

The Women Warriors Behind Gilead's Huge Federal Circuit Win

Fish & Richardson partner Juanita Brooks, a titan of the IP bar, has been practicing for 40 years. This is the first time she's had a case where both her courtroom team and the in-house lawyers have all been women.

By Jenna Greene
May 2, 2018

There was a moment before a recent high-stakes argument at the U.S. Court of Appeals for the Federal Circuit began when the lawyers for Gilead Sciences Inc. were huddled together and realized something.

The outside counsel—Fish & Richardson partners Juanita Brooks, Deanna Reichel and Betsy Flanagan—and the in-house Gilead lawyers—Lorie Ann Morgan, vice president, intellectual property, and Andrea Hutchison, associate general counsel IP litigation—were all women.

And here's something telling: Brooks, a titan of the IP bar and The American Lawyer's 2014 Litigator of the Year, never had that happen in 40 years of practice.

"It was fabulous," she said, describing the team dynamic as "unbeatable."

Sure enough, the Federal Circuit on April 25 sided with Gilead in a fight with Merck & Co. over hepatitis C drug patents. In a precedential decision, the panel upheld the lower court's decision to wipe out a \$200 million infringement verdict against Gilead because Merck's litigation and business misconduct constituted unclean hands.



(l-r) Juanita Brooks, Elizabeth (Betsy) Flanagan, and Deanna Reichel, with Fish & Richardson.

It was a hard-fought win, with oral arguments that lasted two hours, and included a series of tough questions for Brooks from Judge Richard Taranto. (She credits Reichel and Flanagan for her preparation.) He went on to write the unanimous opinion, which Brooks called "very carefully, thoughtfully crafted," and all but "bulletproof" against en banc or Supreme Court reversal.

Of course, if the Gilead team had been all men, no one would have batted an eye. "I hope there comes a time where it's not noteworthy to have an IP litigation team run by women," said Gilead's

Morgan. “Given the number of women in the legal profession, it should be closer to equal. ... But we’re making some progress.”

In-house counsel like Morgan and Hutchison are helping to make it happen. “It troubles us when we see a team come in and it’s four middle-aged white guys—and one junior associate to bring diversity, whether it’s ethnic or gender,” Morgan said. “We don’t hire people just because they are women or ethnic minorities. ... But you need diversity of thought, and for that, you need diversity of background.”

Hutchison added that they recognize there is “a limited number of senior people” who fit the bill, but that they do expect more diverse junior lawyers “to be given a serious role, not to be window dressing.”

Brooks is well-acquainted with that tactic. “So many times I’ll enter my notice of appearance, and then the other side will enter a notice of appearance of a woman” too, she said. “They’ll sit them at the counsel’s table like a potted plant.”

She added, “We certainly don’t have token women. We’re the real deal.”

Laughing, she calls herself a triple threat—a woman, a Hispanic, and a member of the firm’s management committee.

Brooks joined Fish & Richardson in 2000, and her star power has helped Fish attract the next generation

of women IP litigators like Flanagan and Reichel in an especially male-dominated practice area.

“We have a real mentor and role model and inspiration,” Reichel said of Brooks.

Morgan of Gilead sings her praises as well.

“Juanita and I have worked on many, many cases,” she said. “I remember the first time I saw her in court. It was a Markman hearing in an ANDA case, and she was just awesome. I was blown away.”

Still, the full Gilead team outside the courtroom wasn’t exclusively female. For example, Fish principals Craig Countryman, Jonathan Singer and Robert Oakes also worked on the briefs.

Flanagan stressed the “important role that our male colleagues play. They also encourage us to do good work and mentor us.”

Brooks added, “One reason we have been able to end up with an all-women team is because many of the men we are fortunate enough to work with are gender-blind. They don’t pay attention to gender or the color of skin. It’s simply the merits. It just happens organically. Hopefully, in a few years from now, this won’t be news.”

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