

Daily Journal

APRIL 17, 2013

Intellectual Property 2013

One of the striking things about picking the list of top intellectual property attorneys, aside from the difficulty of choosing among hundreds of highly qualified nominees, is the diversity of their achievements. The litigators chosen travel the country to do battle for their clients.

While these attorneys' work has stretched worldwide, some of the biggest cases of the past year took place in California. To qualify for the list, an attorney must be based in California even if much of his or her work is done elsewhere, such as the U.S. International Trade Commission in Washington, D.C., the U.S. Patent and Trademark Office in Virginia, and district courts in Texas, Delaware, Illinois and elsewhere. And their focus must be on intellectual property, as opposed to general litigators who sometimes handle such work.

Top 75 Intellectual Property Litigators

David H. Kramer

Wilson Sonsini Goodrich & Rosati PC | Palo Alto

Internet, copyright



Kramer spent much of 2012 leading Wilson Sonsini Goodrich & Rosati's teams representing Google on several matters, including a battle with the U.S. government regarding the company's placement of cookies on Apple's Safari Web browser, which the Federal Trade Commission alleged was a violation of a prior consent decree.

In that case, Kramer not only secured a settlement in which Google denied liability, but also withstood a challenge to the settlement. Consumer Watchdog filed multiple briefs arguing the agreement was inadequate and that Google should be forced to admit liability. Over Consumer Watchdog's objections, U.S. District Judge Susan Illston of San Francisco Nov. 16 approved the settlement as serving the public interest. *U.S. v. Google Inc.*, 12-04177 (N.D. Cal., filed August 8, 2012).

Kramer is also leading the related effort to address more than 20 federal class actions regarding the matter, which were consolidated into a single litigation in Delaware by the Judicial Panel on Multidistrict Litigation. Google has filed a motion to dismiss.

"I've been working with Google since 1999 in one way or

another and have had the privilege of representing an extraordinarily innovative and principled company," Kramer said.

He said the firm represented Google since the day the influential tech company was born. At the time, he represented "a series of search engines" including Netscape and Lookout, among others.

"When a search company called, it was routed for me," Kramer said.

One day that company happened to be Google, Kramer said. "Who knows where I'd be" if that hadn't occurred, he said.

Kramer said he was fortunate to move from New York to the West Coast "just in advance of the dawn of the Internet age."

He said his practice allows him to work on "some of the most cutting edge and interesting questions that a lawyer could hope to litigate in a career, and I've had a dozen, not one."

— Joshua Sebold

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Top 25 Portfolio Managers/ Patent Prosecutors

Vern Norviel

Wilson Sonsini Goodrich & Rosati PC | Palo Alto
Patent



Norviel spends a lot of his time helping young scientists or university professors launch their life science companies.

"Some of them have left the academic lab and want to translate what they've developed from the bench to the clinic," he said.

For early-stage companies, Norviel added, "Intellectual property is often the most important value driver."

Among his significant matters, Norviel provided patent counsel to Brigham Young University in connection with the school's settlement of a long-running, multibillion-dollar lawsuit with pharmaceutical giant Pfizer Inc. involving the drug Celebrex.

He represented Ion Torrent Systems, since acquired by Life Technologies, in patent matters related to next-generation DNA sequencing that Norviel said is thought to have revolutionized the science.

He also guided Tokai Pharmaceuticals in patent matters related to prostate cancer treatments and aided Pacific Biosciences, which develops single-molecule technology for biological analysis, in patent matters related to its \$200 million initial public offering.

Meanwhile, the patent landscape has been shifting, Norviel

said, noting in particular that the U.S. Supreme Court has become more active about weighing in on patent cases.

He noted a ruling last year that broadened the definition of what constitutes a law of nature. *Mayo Collaborative Services v. Prometheus Laboratories Inc.*, 132 S.Ct. 1289 (2012).

The decision is expected to make it harder for diagnostic companies to obtain patents in some cases.

"As a result, the Supreme Court is cutting back on IP, and the diagnostic segment of the business has to be more creative," Norviel said. "It's more difficult to navigate through the minefield. You have to know the law and make sure the patents are designed along those lines."

On the funding front, he said, "The venture capital environment is not wonderful in life science. It's more difficult for life science to raise money now. We lost a lot of big-name venture firms."

But, Norviel said, that might be changing.

"There are new players in the industry, so it seems to be on the upturn."

— Pat Broderick

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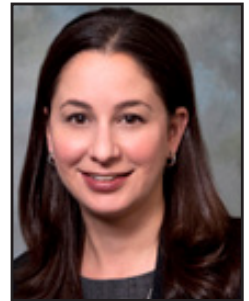
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Top 75 Intellectual Property Litigators

Stefani E. Shanberg

Wilson Sonsini Goodrich & Rosati PC | San Francisco
Patent



Shanberg recently was named secretary of the prestigious executive committee of the International Trade Commission Trial Lawyers Association.

"There aren't that many West Coast attorneys deeply involved in that organization," said Shanberg, who is the only West Coast member serving on the committee. "It's important for me to play a role in the policy setting, so that the ITC understands the perspective of Silicon Valley technology companies. They have been underrepresented."

Among her significant matters, Shanberg represents Meraki Inc. and its new parent corporation, Cisco Systems Inc., against ClearPath Networks Inc. in two cases related to patents alleged to cover the cloud management of a network. *Meraki Inc. v. ClearPath Networks Inc.*, 13-00145 (N.D. Cal., filed Jan. 10, 2013); 13-00259 (C.D. Cal., filed Jan. 14, 2013).

Meraki filed a motion seeking declaratory judgment asking for judgments of noninfringement and invalidity of the ClearPath patents shortly after Cisco's \$1.2 billion acquisition of the company was announced, and the companies are now mired in a jurisdictional battle.

ClearPath is claiming ownership of the patents, she said, and expects to benefit from the acquisition.

"They want a piece of the action," Shanberg said. "During the litigation process, we'll establish they are not entitled to it."

She added, "This case presents interesting issues regarding the economic realities of patent litigation."

In another case, Shanberg represents Trulia Inc. in a competitor lawsuit relating to a feature of its real estate website. *Zillow Inc. v. Trulia Inc.*, 12-01549 (W.D. Wash., filed Sept. 12, 2012).

On the eve of Trulia's initial public offering, Zillow Inc. filed suit, seeking damages and an injunction. Trulia then filed a motion to dismiss based on Zillow's patent allegedly failing to cover patent-eligible subject matter. The case is ongoing.

Shanberg said the common thread in cases like *ClearPath* and *Zillow* is that both happened in tandem with a pivotal company event.

"This is not new," she said. "I've seen this as an adviser to tech companies forever. They believe they've got leverage. Greed pops up when there is a transformative corporate event."

— Pat Broderick

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