

IP MVP: Winston & Strawn's George Lombardi

By **Scott Flaherty**



George Lombardi

Law360, New York (December 10, 2012, 8:17 PM ET) -- Leading the effort to secure a \$1 billion jury verdict for Monsanto Co. in a high-profile patent infringement suit against DuPont Co. over herbicide-resistant seed technology, Winston & Strawn LLP's George Lombardi had a banner year that landed him among Law360's Intellectual Property MVPs.

Lombardi, who joined Winston after finishing law school in 1984 and has remained at the firm since, said he very quickly realized that he wanted to spend as much time as possible in the courtroom.

"I really enjoyed the trial aspect of things," he said. "I sought out trials wherever I could find them."

That desire to take on trials was coupled with an environment at Winston that placed an emphasis on approaching cases — no matter the practice area or legal issue at stake — with "a trial lawyer's sensibility," which meant putting a premium on presenting a jury with a story to follow, Lombardi said.

Lombardi — who took part in his first patent case in 1987 and has, over time, devoted more and more of his practice to intellectual property matters — drew on that sensibility in litigating the Monsanto case, which resulted in a patent infringement verdict in August that awarded the company \$1 billion.

The Winston partner became involved early in the suit — which, in addition to patent infringement claims, originally included breach-of-contract claims against DuPont and grew to include antitrust counterclaims brought by DuPont against Monsanto — taking the lead on the patent side of Monsanto's case.

Though the jury verdict in favor of his client was a nice touch and a successful result, Lombardi said the case also stood out for a variety of other reasons, including the complexity and importance of the technology involved, the challenge of explaining it to a jury, and the opportunity to take on DuPont executives in cross-examinations.

"The nature of that case was definitely a highlight," he said. "There are a lot of war stories that come out of a trial like that."

Monsanto first brought its complaint in 2009 against DuPont and affiliate Pioneer Hi-Bred International Inc. The suit accused the Monsanto rival of infringing patent protections on Roundup Ready technology, used to produce seeds for certain crops, including soybeans and corn, that were genetically modified to resist Monsanto's popular Roundup herbicide.

"It was truly pathbreaking technology that Monsanto developed," Lombardi said. "It really is one of those really rare technologies that does cause a change in the entire industry."

As the case moved forward, Lombardi's co-counsel secured a 2010 summary judgment in favor of Monsanto on the company's contract claims against DuPont. Later that year, at a September 2010 Markman hearing, Lombardi led an effort to secure a favorable construction of the patent claims.

After DuPont's antitrust counterclaims were split off and set for a separate 2013 trial, Monsanto's patent infringement allegations made their way in July to trial, during which Lombardi handled a range of duties in his role as lead counsel.

On one front, DuPont lodged several motions for judgment as a matter of law on a range of issues that Monsanto was forced to fend off. While Lombardi had a role to play in making those responses, he said he sometimes handed off certain tasks to colleagues.

"It wasn't just me at this trial," he said. "There are some very good people on our team who stepped in if I was bogged down."

On another front, Lombardi led the charge in examining some of Monsanto's witnesses and cross-examining most of DuPont's executives who took the stand. Those examinations, like the case more generally, presented twin challenges that stemmed from having to explain such complicated technology and legal concepts to the people sitting in the jury box, he said.

To counteract those challenges, he drew in part on the trial lawyer's approach that he had learned early in his career at Winston, attempting to extract from DuPont's witnesses a narrative that pointed toward the company's infringement of Monsanto's technology.

"The other side of the case was the story of DuPont's infringement," he explained.

The jury ultimately came down in favor of Monsanto on Aug. 1, doing so with force. In addition to issuing one of the largest awards ever in a patent case, the jury granted a verdict that marked the largest ever obtained by Winston.

Looking ahead after the success he had in trying the Monsanto case, Lombardi said he doesn't expect any major changes in his practice as a litigator.

"I have more trials in my future," he said.

--Editing by Katherine Rautenberg.