

Litigators of the Week: Adam Alper and Michael De Vries of Kirkland & Ellis

By Scott Graham

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Trial was only seven months away when Energy Labs Inc. brought in Kirkland & Ellis last fall to defend a patent suit by a rival air conditioning company.

That meant the evidence was mostly locked in place, but Kirkland partners Adam Alper and Michael De Vries got permission for a little extra discovery, including the physical inspection of paper job files maintained by opponent Nortek Air Solutions LLC.

They were so excited by what they found – HVAC projects from the early 2000s using technology that Nortek didn't patent until years later – they took a picture of the file room and included it in their jury presentation. The point: "The job files were in the possession of Nortek while Nortek was out prosecuting the patents here," De Vries said.

The sleuthing paid off Wednesday when a San Jose federal jury handed Energy Labs almost a clean sweep following a two-week trial. Jurors rejected all 12 of Nortek's claims of patent infringement and invalidated four of seven patent claims



Adam Alper and Mike De Vries of Kirkland & Ellis.

challenged by Energy Labs. Though rendered unnecessary by its infringement verdict, the jury went on to specify damages: Zero.

"It was a big win," said Alper. "The plaintiff in this case was seeking an injunction and looking to shut down a business our client had been building for 30 years."

Rhode Island-based Nortek, which was represented by Weil, Gotshal & Manges, is the biggest player in the multi-billion dollar market for heating, ventilation and air-conditioning systems in commercial and industrial buildings.

San Diego-based Energy Labs and its distributor DMG Corp. are no slouches either. At issue in

the trial were Energy Labs projects for Samsung, Los Angeles International Airport and the Camp Pendleton Naval Hospital.

“They’ve recognized that our client is what they called a high-threat competitor, and they needed to address that issue,” Alper said. First Nortek sought an acquisition. When the offer was declined, Alper says, Nortek sued.

At opening statements Nortek accused Energy Labs of infringing its patents on fan array systems “and MORE,” with MORE standing for Modularity, Overspeeding, Redundancy and Effectively reducing sound.

The Kirkland lawyers argued that each of those concepts existed before Nortek tried to patent them. In particular, Alper got a Nortek inventor to concede on cross examination that overspeeding, or driving fan motors faster than 60 Hz, has long been practiced in the industry. By the time closing argument rolled around, Nortek was arguing that MORE was just corporate shorthand, not a specific list of technologies, according to Alper and De Vries.

Nortek was seeking \$5.1 million along with the injunction. The case was tried before U.S. District Judge Beth Labson Freeman.

“Nortek claimed that they had invented things that weren’t theirs,” Alper said. The company “has never been willing to acknowledge that our client was right,” which is why the jury trial became necessary.

Kirkland also got key contributions from partners Brandon Brown and Nimalka Wickramasekera.

Alper and De Vries join forces regularly on patent trials, gaining notoriety a few years ago for guiding Cisco Systems Inc. through a high-profile trial on fair, reasonable and non-discriminatory royalties. They’re also part of a Kirkland team that obtained a patent infringement judgment for Cisco against rival Arista Networks Inc. at the International Trade Commission this summer.

Alper and De Vries have tried so many cases together they feel “telepathic” in court, Alper said.

“We have a completely aligned approach to litigation and to trial work,” said De Vries. “We see things the same way and approach things the same way. It was very gratifying to see that approach validated by the jury.”