

Rising Star: WilmerHale's Andrew Danford

By Britain Eakin

Law360 (June 6, 2022, 4:25 PM EDT) -- Andrew Danford of WilmerHale played a leading role in helping Apple Inc. get a \$506 million infringement judgment against it thrown out on appeal, and helped Genentech prevail in high-profile biosimilar litigation and related Patent Trial and Appeal Board cases over its blockbuster breast cancer drug Herceptin, earning him a spot among the intellectual property practitioners under age 40 honored as Law360 Rising Stars.

THE BIGGEST CASE OF HIS CAREER:

Danford cited his work defending Apple in a 2014 suit brought by Wisconsin Alumni Research Foundation, or WARF, against the iPhone maker over a single microprocessor patent as the biggest case of his career.

In 2015, a Wisconsin federal jury found that certain circuit chips used in iPhones and iPads infringed the patent to the tune of \$234 million. The district court later upped the award to \$506 million.

Danford was intricately involved in preparing Apple's invalidity and noninfringement defenses during the district court trial but also took the lead in Apple's successful appeal to the Federal Circuit. The length of the litigation — which was just resolved for good in May when a Wisconsin federal judge denied WARF's bid for a new trial after the Federal Circuit threw out the verdict — was one of the most challenging aspects of the case, according to the attorney.

"It's an uphill battle when you lose at the district court level," Danford said, which required the legal team to take a longer view, maintain focus and stick with the case over many years.

"It was very rewarding to get to the end of the litigation and see a favorable result, with Apple coming out as the prevailing party with no liability whatsoever," Danford said.

HIS MOST INTERESTING CASE LATELY:

Danford played a key role for Genentech in sprawling litigation under the 2010 Biologics Price Competition and Innovation Act over Genentech's blockbuster breast cancer drug Herceptin. He first helped Genentech prevail in a 2018

2022

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Andrew Danford
WilmerHale

Age: 38

Home base: Boston

Position: Partner

Law school: Stanford Law School

First job after law school: Clerked on the First Circuit

dismissal of Celltrion's declaratory judgment suit seeking a court ruling that Genentech's patents were invalid and not infringed. Danford then represented the biotech company in more than 30 inter partes review challenges at the Patent Trial and Appeal Board from various biosimilars, along with four suits in Delaware federal court accusing biosimilars of infringing dozens of its patents. Genentech largely prevailed in the PTAB cases and reached favorable settlements in the Delaware suits.

Danford called managing that volume of work "a challenge in and of itself," but said it was fun to be involved in these cases because the rules around BPCIA cases, and in particular the so-called patent dance, were still somewhat murky at the time. During the patent dance, the biosimilar applicant and the originator drug company identify the patents that could be implicated and spur future litigation.

Danford helped craft the team's strategy on many issues of first impression under the BPCIA, and said that has prepared the team to handle a second round of patent dances with other biosimilars.

"Having that experience and seeing it through has positioned us to deal with the next wave of filers," Danford said. "It's been fun to see that area of law change from the beginning, where the rules were not well-defined, to now having clarity on what's required of parties and getting good outcomes for our client."

HIS PROUDEST MOMENT AS AN ATTORNEY:

Danford's proudest moment so far came when he was just starting out at WilmerHale as an associate, amid the patent war between Apple and Samsung. A jury in 2012 awarded Apple \$1 billion in damages, which later got wiped out in post-trial relief. A partial retrial on damages in 2013 resulted in a \$400 million verdict, which the U.S. Supreme Court later wiped out. There was yet another trial after that, with a jury awarding Apple \$538.6 million before the parties settled their dispute.

Although Danford wasn't on the trial team, he was tasked with handling an emergency appeal of a decision in the 2012 iteration of the case to unseal some business records that Apple wanted to be kept confidential.

Danford, who had no prior experience with sealing procedures and keeping records confidential, said he got up to speed quickly and ultimately put a winning appeal brief together in a week. He said he was meeting with Apple on a separate matter when news of the appellate victory came down.

"It was such a great feeling to get a positive result on my first appeal while sitting there with the client. That was cool, it doesn't usually happen like that."

WHY HE'S AN IP ATTORNEY:

Danford studied chemistry as an undergraduate at the Massachusetts Institute of Technology. He said he thought about pursuing chemistry further in graduate or medical school, but he'd always been interested in law. So he successfully applied to Stanford Law School.

"I'm happy I got in. I took to it and decided that's what I was going to do," Danford said.

But he soon found out that he didn't have to give up entirely on chemistry. Instead, he realized after taking a patent law class that he could make use of his science background in IP law.

He landed a position as a summer associate at WilmerHale, which he said has a strong IP practice, and the rest is history.

"It worked out that people at each stage of my career have kept that interest alive. It's a good group to work with [at WilmerHale]. I can't imagine doing anything else," he said.

ON THE FUTURE OF THE PRACTICE:

Danford said he foresees reforms to patent damages in the next decade in light of recent damages awards topping \$1 billion.

"I think there is increasing concern that it's not promoting the progress of science, and that it's probably an impediment to innovation in some ways," he said.

Reform could come through further development of case law, stricter requirements for apportionment and how plaintiffs can present damages claims, or legislative action, he said. One way or the other, Danford said the current patent damages model "is not sustainable."

— *As told to Britain Eakin*

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2022 Rising Stars winners after reviewing more than 1,350 submissions. Attorneys had to be under 40 as of April 30, 2022, to be eligible for this year's award. This interview has been edited and condensed.