

Q&A With Morrison & Foerster's Michael Ward

Law360, New York (July 08, 2013, 1:02 PM ET) -- Michael R. Ward, Ph.D., is a partner in Morrison & Foerster LLP's San Francisco office. He is the head of the firm's patent practice and co-chairman of the intellectual property group. He is founder of the firm's plant IP practice and is a member of the steering committee for the firm's cleantech practice. Ward has a background in agronomy and plant biochemistry. His practice consists of preparing and prosecuting international life science patent applications, performing patent due diligence in connection with mergers and acquisitions and other financing transactions, development and management of patent portfolios, counseling clients regarding patent infringement and validity issues, assisting in patent litigation, counseling in a wide range of licensing and joint venture arrangements, handling patent re-examinations and supporting patent interference projects.

Q: What is the most challenging case you have worked on and what made it challenging?

A: The most challenging case that I worked on was an arbitration related to infringement of a lettuce plant variety certificate. We had the burden to prove that the infringing lettuce variety was essentially derived from our client's protected lettuce variety. Our expert was able to convince the arbitrator that the infringing variety retained the essential characteristics of our protected variety. We were not able to prove to the arbitrator's satisfaction that the infringer used our protected variety to produce the infringing lettuce variety. It was a very frustrating outcome.

Q: What aspects of your practice area are in need of reform and why?

A: We need better clarity about the scope of protection provided by plant variety certificates inside the United States and plant breeders' rights outside the United States. There are very few decisions which provide much clarity in this area, particularly outside the United States.

Q: What is an important issue or case relevant to your practice area and why?

A: The *Bowman v. Monsanto* U.S. Supreme Court decision is very relevant to my practice. The Supreme Court held that the doctrine of patent exhaustion does not apply to patented seeds. Monsanto sued Farmer Bowman for patent infringement for making a copy of a patented Monsanto seed and using it to produce a soybean crop. Farmer Bowman argued that Monsanto had exhausted its rights in the patented seed when it first sold the seed. Had the Supreme Court decided that the doctrine of patent exhaustion applied to the seeds at issue here, such a decision would have greatly weakened the scope of protection of utility patents directed to new plant varieties.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Cheree Johnson, chief innovation counsel at H.J. Heinz Company has impressed me with her abilities to develop and implement an IP strategy at Heinz that aligns with the company's business strategy. Cheree is a great listener. She is very pragmatic and thoughtful. She is also a great IP strategist.

Q: What is a mistake you made early in your career and what did you learn from it?

A: A mistake that I made early in my career was to be afraid to tell a client that I did not know the answer to a question. As I have gotten older and more experienced, I realize that clients respect me even more for my willingness to say that I do not know the answer. Clients appreciate my candor and honesty when I explain that I will look up the answer or find someone else who knows more about the issue.

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