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David A. Loewenstein, Esq.

New York, New York

Current Employer-Title Pearl Cohen Zedek Latzer LLP – Partner

Profession Attorney

Work History Partner, Pearl Cohen Zedek Latzer LLP, 2005 – Present; Lecturer, Tufts University (IP Law), 2014 – 2018; Counsel, IP Value; Of Counsel, Morgan & Finnegan; Associate, Fish & Neave.

Experience Over 30 years of experience in complex intellectual property litigation, including complicated, high-stakes patent litigation, most involving international parties and cross-boarder transactions; sophisticated econometric damage models; lost profits, reasonable royalties, litigation and licensing trademark, copyright, trade secrets, standard essential patents ("SEP"), FRAND and ETSI issues (under French law), infringement, invalidity, unenforceability, unfair competition matters; and mediations and arbitrations related to these issues.

Lead counsel for multi-party cases, ITC hearings, federal court appeals, Markman, Daubert and summary judgment hearings related to a wide array of technologies, many for multinational companies, including:

- Ford Motor Company (automobile electronic engine controls (cars, trucks, motor vehicles));
- Procter & Gamble (computer software);
- Varian Associates (Fourier Transform NMR instruments (scientific instruments));
- Fujitsu (cell phones and other technology);
- C.R. Bard (medical devices);
- W.L. Gore (variety of GoreTex products (vein, grafts, medical devices));
- Bombardier, Inc. (33 patents related to personal watercraft (vehicles));
- Boehringer Ingelheim Corp. (Oxycontin litigation (pharmaceuticals));
- Coulter (monoclonal antibodies and flow cytometers (scientific instruments));
- Given Imaging (endoscopic imaging capsules, optics and software (medical devices));
- wireless machine-to-machine (M2M) communicators;
- medical devices, including holmium lasers, femur supports, RF (radio frequency) devices and intra-aortic balloon catheters;
- forward collision and lane-departure warning systems (computer vision, automotive, cars, software);
- surgical simulators
- ink jet printers;
- VOIP, voice over IP;
- Telit (FRAND royalties, patent unenforceability, infringement, invalidity, wireless communications, error checking and correction, encryption);
- Albaad (feminine care);
- agricultural products, seed and plants; and
- software patents, concerning oil exploration, e-commerce, on-line advertising, visual search and other technologies.

Virtually all litigation experience included contractual issues and disputes and licensing, several disputes included terms of use issues in software licenses, EULA disputes, and trade secret misappropriation.

A member of the trial team in the historic Polaroid v. Kodak eight-month damages trial in which Polaroid won just under one billion dollars in damages. Expert on damages litigation and determining the validity of economist's damages analyses. Worked with Nobel Prize winning economists on damages models, and econometric analyses.

Mediator and Arbitrator at the American Arbitration Association
Lecturer in Intellectual Property Law at Tufts University.

1981-1983 – Joseph R Loring, & Assoc.: Worked with well-known architects on various high-profile construction projects; performed computerized energy analysis, including modeling the World Trade Center; IBM headquarters in Armonk, NY and various laboratory facilities; HVAC design, developed various computer programs for elevator analysis and plumbing design.

Mediator Experience

Acted as a mediator during several consumer arbitrations where the matter was resolved short of a hearing.

Mediator Style & Process Preferences

A mediator must approach these conflicts with the view that both parties face considerable uncertainty. If a case has progressed to mediation or litigation, neither side has a "slam dunk" argument." The only thing that is predictable is that both parties will pay legal fees, in some cases significant fees, if the cases is not settled. That said, my role as a mediator is to point out the strengths and weaknesses of each party's case, confidentially, or in a group discussion (as the parties prefer) and based on that to drive the parties to an efficient resolution. With over 30 years of complex litigation experience, I have come across most legal arguments, and have a good sense of which ones will succeed, which will fail and which could go either way. Based on a thorough analysis of the competing arguments, I will estimate what the probabilities of success are for each of the arguments presented.

The overall philosophy is to talk to the parties (not their lawyers) directly and candidly assess the value of the case. Oftentimes, advocates will paint too rosy a picture and build up the client's expectations. As an advocate, I have viewed mediation/settlement discussions as the only opportunity I have to speak directly to the opposing party without his lawyer acting as a filter. This may be the first time he hears the defects of his case. My role as a mediator is to view the arguments objectively and to convince the parties that the outcome either is uncertain (the most likely scenario), or one party has a significantly better chance of prevailing, and more times than not continued litigation is just not worth it.

I have considerable amounts of experience working with exceptional economists (in one case, an economist who went on to win the Noble Prize), including econometricians, licensing and damages expert and will use that knowledge to "cut-through" the parties' posturing on damages to arrive at a realistic value for the case. I have succeeded in Daubert motions excluding damages experts, and know the weak points in damages analyses.

Education

Fordham University School of Law (JD-1987); Columbia University (Masters of Science Mechanical Engineering-1984); Tufts University (Bachelor of Science Mechanical Engineering-1981).

Professional Licenses

Admitted to the Bar: New York (1988); U.S. District Court: Southern and Eastern Districts of New York (1988); U.S. Court of Appeals: Second Circuit (1996), Federal Circuit (1990); U.S. Patent & Trademark Office; U.S. Supreme Court (1992); various admissions pro hac vice.

Professional Associations

NYS Bar, and various other federal courts.

Recent Publications & Speaking Engagements

PUBLICATIONS:

Papers:

A Look At Fed. Circ. Induced Infringement Ruling In NuVasive, David Loewenstein and Clyde Shuman, Law360 (2016),

Patent Litigation in the Eastern District of Texas: Is the Party Over?, David Loewenstein & Douglas Gilbert, IP LAW 360, Jan. 13, 2009.

Pitfalls in Indemnification Provisions in Intellectual Property Agreements, LES NOUVELLES, JOURNAL OF THE LICENSING EXECUTIVES SOCIETY (Sept. 2002).

Authored chapter, Patent Opinions, INTELLECTUAL PROPERTY ASSETS IN MERGERS AND ACQUISITIONS (2002).

The Federal Circuit's En Banc Decision in Johnson & Johnston, Inc. v. R.E. Services, Inc., N.Y. LAW JOURNAL, June 4, 2002.

Recent Federal Circuit Decisions Focus on Defenses, NATIONAL LAW JOURNAL, Apr. 15, 2002.

A Critical Analysis of the Bard v. M3 Systems Decision, INTERNATIONAL LEGAL STRATEGY (May 2002).

Dangers in Joint Patent Ownership, LES NOUVELLES, JOURNAL OF THE LICENSING EXECUTIVES SOCIETY, Vol. XXXII No. 1 (Mar. 1998).

Co-author, Venue Selection for Patent Infringement Actions in the United States, INTERNATIONAL LEGAL STRATEGIES, Vol. VI-12 (1997).

Patent Damages, Paper prepared for Herbert F. Schwartz, Esq. and presented at the ABA Intellectual Property Law Section Meeting (Aug. 1993).

Patentee U.S. Patent Nos: 7,341,254, 7,258,342.

Mediation Rate

\$3,600 Per Day

Languages

English, French, German

Citizenship

United States of America

Locale

New York, NY

The AAA's Rules provide the AAA with the authority to administer a mediation including, mediator appointment, general oversight and billing. Accordingly, mediations that proceed without AAA administration are not considered AAA mediations, even when the parties select an mediator who is on the AAA's Roster.

The information contained in this resume has been supplied solely by the individual mediator and may, or may not, be a complete recitation of their experience. The AAA assumes no responsibility for the content, completeness, accuracy, or reliability of the information contained in a mediator's resume. If you have any questions about a mediator's experience or background, you are encouraged to contact your case manager.

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