

MVP: Desmarais' John Desmarais

By Elliot Weld

Law360 (October 31, 2023, 1:07 PM EDT) -- John Desmarais of Desmarais LLP secured a full defense verdict for Cisco that found the tech giant had not infringed software company Egenera's patents, then, just two weeks later, traveled to Texas and flipped to the plaintiff side to win Ravgen the third-largest patent verdict of 2022, earning him a place among Law360's 2023 Trial MVPs.

His biggest accomplishment over the past year:

Desmarais identified those two cases as his top recent accomplishments. The first win came in Boston in August 2022, when Desmarais was lead counsel for Cisco Systems Inc. in a case in which Egenera Inc. wanted \$371 million over allegations of infringement of its virtual networking patents. The jury took less than six hours to reach a verdict and close a case that had lasted more than six years.

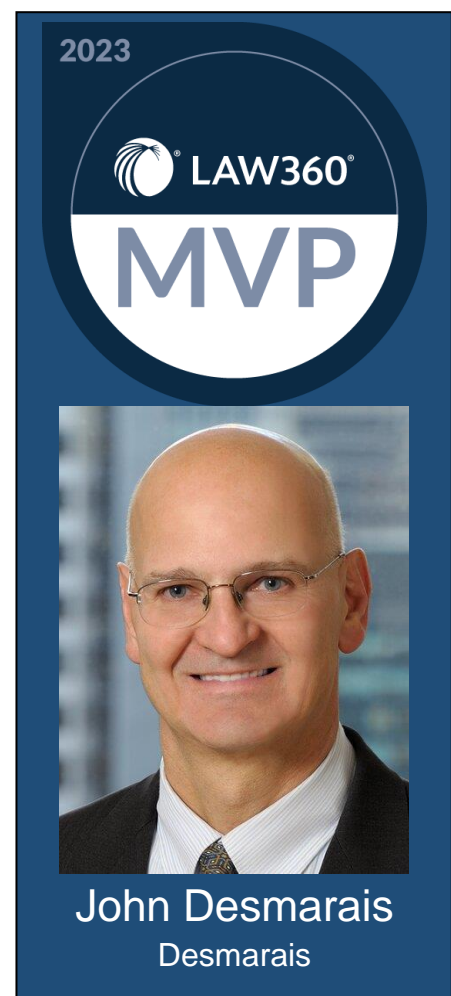
Desmarais said he sought to poke holes in Egenera's argument that it was an upstart looking to take on the gigantic Cisco, instead showing that Egenera was backed by investors and looking to recoup losses with flawed claims.

"This case is about a bunch of venture capitalists trying to make good on their bad bet," Desmarais told the jury. "They got stuck with a bad investment, and they are looking for an exit. That is not Cisco's fault."

Two weeks later, Desmarais was bound for Waco, Texas, where he represented biotech company Ravgen Inc. against rival LabCorp in a case alleging LabCorp had infringed patents for prenatal testing technology. The jury in that case granted Ravgen \$272.5 million in damages, which the judge enhanced by \$100 million, Desmarais said.

The feat was somewhat unusual, Desmarais said, because law firms generally focus on representing either plaintiffs or defendants.

"There are some, but very few do both," Desmarais said. "Very few do both well, so this year showed that we do both well."



His biggest challenge over the last year:

While the back-to-back trials were an accomplishment, Desmarais said handling the two big cases in a short time frame was also likely the toughest test he faced in the past year.

"The biggest challenge was to do them right in a row and not have a lot of time in between," Desmarais said. "You're going a hundred miles an hour with one set of facts and one set of issues, and then you've got sort of two weeks to purge your brain and then ramp up on another set of facts and another set of issues."

Representing plaintiffs and defendants requires different tactics, Desmarais said. When representing the defense, attorneys must come up with a "theme that's going to motivate the jury" due to the perception that juries are "predisposed to side with the inventors or patent owners," he said. Defense attorneys always speak second and therefore must convince the jury to give a "fresh look" after being blasted by the plaintiffs.

By contrast, when representing a plaintiff, a lawyer must "come out swinging" and try to foresee how the defense will attempt to deflect, Desmarais said.

"It's a very different skill set. One is, you've got to figure out what the motive [is], and the other is, you've got to think about what they're going to do to motivate, and you've got to try and be prepared for both," Desmarais said. "It's a fun challenge, doing both."

Desmarais had teams in each city, with a separate group of attorneys working the Ravgen case in Waco while he tried the first case in Boston, allowing him to concentrate on each case separately.

What drew him to become an IP trial attorney:

Desmarais started his academic career in the hard sciences and said he found them fascinating. He earned his undergraduate degree in chemical engineering from Manhattan College but did not want to become a chemical engineer.

"The great thing about being a patent trial lawyer is every case you get is a different technology and you get to learn the technology, you learn how things work, and if you're somebody like me who really likes science but doesn't really want to be a scientist, you get to learn all this stuff."

Desmarais has represented clients in disputes over a wide range of technologies, including switches in data centers, MP3 audio, DVDs and pharmaceuticals, he said. The "fun" challenge is learning the ins and outs of a complex technology then spinning that into a simple narrative for a jury, according to Desmarais.

"I'm one of the few lawyers in the world who really loves what he does," Desmarais quipped.

Desmarais is in a unique position, he said, because of the time he spent as a federal prosecutor in the Southern District of New York from 1992 to 1995, when he tried cases related to the federal Racketeer Influenced and Corrupt Organizations Act, drug trafficking, money laundering, loan sharking and other offenses. The experience gave him a "deep understanding of how to try a jury trial," he said.

His advice for junior attorneys:

Desmarais said younger attorneys should look to co-workers who have been with the firm longer, including senior partners, and analyze what type of work they do and "if they're happy."

In some firms, Desmarais said, the way practice groups are structured can lead to a situation where senior partners are "hogging all the good work and not passing it down."

"In order to be successful in a particular firm or particular setting, you've got to be in a place where mentors are going to pass down good work to younger people," Desmarais said. "If you're in an environment like that, you're in a good place and you'll do well. You should seek out those opportunities. ... If you're not in a place like that, I would leave and go to a place like that."

-- *As told to Elliot Weld*

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