

Bartlit Beck Scores A Trio Of Patent Trial Verdicts

By **Natalie Rodriguez**

Law360, New York (July 3, 2017, 3:55 PM EDT) -- When a Texas federal judge entered a \$20 million patent infringement judgment against Eli Lilly & Co. in May, the order capped off a fruitful month for litigation boutique Bartlit Beck Herman Palenchar & Scott LLP. Using strategies steeped in storytelling and early preparation, the firm's lawyers scored three back-to-back federal jury verdicts across the country in favor of plaintiff clients.

The order cemented an April jury verdict that Eli Lilly had infringed a German pharmaceutical company's patent by marketing the erectile dysfunction drug Cialis to treat enlarged prostates. After that April win, juries in Delaware and Illinois returned more than \$9 million worth of verdicts in mid-May for clients DuPont Co. and toolmaker LoggerHead Tools LLC over other patent claims.

While the cases ran the spectrum of erectile dysfunction drugs, thermal blanket coatings and hybrid pliers-wrench tools, each Bartlit Beck team leaned on early prep and clear storytelling to help deliver the wins, according to the attorneys.

In the Eli Lilly case, five Bartlit Beck partners were assigned to represent the German group, known as Erfindergemeinschaft UroPep GbR, which claimed a patent using the same active ingredient as Cialis to treat a condition called benign prostatic hyperplasia. But they were not the only top attorneys to provide support.

"As we approach trial and are getting ready, I'm able to tap into the most senior leaders of the firm that are not necessarily working on the case but are able to watch me make my opening argument and give me feedback," said John Hughes, one of the lead attorneys.

Among those who weighed in were founders Fred Bartlit and Phil Beck. With their assistance, Hughes' opening arguments set the stage for a focused four days of trial, where the Bartlit team — including partners Hughes, Adam K. Mortara, J. Scott McBride, Benjamin J. Whiting and Nossan D. Knobloch, assisted by associate Alex Groden — shaved away at Lilly's arguments that UroPep's U.S. Patent Number 8,791,124 was invalid.

Among Eli Lilly's attacks was the argument that a prior art reference discussing a concoction of naturopathic herbs, including so-called horny goat weed, to treat enlarged prostates should invalidate the German group's patent.

During arguments, however, Hughes said his team was able to get Lilly witness Claus Roehrburn, a

urologist, to admit that the herb was not an effective treatment for the prostate disorder BPH. That concession undermined the argument that it should invalidate the UroPep patent, according to Hughes.

“The leading urologist didn’t really believe that as true and had to admit that during cross-examination,” Hughes said.

The Bartlit Beck team had been on the case for less than a year, having been summoned in by UroPep last summer in the midst of the suit’s claim construction phase.

“After the judge invited dispositive motions on matters critical to our claims, we made a last-minute change to Bartlit Beck. Was that ever the right call,” said Kim Larsen, UroPep’s general counsel. “I have never seen a legal team, or any team for that matter, with such enthusiastic dedication, brilliant subject matter expertise and unmatched advocacy skills. It was a joy to watch them work, especially before a jury.”

Being called in close to trial as a pinch-hitter is an all-too-common position for Bartlit Beck, an 84-lawyer boutique with bases in Chicago and Denver.

“Because of our size, we’re often seen as the tip of a spear for trials. We’re often brought in on cases another firm has been working on,” said Rebecca Weinstein Bacon, a Chicago partner.

In the past nine months, more than 40 percent of the firm’s attorneys have been deployed to trial, and there are 10 more trials scheduled before the end of the year, according to the firm.

The firm has a bullpen mentality when it comes to deploying attorneys on cases, according to Bacon. While she is considered a “relationship manager” for DuPont, she was not on the recent case in Delaware federal court, where a jury found on May 16 that specialty manufacturer Unifrax LLC had infringed on a DuPont patent for a thermal blanket coating used in a laminate for aircrafts and owed the conglomerate about \$3.27 million.

Instead, four Bartlit Beck attorneys — Chris Landgraff, Mark Levine, Chris Hagale and Sharon Desh — with patent experience led the charge during the weeklong trial on weaving a story through emails, depositions, cross-examinations and visuals on progressive patent developments to convince a jury that Unifrax had infringed on DuPont’s U.S. Patent Number 8,607,926.

“From the get-go, we’re looking at a case as if we’re going to trial,” Bacon said of the firm’s culturally ingrained approach to preparing for trials.

So when depositions are being taken, attorneys are thinking from the beginning about how to weave a compelling narrative and are on the lookout for an emotional hook, she said.

That strategy shone in the third jury trial win for Bartlit Beck. On May 11, an Illinois federal jury awarded toolmaker LoggerHead \$5.97 million after finding Sears Holdings Corp. and Apex Tool Group LLC infringed two of its patents for a hybrid pliers-wrench tool.

LoggerHead, founded by inventor Dan Brown Sr., had filed the suit in 2014 alleging that after numerous conversations with Sears to sell its own wrench, the retail giant worked with Apex to create a Craftsman-branded knock-off.

“Rather than focusing on a couple of key snippets or cherry-picking of different facts, what we did on cross-examination was we went back to basics and laid out things on a chronological basis,” said Jason L. Peltz, a lead Bartlit Beck attorney on the case.

By doing that, the team — consisting of Peltz, Asha L.I. Spencer and Jeannie Tinkham — were able to lead Sears' top witness into recounting much of the same story that Brown had told when he took the stand, about back-and-forth conversations and plans between LoggerHead and Sears, according to Peltz.

How to weave a chronological story is a lesson driven home to many of the firm's attorneys by founder Bartlit, according to Peltz.

“We do timelines in every case. We believe it's so critical because it empowers the jury to understand the complete story,” Peltz said.

During debriefing, the jury remarked that it had found the chronology and the setup of the inventor's story compelling, according to Peltz.

After the jury found that there was patent infringement, but while it was still considering if the infringement was willful, Bartlit Beck's narrative tools also helped to undermine the teary testimony of a lawyer who had written an opinion letter for Sears and Apex that their product was not infringing on LoggerHead's patents, according to Peltz.

The lawyer, during direct examination with Sears' lawyers, had broken down, saying he had done his best and felt terrible that he had written the wrong opinion for his clients to depend on. But in cross-examination, the Bartlit Beck team broke down how little time he had spent on the matter by showing his billing records and tried to get across to the jury that writing these letters was what he did for a living.

“This was his over 1,000th letter,” Peltz said.

Ultimately, the jury found there was willful infringement. Off that finding, LoggerHead has filed a post-trial motion to enhance the damages awarded by the jury threefold. A spokesman for Apex has previously said the company will likely appeal the verdict. Drugmaker Eli Lilly has already set in motion an appeal of the \$20 million judgment to the Federal Circuit.

Bartlit Beck's attorneys, who average about 10 trials a year, are prepared to continue their clients' battles.

“In one way, it's terrific and incredible to have these back-to-back wins with a firm with as few lawyers for us,” said Peltz. “The timing happened to work here. But in terms of the ultimate wins and losses, it's really par for the course.”

The cases are *Erfindergemeinschaft UroPep GbR v. Eli Lilly and Co. et al.*, case number 2:15-cv-01202, in the U.S. District Court for the Eastern District of Texas; *LoggerHead Tools LLC v. Sears Holding Corp. et al.*, case number 1:12-cv-09033, in the U.S. District Court for the Northern District of Illinois; and *E.I. du Pont de Nemours & Co. v. Unifrax LLC*, case number 1:14-cv-01250, in the U.S. District Court for the District of Delaware.

--Additional reporting by Dani Kass, Matthew Bultman and Ryan Boysen. Editing by Christine Chun and Aaron Pelc.

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