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LITIGATION INTELLECTUAL PROPERTY FINALIST

KIRKLAND & ELLIS LLP

## LITIGATION DEPARTMENT *of the* YEAR



From left: Gregory Arovas, Gregg LoCascio, Peter Armenio, Mark Pals, John Desmarais

PHOTOGRAPH BY  
MIKE MCGREGOR

# Young and Hungry

Kirkland had an outstanding year—even though its record-setting \$1.5 billion jury award for Lucent was set aside.

By Ross Todd

**IT WAS HAILED IN HEADLINES** as a “Battle of the Sweeteners.” The companies that make Equal and Splenda squared off in a Philadelphia courtroom over Splenda’s slogan, “Made from sugar, so it tastes like sugar.” Merisant Worldwide, Inc., the maker of Equal, tapped 37-year-old Kirkland & Ellis partner Gregg LoCascio to lead the trial team seeking to prove that Splenda’s tagline was misleading. By all accounts, LoCascio’s cross-examination of key witnesses from Splenda’s maker, Johnson & Johnson subsidiary McNeil Nutritionals, LLC, had set up his client for victory. The two companies settled confidentially just as jurors asked for a calculator to compute damages, but Merisant’s top in-house lawyer is free to praise the Kirkland team’s efforts. “Kirkland put together a team of young, energetic, and creative lawyers,” says Merisant general counsel Jonathan Cole. “When you compare their results against their ages, it speaks volumes.”

Kirkland has a crew of first-chair IP

partners under 50. Los Angeles partner Luke Dauchot, 46, won a \$226.3 million jury verdict for clients in a case involving spinal screws. Gregory Arovas, 40, helped win an ITC case for Samsung Electronics Co., Ltd., and Motorola, Inc. LoCascio argued an appeal before the U.S. Court of Appeals for the Federal Circuit on behalf of Siemens Corporation and others affirming a noninfringement judgment on optical scanners used by the U.S. Postal Service. For all the success achieved by youth, though, in the last year IP veterans William Streff, Jr., 58, and Robert Krupka, 58, scored impressive Markman hearing results for clients Denso Corporation and Limelight Networks, Inc., respectively.

Kirkland emphasizes courtroom skills early through the firm’s annual trial advocacy training program, which pits teams of two or three associates against each other in two-day mock trials. “It’s as close to a real-world situation as you can get,” says senior associate Jeanne Heffernan, who has already put the practice sessions to use while questioning witnesses at hearings and trials.

In some instances, Kirkland’s fresh faces have been a selling point. “[Youth] makes a difference when they are pulling all-nighters prepping for trial,” says Kevin Conroy, CEO of Kirkland client Third Wave Technologies, Inc. In a case involving a Third Wave molecular diagnostic product that had generated only \$236,000 in sales at the time of trial in Wisconsin, Chicago partner Mark Pals, 47, who has a Ph.D. in

biophysics, won a jury verdict of \$5 million that Judge Barbara Crabb subsequently tripled. Crabb also awarded Third Wave attorneys’ fees. (The case ultimately settled for \$10.75 million.) “I’d say, without hyperbole, there is not a smarter IP litigator than Mark Pals,” says Third Wave’s Conroy.

New York partner John Desmarais, 44, protected Forest Laboratories, Inc., from Teva Pharmaceutical Industries Limited’s attack on Lexapro, a \$2 billion-per-year antidepressant. In September the Federal Circuit upheld the victory. Desmarais also won a defense victory for Charter Communications, Inc., against Hybrid Patents Inc. in a case involving potential damages of \$176 million. Kirill Abramov, in-house IP litigation counsel at Charter, says it seemed as though the jurors “sat up in their chairs” every time Desmarais got up to speak.

But Desmarais was also at the wheel for Kirkland’s biggest recent disappointment. In August federal district court judge Rudi Brewster overturned the \$1.5 billion judgment against Microsoft Corporation that Desmarais had won for Lucent Technologies Inc. in February, in the first of three related trials. (Lucent is appealing.) Brewster has since retired, so Desmarais will get to try the next Lucent case before a different judge.

Second chances: another advantage of youth.

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**PRACTICE GROUP SIZE**

Partners: **89**  
Associates: **141**  
Counsel: **5**

**PRACTICE GROUP AS PERCENT OF FIRM**

Partners: **7%**  
Associates: **12%**

**ESTIMATED PERCENT OF FIRM REVENUE 2007**

**18%**