

Trial Pros: Paul Hastings' Blair Jacobs

Law360, New York (May 27, 2016, 10:22 AM EDT) -- Blair M. Jacobs is a partner in the intellectual property practice at Paul Hastings LLP and is based in the firm's Washington, D.C., office. He is a first-chair trial lawyer who focuses on bet-the-company patent and trade secret disputes spanning all areas of intellectual property law. He has tried numerous jury trials and argued more than 20 cases before the federal courts of appeal, with a particular focus on the Federal Circuit. Jacobs has also litigated before the International Trade Commission, successfully representing both complainants and respondents in Section 337 investigations. He has been recognized as a top U.S. practitioner both at the ITC and for his district court and Federal Circuit practice. His practice encompasses an array of technical areas, including hardware and software, semiconductors, fiber optics, pharmaceuticals, medical devices, mobile handsets, SMS technology, robotics, photolithography and product design.



Blair Jacobs

Q: What's the most interesting trial you've worked on and why?

A: I worked on a number of interesting trials while at the U.S. Department of Justice and during my time of government service, it would difficult to pinpoint just one. So I'll turn to my patent trial experience and go back to a series of trials that we handled in the Ciena v. Corvis line of cases. The cases were filed back in the early 2000s during the boom of telecommunication companies and when the infrastructure for the internet was just being built out. The technology was incredibly complicated, dealing with fiber optic telecommunication systems. We had a little of everything happen in those trials, from hung juries to single issue trials just concerning the validity of certain patents. Perhaps more than anything else, the judge made the case interesting by entering an order quadrifurcating the case into four separate trials, a practice that I have (luckily) never subsequently seen. The case really taught me a lot about the importance of human dynamics in patent trials. We had the chance to talk with the jury at the conclusion of every trial, a practice that was invaluable in helping to understand how jurors attempt to process and understand incredibly complex technologies. Finally, the trials were interesting because of the issues involved and the exceptionally talented trial team on the other side of the aisle. We had many late nights hashing over the issues for the next day, several fun moments of levity and friendship, and interesting court days with fair and honest trial combat.

Q: What's the most unexpected or amusing thing you've experienced while working on a trial?

A: I imagine most trial attorneys can regale on unexpected events that occur during trial. Trial is a roller coaster ride. Early in my career during my government stint, my personal safety was threatened and we had secret service guards assigned to patrol our neighborhood and watch over our house. That was unexpected. I had a witness who literally had his heart stop on the stand one time at trial while being asked a straightforward

background question. That was disconcerting. I had a juror fall asleep and snore loudly in the jury box until the judge was forced to excuse the juror from service. That was quasi-amusing and, thankfully, during opposing counsel's presentation. I once had a particularly attentive jury foreperson, a nurse from a local hospital, who we subsequently learned was accused of stealing and using eye drops consisting of illegal narcotics. The trial life is far from ordinary.

Q: What does your trial prep routine consist of?

A: I like to think that I focus on trial preparation from the earliest days of a case. Trial prep varies depending upon the issues involved in a case but there are some common denominators. First, I carefully contemplate not only the story that we want to tell for our client but to also deeply digest and understand the strong points from the opposing party's perspective. This helps in better assessing factual shortcomings but also in building out legal issues that might be exploitable if an opponent pushes the envelope too far. So we come at every issue from two perspectives during trial prep, short term success and long term success. Above all else, I am a firm believer in analyzing everything from the jury's perspective, not only trying to anticipate how each juror will feel about our case but to also identify emotional response issues. We'll inevitably do mock jury research or other type of simulation so that we can to better understand what works and what falls flat. I am lucky to work with a team of remarkably talented and experienced trial lawyers so I also spend a lot of time bouncing ideas off of the group and clients as different perspectives ultimately lead to better comprehension of what might move the jury. We build a storyline based on evidence from the ground up and always focus more on weaknesses than strengths. I like to get very hands on during the trial prep process. I will personally review critical evidence and put together demonstratives based on my own perspectives and experience. I also spend a lot of time with witnesses trying to not only help them tell their story, but to calm them during what is often perceived as a stressful situation.

Q: If you could give just one piece of advice to a lawyer on the eve of their first trial, what would it be?

A: Treat each day like a sprint but focus on winning the marathon. Trial work is so dynamic with many unexpected twists and turns. There will be things that happen each day that can result in stress or create a side-issue distraction, but the ultimate goals of the client are best served by focusing on the ultimate objective rather than the daily skirmishes (though the daily skirmishes are important also). And finally, have fun and enjoy the experience!! With fewer trials actually occurring every year, the learning experience you obtain from being part of a trial team should and the dynamic nature of the process should educate and benefit you for the rest of your career — and it should leave you yearning for more.

Q: Name a trial attorney, outside your own firm, who has impressed you and tell us why.

A: We are blessed in the patent litigation bar to work with and against exceptional trial attorneys frequently, so there are many attorneys that I have worked with who have impressed me. I can honestly say that every team I have worked against in a patent trial has impressed me deeply. As far as a trial attorney who specifically impressed me, my former partner Terry McMahan comes to mind. Among all of the people that I have worked with in a trial setting, Terry cared more about the people involved than anybody I have met, I mean a deep emotional caring that stretched from the jury to members to his team to the judge and to the client. He really cared at an incredibly intense and palpable level and this allowed him to create a compelling scene for his audience.

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