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Q&A With Hogan & Hartson's Steven Hollman

Law360, New York (June 05, 2009) -- Steven Hollman is a partner in the Washington, D.C., office of Hogan & Hartson LLP and is a litigation practice group director at the firm and co-chair of the firm's recruitment committee. He practices intellectual property litigation and complex commercial litigation.

Hollman's intellectual property practice includes patent cases in federal district court, International Trade Commission section 337 proceedings, Federal Circuit patent appeals, trademark and Lanham Act false advertising cases, trade secret misappropriation, enforcement of employee nondisclosure and noncompetition agreements, copyright infringement and Internet-related IP disputes.

Q: What is the most challenging case you've worked on, and why?

A: The China Battery 337 patent proceeding brought in the ITC by Energizer.

On the literal eve of trial, Energizer settled with our leading co-respondent, represented by co-lead counsel at another firm; froze the experts of that respondent upon whom we planned to rely to help make our invalidity and noninfringement case; and effectively tore our case presentation plan to shreds.

Sensing on a Friday afternoon when our colleagues representing the co-respondent seemed to stop returning phone calls that the settlement with our co-respondent might be imminent, we started calling hotels on Friday evening to locate witnesses who were in Washington from out of the country to testify so that we could dispatch process servers to serve them with trial subpoenas as they returned from their post-settlement merriment because we feared that without subpoenas, they would fly back to Europe on Saturday morning, in advance of the Monday trial.

Fortuitously, we were able to find and serve them. Then, in just three weeks, we mastered the part of the case that was to have been presented at trial by our co-respondent and weathered a five-week trial.

The trial itself climaxed with the inventor's startling admission that the language used in the patent claim was a mistake. We succeeded in convincing the commission to invalidate a poorly drafted alkaline battery patent that had been asserted successfully against leading industry competitors Duracell, Rayovac and Matsushita.

We then protected the invalidity determination in two trips to the Federal Circuit, culminating just a month ago in the Supreme Court's decision to deny Energizer's petition for certiorari. It was an epic 5-year battle, and certainly one of my hardest-earned victories.

Q: What accomplishment as an attorney are you most proud of?

A: It's a tie. The talented associates whom I have had the pleasure and honor to help train, and the opportunity to engage in public interest advocacy including major systemic reform pro bono matters as part of Hogan & Hartson's Community Services Department (CSD) Program, which was recognized by the ABA in 1991, when I was the senior associate assigned to the program, as the leading law firm pro bono program in the country.

The Hogan & Hartson CSD Program remains as one of the leading models for law firm pro bono, and it is a draw for much of the top talent that we are fortunate to attract from leading law schools around the country.

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

A: Doctrinal uncertainty, forum shopping, the rise of patent trolls, the increasing complexity of patents and patent claim construction, and the proliferation of junk patents, all have pushed patent reform to the top of the national agenda.

And recent patent jurisprudence has exposed the inherent tensions involved in the demands we place on the patent system, between promoting innovation and spreading the fruits of progress; between the incentive to innovate and the value of vigorous competition; and between flexibility, on the one hand, and predictability and uniformity on the other hand.

These developments have prompted Congress to consider the biggest overhaul of the patent system in over 50 years.

Q: Where do you see the next wave of cases in your practice area coming from?

A: In the patent space, technology, communications and pharma bio-tech patents will continue to attract litigation focus as research-based companies seek to leverage their intellectual property assets to thrive in an increasingly competitive global marketplace.

The proliferation of imported products and the rising percentage of foreign companies employing American labor will ensure a continuation in the trend of using ITC section

337 proceedings as a favored forum for resolving patent infringement disputes, and the speed with which those proceedings are handled and the availability of injunctive relief also will contribute to this trend.

On the trademark side, strategic asset management, lower trade barriers, global branding and increased licensing revenues will give multinational companies great incentive to protect trademark good will.

For trade secrets, the increased mobility and technological skill of the work force, coupled with the economic incentives luring employees in competitive industries, will ensure the continued vitality of trade secret litigation and noncompete and nondisclosure enforcement. In short, IP litigation generally is a thriving growth practice!

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: Aside from my father, Lawrence Hollman, the former managing partner in the D.C. office of Ober Kaler whose unremitting integrity and commitment to client service have been an inspiration to me, I am very impressed with Jim Adduci, a frequent adversary in ITC section 337 patent proceedings.

He is not just a local guy who made good or a smart lawyer who has developed a particular expertise and then drawn skillfully on his experience and his connections; he is someone who keenly understands the business of law practice.

As a result, he has built an extraordinary practice in a critical IP niche area and is on most short lists for section 337 litigation. Sometimes we are so busy beating each other over the head, figuratively speaking, that I don't get the chance to say "nice job, Jim!"

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: IP litigation is a growth area and a great place to be for young lawyers interested in litigation. There is a great debate among patent litigators as to whether one needs skill in a technical art to be an effective patent litigator.

Members of the patent bar say you'd be crazy to show up at a Markman hearing without a lawyer who knows the technology at a technical level. Pure litigators say that most fact-finders, be they federal district judges or juries, are social science people just like them, and communicating effectively at their level to explain the technology in an understandable fashion is more important than technical skill.

Of course, the truth is in between. Young lawyers who have both technical skill and the ability to communicate effectively have a huge advantage. Surprisingly, there do not seem to be enough of them. Of course, it also helps to have a good mentor.