



2018 Practice Group of the Year

Intellectual Property

Kirkland & Ellis LLP scored a victory on behalf of Fox News in a closely watched copyright case against a television search engine, and also secured a \$93 million patent win for Schlumberger Ltd. unit WesternGeco, landing it a spot as one of *Law360*'s IP Groups of the Year.

Kirkland represented Fox News Network in its suit against media-monitoring service TVEyes, which records television around the clock, indexes it, and then turns it into a word-searchable database of clips. While TVEyes had attempted to justify its video service as a fair use, the Second Circuit ruled in February that it was not protected by the fair use doctrine, because it “deprive[d] Fox of revenue that properly belongs to the copyright holder.”

The U.S. Supreme Court later affirmed the appellate court's decision — a “crucial victory in protecting the rights of creators,” partner Dale Cendali told *Law360*.

“There have been those that thought that the pendulum had swung too far in the direction of treating everything as fair use at the risk of undermining the constitutional incentives to create copyrighted work and get a return from your investment as a result,” Cendali said. “TVEyes, we think, is a vital case in helping to have that pendulum swing back some.”

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Kirkland also secured a victory on behalf of WesternGeco in June after the high court found that it could recover profits it lost outside the U.S. due to rival Ion Geophysical Corp.'s infringement of its oil exploration patents.

The Federal Circuit's earlier decision had reversed on the lost profits award, finding that the presumption that U.S. patent law does not extend outside the country meant WesternGeco cannot recover profits it would have earned overseas absent Ion's infringement.

But the justices ruled that because Ion infringed WesternGeco's patents by shipping components of its product outside the U.S., WesternGeco was entitled to damages that include profits it lost abroad due to those actions.

For a long time, patent damages had become difficult for patentees to obtain due to “frankly, specious” claims brought by trolls and nonpracticing

entities, partner Gregg LoCascio said, noting that the victory was particularly meaningful to companies that manufacture technology and contribute to the intellectual landscape against their competitors.

Victories like these are what make Kirkland's intellectual property group stand out, Cendali said, noting that the firm is a “go-to place” in cases where the law needs to be extended or clarified. LoCascio agreed with those sentiments, adding that the group often looks for creative solutions to problems that are “otherwise unresolvable” for some of their clients.

“We're either making law or fixing law, and helping people who have a situation that others will tell them, ‘well, you can't win that case’ or ‘the law isn't on your side,’” LoCascio said. “We'll either find ways to come up with creative arguments legally, [or] dig into the facts to find a solution to that.”

With 200 intellectual property attorneys from offices in Chicago, London, New York, Washington, D.C., Los Angeles, San Francisco and Palo Alto, California — one of the largest intellectual property practice groups in the country — the firm has a “tremendous depth and breadth” in its intellectual property successes, partner Greg Arovas said.

“Because our practice is so balanced and we have true depth of experience in pretty much all the courts and forums people litigate for IP, we can represent our clients in whatever

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dispute they have,” Arovas said. “We can litigate it in the most creative and innovative way using the different forum together to try to get the best results for the client.”



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