

## IP MVP: Morgan Lewis' Daniel Johnson

By **Abigail Rubenstein**

*Law360, New York (December 14, 2011, 2:52 PM ET)* -- Morgan Lewis & Bockius LLP patent litigator Daniel Johnson Jr. helped ActiveVideo Networks Inc. score a \$140 million patent infringement judgment against communications giant Verizon Communications Inc., earning him a spot on Law360's list of IP MVPs.

Johnson, along with his partner Michael J. Lyons, who served as co-lead counsel in the case, convinced a jury that Verizon's FiOS cable system violated four ActiveVideo patents related to interactive television services, including video on-demand. The jury awarded ActiveVideo \$115 million, a verdict hailed at the time as the single largest patent verdict ever in the Eastern District of Virginia.

In October, U.S. District Judge Raymond A. Jackson awarded supplemental damages, bumping up the award to \$140 million. The judge also recently awarded ActiveVideo sunset royalties of \$2.74 per FiOS subscriber per month, which will equal about \$11 million a month, and refused to stay the payment of the royalties even though Verizon is pursuing an appeal of the original verdict.

"Verizon is one of the most aggressive opponents I have ever encountered," Johnson told Law360.

"They really played hardball with us every step of the way, and they had really good lawyers who used every tactic that they could to prevail," Johnson said. "It's particularly gratifying that as a much smaller team, we could execute our strategy and end up with the result we did."

In order to beat a much larger adversary, with a much bigger budget, the ActiveVideo team relied on the Eastern District of Virginia's ability to get a case trial quickly, knowing that a quick resolution would be better for the company, according to Johnson.

At trial, the team focused on showing the jury how innovative ActiveVideo's technology was when it was introduced in the early 1990s and on proving that the company had shown its technology to Verizon in the hopes of securing a business deal only to have Verizon launch its own version.

"Another thing that was particularly gratifying is that the inventor in the case, Leo Hoarty, was a really engaging and nice man, and it was amazing to see someone who is really a visionary," Johnson said.

While the ActiveVideo case stands out because it led to a landmark verdict, Johnson is no stranger to big wins in patent suits.

In September 2010, he scored an important win for Sony Computer Entertainment America, which makes the Playstation gaming console.

Inventor Craig Thorner sued the company, alleging that his patents covered technology used in Sony's vibrating game controllers. The litigation came about after Thorner's invention was discussed as prior art in an earlier patent dispute between Sony and another company, in which Sony had different counsel.

Stepping in after Thorner launched his own suit against Sony, Johnson was able to secure a favorable claims construction ruling for the Playstation maker.

The ruling led Thorner to stipulate that, under the court's claims construction, he could not prove infringement of one of the two patents he was asserting in the suit. The judge therefore dismissed all claims related to the patent.

Thorner is pursuing an appeal of the claims construction decision, but he agreed to administratively dismiss the remaining claims during the appeal.

The recent victories cap off a long record of success in the intellectual property arena for Johnson, who joined Morgan Lewis in 2005 after a stint at Fenwick & West LLP and more than two decades at Cooley LLP.

"I have always practiced in northern California, where, whether you liked it or not, you had an IP focus," Johnson said.

Luckily for Johnson, he liked it.

And he liked it even more after getting dragged into a patent case early in his career by a patent prosecution attorney who needed a litigator for an infringement case. Johnson took on the case even though he had never even read a patent, and the rest is history.

Although Johnson now primarily handles patent litigation, he also still works on other intellectual property matters like license disputes and major trade secrets cases.

His successes in trade secrets matters include getting IBM to settle Compuware's lawsuit claiming the company had stolen its secrets for \$400 million at the close of a five week jury trial in 2005. He also managed to convince a jury that O2 Micro's trade secrets were stolen after the company was sued for allegedly infringing patents that Johnson was able to get ruled invalid.

"The fun thing about IP litigation is that it is like playing three-dimensional chess," Johnson said. "There are always more moves you can make."

--Editing by Lindsay Naylor.