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Q&A With McKool Smith's Douglas Cawley

Law360, New York (May 31, 2013, 12:55 PM ET) -- Douglas A. Cawley is a principal in McKool Smith PC's Dallas office. For more than 30 years, he has been engaged in the trial of complex cases, and has handled intellectual property matters throughout the United States and across the globe. He won a $368 million verdict for VirnetX Holding Corporation against Apple in November 2012, a $290 million judgment for i4i Inc. against Microsoft, a $105.75 million verdict for VirnetX against Microsoft, a $21 million verdict for Anascape Ltd. against Nintendo, and a $156 million verdict for TGIP Inc. against AT&T.

Q: What is the most challenging case you have worked on and what made it challenging?

A: One of my most challenges cases has to be handling the global litigation for Ericsson against Samsung. The case involved simultaneously pending district court litigation in Texas; two U.S. International Trade Commission investigations, and litigation in the U.K., the Netherlands, Germany and Italy. The sun never set on these cases, and keeping up with the niceties of various nation's procedures and substantive laws was a challenge to say the least.

Q: What aspects of your practice area are in need of reform and why?

A: In my opinion, the new anti-joinder provisions of the America Invents Act are a poor solution to a largely nonexistent problem. District courts have always had the ability to order separate trials, if appropriate in particular cases, but they are now faced with multiple trials in circumstances where they may not be necessary. Many courts are already becoming overwhelmed with the burden of these serial trials. District courts need more flexibility in managing patent litigation, not less. Congressional micromanagement of the district courts' case management is a terrible idea.

Q: What is an important issue or case relevant to your practice area and why?

A: The law of damages in patent litigation is undergoing rapid development, and, in the meantime, it is difficult to evaluate prospective cases, to advise clients on the range of reasonable royalties and to marshal the proof necessary to survive Daubert challenges and appeal. I'm afraid it will be several more years before the dust settles and we feel that we have predictability in awards of reasonable royalties.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Henry Bunsow of Bunsow De Mory Smith & Allison LLP in San Francisco is one of the best trial lawyers I have seen. One of the most memorable direct examinations I ever witnessed was Henry's questioning of a retired inventor. A decade later, I remember everything about the inventor's testimony, but nothing about Henry's questions. He has a masterful ability to make his witnesses the center of attention while he fades into the background. Henry also has a down-to-earth grasp of themes that will resonate with jurors.

Q: What is a mistake you made early in your career and what did you learn from it?

A: After several early trials, jurors came up to me and said complimentary things about the job I had done in the courtroom, but expressed their condolences that I didn't have a better client. Eventually, it began to dawn on me that maybe my job was not to impress the jurors with my skills, but to make my clients look good. My success in the courtroom increased significantly after that realization.

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