



2020 PRACTICE GROUP OF THE YEAR

Trials

Kirkland & Ellis attorneys notched a win for Motorola in what the firm says was one of the largest intellectual property theft trials in history and secured release for scores of unaccompanied immigrants transferred to jails and prisons after their 18th birthdays, earning the firm a spot among Law360's 2020 Trials Groups of the Year.

Trials are the bread and butter of Kirkland, where young attorneys are schooled through an annual multi-day trial training program featuring paid actors playing witnesses and jurors. After several rotations through the training, Kirkland attorneys are ready to tackle almost any type of trial, according to partner Jim Hurst.

"The end result is that we have a massive group of trial-trained lawyers ready to go, and I think that's one of the reasons we're one of the most attractive options for clients who want the best and most experienced trial lawyers," he told Law360.

Kirkland doesn't have heads of offices or practice groups, unlike many firms. Partner Greg Arovas told Law360 there's a good reason for that.

"One of the core cultural values of Kirkland is that we want to foster

an entrepreneurial spirit and not bureaucracy and administration, and that culture flows into trial practices in a way that gives us incredibly broad participation."

The sheer number of trials Kirkland handles has kept the firm busy despite a slowdown in courtroom activity this year amid coronavirus lockdowns and restrictions.

That included a February verdict in favor of Motorola against Chinese competitor Hytera, which was hit with a \$765.5 million judgment in Illinois federal court for stealing trade secrets and infringing Motorola's copyrights for millions of lines of source code.

Preparation was key, and Kirkland's team was able to land a series of pre-trial blows against Hytera, including instructions to jurors that allowed them to infer destroyed

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evidence was incriminating, according Adam Alper, who led the trial team alongside fellow partner Mike De Vries.

"The theft was extensive," Alper said. "It appears to be one of the largest technology thefts in

history, involving millions of lines of source code written by Motorola that were directly copied, along with thousands upon thousands of technical documents.”

Discovery and pretrial maneuvering lasted nearly three years. By the time the case went to trial, Kirkland had amassed evidence that Hytera stole trade secrets by poaching three former Motorola engineers and then sought to destroy evidence of the heist.

Alper and De Vries said Hytera overplayed its hand in opening arguments, promising testimony that would show the company did nothing wrong. Instead, most of its witnesses plead the Fifth during depositions in Hong Kong, and Hytera’s CEO backed out of testifying.

De Vries, meanwhile, delivered a withering cross examination of a top Hytera official that all but destroyed the company’s credibility with the jury, the attorneys said.

“You can see a theme that flows through this,” Alper said. “Witnesses didn’t come to trial, they pled the Fifth, there was deletion of evidence, and despite all of that, we were able to affirmatively show what happened.”

The court affirmed the verdict in a recent ruling, and the Kirkland team is now pursuing attorneys fees as well as pre- and post-judgment interest.

“Those could easily bring the overall verdict to a billion dollars, which would be one of the

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largest trade secrets verdicts or intellectual property verdicts of all time,” De Vries said.

In May, Kirkland notched another major intellectual property win on behalf of Intel before the U.S. International Trade Commission. The proceeding was part of a multi-venue dispute with Tela Innovations Inc., which claimed Intel was infringing its patents on microchips that went into billions of dollars worth of products. Intel struck before Tela filed suit, seeking a declaration of non-infringement in federal court.

In a possible play for leverage, Tela raised the stakes by going to the ITC and seeking to block imports of a huge range of products with Intel chips. A Kirkland team prevailed at a four-week bench trial, and the ITC found no violation for Tela’s patents-in-suit, which implicated cutting-edge microchips found in servers, desktops, laptops, motherboards and other devices.

Arovas said that case, along with an April win for Frontier Communications in a Chapter 11 bankruptcy, demonstrated the

depth and versatility of Kirkland’s trial lawyers. Despite numerous objections to Frontier’s \$10 billion plan to de-leverage its balance sheet, a Kirkland team successfully negotiated a settlement over the company’s employee compensation program and struck an eve-of-trial deal with secured creditors.

“The success that we’ve had in pretty much every litigation forum that exists is something the litigation department and our lawyers are very proud of,” Arovas said.

In July, Kirkland scored a victory for immigration advocates in D.C. federal court in a pro bono class action challenging U.S. Customs and Immigration Enforcement policies regarding detainment of unaccompanied minor immigrants after their 18th birthdays.

Certain ICE field offices transferred those immigrants to county jails and prisons after they “aged out” of other forms of custody. At trial, a Kirkland team led by Steve Patton showed the agency was not considering less restrictive options, as required by law.

Patton said the case, brought with the National Immigrant Justice Center, was complicated by ICE's inconsistent policies for age-out placement across its different field offices. Some released the vast majority of those immigrants from incarceration, but others viewed nearly all of them as flight risks.

"These are scared young people who are usually fleeing things like abuse and gang violence," Patton said. "Most of them have somebody here in the U.S., often an immediate family member, who can take them in. There are sponsors available for these kids."

Patton said the incarceration rate for age-outs dropped dramatically

after the Kirkland team won class certification, down from roughly 90% to 25%. An ICE juvenile field officer in Chicago described the change to Patton during a deposition.

"I asked, what happened? And he said, 'your lawsuit,'" Patton recalled.

The parties called 32 witnesses during the four-week trial, which included cross-examinations of top ICE officials. The agency insisted it was following the law and considering less restrictive placements for age-outs.

"The court ruled in our favor on every material issue," Patton said.

"It was about as close to batting .1000 as I've ever gotten in a case."

Nearly all of the age-outs have since been released from jails and prisons to family sponsors and other arrangements, according to Kirkland. Attorneys are now hammering out new ICE training materials and processing forms that the firm hopes will ensure the agency follows the law going forward.

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