



## LITIGATION DEPARTMENT OF THE YEAR: INTELLECTUAL PROPERTY

### KIRKLAND & ELLIS



#### KIRKLAND & ELLIS TEAM

*From left, partners Claudia Ray, Dale Cendali, Robert Appleby, Greg Arovas, Joseph Loy, Patricia Carson, Thomas Fleming and James Marina*

### **Q&A** **What are some of the department's most satisfying successes of the past year and why?**

Patricia (Pat) Carson: One of the most satisfying things about Kirkland's IP practice is the broad range of matters we handle for an incredible group of clients. Highlights from the last year include a jury trial win in trade secret litigation on behalf of biotech company Flexus and its founders; a victory in a precedent-setting copyright fair use case for Fox News; obtaining a precedential opinion in a copyright case for Nike; a summary judgment win for AT&T; securing a critical motion for a major electronics client in a nine-patent case; successful resolutions of three cases before the ITC; and involvement in four

appeals to the Supreme Court. We are also incredibly proud of our pro bono work. We successfully represented a New York-area musician in a trademark dispute with a competitor who misappropriated and unlawfully obtained a federal trademark registration to his stage name. The team continues its successful work on behalf of asylum seekers, veterans, and the LGBTQIA+ community, among others.

Joseph (Joe) Loy: Kirkland lawyers thrive in the courtroom. One particularly satisfying success this past year involved defeating a preliminary injunction following an evidentiary hearing during which a more junior teammate got to cross examine an expert forensic witness—her first. While the win was satisfying, observing my teammate dismantle

the witness was even more so. It also reaffirmed that our deep-rooted culture of on-your-feet training pays dividends.

**A prospective client in crisis calls and asks why your team should be retained. What is your answer?**

Pat: We strive to ensure that our clients avoid crises, to the extent possible. But when a crisis arrives, that is when we demonstrate our unparalleled value. We work together as a team, drawing on our vast firm resources to map out and implement the best plan of action. Our focus is always on the client's needs and the best way to proceed to achieve their business goals.

**What traits do you respect most in opposing firms and lawyers?**

Pat: Honesty and integrity. When dealing with opposing counsel I want to feel comfortable that if we agree on something, the agreement will be honored. Game playing is highly inefficient and only leads to increased expense for the clients on both sides and bad blood between opposing counsel.

Joe: Willingness to concede a point is appreciated. Great lawyers don't fight every battle or argue every point. Our clients may not see eye-to-eye, but being honest about your positions can help resolve disputes more quickly and efficiently.

**What sorts of trends are you seeing in litigation, and what do you think will be the most important development in the law/legal business that will impact your field in the next 10 years?**

Pat: A significant trend and probably what will be the most important development impacting life sciences IP litigation is the growing trend to protect information through trade secrets instead of patents. Trade secret protection is particularly important to companies seeking to protect brand-name biologics against biosimilar competition.

The life sciences industry has been particularly hard hit by the current state of the law regarding patent eligibility. Groundbreaking discoveries such as a non-invasive method to diagnose certain fetal characteristics for pregnant women have been declared

patent-ineligible. Efforts are underway to legislatively reform patent eligibility law and have the potential to significantly impact patent protection in the life sciences industry.

Joe: I have similarly seen a big uptick in trade secrets as an area of interest in IP protection. Whereas 10 years ago I had not a single trade secret case, today, half of my practice is dedicated to it. And it's not just litigation. Companies are seeking advice on how to ensure their trade secrets do not walk out the door, and how to protect themselves from allegations of trade secret misappropriation when onboarding employees.

**What is the firm doing to ensure that future generations of litigators are ready to take the helm?**

Pat: Kirkland excels at training its lawyers to be trial lawyers. The Kirkland Institute of Trial Advocacy or "KITA," is a 2-3 day immersion exercise that has associates trying a case, including openings, live witness directs and crosses and closings. The result is that our attorneys are prepared to be second and first chair trial attorneys well in advance of their peers from other firms. Kirkland supports the development of its attorneys with programs ranging from KITA to women's and diversity networking events.

Joe: Kirkland has a long tradition of encouraging pro bono work, and such work often complements the extensive training programs we provide our litigators. In the past year alone, I have observed Kirkland associates taking witnesses during pro bono trials and arguing appeals as appointed counsel in federal court. These real-world lawyering experiences provide the training backbone for the next generation of Kirkland litigators.

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—Responses prepared by Patricia (Pat) Carson and Joseph (Joe) Loy, intellectual property partners at Kirkland & Ellis.