

In The News

Trial Pros Q-and-A with Jamil Alibhai

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Jamil N. Alibhai has participated in all facets of intellectual property disputes and complex commercial litigation cases and appeals in state and federal courts nationwide.

In March 2015, Alibhai was lead counsel at trial and obtained an \$88 million dollar plaintiff verdict — the nation's second largest intellectual property jury verdict for 2015 — in a matter involving patent infringement and trade secret misappropriation. That case led to Alibhai being honored as a NLJ 2015 Winning Litigator. He was also recently selected as a 2015 Top-Rated Lawyer in Intellectual Property Law by American Lawyer Media and Martindale-Hubbell.

Q: What's the most interesting trial you've worked on and why?

A: A case for a company called Miami Cigar about the distribution of cigars. The primary issue was whether the defendant tobacco company had stolen trade secrets and confidential information from our client, a family-owned distribution company, in an effort to go into business without the distributor. Miami Cigar had done such an amazing job as a distributor, selling more cigars than the defendants could make, that the defendant basically said, "What if we cut those guys out and make more money for ourselves?"

The challenge was showing that the intent was to steal the business away from the distributor and that there was an ulterior motive to the defendant's actions. What made that case difficult was that all of the information that could demonstrate intent was within the knowledge of the defendants. It also involved a tobacco company, which brings its own challenges. In those types of cases, the most effective evidence is found in the defendant's documents, the emails and the internal memoranda. The case went to trial and was a top 50 verdict of the year, with the jury awarding \$43 million in compensatory and punitive damages.

Q: What's the most unexpected or amusing thing you've experienced while working on a trial?

A: Last year, I was lead counsel in a case involving claims for misappropriation of trade secrets, breach of a nondisclosure agreement, tortious interference and patent infringement.

In 2008, Texas Advanced Optoelectronic Solutions Inc., a company that was supplying ambient light sensors to Apple for iPhones, learned that it had been displaced by a company called Intersil Corp. In 2004 Intersil had approached TAOS for the stated purpose of evaluating the purchase of TAOS. At the time, Intersil did not sell ambient light sensors.

Instead of buying TAOS, Intersil used the due diligence process to enter the light sensor business and misappropriated TAOS' trade secrets and confidential information in violation of a nondisclosure agreement between the parties. Intersil developed and marketed a family of optoelectronic sensors that infringed TAOS' patented technology and incorporated TAOS' misappropriated trade secrets.

During the trial, Intersil called a former executive who was in charge of the acquisition. One of the key issues in the case was whether Intersil had used the confidential information provided by TAOS for any purpose not permitted by the confidentiality agreement. During discovery, TAOS learned that Intersil had conducted a build

vs. buy analysis — a decision as to whether to compete with TAOS rather than buy it — using TAOS' confidential information. During cross-examination, the executive admitted to this improper use of the confidential information!

Q. So, if TAOS disclosed products that it was going to offer, you would regard that as confidential information, correct?

A. Under the NDA, yes.

Q. And the NDA provided that the only use of that information was for purposes of considering an acquisition of TAOS, correct?

A. That's correct.

Q. And what you testified today to was that Intersil did a make versus buy analysis using that information; isn't that correct?

A. That's correct, uh-huh.

That was unexpected. The amusing part was on redirect when the executive tried to explain away the damning testimony. His last words to the jury were about the company's (completely unrelated) involvement with the Mars Rover.

Q: What does your trial prep routine consist of?

A: Many complex cases are tried years after the underlying events occurred. In the TAOS case, the complaint was filed in 2008 and trial occurred in 2015. The due diligence between the companies happened in 2004. Because of the passage of time and because the timing of events was so important, a timeline was key for understanding the facts, for conducting discovery and for presentation to the jury.

A timeline organizes important events and documents during discovery. At trial, the timeline helps the jurors remember the critical dates and events. In a trade secret or patent infringement case, a timeline also illustrates how a company's products and technology changed before and after the misappropriation or infringement.

Trial preparation also includes a mock trial. The ability to test out trial themes before the actual trial is invaluable. A mock trial also forces you to narrow down the most important points you would make during trial and, more importantly, the points and counter-arguments that your adversary will make.

Q: If you could give just one piece of advice to a lawyer on the eve of their first trial, what would it be?

A: "Prepare, prepare, then overprepare." You can always plan out certain parts of the trial, but other parts just can't be planned. Understanding all facets of the documents, the testimony, and the trial plan can only help in those moments when something unpredictable happens.

Q: Name a trial attorney, outside your own firm, who has impressed you and tell us why.

A: Joe Jamail. Of course, he is best known for his more than \$10 billion verdict for Pennzoil against Texaco. What made him impressive was his ability to connect with juries and his love of the jury trial. He is reputed to have tried more than 500 cases. As the number of cases going to trial dwindles, lawyers don't always appreciate the important role that a jury plays in the legal system.

To read the full article, [click here](#).

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