



# 2015 Practice Group of the Year

## Intellectual Property

Kirkland & Ellis LLP's intellectual property team helped Intel overturn a \$10 million Ericsson standard essential patent verdict, nabbed a rare injunction for C.R. Bard in a patent infringement suit and fought off a \$13 million claim for Samsung from "the original patent troll," landing the group a spot on *Law360*'s list of IP Groups of the Year.

With 190 attorneys spread mainly across the firm's New York, Washington, D.C., Chicago, Los Angeles, San Francisco and Palo Alto offices, Kirkland's IP group notched a number of major wins over the last year, including taking a leading role fighting Ericsson Inc.'s effort to collect damages from Intel Corp. and other companies using standardized WiFi technology.

In that case — part of a broader series of suits in the U.S. and elsewhere where Kirkland was hired to represent Intel in litigation brought against its customers — Ericsson sued a number of tech companies that used Intel's WiFi chips in their products. Ericsson said the items infringed several of its patents, and won a \$10 million infringement verdict in Texas.

But on appeal, the Federal Circuit ruled in December 2014 that the

district court hadn't properly instructed the jury on Ericsson's promise to license the patents on reasonable and nondiscriminatory terms. The opinion also laid down some valuable case law about how to figure out what royalties should be for standard essential patents, according to Gregg LoCascio, a co-leader of the firm's IP group.

"It finally created some law to benefit people who were being pressured into agreeing to licenses at excessive royalty rates ... not because of the merits of the case but because of the economics of defending cases," LoCascio said. "This is one more piece in a continuing effort to try to bring some kind of economic rationality to some of these licensing

arguments that have historically been made over SEPs."

Kirkland's IP team also scored a preliminary injunction for C.R. Bard Inc. unit Medafor Inc. in a patent case against CryoLife Inc. in March, landing Medafor the relatively rare remedy after a judge concluded that CryoLife's PerClot blood-clotting powder would likely infringe the Bard unit's patent.

At the time, the judge noted that a preliminary injunction is an "extraordinary remedy" that should be granted only in "limited circumstances," but held that Medafor had met the standard, both with regard to infringement and irreparable harm. CryoLife had

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initially planned to appeal the ruling, but ultimately dropped the challenge.

“The district of Delaware has historically not granted a lot of preliminary injunctions in patent cases, and it sees an enormous number of patent cases, the second highest in the country after the Eastern District of Texas,” LoCascio said. “What made this case all the more unusual was that the firm and Bard ... sought the injunction in a forum chosen by the other side and then succeeded.”

The firm further led Samsung Electronics Co. Ltd. to victory in September in a jury trial over patent infringement claims brought by Cascades Computer Ventures, a company dubbed “the original patent troll.”

Cascades sued Samsung and a host of others in 2011 for supposedly

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infringing a patent through sales of smartphones using Google Inc.’s Android operating system. While most of those targeted struck deals to halt the litigation, Samsung forged ahead to trial and beat Cascades’ efforts to collect \$13 million in damages.

“That was a jury trial where [Cascades had] a business model of trying to get people to pay a license because it’s cheaper than litigation, and after that happens, parties build up a stable of licenses that people wave around and say, ‘People paid a license, so the patent must be valuable,’” LoCascio said. “The jury smartly saw through that and recognized just because there are licenses out there from Cascades

didn’t mean they had a valuable invention or any invention at all.”

Kirkland also scored another victory for Samsung in October over a patent infringement suit brought by computer graphics card maker Nvidia from an administrative law judge at the U.S. International Trade Commission.

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