Supplement to the Los Angeles and San Francisco
Daily Journal
AUGUST 16, 2017

TOP INTELLECTUAL PROPERTY LAWYERS 2017

Christa M. Anderson

FIRM	CITY	SPECIALTY
Keker, Van Nest & Peters LLP	San Francisco	Litigation

Anderson's clients include Google Inc., New Relic Inc., Veeva Systems Inc., Sutter Health, Williams-Sonoma Inc. and Qualcomm Inc.

For New Relic, a San Francisco-based software analytics company, Anderson led the defense when CA Inc.'s CA Technologies sued over patents in the application performance management realm. The plaintiff claims that New Relic violated three patents; Anderson's defense focuses on denials of infringement and contentions that the patents are invalid. Since the case began in 2012 she has won summary judgment on one patent and convinced CA Technologies to drop some claims. Remaining issues are set for jury trial later this year. *CA Technologies Inc. v. New Relic Inc.*, 2:12-cv-05468 (E.D. N.Y., filed Nov. 5, 2012).

"There are really two important processes in preparing for trial," Anderson said. "There's logistics: you need to become very organized. You work out a marching plan." Also: "How much time will you have for your presentation? Which are the important documents? Once you're in trial, things move so quickly that you don't have time to waste minutes revising your plan."

In another case in litigation, Veeva offers cloud-based services for the life sciences industry. A rival sued over trade secret theft allegations in January, claiming that five former employees now employed by Veeva had improperly used confidential information obtained at their former company. The plaintiff also contended that some of the workers violated non-compete provisions in their former employment contracts.

Anderson said she moved quickly for Veeva to compel arbitration. "The claims all turn on the obligations of former employees," she said. "We're still waiting for a ruling." *Medidata Solutions Inc. v. Veeva Systems Inc.*, 1:17-cv-00589 (S.D. N.Y., filed Jan. 26, 2017).

Earlier for Veeva, Anderson led the defense when a different competitor sued over patent infringement allegations. The patents at issue relate to the creation of email messages using multiple layers and content available on servers. She successfully narrowed the scope of the case from five patents to two, then persuaded the court that one patent is invalid. Finally, she secured a favorable settlement for the client. *Prolifiq Software Inc. v. Veeva Systems Inc.*, 13-cv-3644 (N.D. Cal., filed Aug. 6, 2013).

"Veeva is a very interesting and innovative company with excellent leadership," Anderson said. "It's exciting to work for them and to represent them in court."

— John Roemer

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Brian L. Ferrall

FIRM	CITY	SPECIALTY
Keker, Van Nest & Peters LLP	San Francisco	Litigation

Ferrall represents tech and biotech clients in high-stakes patent, trade secret and other intellectual property disputes. His book of business lists Comcast Cable Communications LLC, Taiwan Semiconductor Manufacturing Co., Arista Networks Inc. and Coherus Biosciences Inc.

"Comcast is keeping me busy," he said. "They are the target of a lot of patent litigation these days."

Ferrall's defense of Comcast against patent infringement claims brought by Two-Way Media Ltd. looked tricky when Two-Way successfully asserted some of the same audio and video streaming patents against a variety of telecommunications companies and came away with a $28 million jury verdict of infringement against AT&T Inc.

But when U.S. District Judge Richard G. Andrews of Wilmington, Delaware, looked at Ferrall's defense for Comcast, he saw it differently.

Ferrall argued that the patents in question were abstract and patent-ineligible under the U.S. Supreme Court's Alice decision.

The judge agreed and tossed the patents in August 2016. *Two-Way Media Ltd. v. Comcast Cable Communications LLC*, 14-CV01006 (D. Del., filed Aug. 1, 2014).

"Two-Way is one of my prouder wins," Ferrall said. "We were pretty pleased we were able to invalidate those patents."

Also for Comcast, Ferrall is on the defense against patent infringement and state tort employment claims brought by Promptu Systems Corp., formerly Agile TV Corp., related to television voice control technology.

In May, Ferrall successfully compelled arbitration of unfair competition and tort claims and achieved a stay of the patent claims pending outcome of the arbitration. *Promptu Systems Corp. v. Comcast Cable Communications LLC*, 16-CV06516 (E.D. Penn., filed Dec. 19, 2016).

"Promptu claims it had developed voice control for a cable system as far back as the late 1990s," Ferrall said, "and also claimed it had presented the technology to senior Comcast executives. We deny and dispute that our executives agreed to compensate Promptu when it rolled out."

"I suspect the plaintiffs really thought the claims would be particularly sensitive to Comcast because they alleged our executives' involvement," he added. "Putting the patent claims on hold while we arbitrate the contract claims seems to be frustrating the plaintiff no end."

In a third Comcast matter, Ferrall is co-lead counsel defending the company against an International Trade Commission complaint brought by OpenTV Inc. related to digital television set-top box technology, voice control, and the ability to prevent fast-forwarding during commercials.

A hearing before the commission is set for November. *In the matter of Certain Digital Television Set-Top Boxes, Remote Control Devices and Components Thereof*, 337-TA-1041 (ITC, filed Jan. 25, 2017).

"Not everything is Comcast in my world," Ferrall said, "but these are cases and technologies everyone can relate to."

— John Roemer

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Ashok Ramani

FIRM	CITY	SPECIALTY
Keker, Van Nest & Peters LLP	San Francisco	Patent and trade secrets litigation

Ramani's colleagues say he is adept at designing winning strategies and translating sophisticated concepts for juries and judges alike, including a recent $2.8 million patent jury trial win for TEK Global SRL.

In *TEK Global SRL v. Sealant Systems International Inc.*, 3:11-CV-00774, (N.D. Cal. March 17, 2017), Ramani won a $2.8 million jury verdict for TEK in a long-running case against competitor Sealant Systems Inc. over patented tire repair technology. TEK obtained a patent over a portable tire-repair kit in 2010 and sued, using different counsel.

With that counsel, TEK lost its patent on summary judgment of invalidity and lost a jury verdict on a counterclaim patent, resulting in a permanent injunction against TEK's U.S. sales. TEK then hired Ramani and his team, who revived TEK's patent on appeal, vacated the injunction and invalidated the counterclaim patent. Ramani successfully fended off a last-ditch inter partes review last fall, and then persuaded the jury in March that TEK deserved nearly all of its claimed damages of $2.9 million.

The parties are currently briefing post-trial motions, including a permanent injunction and exceptional case requests by TEK.

"It's been a long, difficult road for our client," Ramani said. "They previously lost their patent, tagged for infringement and lost their injunction. This is a reversal of that. Hopefully, we get a favorable outcome on post-trial motion."

Keker Van Nest & Peters has a wide intellectual property practice, Ramani said, representing the open patent holders, as well as practicing entities and handling significant competitor disputes. Currently, he is representing medical technology company ConforMIS Inc., which is suing Smith & Nephew, considered a medtech titan.

"We've been litigating in district court and we've asserted 18 patents," Ramani said. "They've asserted two patents back. There's been some interaction with the Patent Trial and Appeal Board and a petition for IPR on patents. Two were denied. It's pretty interesting."

For those coming up in intellectual property litigation, Ramani said to "get in court as often as they can."

"I've been fortunate to be at a firm where we get to court and to trial a lot," he said. "I've tried 16 cases. To me, that's the most important thing a young person can do."

Ramani added, "I love my job and I love my firm. It's still amazing to me that people pay me to learn about their technology and speak on their behalf in court. That's the most fun in IP litigation. You learn about all this cutting-edge tech in a variety of fields.

— Matthew Sanderson

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Robert A. Van Nest

FIRM	CITY	SPECIALTY
Keker, Van Nest & Peters LLP	San Francisco	Litigation

It has been a busy couple years for Van Nest, but the titan of tech litigation is ready for more.

Van Nest brought home an incalculably significant victory for Alphabet Inc.'s Google in litigation brought by Oracle Corp., regarding the Android smartphone operating system and concepts it borrowed from Oracle's programming language, Java.

He was able to convince a jury that Oracle encouraged people to use and copy aspects of Java in order to increase the influence of the product and that the company cannot turn around after the fact and claim that it was wronged.

The case is now on appeal awaiting briefing and Van Nest feels confident about his position. He said Oracle did not challenge a jury instruction but instead appealed that there was not sufficient evidence at trial to support the jury's findings. That is an argument he is ready to have.

"The evidence of fair use was very strong," he said. "It included not only admissions from Oracle about how transformative Android was but also the fact that both Sun [Microsystems] and Oracle tried and failed to use Java to build a smartphone."

Van Nest said that Oracle's overall success as a company also undermined any arguments that Google's success with Android somehow negatively impacted the plaintiff.

"Their experts weren't able to provide any significant evidence of market harm," he said. "In fact Mr. Ellison testified that Java was doing well."

Van Nest used a similar argument to defeat claims brought by Cisco Systems Inc. against his client, Arista Networks Inc. Van Nest contended that Arista's use of a command line programming interface for its network products was legally defensible because there are limited technological alternatives and Cisco established this technique as an industry standard, rather than a proprietary solution.

In both cases Van Nest essentially contended that a tech company traded away its ability to claim ownership over a technological innovation because the company benefited more by making the technique ubiquitous and expanding its reach, increasing the visibility of its own products, than by keeping it to themselves. He contended that Cisco knew other companies were copying its techniques and essentially encouraged them to do so.

Van Nest convinced a jury to bat aside Cisco's claim for $335 million in damages.

"There was evidence from Dell, evidence from Hewlett-Packard, evidence from Juniper Networks," he said. "All of that evidence pointed to the long-standing practice of Cisco to promote [command line interface] as an industry standard."

That case is also on appeal.

— Joshua Sebold