

# Trials

Kirkland & Ellis LLP successfully defended a video game company in a trial in which LeBron James' tattoo artist claimed that his tattoos shouldn't have been shown in the game, and freed Samsung from a \$4 billion patent infringement trial, making it one of the 2024 Law360 Trials Groups of the Year.

The megafirm handled 55 trials and had 200 lawyers take important speaking roles at trial during the award period, according to Andrew Kassof, a leader of the firm's litigation practice and an executive committee member, who noted that was "more than a trial a week for every week of the year."

Kassof said the firm places an "emphasis on trial-readiness, from day one of an attorney's time at the firm and from day one of any litigation matter we work on." He said the firm's 45-year-running

Institute for Trial Advocacy was part of this investment: It's an annual training program in which senior trial practitioners spend their time "teaching and mentoring the next generation in a multi-day mock trial program."

In August, an Ohio federal judge declined to order a new trial after a jury's April verdict rejecting claims that 2K Games Inc. and Take-Two Interactive Software Inc.'s rendering of James in their NBA 2K video game series infringed a tattoo artist's copyrights.

U.S. District Judge Christopher Boyko said the trial record clearly indicated that Take-Two had an implied license to include James' tattoos, even though the artist had argued that he never gave permission for the video game companies to include his copyrighted art. The jury concluded the companies had an implied license via their licensing of James' likeness.

Kirkland's Dale Cendali, who led the weeklong trial, said the firm additionally presented a fair use defense, but implied license was the only defense the jury ended up reaching in its verdict.

"When someone gets a tattoo, there's an implied license between the tattooed person and their tattooist that you can leave the tattoo person's shop and go live your life and never go back to the tattoo person," Cendali said. "'No strings attached' is how I referred to it during the trial."

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*Andrew Kassof, Partner*

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Cendali says the jury heard James testify via video deposition, where the generational star was clear that his tattoos are “very personal to him” and that “nothing was ever said to him at the time of getting the tattoos to change the normal understanding,” in Cendali’s words.

Cendali also said the case represents what Kirkland is able to do for clients, no matter the subject matter — even if that matter is in uncharted territory.

“This was a cutting-edge case. This concept of what dominion, what rights, does a tattoo artist have under copyright law on someone [they’ve tattooed] was a new concept,” Cendali said. The firm had won summary judgment in a similar case in New York, but that meant it was not tested in trial.

Over in Texas, the firm also won a major victory in a February 2024 patent trial for Samsung when a federal jury cleared the tech giant of infringing two semiconductor patents owned by Demaray LLC.

Demaray claimed that Samsung infringed by configuring reactors supplied by major chipmaking equipment company Applied Materials to fabricate chips for Samsung products. The patents in the case cover methods of manufacturing semiconductors using an approach known as magnetron sputtering.

Richard Demaray, the named inventor on both patents, started his eponymous company after

serving in management roles at several semiconductor companies, according to the 2020 complaint, which said Demaray met with Samsung reps about his inventions in San Jose in 2017 and provided them with significant information.

Mike De Vries, who co-led the trial with Adam Alper, said it was vital for the trial team to focus on “telling the story of what happened and doing that through the lens of particular people.”

One of those was Eddie Maxwell, a Samsung engineer.

“He came and talked to the jury about the work that Samsung did ... how the machines work from a technical perspective, but also the experience that Samsung had had with this particular dispute and the claims that had been made,” De Vries said.

De Vries said there was also a key cross-examination of the plaintiff’s inventor regarding what communications took place at what times between the two companies.

Alper added that a case with such a large demand puts a massive amount of pressure on a corporate client.

“One of the themes that we presented to the jury was this was the plaintiff’s plan, [suing] in hopes that a target like Samsung in this case would blink before the case went to the jury and settle the case for some amount that wouldn’t be justified,” Alper said.

“At one point, the judge offered to us the opportunity to seek a mistrial, and we turned that down, because we and our client wanted to see this through to a verdict.”

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