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2013 Rising Star

John O'Quinn

Kirkland & Ellis LLP litigation partner John O'Quinn specializes in cases before the Federal Circuit but his successes have transcended intellectual property law, and specific courts, to include major environmental and bankruptcy wins and have earned him a spot on *Law360's* list of rising stars in appellate law.

One of the 38-year-old Rising Star's biggest accomplishments last year did come in the patent law arena in Washington, D.C., where he is based — and it came in a case that is as old as he is.

Leading the appellate briefing effort for C.R. Bard Inc., O'Quinn helped secure the Kirkland client's \$371 million damages award in a long-running infringement suit against rival W. L. Gore & Associates Inc. over a patent covering a type of prosthetic blood vessel graft.

In February 2012, the Washington, D.C., appellate court, which specializes in patent law, affirmed an Arizona federal court's decision to enhance a \$185 million damages verdict, finding there was substantial evidence to support the jury's finding.

"The decisions in *Bard v. Gore*, both at the Federal Circuit and by the [U.S.] Supreme Court in denying

certiorari, are important milestones in a dispute dating back nearly 40 years," O'Quinn said. "The Federal Circuit did remand the issue of willfulness, so the matter is not quite entirely finished. But to be involved in a matter as old as I am, with the long history and record associated with it, made it one of the most challenging Federal Circuit briefs I've ever worked on."

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O'Quinn spends a substantial portion of his time working on matters before the Federal Circuit, but with an engineering background and lots of

experience in the government policy world and in other arenas, he's apt to pop up in appellate courts all over the country.

"Travel, of course, comes with the job, and because it's usually to appear for a short hearing or an argument, there's often not much opportunity to take in the local sights, plus I want to get home to my family," said O'Quinn, who has three children.

The traveling life led him to California in October to urge the Ninth Circuit to uphold a federal judge's rejection of the Golden State's low-carbon fuel standard as unconstitutional. The standard was implemented by the state in April 2010 to reduce the carbon intensity of transportation fuels by at least 10 percent by 2020.

O'Quinn is the lead Kirkland partner representing Growth Energy — a leading trade association representing ethanol producers — in *Rocky*

Mountain Farmers Union v. Goldstene, which is on appeal there.

With Kirkland partner Stuart Drake, O’Quinn developed the strategy behind the December 2011 trial court victory against the state, which came in the form of a holding in trial court that California’s policy violated the Commerce Clause.

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“This case presents two very important issues under the dormant Commerce Clause — that a state cannot discriminate against out-of-state practices based on geography, and that a state cannot regulate extraterritorially,” O’Quinn said. “The Commerce Clause arguments almost wrote themselves.”

The Ninth Circuit hasn’t weighed in yet, but the Kirkland team argued, among other things, that the policy

meant the state was regulating activity that lies beyond California’s borders.

“Our argument is that, in this particular area, having policy set at the federal — not state — level ensures that all stakeholders are at the table and that one state can’t export the burdens of its regulatory regime onto another state,” O’Quinn said.

O’Quinn’s work also led him into New York’s Second Circuit on a bankruptcy matter in August, as Kirkland successfully defended Charter Communications Inc.’s prepackaged bankruptcy plan against investors who argued it was unfair because of incentives paid to major creditors.

In one of his more unusual cases, O’Quinn teamed up with Kirkland partner Christopher Landau before the Federal Circuit in a case that allowed the federal judiciary to receive pay increases.

In October, the en banc Federal Circuit agreed with Kirkland that the U.S. Congress’ efforts to withhold judicial salary adjustments previously established by law violated the Compensation Clause of Article III of the Constitution.

By a 10-2 vote, the court overruled its earlier precedent on the same issue.

“It is a privilege to represent several current and former federal judges in their individual capacities in *Beer et al. v. United States*. It is an important hallmark of our system of justice that everyone gets their day in court against the government, including judges themselves,” O’Quinn said.

O’Quinn, who returned to Kirkland in 2009 after three years serving as deputy associate attorney general at the Justice Department overseeing civil cases and reviewing proposed settlements, said his recent successes at Kirkland have been a team effort.

“It’s fun to work with a great group of colleagues who are supportive, talented and completely committed to getting the best possible result for the client,” he said.

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