Insights: News Releases

Kilpatrick Townsend Partner Roger Cook Named 2015 California Lawyer Attorney of the Year for Intellectual Property

MARCH 18, 2015

SAN FRANCISCO (March 18, 2015) – **Kilpatrick Townsend & Stockton** announced today that partner **Roger Cook** and his team have received the **2015 California Lawyer Attorney of the Year (CLAY)** award for Intellectual Property. The CLAY Awards are presented annually by *California Lawyer Magazine* and recognize California lawyers whose recent work has made a significant impact in the legal profession or otherwise in society.

Mr. Cook, defending Sidense Corp. in a patent infringement lawsuit, helped change the law to make it easier for a prevailing defendant to obtain recompense for attorneys' fees incurred in defending baseless patent infringement claims.

In the district court, Sidense defeated Kilopass Technology, Inc.'s claims for alleged infringement of Kilopass' patents on single transistor, one-time-programmable, non-volatile memory. The district court's order granting summary judgment of non-infringement [2012 WL 354286] and dismissal of remaining claims was affirmed by the Federal Circuit on April 23, 2013. 501 Fed. Appx. 980, 2013 WL 1442509.

Yet, the district court denied Sidense's motion for recovery of its attorneys' fees in view of the Federal Circuit's tough and long-standing *Brooks Furniture* standard. Nonetheless, on appeal, arguing that the *Brooks Furniture* standard was too tough and should be overruled, Mr. Cook persuaded a three-judge panel of the U.S. Court of Appeals to soften its interpretation of *Brooks Furniture*, and to reverse and remand the fees issue back to the district court for reconsideration. In reaching this decision, two of the three panel members credited Sidense's arguments for outright overruling *Brooks Furniture* but said they were foreclosed from doing so without convening the entire Federal Circuit court *en banc*. *Kilopass Technology, Inc. v. Sidense Corp.*, 738 F. 3d 1302 (Fed. Cir. 2013). The Federal Circuit declined to convene *en banc* because the U.S. Supreme Court was scheduled to review *Brooks Furniture* in the parallel but unrelated *Octane* case.

A few months later in *Octane*, after the U.S. Attorney recommended the Federal Circuit's *Kilopass* decision to the Court during oral argument, the U.S. Supreme Court overruled *Brooks Furniture*, favorably citing *Kilopass*. *Octane Fitness LLC v. Icon Health & Fitness, Inc.*, 134 S. Ct. 1739 (2014).

Now, as a result, when a company or other person is subjected to baseless patent infringement claims, whether by a competitor or non-practicing entity, it has a fair chance to recover its attorneys' fees from the patent owner as evidenced by the fact that, on remand, the district court awarded Sidense $5.5 million in attorneys' fees and costs. 2015 WL 1065883.

Mr. Cook focuses his practice on patent infringement litigation and licensing, particularly in semiconductor,

computer, electronics and telecommunications technologies. In patent litigation, he represents both plaintiffs and defendants, in both trials and appeals. For the past ten years, Mr. Cook has also co-taught a course in IP-Antitrust law at the University of San Francisco Law School.

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