

IP Group Of The Year: Goodwin

By **Matthew Bultman**

Law360, New York (January 23, 2017, 11:37 AM EST) -- Goodwin has taken a central role in the so-called cheerleader uniform case at the U.S. Supreme Court and also helped convince the Federal Circuit that inter partes reviews are constitutional, earning the firm a spot among Law360's 2016 IP Practice Groups of the Year.

With 52 attorneys, Goodwin's IP group isn't the largest in terms of sheer numbers, but it has shown an ability to consistently deliver results, landing on Law360's list of premier practice groups for the third consecutive year. Doug Kline, chair of IP litigation, said the firm excels at being able to handle patent litigation for clients in a way that is tailored to their needs.

"Some of our clients can afford to wage war, if you will, and we're pleased to represent them in those efforts and we've got a good track record of getting great results for them," he said. "But we've got a lot of clients, and for some that's not in their business plan and litigation is just getting in the way of them trying to achieve their goals and implement their strategies."

"Our role there," he said, "is to be absolutely as efficient as we can and figure out how to drive a matter that's really just in the way for them to a quick resolution so they can get on with their business."

This was evident over the past year, as Goodwin scored favorable outcomes for clients — including household names like Pepperidge Farms and JPMorgan Chase & Co. — at every level, from the Patent Trial and Appeal Board to district courts, and on up to the appellate courts.

In one headline grabbing case in late 2015, the Federal Circuit upheld a lower court ruling in favor of Teva Pharmaceuticals USA Inc. in a patent case involving the nearly \$1 billion market for generic Lovenox. The appellate court said Teva, which was represented by Goodwin, did not infringe the disputed patent, as Momenta Pharmaceuticals Inc. and Sandoz Inc. alleged.

Notably, the court's precedential decision found that Teva's fellow defendant, Amphastar Pharmaceuticals Inc., lost protection of a so-called safe harbor provision in patent law, which holds that otherwise-infringing conduct is legal if it is done under the requirements of federal drug laws. The infringement case against Amphastar was remanded while Teva prevailed.



Just a few weeks later, the Federal Circuit issued a decision in favor of Hewlett-Packard Co. in a case that quite literally threatened the very existence of America Invents Act reviews.

MCM Portfolio LLC, which saw claims in its flash memory patent invalidated by the PTAB in inter partes review after suing HP for infringement, argued that all AIA reviews are unconstitutional because they deprive patent owners of the right to a jury trial on the validity of their patent.

Rejecting that argument, the Federal Circuit held that Congress' assigning review of patent validity to the U.S. Patent and Trademark Office is consistent with Article III of the Constitution. And because patent rights are public rights whose validity is susceptible to review by an administrative agency, agency adjudication without a jury doesn't run afoul of the Seventh Amendment, the court said.

The Supreme Court declined MCM's bid for certiorari in October.

Marcia Sundeen, one of the attorneys who represented HP, said the case "exemplifies one of the things that makes Goodwin special." Sundeen led the case through the U.S. International Trade Commission, district court, and the Federal Circuit. Once it reached the appeals court, Willy Jay, co-chair of Goodwin's appellate litigation practice, also became involved.

"I think this exemplifies how the attorneys at the firm work together to do the best job for the client," Sundeen said.

Jay, a former assistant to the U.S. solicitor general, is also a veteran Supreme Court litigator, having argued before the high court more than a dozen times. He was back before the justices in October, this time making arguments in a case over whether cheerleading uniforms can be protected by copyrights.

The dispute pits Varsity Brands Inc., Goodwin's client and the country's largest cheerleading supplier, against Star Athletica, an upstart rival that Varsity claims is illegally copying its copyright-protected uniform designs. Star Athletica brought the case up to the high court after a divided Sixth Circuit panel ruled in 2015 that Varsity was entitled to protection.

The case, which is expected to be decided later this spring, is being closely watched by fashion companies and copyright attorneys alike.

"What the lower court held, and what we are defending, is that that is a pictorial graphic or sculptural work that is eligible for copyright," Jay said.

--Additional reporting by Bill Donahue. Editing by Emily Kokoll.