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Q&A With Goldman Ismail's Alan Littmann

Law360, New York (June 27, 2013, 1:50 PM ET) -- Alan Littmann is a partner in Goldman Ismail Tomaselli Brennan & Baum LLP's Chicago office. After clerking for the Honorable Frank Easterbrook of the Seventh Circuit, he practiced at Bartlit Beck and became a partner. He joined Goldman Ismail as a partner in 2010. His practice focuses on complex technology-based cases and commercial litigation.

Q: What is the most challenging case you have worked on and what made it challenging?

A: Probably the most challenging cases are the ones where I get to know, and spend time with, my client's witnesses. While defending a recent patent infringement case, I spent considerable time with my client's business and technology leaders. They had spent years developing a product and were justifiably proud of their innovation. Like many in their situation, while this wasn't a lawsuit against them personally, they took it personally. They felt their careers and ideas were being directly challenged. I was thrilled when we won the case, and it was particularly exciting to provide them with the satisfaction and relief they deserved. When you sincerely care about the people you represent, it raises the stakes and pressure far beyond the money at issue.

Q: What aspects of your practice area are in need of reform and why?

A: Clients frequently express frustration about the very high cost of defending patent litigation. Nonlawyers in particular are disheartened when pressured to settle cases involving patents they consider worthless. While settling a case may make business sense in isolated instances, over time it feels like extortion.

One way to combat the rising costs of litigation is to focus on obtaining greater certainty earlier in a case. When parties are able to accurately assess their chances of success they can better evaluate whether to settle the case or push through to trial. There are several good methods for lowering costs and increasing certainty, including: limiting the scope of electronic discovery, bifurcating liability and damages discovery, and holding early Markman hearings. I hope more courts continue to focus on these methods.

Q: What is an important issue or case relevant to your practice area and why?

A: Continuing on the theme of reducing the amount and cost of patent litigation, I have seen several creative approaches used that are worth watching.

First, there are legislative proposals such as the Shield Act, which attempts to force "patent trolls" to internalize costs by putting them at risk of having to pay defendants' fees if they lose.

Second, there are prelitigation strategies. These include creating defensive patent licenses like Twitter's Innovator's Patent Agreement. Google has been very effective in this area, by making prior art searches much more accessible and proposing royalty-free licensing agreements.

Finally, there are litigation strategies. Cisco's attempt to bring a RICO counterclaim is probably the best-known example. While the strategy didn't ultimately pan out, I give them a lot of credit for creativity and effort. Sometimes unexpected strategies can be effective. For example, in one recent case I advised my client to purchase an outstanding judgment against the plaintiff's corporate predecessor. The predecessor was insolvent and had transferred the patents to a new company (run by the same people) without paying off the creditors. While we did not ultimately void the transfer of the patents, we put a lot of pressure on the plaintiff, obtained some very useful discovery, and, incidentally, made my client a little money in the debt-collection business.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: A former professor and longtime friend, Doug Lichtman, always inspires me with his insatiable intellectual curiosity. Doug excels at framing complex topics in a simple manner. For example, Doug hosts terrific discussions on a broad range of IP topics during the podcasts he developed called the IP Colloquium. For those who haven't been in his classes at the University of Chicago and now UCLA, you can hear how he always manages to ask insightful questions that encourage open, thoughtful discussion. I learn something from him every time we talk and always enjoy his perspective.

Q: What is a mistake you made early in your career and what did you learn from it?

A: When I was preparing for my first cross-examination of a witness at trial, everyone on our team expected the witness to attempt to blurt out a completely irrelevant accusation against our client if given an opportunity. His accusation was the subject of a motion in limine, and I went to great lengths to ensure my questions could not even remotely be construed as opening the door to his rant.

During cross, however, when I asked him an entirely unrelated question he jumped up and shouted the accusation anyway. Chaos ensued. This was a big case and lawyers were running everywhere (or so it seemed to me). The jury was stunned, I was in a daze, and the partners on the case were telling me to move for a mistrial. In the middle of the courtroom, one of the senior partners pulled me aside and ordered me to "decide right now whether you want to do this for the rest of your life." I'm happy I decided in the affirmative, but I did learn an important lesson: It's not enough to prepare for the things you can control; you also need to consider how to respond when circumstances end up completely out of your control.

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