Law360

June 3, 2013

Q&A With Hunton & Williams' Maya Eckstein

Maya M. Eckstein is a partner in Hunton & Williams LLP's Richmond, Va., office. She is a patent and intellectual property litigator, representing plaintiffs and defendants in patent infringement disputes and complex litigation involving multiple defendants and jurisdictions. She represents clients from numerous industries, with an emphasis on the technology sector. She has litigated cases involving smartphone technology, hearing aid technology, cable television technology, wireless email technology, electronic payment technology and other technologies. She also regularly represents parents on a pro bono basis in international child abduction cases.

Q: What is the most challenging case you have worked on and what made it challenging?

A: Each case I work on has its own particular set of challenges. In general, though, the most challenging moments are those in which you are on your feet in the middle of a trial.

In one case on which I was trial counsel for the plaintiff patent holder, the defendants identified a brand-new defense theory in their opening statement that could have drastically affected the case. As a result, we had to act very quickly, in the middle of the trial, to find a new witness who could debunk the new theory.

We found that witness — he was a former engineer who was no longer working as an engineer but spent his time day trading in a Central American country. We found him, spoke with him, and convinced him to come to Delaware within the week to testify at trial (which he agreed to do so long as we provided him with a computer so that he could continue day trading). We also obtained a declaration from him setting forth his proposed testimony, which debunked the new defense theory. While the judge denied our motion to call this witness on rebuttal (since he wasn't on our original witness list), the judge also precluded the defendants from asserting the new defense. The defendants abided by the judge's ruling through closing arguments, when they again referred to it. After they did it a second time, the judge sustained our objection and then published to the jury the witness's declaration. It was the last piece of evidence the jury saw before deliberating. The jury returned a very favorable verdict for our client.

Q: What aspects of your practice area are in need of reform and why?

A: Something needs to be done about the costs of patent litigation. Patent cases are ridiculously expensive and, for some, prohibitively expensive. The Federal Circuit's model order on e-discovery is a good step in the right direction, but even it doesn't go far enough. Something structurally needs to change in the system.

The high cost of patent litigation affects potential plaintiffs and defendants alike. Individual inventors and small companies simply cannot afford the cost of litigating against a relative behemoth that is infringing their patent. On the other hand, companies are including funds for

settling patent litigations in their yearly budgets, as a cost of doing business, because they know that settling will be far less expensive than litigating.

A system that leads to these outcomes is structurally broken. Critical thinking must be expended on ways to make the process more affordable for plaintiffs and defendants alike.

Q: What is an important issue or case relevant to your practice area and why?

A: The Federal Circuit's en banc decision in Akamai on joint infringement probably is one of the most important cases to issue from that court in recent history. In my view, the court changed the rules of the game by holding that multiple parties can perform the varying steps of a method patent to collectively cause its infringement. With this ruling, the court created a clear distinction in the standards between direct and indirect infringement, and I know that many practitioners are not entirely convinced that distinction is justified.

The ruling is causing much consternation amongst patent litigators and companies involved in patent litigation. It's also causing consternation among patent prosecutors, who now need to carefully analyze the effect of the court's opinion on their claims. I suppose there would be less consternation about the ruling had it been issued by a clear majority of the court. But it was a 6-5 ruling, with two very sharp, stinging dissents that went in opposite directions. The case is now before the U.S. Supreme Court on a petition for writ of certiorari. It would be helpful for the Supreme Court to provide some clarity on the joint infringement issue.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: I've worked with Elaine Herman Blais of Goodwin Procter LLP as counsel to a co-defendant. She has impressed me with her thoughtfulness, thoroughness, and her passion for her clients' position. We've worked together in a large defense group setting, which can be pretty unwieldy, but Elaine is able to avidly argue her position, while still being diplomatic and respectful of others.

Kevin Anderson of Wiley Rein is another lawyer who has impressed me. I met Kevin early in his career, when he was a young associate. His drive, unfailing attention to detail, and ability to strategize at a level that was then above his years were impressive and definitely an asset to his client.

Q: What is a mistake you made early in your career and what did you learn from it?

A: When I was a young associate, I asked an assistant to help file a brief for which I was responsible. After an error was made in the filing, I tried to explain the assistant's mistake to the partner with whom I worked. The partner quickly reminded me that I was responsible for the filing, and that I shouldn't try to "pass the buck" onto my assistant. He taught me a great lesson that day, which I practice daily and that I think my clients appreciate: At the end of the day, I am responsible for the cases that they entrust to and I do not pass the buck. Today, I pass on that advice to young lawyers, in hopes that they don't make this mistake in the future.