

## IP Group Of The Year: McKool Smith

By **Melissa Lipman**

*Law360, New York (January 08, 2014, 5:16 PM ET)* -- McKool Smith PC's intellectual property group proved its patent litigation prowess by netting a \$368 million jury verdict against Apple Inc. and winning a precedent-setting Federal Circuit decision for Ultramercial LLC, earning the firm a spot among Law360's 2013 IP Practice Groups of the Year.

Made up of more than 100 attorneys spread across all but one of the firm's eight offices, McKool Smith's IP group racked up nearly \$570 million in patent infringement awards for its clients from November 2012 to November 2013.

That total includes a \$368 million verdict that the firm scored for VirnetX Holding Corp. against Apple in a dispute over patents related to virtual private network technology used in the iPhone, iPad and other products that run Apple's FaceTime application.

Though Apple has appealed the November 2012 verdict, the case marked a key win against a company known for its willingness to litigate, according to Douglas Cawley, lead trial counsel for VirnetX.

"Apple is a very formidable adversary and a very hard fought litigator," Cawley said. "This is a feature ... that was widely advertised [and] something I think Apple defended vigorously."

Cawley also served as lead trial counsel for ParkerVision Inc. in its October \$173 million verdict against Qualcomm Inc. in a lawsuit over patents for radio frequency receivers and the down-conversion of electromagnetic signals.

"This is technology invented by ParkerVision in the late '90s, it is widely used in the cellphone industry but ... until now the patents of ParkerVision have been widely disparaged," Cawley said, pointing to analyst commentary on the value of the publicly traded company's portfolio. "So this lawsuit was really ParkerVision seeking not only to recover fair value for the use of its technology, but also to achieve a public validation of the value of its technology."

But McKool Smith's IP accomplishments weren't limited to the district courts. Indeed, the firm scored two notable victories in the Federal Circuit in 2013, including one case that may end up before the U.S. Supreme Court.

In that suit, the firm convinced the appellate court to revive a case its client Ultramercial had brought against WildTangent Inc. over Internet advertising technology that the district court had dismissed after finding the patent didn't cover eligible subject matter.

The case speaks to a broader dispute about where the line is between a patentable invention and an abstract idea, particularly when it comes to finding new ways to do conventional tasks, like adding advertising to video content, online.

But what makes the decision — which held the patent claimed a patentable process rather than an abstract idea — even more remarkable is that it came from the same Federal Circuit, and two key judges, who had deadlocked over how to approach the same issue just a month earlier in a case involving CLS Bank International.

"Right now my case kind of stands out because both sides came together ... and wrote an opinion," said Lawrence Hadley, who represented Ultramercial in the case. "It is the governing law on what is patentable and what isn't patentable with respect to computer-related inventions."

Though that may not last — the Supreme Court recently agreed to hear the CLS case — the Ultramercial dispute may take McKool Smith to the high court as the justices have asked for further briefing and could ultimately hear that case along with CLS.

The firm also nabbed another major Federal Circuit victory in May, when the appeals court upheld McKool Smith's \$391 million jury verdict for Versata Software Inc. against SAP America Inc.

Argued by firm co-founder and Chairman Mike McKool, that case could also potentially land the firm before the Supreme Court for the first time as SAP has challenged the decision.

"We've ranged ... now where we certainly have handled and successfully handled some of the most significant cases on the appellate level, and five years ago we couldn't say that," McKool said. "We used to ... for these very large cases suggest to our clients that they hire the very best appellate lawyers, and over time we've started to argue them ourselves."

McKool credits that change to the firm's willingness to follow the market as demand grew for patent litigation capabilities, going from having virtually no IP practice in the mid-'90s to having more than 110 attorneys handling patent work now, including nearly 60 lawyers with technical training.

The one area where the firm would like to expand is into pharmaceutical patent work. McKool said the firm was on the hunt for a top quality lateral hire with a strong background and client connections in the pharmaceutical world.

Still, McKool said the firm was happy with what it had achieved so far.

"There's nothing in patent infringement litigation that we don't have the capability to handle," McKool said. "We've got over a billion dollars on appeal right now in verdicts and judgments, and there is not another firm that has won nearly as many large verdicts as we have."

--Additional reporting by Ryan Davis. Editing by Katherine Rautenberg.