

THE **RECORDER**

How We Won It: Latham Secures Back-to-Back ITC Patent Wins for California Companies

Partner Kevin Wheeler led Latham teams in separate offensive litigation cases before the ITC to protect the IP of wireless networking giant Netgear and Serendia, an Orange County-based medical devices company.

By Michelle Morgante

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Latham & Watkins teams led by partner **Kevin Wheeler** recently secured wins in two offensive patent cases tried before the U.S. International Trade Commission for California-based companies Netgear and Serendia.

In the case of Netgear, Latham filed litigation on behalf of the San Jose-based wireless networking technology giant after finding that a competitor, TP-Link of China, had used Netgear's intellectual property in its products, stealing Netgear's market share.

Trial before the ITC was held in January of last year and featured highly technical examinations about source code, with testimony from eight expert witnesses and translation into Mandarin Chinese. The ITC administrative law judge issued an initial determination finding that all of the accused products infringe two of Netgear's patents, that the patents are valid and that TP-Link's dual-band wireless routers should be barred from importation.

In the case of Serendia, a medical aesthetic technology company based in Orange County, Latham filed litigation at the ITC to protect its partners, ViOL Co. Ltd. and Benev Co. Inc., against competitors infringing on their patented microneedling devices.

Trial before the ITC was held in late 2023, with Serendia asserting infringement on four patents. Last month, an administrative law judge determined the companies violated the Tariff Act of 1930 and infringed on the patents.

Below, Wheeler discusses the cases in a Q&A with The Recorder.



Courtesy photo

Kevin C. Wheeler of Latham & Watkins.

Q. What was at stake in each of these cases?

The stakes could not have been higher in both of these cases, which involved our clients' direct competitors using their technology to compete against them.

The Netgear case concerned the future of the market for advanced Wi-Fi routers and mesh network devices found in almost every home in the U.S. In the Serendia case, we were protecting revolutionary technologies that our client had developed for radio frequency (RF) microneedling technology—an increasingly popular dermatological treatment to, for example, treat wrinkles and improve skin texture and firmness—that has been widely adopted in the market. Each case involved hundreds of millions of dollars of products that the ITC found to infringe.

Q. What made each of them particularly unique or different from other, perhaps similar cases?

Both cases involved respondents who quickly recognized the significance of the lawsuit and retained experienced ITC counsel to represent them. In the Serendia case, the respondents each hired their own, separate counsel, pitting our team up against seven different law firms.

The Netgear case was one of the most significant recent battles in the Wi-Fi router and mesh network space—technology that touches virtually every aspect of our lives these days. As a result, it was extremely hard-fought, both during the initial ITC proceedings and afterwards, with TP-Link filing many proceedings to try to obtain leverage after the ITC issued an initial determination in Netgear's favor. This included not only a follow-on ITC case against Netgear, but also an attempt to obtain a preliminary injunction against enforcement of an ITC exclusion order.

In the Serendia case, the sheer number of distinct products that companies all over the world had commercialized using our client's technology posed unique challenges.

Q. What were the most challenging elements and how did you meet those challenges?

In the Serendia case, we faced off against seven law firms representing various groups of accused infringers. We could not have prevailed, litigating one-on-seven, without relying on the deep bench of talent within our intellectual property litigation practice and maintaining our focus on the key issues for the trial. Prevailing against seven firms, all large and/or experienced firms, speaks to the unique capabilities of our IP group.

In the Netgear case, the respondent presented a case about how our key patent was invalid, even after the Patent Trial and Appeal Board had rejected those arguments. We focused, as we typically do, on explaining the technology clearly and simply, showing the administrative law judge that the respondent's arguments were all contradicted by the evidence. We also faced an unusual logistical challenge because one of our key technical experts had to testify before a jury in Texas during the ITC trial and respond to testimony given in the ITC while he was at trial in Texas. Through diligent preparation, our team was positioned to ably prepare him after he got off the stand in Texas so that he could testify remotely in the ITC the next day.

Q. What will be the lasting impact from these cases and how they were resolved?

Following the ITC's initial determination in our favor, the Netgear case was resolved by a favorable settlement that led to Netgear's stock price jumping over 30% in one day. In the Serendia case, most of the accused infringers saw the writing on the wall and settled. We received an initial determination finding in our favor on all asserted claims of all asserted patents against the remaining parties, and that case remains ongoing.

Q. Were there any surprises for you?

Absolutely. In the Serendia case, we were taken aback at the start of trial when the accused infringers took an extreme position that their RF microneedling devices do not cause coagulation of tissue. We immediately adjusted our trial presentation to emphasize that every accused infringer had sworn to the U.S. Food and Drug Administration that their devices were intended to cause coagulation. This made for some fun and interesting cross-examinations.

Q. What are the key takeaways you could share with other attorneys who practice in this area?

In such hard-fought, fast-moving, expansive cases, the importance of having a deep team who understands the issues and is empowered to tackle them cannot be overstated. We were extremely fortunate to have such dynamic and experienced teams in both cases who made countless contributions along the way to our clients' obtaining successful results.

Based in Latham & Watkins' Washington office, Wheeler is a member of the intellectual property litigation practice and serves as the lead trial counsel for companies of all sizes in high-stakes IP disputes. In addition to the recent Netgear and Serendia victories, he has successfully resolved dozens of competitor disputes for companies across industries.

Latham's team for the Netgear case included partners **Bert Reiser**, **Patricia Young**, **Blake Davis**, **Charles Sanders** and **Thomas Yeh**; counsel **Susan Tull** and **Allison Harms**; associates **Elliott Greb**, **Akosua Kyereme-Tuah** and **Steven Peters**; and patent litigation attorney **Daniel Ripley McNeely**.

The Serendia team included Latham partners **Charles Sanders**, **Michael David**, **Cecilia Peniza** and **Gabriel Bell**; associates **Bradley Hyde**, **Benjamin Behrendt**, **Hannah Fan**, **Franco Benyamin** and **Nicole Elena Bruner**; and **McNeely**.