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Phone: +1 212 537 6331 | Fax: +1 212 537 6371 | customerservice@portfoliomedia.com

Q&A With Kirkland & Ellis' Luke Dauchot

Law360, New York (July 06, 2009) -- Luke Dauchot is a partner with Kirkland & Ellis LLP and a trial lawyer in the firm's intellectual property practice.

Dauchot has obtained multiple defense and plaintiff's verdicts, including a recent \$226 million jury verdict that represented the second highest patent infringement award in 2007 and was the highest award in the history of Massachusetts.

Q: What is the most challenging case you've worked on, and why?

A. Medtronic Sofamor Danek v. Gary Michelson, M.D. Our client, a Los Angeles-based orthopaedic surgeon, was preemptively sued in Memphis, Tennessee, where MSD is headquartered. Dr. Michelson counterclaimed with 20 claims spanning contracts, torts and patent infringement.

The four-month-long trial concerned a seven-year commercial relationship, over 20 patents and over 30 medical product systems. Preparing Gary Michelson for his three-week stint on the witness stand was a challenge. Unlike other cases of this magnitude, we had virtually only a single fact witness, and much of the case hinged on his testimony.

No less a challenge was distilling evidence from 60 trial witnesses, 885 trial exhibits, and a 285-question verdict form into a four-hour closing argument. After winning \$560 million in compensatory and punitive damages at trial (which did not include future royalty obligations), Dr. Michelson settled his differences with Medtronic for \$1.35 billion.

Q: What accomplishment as an attorney are you most proud of?

A. Two very different experiences come to mind.

The first was working with a group of our younger lawyers to win a pro bono jury trial on behalf of a California prisoner against his guards, alleged to have physically and psychologically abused our client. The verdict (from a jury in relatively conservative Orange County, California) served an important public policy function, and helping more junior lawyers develop as trial lawyers was quite gratifying.

The second was winning a \$226.2 million patent damage award, reportedly the highest patent award ever returned in Massachusetts.

Q: What aspects of law in your practice area are in need of reform, and why?

A. Two things come to mind. At the front end, we could use fewer poor patents, a problem that is only exacerbated by the presumption of validity that a patent enjoys in litigation. Congress is working on that, considering things such as allowing third parties to have a say in what is now strictly an ex parte patent prosecution process, and a more robust post-issuance patent reexamination process.

At the back end, having patent cases assigned on a district-by-district basis to judges who want these cases, have (or are willing to develop) experience with them, and are not shy about managing them aggressively, would go a long way to help. Steering patent cases to such judges will curb frivolous claims and arguments, reduce unnecessary discovery and motion practice, accelerate the disposition of both meritorious and non-meritorious cases and reduce the rate of reversal on appeal.

Q: Where do you see the next wave of cases in your practice area coming from?

A. Specifically and immediately, I see more biotechnology, pharmaceutical, and medical device patent litigation. The combination of increased federal funding (e.g. stem cell research) and regulation (e.g. cost control) in these areas will encourage and force more patent activity. More generally speaking, any which way you cut it, patent protection and enforcement will remain vital, indeed, may even be even more so.

With a stagnant economy, survival and growth turn on protecting existing market share and creating new markets. Patent enforcement and protection are key to both, particularly in a regulatory environment that portends more aggressive antitrust enforcement.

And the long-term push for technical innovation in alternative energy, health care, communication and transportation only portends increased investment in patent protection and enforcement.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A. Charles F. Clarke, Squire Sanders & Dempsey LLP. A brilliant trial lawyer and trusted advisor to executives, politicians, lawyers and judges alike. He was also a humble and selfless mentor. He was eager to pass responsibility to those of us willing and ready to

assume it. When things went right (they usually did), he passed the credit; when things went wrong, he took the blame.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A. Patent litigation obviously demands a command of patent law arcana, and the intellectual curiosity and aptitude to master the relevant technology. But the field also presents a very challenging human experience.

The law and the facts with which we deal yield complexity that understandably irritates, intimidates, or altogether overwhelms even the most proficient of our judges and jurors. That reality demands not only a strong sense of empathy, but also a well-honed skill set to respond to it.