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INTERVIEW

Behind the case: how Latham & Finnegan secured \$115m biotech win

By Rani Mehta, January 09, 2025

Partners at **Latham & Watkins** and **Finnegan** reveal how they helped explain their client's technology to a jury

Latham & Watkins and Finnegan received good news before the holidays last year after securing a \$115 million win for a life sciences client.

A jury at the District Court for the District of Delaware awarded biotech company Sarepta Therapeutics \$115 million in lost profit damages following its patent case against Nippon Shinyaku (NS).

Sarepta had countersued NS in 2022 after NS sued it in 2021. On December 19 – the day before the December 20 damages ruling – a jury at the court found that NS's patent was invalid for obviousness.

Latham & Watkins partners **Mike Morin, Michele Johnson, David Frazier, Rachel Blitzer, Ernest Yakob,** and **Rebecca Rabenstein** advised Sarepta. Associates **Will Orlady, Daniel Hemming, Tiffany Weston,** and **Drew Wiley Roberts** also acted in the case.

Morin conducted opening and closing arguments.

Finnegan partners William Raich, Ryan O'Quinn, and Brian Kacedon, alongside associates Yoonjin Lee, Kaitlyn Pehrson, and Jameson Gardner acted for Sarepta as co-counsel.

Morris Nichols partners Rodger Smith and Megan Dillinger, and of counsel Jack Blumenfeld also represented Sarepta.

Managing IP interviewed Morin and Raich about how Finnegan and Latham worked together to secure victory.



L-R Latham's Mike Morin and Finnegan's William Raich

How did you get Sarepta Therapeutics as a client?

Raich: Sarepta was an existing Finnegan client on IP matters and a Latham client in other types of cases. Given the stakes of the case and the complementary trial teams, Sarepta asked Latham and Finnegan to try the case together, which we were delighted to do.

How did you put together the team that would work on this case?

Morin: David Frazier and I are former Finnegan partners who moved to Latham ten years ago.

We continue to have a great relationship with our former firm, including Bill [Raich].

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Bill and I co-lead the trial. I opened and closed in both phases of the jury trial (it was a phased trial, with liability first, then damages), and examined several key witnesses, including Sarepta inventor Dr [Steve] Wilton, one of NS's inventors, and NS's damages expert.

Bill directed Sarepta's key liability expert and cross-examined NS's other inventor, and also opened in the bench trial on inequitable conduct. David cross-examined both of NS's liability experts, obtaining critical concessions.

Michele Johnson and Rachel Blitzer from Latham and Ryan O'Quinn and Yoonjin Lee from Finnegan also examined important witnesses. It was a true team effort, with both firms working seamlessly together as one.

Why did you pick an attorney who was normally a securities and commercial disputes litigator to be part of this team?

Morin: Michele [Johnson] had a major role for two reasons. First, she had the existing Sarepta relationship at Latham, having successfully handled significant commercial litigation for them, so the client liked and trusted her. Second, she is an experienced and talented jury trial lawyer, who was able to help simplify and humanise the complex issues in the case.

How did you prepare for trial?

Raich: Not surprisingly, having worked so many years together, Mike and I view trials similarly: just as in team sports, where preparation and practice are often the keys to victory, the same is true for trials.

Our teams worked together closely to make sure that we knew our case and our opponent's case equally well, so we could account for NS's arguments and work them into our narrative. As in team sports, where every player plays an important role, the same was true here.

While the lead lawyers were preparing for opening, closing, and witness examinations, other team members focused on witness and outline preparation and preparing for and arguing pretrial motions, jury instructions, and procedural issues.

We also had outstanding support from Morris Nichols and our terrific client who supported us in every decision we made.

How did you approach explaining complex technological concepts to the jury?

Morin: The case involved complex biologics issues, which can be complicated for [people with] PhDs, much less a jury. We worked hard to simplify the issues.

For example, we visually demonstrated that Dr Wilton, the pioneering inventor, had identified a previously unknown genetic 'hot spot' that served as a blueprint that others in the field (including NS) followed to make their antisense oligonucleotides (ASOs) [short oligonucleotides that can alter RNA].

What were the greatest challenges during this case? How did you overcome them?

Raich: NS filed the case, so it went first at trial, giving it a potential procedural advantage. But we were able to overcome that with strong cross-examinations, allowing us to tell our story through NS's witnesses and challenge NS's narrative.

For example, in cross-examining NS witnesses who touted the virtues of their product, we embraced their testimony that patients should come first and have as many choices as possible, but emphasised repeatedly that Dr Wilton's patent and Sarepta's products came first, paving the way for NS.

By the time we got to our case in chief and Dr Wilton's patent, we were already in a position of strength.

What went wrong during this case?

Morin: Very little. There was originally a claim construction of ASO that we respectfully disagreed with, but Judge Jennifer Hall reconstrued the term in our favour after she was reassigned the case in May, further strengthening our arguments.

Why did you seek lost profit damages?

Raich: NS is Sarepta's only competitor in this space, and the evidence was clear that its infringement improperly diverted sales from Sarepta.

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