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Intellectual Property Group Of The Year: Arnold & Porter

By Dani Kass

Law360 (February 5, 2024, 2:02 PM EST) -- Arnold & Porter Kaye Scholer LLP brought in a win for Sanofi and Regeneron at the U.S. Supreme Court while also securing a \$158 million infringement verdict for Boston Scientific, earning the firm a place among Law360's 2023 Intellectual Property Groups of the Year.

The firm has just over 1,000 attorneys, and the intellectual property group is one of its largest teams with around 100 attorneys. The group spans the breadth of the practice area, from litigation to post-grant reviews to portfolio management, and its attorneys work on all types of IP, including patents, trademarks, copyright and trade secrets.

Co-chair Dina Hayes said the group stands out because they "really care about our colleagues," be it partners, associates or staff.

"We're really invested in making sure that they're growing and learning, and doing really the highest level of work that they can," Hayes said.

The attorneys are spread across offices in New York, London, Los Angeles, Chicago, Washington, Denver, San Francisco and Silicon Valley.

"We provide a really interesting approach to IP services, and I like to refer to it as the Mayo Clinic approach," said partner Christopher Renk. "When you go to a regular doctor and you have a shoulder problem, the doctor says 'here's a prescription, go see an [orthopedist],' and unless you follow up, the [orthopedist] either sees you or doesn't, and your primary care provider never contacts you. What we do is: You come to us, we have a team that's integrated. We all talk to each other. We get you in front of the right specialist."

The firm's approach has led to two recent Supreme Court victories in cases in which they'd also prevailed at the Federal Circuit.

"That's always a little scary, because I think there's a feeling that if the Supreme Court takes [a case], they may be taking it to reverse it," said partner Jennifer Sklenar.

Most recently, Arnold & Porter was on the team representing Sanofi SA and Regeneron



Pharmaceuticals Inc. as they sparred with Amgen Inc. over how to meet enablement standards with antibody patents.

The Supreme Court ruled in their favor in May, a decision that upheld the invalidation of Amgen patents for its cholesterol drug Repatha, which competes with Sanofi and Regeneron's Praluent.

"The case addressed two fundamental questions," said partner Matt Wolf. "First, at the leading edge of life sciences research, should a patentee be allowed to claim a monopoly on what a molecule does, as opposed to what that molecule is? Second, and more broadly, is the scope of patent protection broader for research at that leading edge? The Supreme Court answered with an emphatic 'no' to each."

Two years before, the high court had ruled in favor of Arnold & Porter's client, Hologic Inc., when reviewing when inventors can challenge their own patents — something that's most likely to happen in instances where a patent is assigned to an employer and then the inventor moves to another company.

The petitioner, Minerva Surgical Inc., had wanted the justices to get rid of so-called assignor estoppel altogether, and Hologic — argued by Wolf — stopped that from happening. The court did, however, add more restrictions to the doctrine.

Arnold & Porter also achieved success for medical device clients in Indiana district court. A federal jury in June awarded Boston Scientific Corp. \$158 million after concluding Cook Medical infringed its patents on hemostatic clips used to stop internal bleeding. The parties settled soon after for an undisclosed sum.

The jury was asked only to decide whether Cook infringed based on the doctrine of equivalents and if that infringement was willful, a challenge Sklenar said was particularly difficult.

"There was harmonizing the argument that they weren't literally infringing, they were doing it by equivalent, but they were also doing it willfully," she said.

Outside the patent practice, Arnold & Porter successfully represented Nike in a high-profile trademark fight against shoe customization company Drip Creationz, which was found to be altering legitimate Nike Air Force 1 sneakers and reselling them. In September, the firm secured a consent judgment, which features a permanent injunction against Drip Creationz.

"You can't just go out and buy a product, materially alter it, and resell it for your own profit," Renk said.

Nike had been asking for disgorgement, but whether it obtained any money in the settlement that ended the case has not been made public.

Finally, Arnold & Porter is representing Samsung in a series of inter partes reviews against a company formed by a top IP attorney from the tech giant.

Samsung is facing multiple infringement suits from patent owner Staton Techiya LLC and assignee Synergy IP, a company formed by former Samsung executive Seung-Ho Ah. In turn, Samsung filed 15 IPR petitions and two for ex parte reexamination, many of which have been successful in invalidating Staton Techiya's patent claims, the firm said.

"It's Patent Office-specific work, and it was — given the volume of patents and the way it came about

and as often happens with [Patent Trial and Appeal Board] work — it really was a high volume of work that had to be done in a very short time, and obviously as high quality as possible given the stakes," Sklenar said. "There was a large team headed up by three of our partners, who really just oversaw a large team of associates, that did this massive PTAB work. It's just another example of how broad and deep we are."

The district court litigation is ongoing as well, but is largely being handled by Kirkland & Ellis LLP.

--Editing by Andrew Cohen.

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