

## IP Group Of The Year: Desmarais

By **Dani Kass**

*Law360 (January 19, 2023, 2:02 PM EST)* -- Desmarais LLP secured a \$272 million patent infringement verdict against LabCorp and helped Cisco beat a \$371 million infringement case, earning the firm a place among Law360's 2022 Intellectual Property Groups of the Year.

The IP trial firm has about 75 attorneys, and is hyperfocused on being "a training ground for trial lawyers," according to founder John Desmarais. Across the firm's New York, Washington, D.C., and San Francisco offices, Desmarais said the development of newer attorneys is a key aspect of what helps the firm win.

"Even our most junior associates are thinking like trial lawyers," partner Kerri-Ann Limbeek said. "We're thinking about the case from the perspective of 'how are we going to present this to a jury, on summary judgment, on appeal.' It makes our teams really strong from top to bottom."

The firm also doesn't do hourly billing, which Limbeek said allows them to not get distracted thinking about how much time and money something takes but focus on the work itself. The fee arrangements vary by client, she added.

In September, the firm won a \$272 million verdict against Laboratory Corp. of America Holdings from a Western District of Texas jury. Desmarais was representing the patent owner, Ravgen Inc., run by an inventor who had a breakthrough for noninvasive prenatal testing but who was inexperienced with licensing, Limbeek said.

When large companies showed interest, he was excited, but then the companies "trampled on his rights" and used the technology without a license, she added.

"The jury followed the story and saw what this massive company did in taking his invention and not paying for it, really blatantly," Limbeek said.

During that trial, multiple associates took on "meaningful trial roles," she said.

Kyle Petrie and Deborah Mariottini were two of those associates. Petrie, who joined the firm in 2016, said he cross-examined LabCorp's technical expert, while Mariottini, who was a summer associate in



2017 and 2018 before officially joining the firm in 2019, handled a direct examination.

Both associates said they felt prepared to take on a major trial based on the company's training program, where associates — including summers — have to prepare and put on a real trial.

"We have actors play witnesses. Sometimes we use the experts from our cases to play experts, we have people from the community play juries, partners are judges," Desmarais said. "It's a very unique environment, because the whole firm is going through this program."

When starting the Ravgen case, Mariottini said it felt surprisingly similar to the test trials, and Petrie agreed it helped make him feel prepared for trial.

"I would be lying if I said I wasn't a little nervous, but on top of that was a sense that I was prepared," Petrie said.

In August, the firm represented Cisco Systems Inc. as it was fighting Massachusetts-based cloud services company Egenera Inc.'s infringement suit, which sought a \$371 million award from the jury. The case over data center servers led to a victory for Cisco when it was found not to infringe.

"We had a very simple trial theme," Desmarais said. "The way our product worked was clearly not what the inventors invented in the patent, and the plaintiff didn't do a good job of rebutting that. One thing we study at the firm is how to take these complicated issues and break them into the simple themes. They had to get deep into the technical side to recover their case."

The firm also represented ViiV Healthcare, which said Gilead Sciences Inc.'s HIV drug Biktarvy infringed one of its patents. Not long before trial, the parties settled, with Gilead handing over \$1.25 billion upfront and agreeing to pay royalties until 2027.

Desmarais said the deal, announced Feb 1., was the first time someone alleged infringement through the doctrine of equivalents when the patent covered a molecule.

"We had to argue that what Gilead was doing was equivalent to ViiV. That's never been done before in the context of a chemical pharmaceutical claim," the firm founder said, adding that Gilead lost its bid for judgment that the doctrine doesn't apply. "Settlement negotiations began right at trial, and we got one of the largest settlements of all time."

The firm launched in 2010 after its founder spent years at Kirkland & Ellis LLP and Fish & Neave and served as an assistant U.S. attorney in the Southern District of New York. The firm takes on both life sciences and technology clients, and it represents both plaintiffs and defendants, he said.

"We're a very balanced practice," founding partner Desmarais said. "When you get one of our lawyers, they have a really good understanding of how plaintiffs run cases and how defendants run cases."

--Editing by Andrew Cohen.