

IP Group Of The Year: McKool Smith

By Suzanne Monyak

Law360 (January 18, 2019, 5:23 PM EST) -- McKool Smith PC's intellectual property attorneys notched key wins at the U.S. International Trade Commission and the federal courts, including a \$110 million verdict awarded to Ericsson Inc. and favorable rulings against Apple and Comcast, landing them among Law360's Intellectual Property Groups of the Year.

With nearly half of the 175 attorneys at the national law firm practicing IP cases, and the other half focusing on commercial litigation, McKool Smith has achieved an "extremely deep" trial practice, Ted Stevenson, a principal at the firm who heads its IP practice, told Law360.

"We have a very deep number of lawyers that are not only just comfortable in court, but are at the top of the profession when it comes to courtroom presentations," Stevenson said. "We're always able to put together a very experienced and very capable courtroom team."

Doug Cawley, the other co-head of McKool Smith's IP practice, similarly praised the firm's "standout trial experience."

"We're not only a small firm, but we're a small firm that exclusively does litigation," Cawley said. "We spend all our time thinking about how to handle complex litigation efficiently and how to win."

The firm put those trial chops in action during a patent infringement dispute between Ericsson and TCL Communication Technology Holdings Ltd. last year over cell phone technology. A Texas federal jury found in December 2017 that TCL had infringed Ericsson's patent and awarded the Swedish telecommunications company \$75 million in damages.

After Magistrate Judge Roy S. Payne of Texas' Eastern District first nixed that damages verdict as too high, attorneys with McKool Smith persuaded him in May not only to reinstate the verdict, but also to tack on an additional \$35 million in enhanced damages and interest. TCL's appeal of that ruling is currently pending before the Federal Circuit.

Stevenson said the attorneys had taken a newer approach to calculating the damages that Ericsson was owed by using a consumer survey to determine the value of the phone feature covered by the infringed patent claims.



"This is a fairly new and burgeoning way to do apportionment," Stevenson said, adding that the method will likely be reviewed in the appellate courts. "I think it's a workable approach and it makes a lot of sense, because it really isolates the value of the patent."

In another notable win last year for McKool Smith in the Eastern District of Texas, the firm scored a \$10.6 million patent infringement verdict against Huawei Technologies Co. Ltd. on behalf of patent licensing company PanOptis Patent Management LLC.

The case was initially filed by PanOptis and Optis Wireless Technology LLC, which alleged that Huawei was infringing its patents with the Chinese company's 4G LTE equipped devices. Huawei countered that PanOptis' royalty rates were too high and that the company was not licensing its standard essential patents related to 4G technology on terms that were fair, reasonable and non-discriminatory, or FRAND.

But in an August ruling, a Texas federal jury found that the Chinese smartphone manufacturer had willfully ripped off five of the company's patents covering video and wireless technology.

Stevenson said that it was the first case in his career where the accused infringer did not contest the infringement allegations.

"At the end of the day, I think it turned into an opportunity for our client, because I think we were able to point out pretty persuasively that Huawei wasn't respecting the patent system," he said.

In November 2017, up against telecom giant Comcast Corp., McKool Smith persuaded the full ITC to ban the importation of Comcast's set-top boxes that were found to infringe two patents owned by the firm's client, TiVo's Rovi Corp.

And in a case that firm founder Mike McKool described as an "uphill fight," McKool attorneys convinced a California federal jury in August that Apple Inc. had infringed two patents owned by Canadian licensing company WiLan Inc.

McKool said that the most difficult aspect of that trial was convincing a jury in California, where he said Apple rarely loses patent infringement suits, to rule in favor of a lesser-known Canadian company.

"The biggest challenge is that Apple is so well-known and so well-liked — I think most of the jurors in our case used Apple products," he said. "So just coming in with a Canadian plaintiff that the jury probably had never heard of and challenging Apple, I think that was the most challenging."

While the infringement finding was later sustained by the district court, the \$145.1 million damages verdict initially granted by the jury was scrapped by a federal judge in early January. McKool told Law360 he is "very optimistic" about the amount of damages that WiLan will get in the retrial.

--Editing by Nicole Bleier.