

IP MVP: Crowell & Moring's Michael Songer

By Roxanne Palmer

Law360, New York (December 20, 2011, 5:02 PM ET) -- In September, Crowell & Moring LLP's Michael Songer scored a \$920 million jury verdict for DuPont Co. in its suit against Kolon Industries Inc., a victory that closed the book on one of the largest trade secret misappropriation cases in history and landed Songer a spot on Law360's list of intellectual property MVPs.

A Virginia federal jury found that South Korea-based Kolon illegally obtained information about the technology used to make the Kevlar aramid fiber used in military and law enforcement flak jackets from a former DuPont employee it had hired as a consultant in order to improve its process for producing a rival product.

Songer says what was particularly interesting about the DuPont case was the magnitude of the verdict, in which the jury decided that Kolon had stolen 149 separate trade secrets relating to Kevlar.

One of the major keys to his win, Songer says, was simply "letting the DuPont engineers tell their story."

Many of the expert witnesses for DuPont had worked at the company for up to 40 years, and could testify about documents that were often decades old, according to Songer.

Expert witnesses can make or break intellectual property cases, and Songer says he takes particular care to make sure that his witnesses know the technology at issue inside and out.

"They're not going to get past a cross-examination if they're just winging it," Songer says.

Of course, a deep knowledge of science does not necessarily ensure that someone will be an effective expert in a court case, which is why Songer also looks for personable witnesses who can explain concepts to the jury. He often turns to professors, who are used to breaking down complex concepts.

"It's all about setting up the story you want to tell," Songer says.

He likened his role in the immensely complex DuPont case to something like the conductor of an orchestra — he had to make sure all of the players and pieces fit together and made sense to the jury. He also made sure to thoroughly research the Kevlar technology, so he could know immediately what points to press or question in the courtroom.

Songer is quick to share credit for the DuPont win with his colleagues, especially Crowell & Moring's Stephen M. Byers, who uncovered evidence that Kolon had deleted emails and files relevant to the case.

Byers noticed a series of documents which hinted that Kolon had deleted evidence and “we just kept following up — it was like unwinding a thread,” Songer says.

In July, U.S. District Judge Robert E. Payne hit the company with sanctions, finding that key Kolon employees had intentionally deleted emails in bad faith.

The DuPont case wasn't Songer's only recent big victory — he also delivered CoStar Realty Information Inc. a win in its suit in Maryland federal court against individuals who used CoStar's subscription databases without authorization.

Songer says that at first the CoStar suit seemed like a simple copyright case, but it soon became entangled in high-tech digital forensics issues, as his team worked to prove that the defendants had accessed CoStar's services.

“The proof issues are pretty daunting. How do you prove you downloaded a picture onto your computer on a certain day?” he says.

In December 2010, U.S. District Judge Alexander Williams Jr. ordered the defendants to pay CoStar \$1.2 million for breach of contract and \$600,000 for copyright infringement.

The case is also notable in that Judge Williams' order denying the defendant's motion to dismiss the case has been favorably cited by several courts regarding the enforceability of forum selection clauses in a website's terms of use, according to Crowell & Moring.

Songer has extensive experience with both patent and copyright litigation and enjoys both kinds of cases, particularly because they are very different beasts.

In copyright cases, the technology is a little easier to explain to the jury, especially if the issue is something like a movie or a video game, but the relevant law has more hidden surprises that can trip up the unwary lawyer, says Songer.

Conversely, in patent cases the law is a bit more straightforward, but the issues are more complicated.

For example, Songer says, “how the hell am I going to explain to a jury what this encoder is or how the electrons are moving?”

Songer, who started out at a government contracts firm, gravitated to intellectual property practice thanks to his interest in computer law. He says he feels grateful to have gotten in on the ground floor of Internet law, which, like the technology that spawns it, can change dramatically in a short time period.

But it's precisely the ever changing nature of Internet law that excites Songer, who has taught the subject for 12 years as an adjunct professor at Georgetown University.

“I always tell my students — don't pay attention to the finals from eight or nine years ago. Back then it was a whole different world,” he says.

--Additional reporting by Kaitlin Ugolik and Ben James. Editing by Sarah Golin.