

Litigators of the Week: The Team that Stuck Apple With a \$500M Verdict In the First Patent Jury Trial of the Pandemic

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By Ross Todd
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Patent trials came back with a bang last week as an East Texas jury hit Apple with a \$506 million dollar damages verdict finding that the company infringed five patents that are essential to the 4G LTE wireless standard.

Litigators of the Week **Jason Sheasby** of **Irell & Manella** and **Sam Baxter** of **McKool Smith** led the trial team for patent owner PanOptis in the six-day trial before Chief U.S. District Judge Rodney Gilstrap, the first to get off the ground during the COVID-19 pandemic. In a sweeping victory for the pair's client, the eight-person jury found that Apple infringed claims of the five patents at issue, determined that all the asserted claims were valid, and found that Apple's infringement was willful. With precautions including daily temperature checks and face shield for jurors, plexiglas around the witness box, and lawyers confined to the podium, the plaintiffs team navigated a unique set of challenges to deliver the Texas-sized verdict.

Sheasby and Baxter answered the Lit Daily's questions about the extraordinary trial and result jointly.

Litigation Daily: Who was your client and what was at stake?

Jason Sheasby and Sam Baxter: We represented PanOptis, a company that was created with the help



(Photo: Courtesy Photo)

Jason Sheasby of Irell & Manella and Sam Baxter of McKool Smith of Panasonic, LG and Ericsson to protect and license their innovations. The case related to patents that were essential to the LTE standard. Separately in a trial before the bench, PanOptis alleged that Apple acted in bad faith and engaged in holdout behavior and therefore has lost its rights to claim the benefit on an undertaking that members of The European Telecommunications Standards Industry organization give to license essential patents on fair reasonable and nondiscriminatory terms. The judge's decision on the bench trial is pending.

Who all was on your trial team and how did you divvy up the work?

Annita Zhong, Steve Pollinger, Jennifer Truelove, Jonathan Yim, Lisa Glasser, Tara Trask, David Barnard,

Rebecca Carson, Maclain Wells, Andrew Strabone, Ingrid Petersen, Kelsey Schuetz, Seth Hasenour and Chris McNett. We treated ourselves as one team all working together. Tasks were not split by firms. We found the best people for the job and got them together.

How did navigating the pandemic affect your trial preparation and the dynamics of the trial?

We worked with an industrial hygienist to design work spaces that were safer and minimized exposure, and we were spread out in different buildings throughout downtown. For out of towners, we arrived substantially in advance of trial and avoided going to public places during a quarantine period.

Did you talk about the pandemic with jurors, or did you treat it as just another trial?

Judge Gilstrap included a letter in his jury summons that allowed potential jurors to express concerns about service in advance. The 44 citizens who showed up for jury selection expressed no reservations about service, and we respected their decision. We acknowledged the serious and difficult time our country was facing, but we made the trial about the substance of the dispute.

I've heard that the two of you have pretty different practice approaches. How would you describe those differences and how did you think you complimented each other?

You should never stop learning. Different approaches to trial practice are just great opportunities to learn your craft.

Apple enjoys a positive image and is popular all over the country. Was that something you had to overcome? If so, how did you do it?

Apple makes wonderful products, and this can be acknowledged. But there are many areas in which Apple does not innovate. One of those is communications technology. Companies, like individuals, can be complex. There can be good aspects of them and not so good aspects to them.

Were there strategic or tactical moves Apple made that concerned you? How did you address them?

One of the patents that PanOptis owns was originally assigned to Samsung. Apple examined our corporate representative as to whether Samsung copied Apple's physical design, and made this a centerpiece of its corporate representative's testimony. We addressed it on cross-examination of Apple's corporate representative and damages expert by making clear this case was not about physical design. We used Apple's demonstrative comparing Samsung and Apple phones against it by pointing out that the first Apple iPhone used a Samsung processor and that Samsung was ahead of Apple on LTE by close to 26 months.

Judge Gilstrap's strict time limits can make clock management an issue in his courtroom. Were you able to gain an advantage there?

Judge Gilstrap's courtroom is fair and balanced to each side. In this case there was no disagreement between the parties as to the length of trial.

What was the key to your damages case? Were you able to use the history of licensing 4G/LTE patents?

The key to the damages case was a rigorous statistically significant consumer preference survey that made clear the importance of LTE performance and our ability to quantify the performance contributions of the patent.

So far as you know, has everyone who participated in the trial remained COVID-free to date?

No one as far as we know has been diagnosed.

Is there anything else we should be talking about?

The constitution works. It works in good times, and it works in bad times. This is exactly what the founders had in mind.

Ross Todd is the Editor/columnist for the Am Law Litigation Daily. He writes about litigation of all sorts. Previously, Ross was the Bureau Chief of The Recorder, ALM's California affiliate. Contact Ross at rtodd@alm.com. On Twitter: @Ross_Todd.