

## Trials Group Of The Year: Desmarais

By Daniel Siegal

*Law360 (February 8, 2019, 6:44 PM EST)* -- By winning an \$82.5 million verdict for IBM Corp. in its first patent trial as a plaintiff, setting up the technology giant for future success licensing out its long-held patents, Desmarais proved its courtroom chops, earning the firm a spot among Law360's Trials Groups of the Year.

In the past year, Desmarais and founding partner John Desmarais had to convince his longtime client IBM that it needed to be the one to take a patent infringement case to trial, after Groupon Inc. refused to sign a reasonable licensing agreement for IBM's e-commerce patents.

Desmarais said the case posed a unique challenge — taking patents from an earlier generation of technology and proving to a jury that the inventions in those patents were "foundational" for the modern world of online shopping.

"They were ideas that were just being invented at the time by IBM about how to do online commerce, and the defendant tried to use that against us by saying it was outdated technology they weren't using," he said. "One of the things that we did that was really fun, we tried to find documents and evidence from that time period to tell the story of what was going on in the world at that time, and how breathtaking the patents were really."

Partner Karim Oussayef, who was second chair on the IBM trial, noted the trial was key for IBM to be able to get a fair result when it negotiates with modern companies about using its patented technology.

"Given the patent climate we're in because of recent changes in the law, people are less forthcoming in reaching a business resolution to patent disputes," he said.

Before the trial, other companies such as Amazon.com and Google had signed licensing deals for the patents, according to the firm.

Part of Desmarais' success at trial last year actually involved a case that didn't make it to a verdict, as it turned the tide for Cisco Systems Inc. after it was hit with an antitrust suit by network equipment rival Arista Networks Inc.



Cisco countered with intellectual property claims against Arista, and hours before opening statements were set to begin, Arista ended the suit by agreeing to drop its claims and pay Cisco \$400 million.

Oussayef said the firm's trial-first approach helps put it in the driver's seat when a case can't be resolved at summary judgment or before, helping it secure results like the Cisco settlement.

"It's not [that] we develop a case to try to show that it's going to be expensive to litigate, or that we're going to try to put all our eggs in the summary judgment basket, but we really try to develop the case with an eye towards what will be successful in front of the jury, not just what will be successful in front of the judge," he said.

Desmarais, who founded the firm in 2010, is himself a trial attorney, and set out to build a firm that was just as capable at taking technology cases to trial as he is. He noted that the entire 54-attorney firm is litigation-focused, and thus doesn't have a separate trials practice group.

"The whole firm essentially works together with a shared mission and a shared vision," he said. "By having one group, we don't have to fight for resources."

Desmarais said there are firmwide trial training programs several times a year, including mock trials set up by the partners, to coach younger attorneys on the nuances of trial practice. This training gets put to use quickly, too, Desmarais said, noting that the high number of cases the firm takes to trial presents real trial work for young attorneys.

Oussayef said Desmarais' trial-first approach — and the tough, exciting cases this attracts — was a big part of what drew him to join the firm from Ropes & Gray LLP.

"There are real advantages to being more specialized," he said. "If your focus is on patent litigation cases and that type of work, when people come to you with a case, they have that in mind. ... A bigger proportion [of our cases] are the ones where people come to us in the first instance as, 'This case would be great for you guys,' as opposed to, 'Here's something that just came up, can you handle it for us?'"

--Editing by Marygrace Murphy.