

Rising Star: WilmerHale's Thomas Saunders

By Daniel Siegal

Law360, Los Angeles (April 13, 2016, 6:12 PM ET) -- Securing victories that encompass both complex technological issues and novel legal issues, including defying expectations to win a case when the U.S. Supreme Court upheld a long-standing patent royalty rule, has made WilmerHale partner Thomas Saunders one of Law360's top appellate lawyers under age 40.

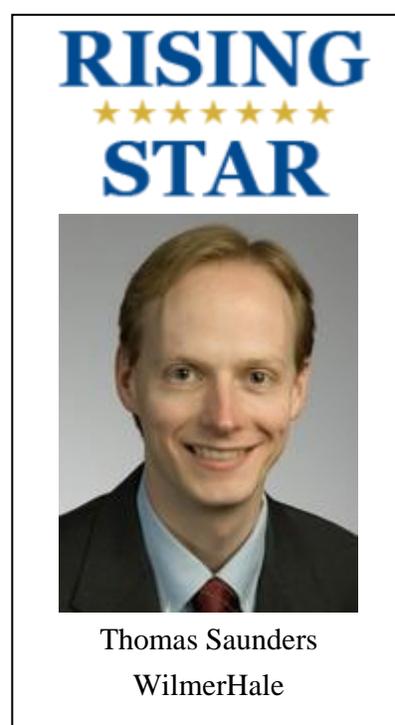
The 38-year-old Rising Star's career might still be on the upswing, but Saunders' track record in his 11 years at WilmerHale has already marked him not only as an appellate attorney on the rise but also one who is already a pre-eminent attorney in his field; he was named a Law360 Appellate MVP for 2015 in December.

Included in that track record was Saunders' work securing a 6-3 decision in *Kimble v. Marvel Enterprises* in June 2015, in which the Supreme Court went against the expectations of court watchers and upheld a 50-year-old rule barring royalty agreements that continue beyond a patent's expiration, enabling Saunders' client Marvel to stop paying royalties on a Spider-Man toy after a patent on it expired.

Saunders said that his experience before the high court helped him realize that the crucial task was to not get caught up in the noise and instead focus on his strongest arguments in the case and make sure to "execute flawlessly."

"There were a lot of commentators predicting that the court had taken the case to rule against us, and so we just had to be clear and consistent," he said. "Sometimes when people think the odds are against them, they'll begin to try to get a little too creative, or branch out in other directions that actually hurt them, when it's better to stick with your core strengths."

And the same day as the decision in *Kimble* came down, the Supreme Court agreed to hear another case of Saunders', *Kingdomware Technologies Inc. v. U.S.*, which contended the U.S. Department of Veterans Affairs habitually ignores federal laws mandating the consideration of veteran-owned small-business contractors. Saunders ended up arguing that case before a diminished Supreme Court in the first oral argument heard after the death of Justice Antonin Scalia, but he said the argument ended up being



“surprisingly normal.”

Saunders said that this ability to cut through distractions and overwhelming information and come away with cogent, focused legal arguments is the key to a successful appeal, both in the Federal Circuit and the Supreme Court.

He has won detail intensive patent cases in the Federal Circuit such as *Promega v. Life Technologies*, in which the appeals court vacated a judge’s ruling eliminating a jury’s \$52 million infringement verdict, and *Delano Farms v. California Table Grape Commission*, which saw the court upheld two key patents on grape varieties licensed to the commission.

He’s also taken patent cases up to the Supreme Court, such as *Stryker v. Zimmer*, a case that deals with the standard for awarding treble damages and involves an \$150 million enhanced damages award.

Saunders said that whether it’s handling a Federal Circuit’s panel desire to drill down into the details of the technology of a patent, or dealing with the unique task of parrying and responding to the questions of the Supreme Court justices, the successful appellate attorney will know how to focus on the fault line in a case.

“Whether you’re talking about the technical detail of a patent on cutting-edge technology or you’re talking about a complicated multipart federal statute, the skill is really the same, in terms of being able to take that complexity, boil it down for the court,” he said.

--Additional reporting by Matt Fair. Editing by Brian Baresch.

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