

IP MVP: Fish & Richardson's Juanita Brooks

By **Ryan Davis**

Law360, New York (November 13, 2013, 8:20 PM ET) -- Fish & Richardson PC's Juanita Brooks secured rulings that wiped out a \$23.5 million infringement judgment against Fresenius USA Inc. and protected two Allergan Inc. drugs from generic competition, earning her a spot on Law360's list of Intellectual Property MVPs.

In one of the year's most talked about cases, Brooks defended Fresenius against Baxter International Inc.'s claim that it infringed a dialysis machine patent. While a lower court found that Fresenius infringed and awarded \$23.5 million in damages and royalties, the company pursued a re-examination at the U.S. Patent and Trademark Office that invalidated Baxter's patent.

The Federal Circuit ruled in July that as a result of the USPTO's finding, Baxter could not collect the infringement award. It held that the infringement case was not final because some royalty issues were outstanding, and that the invalidation of the patent effectively negated the judgment.

The ruling sets an important precedent that post-grant review of patents can directly impact the outcome of litigation, Brooks said. She praised Fresenius for being willing to press a difficult issue that some companies might not have wanted to take on.

"There were a lot of strategic decisions to be made along the way, and it's a little scary making a strategic decision where, if you're wrong, it can result in disaster," she said. "But we're very fortunate to have a client that put their trust in us and supported us 100 percent. They really believed in the justice of their cause and wanted to see it through."

The case is widely expected to be further appealed after the full Federal Circuit sharply split this month on whether to rehear it, so "we'll see if the Supreme Court wants to weigh in," she said.

Also this year, Brooks represented Allergan in two separate cases at the Federal Circuit that maintained patent protection for the company's glaucoma drugs Lumigan and Combigan.

In the Lumigan case, the Federal Circuit in January affirmed a ruling that generic versions of the drug planned by Barr Laboratories Inc. and Sandoz Inc. infringe Allergan's patent. That ruling will prevent generic competition for Lumigan, which has \$300 million in annual sales, until 2014.

Brooks said that case was particularly memorable because the lower court's ruling hinged on a finding that the defendants' expert witness had been "eviscerated on cross-examination" by Brooks. The

Federal Circuit wrote that the judge correctly assigned no weight to the views of the expert, "whose prevarication and inconsistency were repeatedly demonstrated during Allergan's cross-examination."

Brooks said she was able to demonstrate on the stand that the expert had "taken the exact opposite positions in a previous case."

"The judge said he was eviscerated, and the Federal Circuit took it one step further by saying he had prevaricated, meaning that he lied," she said.

In the Combigan case, a judge in the Eastern District of Texas ruled that the company's patents were valid and infringed by generic versions planned by Sandoz, Alcon Inc., Apotex Inc. and Watson Laboratories Inc.

The generics makers argued on appeal that the patents were invalid, and the Federal Circuit ruled in May that only one of the patents was invalid as anticipated.

That left intact a patent that will prevent the generics makers from selling their own version of Combigan, which has \$200 million in annual sales, until it expires in 2022.

In a busy year for Brooks, she also represented Apple Inc. in a trial where Multimedia Patent Trust sought \$172.3 million in damages for alleged infringement by the tech giant's products of video compression patents once owned by Alcatel-Lucent SA. A California jury cleared Apple of infringement in December.

"The verdict came shortly before Christmas, so that was a great present to get," Brooks said.

Known for her aggressive advocacy, Brooks said she once told a prospective client that her mentor was Al Capone, who famously said, "You get more with a kind word and a gun than you do with just a kind word."

She said she has a facility with science and enjoys representing clients across a range of industries, having worked on cases involving pharmaceuticals, high-tech products and medical devices in the past 12 months.

"I love what I do. I get to cover a broad range of technology, which makes it interesting," she said. "It's been a great year."

--Editing by Edrienne Su.