

## Winston's "Appeal" to the Federal Circuit Results in Major Victory

APRIL 6, 2017

On April 6, 2017, Tom Melsheimer and Tom Walsh, partners in Winston & Strawn's Dallas office, obtained an affirmance at the Federal Circuit for firm client FFF Enterprises, Inc. (FFF).

AmerisourceBergen Specialty Group, Inc. (ABSG), a major competitor of FFF, filed a patent infringement lawsuit in the Eastern District of Texas (EDTX) against FFF on December 24, 2013. The Winston team soon determined that ABSG was not actually the owner of the patent (and that instead, a subsidiary of ABSG called ASD Specialty Healthcare was the true owner). As a result of this discovery, a declaratory judgment lawsuit against both ABSG and ASD seeking declarations of non-infringement and patent ownership in the Central District of California, where FFF is located, was filed. At the same time, a motion to dismiss ABSG's lawsuit in EDTX for lack of subject matter jurisdiction and lack of standing was also filed.

Shortly thereafter, Tom Melsheimer and Tom Walsh led a team that filed a Covered Business Method Review (CBM) in front of the U.S. Patent Trial and Appeal Board (PTAB), which sought to invalidate the patent-in-suit and also filed a motion to stay the EDTX lawsuit so that the CBM proceeding could proceed to a determination on whether the patent claims were valid. The EDTX court granted the motion to stay, which was a major setback for ABSG.

Tom Walsh then argued the CBM trial before the PTAB in September 2015, which resulted in a finding by the PTAB that the asserted claims of the patent-in-suit were not patentable. ABSG appealed that decision from the PTAB to the U.S. Court of Appeals for the Federal Circuit. Tom Melsheimer handled the oral argument on April 4, 2017 in front of the Federal Circuit, and 48 hours later, the three-judge panel unanimously affirmed the decision of the PTAB—which ended the EDTX lawsuit in favor of FFF.

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