

Daily Journal

APRIL 18, 2012

INTELLECTUAL PROPERTY 2012®

Patent re-examinations gain popularity, despite their risks. A few years ago, defense attorneys faced with infringement lawsuits rarely tried to get plaintiffs' patents invalidated by the U.S. Patent and Trademark Office. Today, it's increasingly common to ask that the patents get a second look.

TOP 75 INTELLECTUAL PROPERTY LITIGATORS



Adam Alper
Kirkland & Ellis LLP
San Francisco

Alper described the patent battle between his clients and Wi-LAN Inc. as "a real dog fight from beginning to end." "There were more disputes than I could ever imagine," he said.

At issue were multiple litigations related to patent assertions brought by Wi-LAN Inc., a publicly held Canadian company.

Those involved more than 20 global technology companies, including his clients, Intel Corp. and Motorola, more than 20 patents-in-suit and thousands of accused products using multiple standardized wireless technologies, including Wi-Fi, cellular and Bluetooth.

Alper oversaw a team of more than 20 Kirkland partners and associates.

He also took responsibility for the co-defendant group and frequently appeared on its behalf.

The matter settled shortly before trial, after summary judgment was entered against Wi-LAN on a number of patents in the Northern District of California and after Wi-LAN had sought to extend its own trial date in Texas.

Alper said his main strategy was to stay cool and focused.

"We had to be very pro active, making sure that we were on top of everything they were raising and the fires they were lighting," he said. "But in a measured way — not blowing things up in angry letters going back and forth. That's not my style."

Alper added, "If you allow the other side to make you look bad in discovery, it can bleed over into the merits of the case — in a bad way," he added, "and distract from what matters."

Burying an adversary in unnecessary discovery motions is a good way to alienate a judge, he said.

"On the other hand," Alper added, "we were able to capitalize on major problems with our opponents' document practices to apply additional pressure leading up to trial."

— Pat Broderick