



Trend Report: Focus on Technology

by Chris Banks

This is the second in a series of trend reports tailored for our clients and friends to help companies stay a step ahead of legal issues that may affect their businesses. In this issue, Morgan Lewis lawyers have identified the following five litigation trends in the technology industry:

1. Privacy and Data Security: The rise in cloud computing, with computer users increasingly using applications and storing data remotely, has resulted in significant increases in the amount of personal data and sensitive information (including commercially sensitive) that is stored remotely in aggregated data centers. At the same time, growing computing power has made data encryption cracking and other forms of “hacking” more powerful. Since 2005, an estimated 2,800 data breaches have occurred in the United States, with 4% of those breaches leading to federal litigation.¹ The increasing amounts of confidential and sensitive information at risk exposes companies to potential loss of important data, competitive risks, and privacy lawsuits or government investigations. Well-designed internal controls, security breach

1. Sasha Romanosky, David A. Hoffman & Alessandro Acquisti, *Empirical Analysis of Data Breach Litigation*, Temple Univ. Legal Studies Research Paper No. 2012-30 (2012), available at <http://ssrn.com/abstract=1986461>.

policies, and consumer agreements can help companies mitigate these risks.

2. Counterfeit Electronics: Consumer-electronics piracy is on the rise, making it now the most-pirated category of goods in the world (replacing shoes), according to the U.S. Department of Homeland Security. Pirated products include not only knockoffs but also recycled or refurbished originals or substandard parts, made by authorized manufacturers, that were supposed to have been destroyed but instead were sold into the marketplace. For technology companies, pirated goods pose myriad problems, from brand protection to erosion of sales to the possibility that counterfeit components might inadvertently be incorporated into final products and then fail, creating potential liabilities. Companies can protect themselves by being vigilant about their marks and instituting internal controls to protect against the inadvertent incorporation of counterfeit components.

3. Design Patents, Copyrights, and Trade Dress: Intellectual property remains the lifeblood of technology companies, and, as recent cases confirm, companies are increasingly relying on design patents, copyrights, and trade dress claims to protect their intellectual property. Design patents and trade dress claims have proven that they can be highly successful with juries if they can survive the *Markman* process or other applicable pretrial proceedings. Recent jury verdicts in such cases may encourage others to follow suit and more aggressively pursue such design claims in the future.

Winter 2012

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Our experience litigating matters for technology companies includes matters involving the following:

Antitrust

Commercial disputes

Consumer and commercial class actions

Copyright

Environmental disputes

Enterprise resource planning (ERP) implementation disputes

Foreign Corrupt Practices Act

Government investigations

Insurance and insurance recovery

Securities litigation and enforcement

Software licensing disputes

Privacy

Postacquisition strategic partnership disputes

Qui tam litigation

Tax

Trademark

Trade secrets

White collar investigations

4. Employment Contracts and Trade Secret

Misappropriation: With a hot technology sector and an improving economy all around, workforce mobility has been on the rise in Silicon Valley, along with efforts by companies to acquire premium talent from competitors. New words like “acqui-hire” have even been invented to describe start-up acquisitions by larger companies that target a start-up’s employees, rather than its business. Workforce mobility in the technology sector, however, can lead to legal disputes involving claims of intellectual property misappropriation, breach of employment contracts, interference with employment contracts, and other similar claims. Companies can protect themselves and their intellectual property with appropriate employee agreements and hiring procedures and by pursuing claims where necessary.

5. Continued Internationalization of Technology Litigation:

Large-scale litigation between technology companies has become increasingly internationalized, with disputes between companies frequently being litigated in distant forums. This often has led to litigation on multiple fronts, with conflicting results from jurisdiction to jurisdiction. Technology companies require worldwide representation and must be prepared to litigate anywhere in the world they do business.

Our Technology Industry Litigation Capabilities

Morgan Lewis recognizes that change, innovation, and competitive edge are the lifeblood of our clients across the hardware, software, Internet, wireless, semiconductor, and cleantech sectors. With up-to-the minute command of the trends, emerging markets, and evolving laws and regulations affecting the technology industry, we collaborate with globally established leaders in this space – as well as with some of the world’s most promising, innovative start-ups – to clear the way toward their strategic goals.

We represent technology companies in all aspects of litigation and dispute resolution in the United States and around the world. Because of our experience in the technology industry and familiarity with its business trends, we often anticipate – and are able to respond quickly to – our clients’ needs, whether they involve an alleged breach of a distributor contract, intellectual property dispute, government investigation, or consumer class action.

Recent Expansion News

Morgan Lewis Expands Litigation Capabilities in London and Opens New Offices in Moscow and Almaty

The firm has experienced significant international growth over the last year, with the announcement of two new offices and the arrival of more than 70 lawyers and 70 staff members to our offices in Europe, Asia, and the United States. The announcement brings our total number of offices around the globe to 24.

As part of the expansion this summer, the firm added more than 20 lawyers in London, including Litigation partners Peter Sharp, David Waldron, and Nick Greenwood. Peter was most recently the managing partner of another *AmLaw 100* firm, while David served as overseas co-chair of that firm's Litigation Department and co-chair of its Oil, Gas, and Energy Dispute Resolution Group.

Peter, Nick, and David have handled sophisticated disputes both in the UK and elsewhere in a number of key industry sectors. Their experience representing companies and individuals around the world – from Europe to Asia, the Middle East, Africa, and the Caribbean – will be a tremendous asset to our multinational clients.

Peter has a diverse litigation practice and has worked across a variety of industries, including financial services, insurance, aviation, and engineering. His experience also includes roles in insolvency and restructuring situations, as well as corporate governance, internal investigations, and related issues, where he advises boards of directors facing corporate crises.

Nick focuses his practice on commercial disputes work involving litigation and arbitration in industries that include private equity, banking and financial services, insurance, property development, and shipping. In addition to handling cases in the Commercial Court and Chancery Division in London, he has worked on matters involving the London Court of International Arbitration, the United Nations Commission on International Trade Law, and the International Criminal Court.

David has a broad international commercial disputes practice and regularly assists clients in disputes concerning the international oil, gas, and energy industries. He has experience in industrial and infrastructure projects; financial products, including private equity, derivatives, and risk transfer; and general commercial disputes, such as supply agreements, sale agreements, and joint ventures.

This team's substantive background complements our strengths in U.S. litigation and augments our geographic reach, particularly on cutting-edge issues that range from complex international disputes and fraud investigations to the UK Bribery Act.

In addition to our enhanced litigation capabilities in London, the firm opened new offices in Moscow, Russia, and Almaty, Kazakhstan, this summer. The Moscow and Almaty teams advise multinational clients investing in the Russian Federation, the Republic of Kazakhstan, and the other countries of the Commonwealth of Independent States (CIS), including Central Asia and the Caspian region. They also represent prominent companies from the region in transactions, international dispute resolutions, and litigation matters worldwide. While the energy sector will be a key practice area, the Moscow and Almaty lawyers will serve clients in a wide range of industries, including financial services, life sciences, manufacturing, media, real property, retail, and technology.

The Moscow team is well known in the Russian market and has advised on some of the largest transactions in the region, with total values of several hundred billion dollars. The new Moscow office has a team of nearly 80 lawyers and staff.

Both new offices are full-service legal practices, serving both international and domestic clients, with emphasis on significant mergers and acquisitions, joint ventures, corporate finance, debt and equity capital markets transactions, and disputes. They will also advise on matters involving intellectual property, tax, environmental law, competition law, antibribery and compliance, and corporate governance, among other areas.

In the energy sector, the new offices' practices will encompass upstream oil and gas, oilfield services, power and renewable energy, and a broad range of other energy-related businesses. The energy practice will cover mergers and acquisitions, divestitures, farm-ins and farm-outs, joint ventures, licensing and regulatory issues, and financing of energy projects (including project finance and public-private partnership structures).

Meet Our Technology Industry Litigation Team Leaders



Jim E. DelBello | Philadelphia | 215.963.5182 | jdelbello@morganlewis.com

Jim represents technology clients in disputes involving IT outsourcing agreements and naming rights agreements, as well as disputes involving theft of trade secrets or other confidential information. He has defended international software companies in cases involving the licensing, functionality, and implementation of ERP software.



Howard Holderness | San Francisco | 415.442.1740 | hholderness@morganlewis.com

Howard litigates complex commercial disputes on behalf of both plaintiffs and defendants, including fraud, breach of contract, antitrust, product liability, false advertising, unfair business practice, insurance coverage, and class action claims. His clients have included some of Silicon Valley's largest technology companies, leading suppliers of Internet-networking equipment, and large software vendors.



David J. Levy | Houston | 713.890.5170 | dlevy@morganlewis.com

David focuses his practice on complex commercial and intellectual property disputes and has represented clients in class action, trade secret, ERISA, probate, product liability, oil and gas, real estate, and employment litigation matters, and he has provided crisis management advice to clients in a variety of industries. He has defended one of the world's largest technology companies as lead counsel in more than a dozen alleged patent infringement cases, represented a major technology company as co-lead counsel in a declaratory judgment action, and defended technology companies in various alleged patent infringement cases.

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