

Being ready for trial can avoid court

● Jurors and judges in patent cases can be unpredictable, so Bill Manning tries to avoid the courtroom.

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When a litigator whips an adversary on a big case, that feels good. When the adversary subsequently hires the same litigator to go after another corporate target, well, that feels even better.

Huge Advanced Micro Devices (AMD) recently won a \$283 million settlement in its case against electronics titan Samsung over charges that the Korean manufacturer infringed on seven of AMD's patented semiconductor products. The settlement was quietly disclosed in an AMD regulatory filing earlier this year.

That settlement marked another favorable pretrial resolution for Bill Manning's intellectual property litigation team at Minneapolis-based Robins, Kaplan, Miller & Ciresi. The Manning crew has achieved settlements totalling nearly \$1 billion for a variety of technology clients over the last decade.

"We are pleased with the settlement we got and with Bill and his team," Harry Wolin, general counsel of AMD, said in an interview earlier this month. "They set out a nice strategy and they were able to present a compelling case. I'm pretty sure that Samsung didn't want to write that check. But it was a lot less than the \$1 billion that we were going to ask for in court. And [Manning's team] has always been more prepared than the other side."

Wolin found that out the hard way. Several years ago, Manning won several hundred million bucks' worth of favorable settlements against AMD, Dell, Intel, Hewlett-Packard, IBM and others on behalf of smaller, Alabama-based Intergraph's microprocessing system, including the "Clipper" memory-cache technology.

The device dramatically increased speed, memory and data flow for desktop computers.

Wolin, at a settlement conference with Intergraph and Manning, called him a good lawyer and a "man of integrity." Then Wolin hired Manning to sue Samsung.

Manning, a former assistant Minnesota attorney general, also has proven to be one of the Robins firm's top revenue producers over the last two decades in a practice focused at the intersection of personal injury and patent-infringement law.

The veteran lawyer said his approach is rooted in meticulous preparation, breaking down complex technology to simple concepts that can be understood by laypeople and



Star Tribune

The litigation team of Sam Walling, Aaron Fahrenkrog, Bill Manning and Jake Zimmerman engineered a \$283 million settlement in a patent-infringement lawsuit by client Advanced Micro Devices against Samsung Electronics.

presented multiple times by Manning and younger associate lawyers and expert witnesses to "jurors" at the firm's mock courtroom. Sometimes, they even invite the other side to show them what they've got.

Manning, 60, said he increasingly calls on his team of three 30-something associates to not only research, but to argue up to half the pretrial motions, a departure in practice for most high-profile litigators. They're smart and deeper into the technology than the old warrior.

Filing carts = computer chips

For example, to explain how Pearl Cheng, an AMD scientist, 15 years ago innovated a patented memory chip with dedicated circuitry from each of its subarrays that enhanced the performance of memory through a "continuous burst mode," Manning hired a design team to construct a physical model that resembles filing carts containing color-coded files and papers. That helped jurors understand what distinguished the "Cheng 990" patented invention that AMD said Samsung had copied.

"It helps overcome that level of complexity that the jurors may not understand," said Sam Walling, a Robins associate who helped make the AMD case.

Manning's two other young guns are Jacob Zimmerman and Aaron Fahrenkrog. Their backgrounds include economics, chemistry and anthropology.

Most companies don't set out to steal patented innovations, Manning said.

"People use the latest idea to stay current,"

Manning said, explaining how "patent creep" begins. "It's no different than hunting on our property. If you are going to hunt on our property, you are going to pay me."

The Manning team on the AMD litigation totaled about 60 lawyers, scientists, economists, prop builders and others who spent a few hours to months. The case, which never went to trial, lasted three years.

The Manning doctrine attempts to "drive the process" to a favorable settlement, including maintaining cordial relationships with the other side's lawyers and regular settlement overtures as the opponents learn what's planned for at trial, including sharing expert witness testimony and exhibits.

There's a lot of risk once a trial starts — what with confused jurors, impatient judges, tough opposing counsel and other variables. And even if you get a verdict, about 50 percent of patent cases are reversed by a special federal appellate court that reviews the cases in Washington, D.C. Better to present the most compelling case prior to trial.

Years ago, Manning was disappointed in the resolution of a case brought by his client, Xerox, against Hewlett-Packard. There was a summary judgment against Xerox in the patent case.

"I saw some things from the other side that conveyed to me the importance of meticulous pretrial preparation," Manning said. "We love trial. But it's been all [pretrial] settlements since then."

Manning said his team has produced about \$10 in settlement proceeds for every dollar his clients have invested in their cases.