



## LITIGATION DEPARTMENT OF THE YEAR: INTELLECTUAL PROPERTY

### DESMARAIS



#### DESMARAIS TEAM

*Seated, from left, Bindu Donovan, partner, and John Desmarais, founding partner; standing, from left, partners Justin Wilcox, Laurie Stempler and Paul Bondor*

#### **Q&A** **What are some of the department's most satisfying successes of the past year and why? We have made trial practice a priority from the inception of our firm.**

Three recent trial successes—by three different groups of Desmarais LLP attorneys—exemplify this commitment to outstanding trial practice.

In July 2018, Desmarais secured one of the largest and most important jury trial wins in recent years, achieving an \$82.5 million jury verdict on behalf of client IBM against Groupon. That trial involved four fundamental e-commerce patents developed by IBM engineers. Two patents were originally created for Prodigy, an IBM-affiliate from the '80s and '90s that was a forerunner of the mod-

ern Internet; the other two patents proved to be critical to modern e-commerce transactions. The jury found that Groupon willfully infringed all of those patents. As a result, Groupon was potentially liable for enhanced damages that could triple the verdict and cover IBM's attorney fees. That trial was particularly satisfying because it was the culmination of several years of effort, including overcoming several pre-trial obstacles along the way.

In August 2018, another Desmarais trial team helped client Cisco achieve a \$400 million settlement with Arista Networks. That settlement was finalized just before opening statements were set to begin in a trial involving antitrust claims brought by Arista against Cisco. The settlement



was a major victory for Desmarais and Cisco, which had been locked in litigation with Arista for years. Under the terms of the extraordinary deal, Arista—the plaintiff—dropped its antitrust claims, gave Cisco \$400 million, and left the door open for Cisco to pursue new copyright and patent infringement cases against Arista. That success spotlighted the breadth of the firm's expertise in areas other than pure patent litigation, and demonstrated that Desmarais lawyers can handle and master cases outside of its core patent practice. Due in no small part to this litigation and as a result of its work in 2018, Cisco named Desmarais as its 2018 Litigation Firm of the Year, an award it also won in 2013.

Finally, this past January—with only three weeks' warning—a third Desmarais trial team tried and invalidated a patent asserted by software company Egenera against our client Cisco in the District of Massachusetts. The resulting judgment completed a total victory for Cisco, as the other asserted patents had been invalidated at earlier stages of the case. The firm is particularly proud of its work here because the trial team displayed the kind of creative lawyering, under pressure in a high-stakes situation, that is a hallmark of Desmarais' successful trial practice.

Those three successes—achieved by different sets of attorneys in different fora—demonstrate the overall strength of the practice and the depth of the Desmarais bench.

**A prospective client in crisis calls and asks why your team should be retained. What is your answer? Desmarais wins. The victory may come in the form of a trial win or some other success** because we have put the client in the best position to achieve its goals. But whatever the situation, our teams dedicate themselves to the case at hand. Desmarais boasts attorneys that combine an array of experience and expertise with creativity and imagination. Those attributes directly translate into success in and out of the courtroom.

**What traits do you respect most in opposing firms and lawyers? Honesty, civility, and reasonableness.** Those are the same attributes that we want our lawyers to embody when dealing with opposing counsel. Our line of work is challenging,

**WITH ABOUT 60 ATTORNEYS,** DESMARAIS FOCUSES ON THE LITIGATION OF COMPLEX, OFTEN TECHNOLOGY-DRIVEN DISPUTES. THE FIRM'S CLIENTS INCLUDE BOTH FORTUNE 100 COMPANIES WHO RELY ON DESMARAIS TO PROTECT THEIR MOST IMPORTANT INTELLECTUAL PROPERTY ASSETS, AS WELL AS SMALLER ENTITIES, INCLUDING INDIVIDUALS, WHO SEEK TO ENFORCE THE EXCLUSIVE RIGHTS IN THEIR INVENTIONS OR TECHNOLOGY.

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fast-paced, and demanding; there is no reason to overlay unnecessary unpleasantness in our cases.

**What sorts of trends are you seeing in litigation, and what do you think will be the most important development in the law/legal business that will impact your field in the next 10 years? Almost every patent litigation involves a parallel proceeding before the USPTO;** we do not anticipate that trend changing save some sea change in the law. As a result, it is critical, and will become even more critical, to coordinate trial practice and practice before the patent office, specifically in inter partes reviews (IPRs). Desmarais has a highly successful IPR track record that has grown out of, and complements, our trial practice. As a result, clients often choose Desmarais attorneys to manage all aspects of litigation, which increasingly involves IPR practice.

**What is the firm doing to ensure that future generations of litigators are ready to take the helm? Desmarais prides itself on training the next generation of IP litigators.** That includes our annual trial practice exercises, which feature several concurrent, full-scale, live trials. We require every attorney to participate and hone their trial skills. This way each attorney gains experience in developing a trial theme, presenting witnesses, analyzing facts, and delivering an argument.

But besides formal training, Desmarais prides itself on giving opportunities to junior lawyers. At Desmarais, attorneys at all year levels interface with clients, opposing counsel, and courts. It is through these efforts that the firm has developed a deep bench of litigators, exemplified by the fact that three separate trial teams achieved three separate victories in three separate fora. The next generation of litigators is already taking the helm at Desmarais.