

Texas Powerhouse: McKool Smith

By Michael Phillis

Law360 (September 7, 2018, 2:50 PM EDT) -- McKool Smith PC in the last year helped Ericsson Inc. win \$110 million in a cell phone patent infringement case against a rival and cemented a \$9.4 million royalty case victory for a Michael Jackson producer who helped the King of Pop create some of his biggest hits, underlining its courtroom strengths.

One of Law360's 2018 Texas Powerhouses, McKool Smith is a litigation-focused firm that's often brought in when a trial is likely. It scored a major jury verdict for Ericsson at trial, then got that verdict reinstated in May after a magistrate judge had ordered a new trial. And it helped TiVo subsidiary Rovi Corp. in a sprawling patent fight against Comcast over the rights to important TV features.

"We try to understand the market demands for courtroom lawyers. That is really how we are known and what our reputation mainly consists of — our success in the courtroom," Mike McKool, a founder of the firm, said.

McKool Smith started in Dallas in 1991 with 13 attorneys, then expanded nationwide to about 185 lawyers today. Texas remains a significant hub for the firm, which has 72 attorneys in the state and offices in Dallas, Austin, Houston and Marshall. McKool said the firm's work is split largely into two areas: patents and commercial litigation.

According to McKool, the firm tries to hire people who have technical experience and the know-how to persuade a jury.

"You can't practice patent litigation at the highest levels without a deep bench of technically trained lawyers," McKool said. "In order to deal with experts and technology, it is just important to have those kinds of people."

That expertise helped the firm secure a win for Ericsson after a jury trial in December against TCL Communications Technology Holdings Ltd. At issue was a patent for technology that allows a phone to provide an application with permission to access individual functions on a device, such as a phone's contacts, camera or location.



A Texas magistrate judge had ordered a new trial in the Ericsson case, but its win was reinstated in May, with Ericsson scoring \$75 million in damages, more than \$10 million in prejudgment interest and \$25 million in enhanced damages. The case is on appeal.

"It was a significant accomplishment," said Ted Stevenson, a principal at the firm who worked on the case. "We used a methodologically sound way of zooming in and honing in on the value of the actual invention."

The firm did a consumer survey that sought to determine exactly how much the patent was worth, and argued the survey results supported its contention that the technology allowing a phone to provide individual permissions was highly valuable.

"We do a lot of this," Stevenson said. "We have a long track record of trying patent cases all over the country to successful results."

The firm is especially strong in telecommunications cases, which are common in the Dallas area, Stevenson said.

"We have literally litigated several hundred essential cellular patents as a firm, so we know it well," he said.

Douglas Cawley, a principal for the firm, is working for Rovi in a dispute over whether Comcast's programming guides and set-top boxes infringed Rovi's patents. Cawley said that at one point, the entire industry licensed Rovi's patents, but Comcast has now refused to renew its license, causing the current dispute.

Proceedings are moving forward in multiple jurisdictions, and Cawley said it is one of the most complex cases he's worked on.

"From [Rovi's] perspective, these proceedings have already forced Comcast to de-feature some of its cable offerings," he said, adding that the high amount of legal activity shows the importance of the matter to both sides.

The firm's expertise makes it one of the few that can handle such a complex matter, he said.

Outside of Texas, McKool Smith in August helped WiLan Inc. win a \$145 million jury award in California against Apple Inc. over two patents covering wireless technology.

And there was the high-profile case of Quincy Jones, the legendary music producer who helped create some of Michael Jackson's best-known albums, including "Bad" and "Thriller." Because of the names involved, the case received a lot of press attention. After Michael Jackson died and his record sales skyrocketed, a production company controlled by Jackson's estate and record label Sony Music Entertainment struck a profit-sharing deal. Jones filed suit claiming he had not received the royalties he was owed from the deal. While he didn't get as much as he wanted, Jones still received \$9.4 million from a California jury last year.

McKool said the case was a particularly significant win.

"The amount of the verdict does not represent the gravity of the case for [Jones]. That is only the

amount he was deprived of," McKool said. "It establishes his right going into the future. For him and his family, that could be a much larger number, obviously."

McKool said the firm's success is demonstrated by the verdicts it achieves.

"The actual courtroom expertise and demonstrable courtroom success, I think, are differentiators," he said.

--Editing by Marygrace Murphy.

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