

## All They Do is Win, Win, Win: Dissecting a Trial Hot Streak With Kirkland’s Adam Alper and Mike De Vries

By Ross Todd  
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The six-trial winning streak that Adam Alper and Mike De Vries of Kirkland & Ellis are on has included some real doozies over the past two-plus years. A pair of the wins in the streak were part of the firm’s winning entry for The American Lawyer’s Litigation Department of the Year last year: Namely, the \$765 million jury verdict they won for Motorola Solutions against Hytera in February of 2020 involving trade secrets and their October 2020 trade secret win for TriZetto and its parents, Cognizant Technology Solutions where the jury awarded more than \$850 million in damages. After a win in San Jose, California, federal court last week, the streak now includes four-straight plaintiff-side wins in trade secrets cases. There the jury awarded their client Comet \$40 million, including \$20 million in punitive damages after finding that rival XP Power “willfully and maliciously” stole trade secrets related to technology being used in next-generation semiconductor manufacturing.

The Litigation Daily this week caught up with Alper and De Vries to discuss how they work together as a team and the steps they take to prepare a case for a jury. The following has been edited for length and clarity.

**Lit Daily: Let’s just drill down on your dual-lead approach a little bit more. Does that mean that you divide and conquer the individual tasks? Or is it like there are two people who are equally on top of everything?**

Mike De Vries: It’s a little bit of both, which sounds like a dodge. We’re always guided by one principle, which is: “What can we do to maximize our opportunity to win?” One thing that we say going into every trial to one another is, “If we can win this trial, nothing else matters.” In other words, not anyone’s ego about who does what or who can claim this or that or the other thing in terms of credit. We want to be driven only by winning. But I think we have, to a large extent, some back and forth between who’s doing the opening statement and the closing arguments and other things like that. However, we don’t really think about it



Courtesy photos

**(L-R) Adam Alper and Michael De Vries of Kirkland & Ellis.**

in terms of who is doing what. What we’re really thinking about is who is going to do the best job in this particular moment at this particular trial and maximize our ability to win. How I think that comes out is we both try to be on top of every single aspect of every trial.

I hear people use the word “lead trial lawyer.” Far more people use that word than are lead trial lawyers. And I also think every time I hear that word, that there’s an ego factor that is built into it that is not necessarily aligned with maximizing your chances of winning. Once you get rid of that, it allows the kind of mind-meld and shared vision that I think has led to outcomes [for us] far more than repetition. At some point, you can say, “Oh, you’ve done this a lot. You must get better each time.” And although I think that’s true, I actually don’t think that’s what unifies us and unifies the outcomes. It’s really that we think about these things in the same way. We hopefully impart that to our teams and learn from others on our team about how to think better.

Adam Alper: Mike and I have extreme confidence in each other’s abilities. I think the most joy that we get is sitting there watching the other one do what they are so good at in court — just watch the art of it, frankly. And we’re also incredibly collaborative. We will approach issues

together. We will reverberate off of the thoughts of not just the highly skilled team members that we're working with, but each other. That has been our principal source of growth over the years frankly. Neither of us has had a key mentor, so to speak. Really, we've been each other's mentors for the last decade and a half and that's how we really learn. There's an incredible benefit to that type of collaboration. And it also makes us happy as people.

We'll talk to each other about what we're going to do on a direct or a cross. Even at this last trial, we'll both save a few surprises for the other person. That way, after it's done, you can kind of see the other one come up and have a little bit of a "wow" moment. But it's a very close-knit thing and it is a product of a desire to maximize results for our clients. It is also a product of us enjoying practicing that way and just being incredibly close friends

De Vries: Those collaborative discussions involve pushing back, saying things like, "Let me challenge that for a second. Are you sure that this is going to play the way that you think it's going to play?"

Sometimes you hear that one problem that world leaders can have is they can end up in the echo chamber of their own mind. They only hear what they want to hear. And it actually takes quite an environment in order to have people feel safe in a trial, or frankly, any other environment, to be able to say "Hey, wait a minute, Mike. Yeah, I hear you sound confident. But don't you think this could really go differently than the way you think?" Having that kind of feedback, especially from somebody that you know and trust like Adam, but also from other members of the team too, enables you to really get better, I think.

#### **Do you guys do jury research?**

Alper: Yes. In a couple of different ways. One is maybe the more typical way: We work with folks who are skilled in that area in connection with a particular matter in order to understand backgrounds and how that might affect thinking and so forth. But then, the other thing that Mike and I rely on more these days is just our own experience. We have now through actual trials and focus groups, and other types of exercises seen many, many jurors who have different backgrounds: Some who have a tremendous amount of education, and some who do not. Some who work in similar jobs as the folks who we're putting on as witnesses and some who have completely different backgrounds. We've been able to collect through years of experience a knowledge base concerning how we believe folks think and how they react to specific issues and cases and just general notions of right and wrong.

At the end of the day, no matter how educated the jury is, no matter how sophisticated they are, no matter how

similar their backgrounds are to the CEOs testifying or the senior engineers or other employees or experts, everyone reacts to notions of right and wrong, good and bad, and who the real victim is regardless of who even brought the suit.

De Vries: I feel that we have a very strong sense of how people will react to things. And I think that we trust each other in that regard as much or more than any other people in the world. And I think that that is not just in the jury context, but in all contexts, like interacting with people. I think we both have a very strong sense for people's motivations, thought processes, ways in which you can lose credibility with people, that kind of thing.

We constantly do actual mock jury trials as a fundamental part of our practice. We frequently do them multiple times in the course of cases. We really push the envelope in terms of trying to get the absolute best data possible. Many lawyers view mock trials as a threat to their position on a case. I think this comes from the mode of thinking by lead trial lawyer X of "How will the client think about the case after this? How will the client think about me? How will I perform?"

We try to put our very best lawyers on the opposite side of our client's position in a mock trial. We did one mock trial where I played our client and Adam and another one of our colleagues who we collaborate a lot **Sharre Lotfollahi** played the adversary. To me as the lawyer and to our client, even though it was mock, it was really painful to listen to lawyers of that caliber do as good a job as they possibly could playing the other side.

But what's the benefit of that? When you listen to these mock deliberations — which I'm always astonished at how real the conversations are — you get really, really, really good feedback. You can hear first-hand the biggest challenges to your case. Although it can sometimes even be painful to hear when you believe in your case strongly, those mocks are absolutely critical by the time you get to trial when you can address what may be concerning to someone.

#### **Four of the trials in your current six-trial winning streak are trade secrets cases. What attracts you to those cases?**

Alper: I believe what attracts us to those cases is actually the same thing that ultimately attracts us to the patent cases that we try, which is the story of what happened: We have a real market, we have real competitors and we have a client who has been aggrieved by some really wrongful conduct. In the trade secret cases that we've tried, it's not just that. It's a repeated series of actions by the defendant company that has aggravated theft, made it worse, and cre-

ated a real risk or threat of negative impact to our client's market and a threat generally to corporations' desire to invest in R&D and to innovate.

There's a pretty big issue at stake when it comes to companies that are stealing hundreds of millions of dollars worth of research and development and or R&D that will be worth hundreds of millions of dollars in sales in the market down the line. In every one of our trade secret cases, we've been able to successfully not just explain the economics of it, but weave that into the story of what happened. You have real-life chief executive officers and senior engineers and other senior executives making decisions that are so self-interested or intentionally making decisions that have such a serious impact on our clients and research and development, generally, that the juries that we've explained what happened to have reacted in every case with not just damages but by finding willful and malicious conduct, and awarding punitive damages.

When we have patent cases, we see the same thing. It's not just a technical application of a patent claim to a product. It's what happened here between competitors. Who copied who and why? And what did they do about it once they knew what they were doing was wrong? And those types of facts resonate in exactly the same way.

De Vries: There are aspects of [a trade secret] trial that a member of the public can't see, whether it be computer code or different technologies. That is a critically important part of the trade secret trials that we do. And I think you do get into the level of technical complexity that is necessary. What we see oftentimes is a defendant whose fundamental position is ultimately a technical one. It is: "We aren't using that technology. Look at the code and our product. It isn't there." And I think that one of the things that we do in addition to focusing on the high level "right and wrong" that Adam was talking about, is also demonstrate a willingness to go into a very deep level of technical complexity, to show the jury why we are right, that the technology is being used in sometimes incredibly technologically complex products or environments. And I think that that's a crucial part for two reasons.

First, although I think you hear sometimes from trial lawyers, things like "We don't want a technologically educated jury. We're afraid that they're going to have convictions of their own that are somehow inconsistent with the way we see things." But we only try cases that we have conviction about, and we don't want to try a case where we are not 100% comfortable presenting the case at that level of

technological complexity to people who really understand what we're talking about.

And two, although you always have different types of jurors, and you have to be able to explain it at a level that various different people can access. We have been adamant about being able to get into that level of technological complexity, because it is so frequently necessary when the defendant just says: "I swear. Believe me. It's not in there."

**How do you make sure going in that the case that you're looking at the case that you're potentially going to try is one where you're going to have that level of conviction?**

De Vries: I think there are two aspects of that. The first is that we look at our cases very, very, very carefully before we decide to take them on. And we will not take on cases that we don't believe in. That can be a luxury, of course, that maybe not all lawyers feel like they have. However, we've felt that way for a very long time. And understand that it is crucial to this kind of practice. On the plaintiff side, it can be a little easier because you're choosing to file the case or not. If you're a defendant in a case, you have to deal with the case that you have. But we look at it very carefully from the outset. And then Adam and I are very, very involved in the litigation throughout the process, though not to the exclusion of our team. I cannot emphasize enough, for example, how much **Akshay Deoras, Leslie Schmidt**, Sharre Lotfolahi and many others that we work with regularly contribute. They have tremendous value. But if you were to look at the lead-up to this last trial, Adam and I took the depositions of every witness that we cross-examined. And in this particular case, we cross-examined the bulk of the defense side witnesses. That means that we've had a real engagement throughout the process. And that was happening at a time when we were trying multiple other cases. So balancing that is a real challenge, but it's really important.

**How many cases do you say no to for everyone that you say yes to?**

Alper: We turn down many cases. So, multiple, multiple cases for every one that we take at the outset. And then, through the process of litigating a case for those that we take on, Mike and I focus. There are different ways to litigate and one is to kind of keep all options open throughout the entire case. A very key aspect of our practice is to make sure that we're focusing on what matters and what is important and for the overall resolution of the matter, not just for trial. Ultimately, that accrues to our side's benefit at trial because we present to the jury the strongest parts, and it's been a successful approach so far for quite a while.