THE NATIONAL LAW JOURNAL
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WINNING

SUCCESSFUL TRIAL STRATEGIES FROM 10 OF THE NATION'S TOP LITIGATORS

MARTIN R. LUECK

Conveying the thrill of invention

By June Bell

SPECIAL TO THE NATIONAL LAW JOURNAL

ATTORNEY: *Martin R. Lueck*

FIRM: *Robins, Kaplan, Miller & Ciresi, Minneapolis*

CASES: Honeywell Inc. v. Victor Co. of Japan, *No. 99-1607 (D. Minn.) and* Eolas Technologies Inc. v. Microsoft Corp., *No. 99-C-0626 (N.D. Ill.)*

BEFORE THE PATENTS and the supporting diagrams, before the refinements and the prototypes, before the research and the theories, a spectacular invention begins with a thinker aflame with an idea.

Representing those inventors in patent infringement litigation is Martin R. Lueck's idea of heaven. "I think you have to look at what's naturally exciting in their stories. One of your jobs as a trial lawyer is to bring that out," said Lueck, who chairs the business litigation group at Robins, Kaplan, Miller & Ciresi in Minneapolis.

Juries deciding patent infringement cases also must understand the significance of sophisticated inventions, their application and their value in the marketplace. Lueck delights in the challenges of conveying those complexities to laypeople.

He scored two big wins last year in patent cases. In August, he secured a $520.6 million verdict against Microsoft Corp. on behalf of a small company called Eolas Technologies and the University of California in a dispute over Web-browser technology.

It was the third-largest jury verdict of the year, according to *The National Law Journal*'s Top 100 Verdicts for 2003. Two months earlier, a jury awarded $30 million to Honeywell Inc., his client, which had sued JVC Corp. over auto-focus technology used in video cameras. *Honeywell Inc. v. Victor Co. of Japan*, No. 99-1607 (D. Minn.).

Lueck, 47, was one of 15 "Attorneys of the Year" honored in 2003 by *Minnesota Lawyer*. *The American Lawyer* and *IP Law & Business* named Robins Kaplan's litigation department "IP Litigation Department of the Year." Lueck has been with the firm since 1984, when he graduated from William Mitchell College of Law in St. Paul, Minn.

Compelling stories

Key factors in both 2003 victories were a client with a compelling story and with jury appeal. "If you don't have a sympathetic plaintiff or defendant, you have to ask yourself why," Lueck said. "Come to grips and ask hard questions: Does it have to do with the merits of the case?"

He felt confident that his clients in each of last year's big cases had a compelling tale to share. In the *Eolas* case, it was former University of California researcher Michael Doyle, who in 1993 helped conceive technology that is today used universally in Web browsers. His patented technology allows computer browsers to automatically launch applications to interact with the Internet, enabling users to do such things as

access current stock prices and place bids in on-line auctions.

Doyle, who later founded Eolas Technologies, claimed that Microsoft violated his patent by incorporating his invention into its Windows package as part of its efforts to stave off competitor Netscape Navigator. *Eolas Technologies Inc. v. Microsoft Corp.*, No. 99-C-0626 (N.D. Ill.)

In the *Honeywell* case, Lueck's ardent inventor was retired Honeywell employee Norman Stauffer, who had devoted 15 years to perfecting auto-focus technology for video cameras. Stauffer's invention made it possible for amateurs to make quality home movies, opening the video camera market to noncommercial uses.

TRIAL TIPS

- **A small trial team is a properly informed team.**
- **Don't shy away from complex material.**
- **A passionate inventor humanizes a case.**

The jury was "absolutely enthralled" by Stauffer, Lueck said, because decades after completing his invention, he remained "still as excited about it in front of the jury as he was when he'd invented it."

Stauffer was particularly effective in explaining the thrill of invention, which helped the jury understand why Honeywell was determined to protect his patent. "Hereally brought alive both how simple the solution to the [auto-focus] problem ultimately was, but also how difficult and complex it was to get to that point," Lueck said.

Doyle and Stauffer were engaging personalities, but their testimony alone wasn't enough to win their cases, the litigator cautioned. Jurors also needed to understand the technology at issue so they could put the claims into context and award appropriate damages.

Lots of hardware

In *Eolas v. Microsoft*, Lueck turned to Ed Felton, a computer science professor at Princeton University and an expert on infringement and validity.

As Felton explained the workings of a computer, a computer network and the World Wide Web, he used five computers, prepared boards, flow charts and computer-generated tutorials, demonstrated how a computer program is written, wrote a Web page in the courtroom and then accessed it on an Internet browser and gave the jury a virtual tour of the Web using a "smart board," which allowed them to see the Web pages and the source code.

Lueck, who tried his hand at teaching before attending law school, wasn't out to dazzle the jurors but to educate them. "The media isn't what convinces the jury," he said. "It's the effective use of that teaching tool."

Lueck doesn't apologize to jurors for asking them to absorb complex material quickly. That's their job.

"People say to keep it simple, but you have to give the jury enough detail and evidence, even if it's highly technical, so they are going to be able to understand why you are right. You've got to give them the hard evidence to back it up."

He prepares for complex cases by studying literature, prior inventions in the field and working closely with experts.

Lueck also relies on a "core team" whose members are familiar with every issue in the case. "It's a very effective way of presenting a case at trial. It allows us to be very nimble and responsive to changing issues at trial," he said.

The *Eolas* core team three associates and three partners: Lueck, Jan Conlin and Richard Martinez.

The jury in that case awarded $520.6 million, which was based on royalties of $1.47 per copy of Windows sold during a three-year period. It was less than the $3.50 per copy that Lueck had sought, but he said the amount was "reasoned and rational."

A percentage of sales

The jury in *Honeywell* returned a verdict of $30 million—2% of JVC gross sales during the alleged infringement period—which was what the plaintiff had requested.

Honeywell was tried by a core team of attorneys, including Lueck, partner Matthew Woods and associate Stacie Oberts. The cases were tried nearly concurrently; a month after the June 9 *Honeywell* verdict, Lueck was back in court for *Eolas*, which reached a verdict on Aug. 11.

Lueck said he had no trouble keeping witnesses and information straight thanks to solid co-counsel, the clear-cut distinctions between Web browsers and auto-focus video cameras, and his enthusiasm for trial work.

When he walks into a courtroom for a patent infringement case, Lueck is filled not with nerves but gratitude. He said he thinks, "I can't believe I'm lucky enough to get to do this again."