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Honoring the Top Performing Attorneys in California



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Robert Van Nest is very busy with trials this year. He successfully completed two already, and he has two more coming up, including one set to start in just a few days. “I have a challenging schedule this fall,” Van Nest said.

In January, he reached a settlement the night before closing arguments in a case for Google over patents covering the high-speed computer chips called “tensor processing units” that provide the com-

puting power for AI and neural network applications. A Boston inventor who claimed the search giant had stolen his technology “accepted an outstanding offer,” Van Nest said. *Singular Computing LLC v. Google LLC*, 1:19-cv-12551 (D. Mass., filed Dec. 20, 2019).

Then in March, he achieved an unusual victory for DexCom in its global battle with Abbott over patents for continuous glucose monitors. This particular lawsuit began with Abbott asserting 12 patents against DexCom, but only four remained by trial. The jury found two of the patents were not infringed, it hung on a third and it awarded zero damages on the fourth because the judge had ruled that “Abbott’s damage theory was based on winning all four patents,” Van Nest said. *Abbott Diabetes Care Inc. v. DexCom Inc.*, 1:21-cv-00977 (D. Del., filed July 1, 2021).

On Sept. 9, he is set to begin a three-week trial defending a Sunnyvale cybersecurity company against a warranty claim over about \$10 million in equipment it sold to a call-center provider. The plaintiff is seeking \$250 million in lost profits. *Alorica Inc. v. Fortinet Inc.*, 19CV344971 (Sta. Clara, Super. Ct., filed March 21, 2019).

Then, on Oct. 8, he will start another three-week trial in what he called an “exciting”

case over copyrights on commands in a programming language. Van Nest said he does not believe commands such as “Set Clock” and “Analyze” should be given copyright protection. “Those commands have been used throughout the industry for many years. So, we have a strong fair use defense, and we have a strong non-infringement defense because the number of commands they claim were copied is so small,” he said. *Synopsys Inc. v. Real Intent Inc.*, 5:20-cv-02819, (N.D. Cal., filed April 23, 2020).

Van Nest and his team recently were brought in on several new and important copyright cases. They will be co-counsel defending OpenAI and its ChatGPT artificial intelligence product in a quartet of lawsuits by authors, newspapers and other copyright holders. Plaintiffs include novelist Paul Tremblay, the *New York Times* and the *Daily News*. *Authors Guild v. OpenAI Inc.*, 1:23-cv-08292 (S.D.N.Y., filed Sept. 19, 2023).

These are “very significant cases for the future of artificial intelligence,” Van Nest said, because they challenge “the fundamental training material that OpenAI and all the other AI companies use.”