

### Daily Dicta: Sleep is Overrated: Kirkland's Hurst Wins Second Mega-Trial in Three Weeks

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By Jenna Greene  
December 4, 2018

You hear a lot these days about how so few cases go to trial—the “Death of the American trial,” some have called it. But don’t tell that to James Hurst.

The Kirkland & Ellis partner just won his second major jury trial in three weeks, successfully defending Alere (now owned by Abbott Laboratories) in a patent fight over its best-selling urine drug screening test, the iCup.

The win on Nov. 30 in federal court in San Diego follows Hurst’s victory in an 11-day trade secrets trial in Delaware on behalf of Silicon Valley’s Flexus Biosciences (now part of Bristol Myers) and its two founders. Hurst’s client was sued by Incyte, which sought damages of \$200 million, or \$600 million with trebling, but walked away with nothing.

On Nov. 16, we named Hurst and Kirkland partners Patricia Carson and Diana Watral our Litigators of the Week for their successful defense.

Hurst apparently had just enough time to go home to Chicago, pack a new suitcase, and head to San Diego for his next showdown, where he teamed up with Kirkland partners Amanda Hollis and Sarah Tsou.



James Hurst of Kirkland & Ellis in Chicago. November 2017.

I’m tired just thinking about it. So how does he do it?

“Lots of advanced planning, a high tolerance for very little sleep, and the support of extraordinarily talented trial lawyers like Amanda and Sarah,” he said.

Alere was hit with a patent infringement suit in 2016 by Rembrandt Diagnostics, a patent assertion entity that describes itself as providing “the necessary resources, including professional expertise and financial capital, to maximize the value of infringed intellectual property.”

At issue: the iCup—the top-selling drug-screening product in the world. The iCup provides instant urinalysis results, with no need to send the sample out to a lab.

Represented by a team from Knobbe, Martens, Olson & Bear featuring partners Joseph Jennings and Jared Bunker, Rembrandt partnered with Dr. “James” Jin Po Lee, who patented a process for collecting a urine sample and testing it for the presence of certain substances such as illegal drugs.

Alere licensed one of Lee’s patents. Rembrandt (which initially alleged patent infringement) claimed Alere breached the license agreement and the covenant of good faith and fair dealing.

Hurst and his team got involved late last year, taking over the lead role from Goodwin Procter, according to docket entries.

In a motion for summary judgment, they summarized their case: “Through this litigation, Rembrandt seeks to inflate what should be at most a narrow dispute over a \$30,000 annual payment into a far-flung contract case seeking millions of dollars in royalties,” the Kirkland team wrote.

Rembrandt’s claim for royalties is “plainly meritless,” they argued, because their client is only obligated to pay for sales of urine drug-test cups that would infringe the claims of any licensed patents—and theirs don’t.

The Kirkland team whittled the question before the jury down to this: Did one Alere product infringe one valid patent claim, which covered Dr. Lee’s use of an “equivalent” “pressure” mechanism for protecting the test cup’s sensitive test strips?

After a four-day trial and a day of deliberations, the jury said no.

As for Hurst, he’ll finally catch a (short) break. “There’s always something,” he said, “but no trials for the next few weeks, and then going skiing in Canada over the holidays with my wife and kids.”