringement

Northern District  
U.S. District Judge  
Beth Labson Freeman

#### Defense lawyers:

Keker, Van Nest & Peters LLP,  
Robert A. Van Nest, Brian L.  
Ferrall, David J. Silbert, Ajay  
S. Krishnan, Michael S. Kwun,  
Audrey Hadlock, Ryan Wong,  
Elizabeth K. McCloskey, Eduardo  
Santacana, David J. Rosen,  
Andrea Nill Sanchez, Christina  
M. Blais

#### Plaintiff lawyers:

Quinn Emanuel Urquhart &  
Sullivan LLP, David A. Nelson,  
Sean S. Pak, John M. Neukom



ROBERT A. VAN NEST



DAVID J. SILBERT



BRIAN L. FERRALL

**K**eker, Van Nest & Peters LLP relied on a large trial team to represent Arista Networks Inc. in fending off a \$335 million intellectual property case brought by Silicon Valley giant Cisco Systems Inc.

Cisco alleged that Santa Clara-based Arista illegally used Cisco's command-line interfaces, which are typed-in manual text

commands used for controlling network switches. Cisco claimed the command-line interfaces were protected by copyright.

"We had seven different lawyers handle witnesses in front of the jury," lead Arista counsel Robert A. Van Nest said. "We presented a wide range of people as part of the Arista team."

Van Nest said that a big team allows each practitioner to focus on one or two witnesses and avoids overburdening a single lawyer.

"I think it's more interesting and more engaging for jurors," Van Nest added. "The same lawyer over and over during two weeks

of evidence is pretty boring."

Arista brought to the stand witnesses from other major technology companies, including HP Inc., Juniper Networks Inc. and Dell Inc., who testified to widespread use of the same set of command-line interfaces by the networking industry without any objection from Cisco.

Through the testimony, Arista sought to demonstrate that the command-line interfaces were not creative products meant for copyright protection.

A federal jury held in December that Arista presented a valid legal defense to Cisco's copyright infringement claims.

Jurors also found that Arista did not infringe a Cisco patent also asserted at trial. *Cisco Systems Inc. v. Arista Networks Inc.*, 14-5344 (N.D. Cal., filed Dec. 5, 2014).

San Jose-based Cisco has filed a post-trial motion to overturn the verdict. U.S. District Judge Beth Labson Freeman has scheduled a hearing for April.

"Cisco wasn't able to compete with the new product format that Arista was presenting and was trying to slow them down with a legal action," Van Nest said. "I think this was purely a move to prevent competition."

— Kevin Lee