

Tom Melsheimer Discusses Win for Flyp in Patent Lawsuit with *The Texas Lawbook*



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Winston & Strawn partner Tom Melsheimer was quoted in *The Texas Lawbook* following a win secured on behalf of Flyp in a patent lawsuit filed against Google seeking damages for infringement of five patents covering technology that allows users to use the internet to connect multiple phone numbers to a single mobile phone. The Waco jury determined Google owes \$12 million in damages for infringing the patents and declined to invalidate any of the patents.

“There were some interesting challenges in this case. One is, you’re suing Google, which is seen as this highly innovative, technologically sophisticated company,” Tom said. “So the notion that they would have invented things is pretty plausible to people.”

While Google Voice dates to 2009 and Flyp filed its patent application in 2013, Tom said his goal was to drive home to the jury that Google Voice was not the same product that Flyp alleged infringed its technology. “We told the story that they did have something called Google Voice in 2009, but it turned out there were challenges and problems with it that did not get fixed until 2017,” he said. “And that was how we were able to show that our patent was both infringed and valid.”

Another challenge Tom faced in the case was cross-examining Google’s fact witness, who happens to be blind. To accommodate the witness, Tom gave Google in advance the documents he planned to use to cross-examine and Google gave the documents they intended to ask the witness about.

“You’ve got to be really careful, you can’t be too aggressive,” Tom said. “But the other thing is you have to formulate your language differently. The most asked question during cross-examination is ‘Do you see where I’m reading?’ or ‘Do you see that clause?’ or ‘What does that email say?’... I was extremely anxious about how this would work.”

“But there were a lot of things that we had to get out of him to win. Because the truth is, if [the jury] believed him 100 percent we were going to lose,” he said. “The moral of the story for me is being nice is fine. Because unless you’re truly cross-examining a witness that you need to prove is a liar... what you’re usually trying to prove is they don’t know something the other side wants the jury to think they know.”

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