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AM LAW LITIGATION DAILYLitigators of the Week: Wilmer Gets a Clean Defense  
Sweep in Waco for Dropbox in Its First-Ever Trial

By Ross Todd

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**R**epresenting a defendant in a patent infringement trial in U.S. District Judge Alan Albright's courtroom in Waco, Texas can be an intimidating assignment for any litigator.

But what about in a case where your client has never taken *anything* to trial before?

That was the task facing **Greg Lantier** and **Amanda Major** of **Wilmer Cutler Pickering Hale and Dorr**, as they represented cloud storage and file sharing service Dropbox in a patent showdown with Motion Offense.

How did it go?

A federal jury in Albright's courtroom handed them a clean defense sweep last week, finding not only did Dropbox not infringe the Motion Offense patents, but the patents themselves were invalid, and issued under the incorrect priority date.

**Lit Daily: I hear this was the first time Dropbox has ever gone to trial. That's surprising! What's it like being called on to represent a company in a scenario like that?**

Greg Lantier: I actually did not know that this was Dropbox's first trial until we were three days into it. Based on what I observed from the Dropbox legal team in the run-up to the trial, it never occurred to me to ask—they exercised judgment like they had led the company through trial many times before.

I did know that this was the first patent infringement action to go to trial, based on my history of working with the Dropbox team on other patent infringement matters. We handled this matter in the same way that we have handled all others, so that we are always ready to take the case to trial if needed. In that respect, this matter was not very different from the others we have handled for Dropbox, except that we had to take it all the way through the jury verdict.



Courtesy photos

**(L-R) Greg Lantier and Amanda Major of Wilmer Cutler Pickering Hale and Dorr.**

**Give me a little bit of the backstory here. Dropbox actually filed a declaratory judgment action after a customer was hit with infringement claims by Motion Offense, right?**

Lantier: That's right. In July 2019, Motion Offense sued Sprouts Farmers Market, a Dropbox customer. The sole allegation in the complaint was that Sprouts used Dropbox. Rather than have the customer suit proceed, we filed a declaratory judgment action against Motion Offense in Delaware, its state of incorporation. Motion Offense had no offices or other connections in the Western District of Texas. We simultaneously moved to stay the action against Sprouts under the customer suit exception. The declaratory judgment action was eventually transferred to the Western District of Texas, but the customer suit exception stay was granted, relieving Sprouts of the need to defend a lawsuit.

**What was the underlying technology?**

Amanda Major: Dropbox is a cloud-based storage and sharing platform that allows you to access your files from any device and to share files with anyone. Motion Offense targeted certain ways of sharing folders and requesting

files, and focused on a feature in the Dropbox Desktop application that shows placeholders for all that is available in a customer's Dropbox account but does not download a file until the customer selects it for download.

**Who was on your team and how did you divide the work?**

Major: We had an amazing team. **Liv Herriot** has managed the case for years and oversaw all trial tasks in the lead-up to and week of trial. **Mark Matuschak** and **Brittany Amadi** provided strategic input during trial and helped prepare witnesses—particularly for cross-examination. **Trishan Efram** (another long-standing member of the team) and **Namo Kim** helped prepare our two technical experts for their testimony. **Makenzi Herbst**, **Rauvin Johl** and **Jeannette Leopold** joined the team just months ago and tackled all pretrial filings, witness preparation, and other trial support. Our paralegal team (**Lanta Chase** and **Becky Middleton**) provided excellent support, and **LaShawn Davenport** and **Lenise Jennings** helped keep us organized and our technology working. We were fortunate to have **Steve Ravel** and **Kelly Ransom** of **Kelly Hart & Hallman** share their Texas know-how during the years-long case, and to have **Gil Gillam** of **Gillam & Smith** as co-counsel at trial. We also worked closely with the terrific in-house team at Dropbox.

**What were your trial themes and how did you try to drive them home with the jury?**

Lantier: Our trial themes were driven by the facts of the case. Our foremost theme was that Dropbox did the work and that Dropbox did it first. Before any of the Motion Offense patents were applied for, Dropbox had already done all the innovation that Motion Offense was accusing of infringement. To drive that home to the jury, we started and ended the case with a timeline demonstrative of undisputed events demonstrating that Dropbox predated the patents. We also explained to the jury that the patent system had been misused in this case. The patentee had sought to describe Dropbox in continuation-in-part patent applications and then claim entitlement to a far earlier priority date. The timeline demonstrative helped to visually show that as well.

**Here you had defenses of non-infringement and invalidity as well as defenses stemming from the priority date for Motion Offense's patent. You ended up winning on all three fronts, but I'm curious when you have multiple defenses like this, how do you balance how much time and emphasis to give each one at trial?**

Lantier: That is always a challenge, and particularly so in courts like Judge Albright's in which each side is subject

to strict time limits. In this case, we focused on different defenses at different points in the trial. We discussed the priority date issue more early in the trial, because the underlying facts were important to our trial narrative and to clue the jury in to which of the parties had played it straight and which had tried to game the system. Once we had told that story, we did not need to spend much time on it later in the trial. We waited to focus on the details of the non-infringement defense in the middle of the case, after the jury had the opportunity to understand the underlying technology. The invalidity defense was woven throughout the trial because it was part of the big picture. Dropbox had already developed all this technology early on, and then most of the activities from Motion Offense occurred far later. The most important thing we did was to ensure that our trial themes were presented throughout the trial. Those cut across all of our defenses.

**What can companies facing patent infringement claims—and particularly those facing a potential trial in the Waco courthouse—take from your experience here?**

Major: To me, the takeaway is that if you have a story that resonates with people, and arguments that reinforce one another and can be made via compelling evidence and strong witnesses, you can prevail on multiple fronts.

**What will you remember most about this matter?**

Major: This was a challenging case. As just one example, the asserted claims were very long—they had 13 or more claim limitations—and the arguments at times seemed like they would be hard to convey to a jury. But the team was dedicated to figuring out how to put on the best possible trial presentation and working very hard to make it happen. Above all else, I expect I will remember the incredible level of commitment every team member demonstrated time and again throughout the trial.

Lantier: I will remember the people on our team and how dedicated they were. Our fact witnesses at the trial had tremendous responsibilities within Dropbox and many demands on their time. Nonetheless, they were wholly committed to helping to prepare so that the jury could understand the facts, and that the claims against Dropbox were without merit. The in-house Dropbox legal team was deeply involved in helping to shape the case strategy and prepare it for trial. Each member of our outside counsel team—including the WilmerHale attorneys, Texas-based counsel, and others who were integral to the trial—did their best work at every turn. It was a very memorable team experience for me.