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Q&A With Baker Donelson's Wayne Edward Ramage

Law360, New York (January 29, 2010) -- Wayne Edward Ramage, shareholder in the Nashville, Tenn., office of Baker Donelson Bearman Caldwell & Berkowitz PC and chairman of the firm's intellectual property group, concentrates his practice in the areas of patent and intellectual property law and litigation, including the protection and management of intellectual property asset portfolios.

A cum laude graduate of Harvard University with a degree in geological sciences, he received his master's degree in engineering from Stanford University. Before attending Vanderbilt School of Law, he worked as a petroleum engineer with Shell Offshore Inc., where he designed and programmed the strategic planning program for calculating the comparative economics and production of all oil and gas reserves for all divisions of the company.

Q: What is the most challenging case you've worked on, and why?

A: I took over the defense of a patent infringement matter at the conclusion of discovery. Very contentious at all turns... we spent hours arguing about the meaning of the word "on" in the Markman hearing.

I also took over prosecution of a related patent application for the client at the same time. My client's patent application had an earlier priority date than the plaintiffs' patent-in-suit, which was for the exact same invention and had been filed several months later by a company in which some former employees of my client had an interest.

It allowed for some interesting multiple-front strategy, as I was able to get my client a patent while the litigation was pending. Unfortunately, it was one of those disputes where personal rancor and animosity colors the entire litigation, and made settlement extremely difficult.

Q: What accomplishment as an attorney are you most proud of?

A: Early in my career, I was representing an individual plaintiff with limited money against a well-heeled corporation that did not take her seriously. After years of preparation and a week of trial, the jury had gone into deliberations for only an hour when the judge called us back to tell us the jury had submitted a single question: "Are we limited in the amount of damages we can award the plaintiff?"

The look of joy on my client's face as she realized what the jury's decision was going to be was priceless. My personal "Perry Mason" moment... or more appropriately, perhaps, "L.A. Law."

Q: What aspects of law in your practice area are in need of reform, and why?

A: Patent litigation is incredibly expensive, even for resolving incidental or minor infringement matters. From the defendant's perspective, in too many cases it is clear that the plaintiffs care little about what claim terms mean or whether there actually has been infringement. They are concerned only with determining just how much you are willing to pay them to make them go away.

And from the other perspective, a genuine small-time patent owner whose invention is being blatantly infringed often cannot afford to even initiate the lawsuit, knowing that the legal fees for the first year likely will exceed his or her net worth.

Resolution of patent infringement disputes should not cost an arm and a leg every time. There should be some alternatives that require the sacrifice of fewer body parts.

Q: Where do you see the next wave of cases in your practice area coming from?

A: I expect a great deal of activity involving business method patents and the like after the U.S. Supreme Court's decision this coming term in *In re: Bilski*.

On the one hand, if it broadens the scope of patentable subject matter, then we can expect to see another wave of patent applications in this area, along with litigation as holders of these types of patents feel more comfortable bringing lawsuits.

On the other hand, if it further restricts patentable subject matter beyond the Federal Circuit's "machine-or-transformation" test, then I expect more re-examinations and litigation over issued patents that arguably would then be invalid.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: Former Sen. Howard Baker, R-Tenn., is incredibly impressive. A true gentleman and respected representative of this country, he has held, and continues to hold, so many roles in his long career. However, since I dabble in photography myself, perhaps what impresses me the most is that he caps all of that off with a sharp eye behind the lens.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: If he or she is interested in patent litigation, I would strongly recommend becoming a good commercial litigator first. Get trial court experience early and often, do depositions, draft and argue motions in general commercial cases. These skills are invaluable, and unfortunately, do not get developed as well as they should if we focus exclusively on patent cases from the beginning of our careers.

That's why I require that our young future IP litigators go through a couple of years of basic new litigator training when they first join us, the same process that all of our young litigators go through.