

TEXAS LAWYER

An **ALM** Publication

texaslawyer.com | September, 2018

LITIGATION DEPARTMENT OF THE YEAR

WINNER: MIDSIZE FIRM
MCKOOL SMITH



From left: Theodore Stevenson,
David Sochia, and Douglas Cawley,
principals at McKool Smith in Dallas.

BY MARY ALICE SALMON

AFTER VETERAN MUSIC PRODUCER QUINCY JONES SUED the estate of the late Michael Jackson, he sought McKool Smith's help to try the case in California Superior Court. The result was a \$9.4 million verdict for Jones.

"It was probably my favorite case I've tried," said firm founder Mike McKool, Jones' lead counsel.

With 186 lawyers in offices across the country, McKool Smith focuses on trying cases.

In *Quincy Jones, et al. v. MJJ Productions Inc., et al.*, Jones alleged that he was not paid royalties for the soundtrack to a documentary released after Jackson's death and for Jackson's Cirque du Soleil productions. He alleged that through "clandestine" agreements with Sony Music, which released the soundtrack to the film, MJJ disguised "royalties" as "profit" and diverted the disguised royalties to itself.

"Our allegation was that was a sham," McKool said.

In July 2017, the jury found that MJJ owed Jones unpaid royalty fees. The significance of the verdict, McKool said, is "you can't mask a royalty with another name and have it paid out in a different way."

Jackson's estate has appealed.

In 2017, the firm won a victory at the International Trade Commission for TiVo and its Rovi subsidiaries in patent infringement litigation against Comcast. Rovi alleged infringement of two TiVo patents covering set-top boxes technology.

"Preparing for a procedure in the ITC is very demanding," said McKool Smith Dallas principal Doug Cawley, Rovi's lead counsel.

Some briefs filed on both sides of the case were more than 1,000 pages long. On May 26, 2017, an administrative law judge found in Rovi's favor. The commission affirmed

much of that determination in November and also issued exclusion cease and desist orders prohibiting Comcast from importing into the U.S. any set-top box infringing any of the asserted patent claims.

Also in 2017, McKool Smith obtained a verdict on behalf of the plaintiff in *Ericsson Inc., et al. v. TCL Communications Technology Holdings Ltd, et al.* in a patent infringement case. On Dec. 7, 2017, a jury in the U.S. District Court for the Eastern District found that TCL willfully infringed claims of an Ericsson patent by selling phones and devices equipped with the Google Android operating system and awarded \$75 million as reasonable royalty damages.

In preparing for the trial, McKool Smith surveyed more than 1,000 Android customers to determine what the feature in question is worth and found that 28 percent of them wouldn't buy the phone without it, according to McKool Smith principal Ted Stevenson of Dallas, Ericsson's lead counsel. The popularity of the feature, which allows an Android user to place restrictions on the ability of third party applications to access the user's phone data and hardware, meant that TCL had substantial at-risk profits without a license, Stevenson noted.

"We try a lot of patent cases, and I think we're getting pretty good at explaining technology and persuading juries," he said. "Our lawyers are getting it down to a science."

In March 2018, a magistrate judge ordered the damages portion of the verdict set aside for a new trial but held the jury's finding of infringement was supported. He reconsidered his decision in May, denying TCL's motions for judgment as a matter of law and a new trial. He also enhanced the damages and awarded interest for a judgment of almost \$110 million. ■