

Q&A With Akin Gump's Fred Williams

Law360, New York (April 05, 2013, 2:05 PM ET) -- Fred I. Williams is a partner in Akin Gump Strauss Hauer & Feld LLP's Austin, Texas, office. He is the assistant leader of the firm's global intellectual property practice. His practice focuses on complex litigation and counseling, with emphasis on intellectual property and unfair competition disputes. He regularly represents industry-leading technology companies and financial institutions in cases involving patent infringement, trade secret, competition, trade regulation and consumer protection claims. His work focuses on representing plaintiffs and defendants in preparing and trying cases to judges and juries across the country, with particular experience in the U.S. District Court for the Eastern District of Texas. He has represented clients in proceedings in 26 different states and in the Court of Federal Claims.

Q: What is the most challenging case you have worked on and what made it challenging?

A: Twelve years ago, I began representing the world's leading networking company in a large case filed by an extremely litigious foreign competitor. The case involved five courts in multiple countries; a dozen patents and a raft of alleged trade secrets relating to router, switch, and cross-connect technology; antitrust and malicious prosecution counterclaims (and even counter-counterclaims); hundreds of witnesses; and dozens of lawyers on each side. There were great lawyers from several prominent firms involved in the case, and I was part of a team (and an effort) that still makes me proud today.

The posture of the case and its high stakes meant that we had to provide world-class service for our client under tight time constraints and difficult circumstances. The case was challenging for all of these reasons and also because the demands of the case required me to stretch the limits of my experience, training and comfort every day. For four years, I had more responsibility on a case than ever, the demands on my time and mind seemed to increase daily, and there was more riding on my performance every day than ever before. To top it off, I had to live in Dallas for a few years, but even that turned out all right.

I learned to be a professional, dedicated to my client's cause at all hours, and I loved the experience and the results. I learned from the best lawyers on the planet how to prepare and try a case, and I worked day and night, all around the world, on perfecting my craft. I still treasure the professional relationships and friendships I made then. I also managed to sing the theme from "The Love Boat" at a karaoke establishment one memorable night in Garland, Texas.

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

A: Our patent litigation practice changes constantly, and many of the changes result from legislative reform and, also, court decisions that sometimes reform the practice more rapidly than Congress can. Most recently, the courts have made great efforts to address venue and transfer issues that affect us in the Eastern District of Texas, which is still the busiest patent court in the country. And the joinder provisions of the America Invents Act have required all of us to address the management and administration of the large, multidefendant patent cases filed by nonpracticing entities that have

predominated in recent years; that effort has reformed how plaintiffs structure their cases and is reforming how judges with significant patent dockets are managing those cases at trial and before. My defense clients are very appreciative of the Federal Circuit's and the Eastern District of Texas's efforts to manage rationally the burdens of electronic discovery, which have really taken hold in the past year.

As a corollary to those ongoing efforts, I see a continuing need to modify how courts and parties manage patent cases generally, especially those cases that can and should be resolved promptly because of either patently defective claims or defenses. For example, it frustrates corporate defendants that the courts appear to be too busy to fashion creative methods for managing cases with fatal defects in the plaintiff's infringement or invalidity positions. It would benefit the courts and all parties to have a way to bring obvious defects to a decision point before the parties spend hundreds of thousands (or millions) of dollars on mandatory disclosures and discovery.

While plaintiff's counsel sometimes prefer to leverage those expenses as a way of extracting an unwarranted settlement offer, I see more and more defendants who are willing to spend the money to defend baseless cases instead of settling for a fraction of the cost of defense. If the courts were not buried under so many cases (and if my fellow defense counsel could resist the urge to file a bunch of summary judgment motions in every case and focus, instead, on the clear winners), I believe they would have the resources and will to fashion creative management approaches in more cases, including early rifle-shot claim construction proceedings and early summary judgment hearings.

Q: What is an important issue or case relevant to your practice area and why?

A: Given how our clients manufacture, distribute and service electronic devices these days, I have been spending a fair amount of time thinking about joint infringement issues in light of the Federal Circuit's recent en banc decisions in *Akamai Tech. v. Limelight Networks* and *McKesson Tech. v. Epic Systems*, which lowered the standard for proving liability for inducing infringement. While the prior standard required proof that a single actor had directly infringed the patent, the new standard allows for a finding of inducement liability if all of the steps of a method claim were performed by someone: so "it is no longer necessary to prove that all the steps were committed by a single entity." The accused infringer must still have knowingly induced infringement, so the decision is somewhat narrow, but it could raise the likelihood that a party can be found liable (or at least sued) for innocently performing one or more steps of a method claim.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: I am captivated by Franklin Brockway "Brock" Gowdy at Morgan Lewis & Bockius in San Francisco. Brock is a consummate professional, a magnificent trial lawyer, and a mentor to many. His unique ability to command a courtroom and connect with his audience is impressive, and his personality everywhere else impresses me even more. His demeanor with judges, juries, witnesses, clients, associates, staff, cab drivers and even adversaries is my standard for professionalism and grace. My time spent learning from Brock has changed me for the better. I wish my young colleagues at Akin Gump and elsewhere could have the same experience.

Q: What is a mistake you made early in your career and what did you learn from it?

A: I made a regrettable mistake a few years ago, and I wish I could say it happened earlier in my career than it actually did. I was having a conversation with a fine lawyer who represented a co-defendant of my client in a fairly contentious patent case involving smartphone technology. We were discussing the relative contributions and conduct of our clients in the joint defense of the case, and there were several others of our joint defense counsel within earshot. I was agitated by something my colleague had said, and I made a snap decision to question his (or his client's) character and judgment. My reaction did not

benefit anyone, including my clients. It was not responsible or gracious. I could have, and should have, said something like “We disagree and I don’t see a point in discussing this anymore today. Let’s talk later.” The lesson I have tried to apply to my work since that day is that zealous advocacy has its limits, and the way we treat each other in the profession is important and should not be governed by rash judgments or emotional responses.

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