

IP Group Of The Year: Goodwin Procter

By **Aaron Vehling**



Law360, New York (January 28, 2015, 7:14 PM ET) -- Goodwin Procter LLP's intellectual property group had a banner year, from scoring a high court decision on claim construction for Teva Pharmaceuticals USA Inc. to securing the Patent Trial and Appeal Board's first precedential decision during post-grant proceedings, earning a spot among Law360's IP Practice Groups of the Year.

Last year, a Goodwin Procter team argued that the Federal Circuit's practice of reviewing anew a district court's factual findings in claim construction is inconsistent with federal law. Their hard work in 2014 paid off, with the U.S. Supreme Court on Jan. 20 ruling that the appeals court must show deference to the district court.

Members of Goodwin Procter's 150-attorney IP team, led by Doug Kline from the firm's Boston office, also represented client CardinalCommerce Corp. in a PTAB proceeding in which the board rejected rival SecureBuy LLC's three covered business method petitions challenging CardinalCommerce's online payment patents. The relatively new PTAB's first precedential decision, rendered in July, centered on its denial of a CBM review because SecureBuy had previously filed a declaratory judgment action challenging the validity of the patents.

In another big win for the firm's IP group, a team in August secured for its client Veracode damages equal to 100 percent of the revenue on sales from a product that infringed Veracode's key app security patent.

Goodwin Procter chairman David Hashmall partially attributes the firm's success in venues such as federal court, the PTAB and the U.S. International Trade Commission to the firm's system for staffing cases with a mix of patent and trial lawyers.

"There's a real collaborative effort among attorneys," Hashmall said. "I think that overall gives you a better strength as you walk into the courtroom."

Kline agreed, noting that the collaboration is a huge part of the firm's culture, and not always a given in the legal world.

"My impression from discussions I have with colleagues at other firms, including with lateral partner

candidates, is that Goodwin's collaborative culture is unique," he said.

Kline noted that attorneys with diverse expertise are needed to support the work in cases representing a wide range of clients that span from large, public companies to early growth stage companies across industries in the life science and technology spaces.

Combining the expertise of attorneys with deep science backgrounds and those with a lot of trial experience creates an adept and successful group, Hashmall added.

"At the moment, we've assembled the strongest IP litigation team of any firm in the country that I know," Hashmall said.

IP is also one of the firm's major focuses, with its team making up more than an eighth of the firm's 850 lawyers in the U.S., Asia and Europe. The strength of the team goes all the way to the top. Hashmall himself is a partner in the IP group.

"It's unusual to have an IP attorney as chair of a firm," Hashmall said.

The firm's philosophy was put to practice in a suit in which Teva sued drugmakers Sandoz Inc. and Mylan Inc. over their plans to make a generic version of Teva's multiple sclerosis drug Copaxone. It claimed that Sandoz had infringed four patents and Mylan had infringed seven.

In June 2012, a New York federal judge found in favor of Teva, ruling after a bench trial that the generics makers infringed all nine Teva patents and that they had failed to prove that the patents were invalid.

A year later, the Federal Circuit overturned that decision, ruling that Sandoz and Mylan had proven that five of the patents were indefinite because a person skilled in the art could not discern the boundaries of the claims. However, the panel did affirm that the other patents were infringed. In coming to its decision, the appellate panel relied on a then-common practice of reviewing a patent's claim construction de novo, or afresh.

Teva appealed the decision to the Supreme Court, arguing in October 2014 for the appeals court to defer to the district court's claim construction. This month, in a 7-2 vote, the high court justices agreed.

While it is too early to assess the impact of the decision, Hashmall, who led the Teva litigation, said that several attorneys think it might change settlement dynamics.

"I think there will be greater appreciation by practitioners that the district court ruling on claim construction will be more likely to stand," he said. "There will be more certainty to parties when evaluating whether to settle and litigate."

In another decision that could cause ripples in the IP world, in August the PTAB labeled as precedential an April decision that a CBM patent review cannot proceed if a petitioner files a civil suit to challenge a patent's validity prior to filing its review petition.

The ruling had said that under the America Invents Act the appeal was foreclosed by two federal court suits SecureBuy had previously lodged to challenge the validity of U.S. Patent Number 7,051,002, a patent owned by Goodwin Procter client CardinalCommerce. The PTAB decided to make it precedential to clear up confusion and make the decision binding on future PTAB rulings.

Kline said that the PTAB is relatively new, but with decisions like that one it's already making its mark on the patent landscape.

"The PTAB is already having a significant impact on patent litigation and undoubtedly will continue to have a big impact," he said.

In the firm's August win for Veracode, a Goodwin Procter team won two jury trials in a Massachusetts federal court for Veracode, a major provider of cloud-based security for Web, mobile and third-party enterprises applications.

The jury confirmed the validity of Veracode's key app-security patent and found that it was willfully infringed, leading to a separate damages trial.

For Kline, a standout from that case is that it was tried in the backyard of the Boston office, which gave many members of the IP group a chance to watch the trial.

"For those of us on the trial team, it was a great opportunity to get feedback from our Goodwin colleagues," Kline said. "For members of our IP practice who weren't on the trial team, they got the chance to see their colleagues try and win a case."

Going forward, Hashmall sees the IP group serving an integral role in expanding the firm. IP is an attractive area for recruiting young attorneys, in addition to helping attract lateral partner moves, he said.

The firm will expand its ITC and inter partes review practices, in addition to IP overall, he said.

For his part, Kline sees great things ahead.

"With so much taking place," he said, "I see Goodwin's IP practice continuing to be an active, thriving practice at the firm and an important part of our service offering to clients."

--Additional reporting by Ryan Davis and Vin Gurrieri. Editing by Mark Lebetkin.

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