

IP MVPs: MoFo's Rachel Krevans And Grant Esposito

By Allissa Wickham

Law360, New York (November 9, 2015, 8:44 PM ET) -- Rachel Krevans and Grant Esposito of Morrison & Foerster LLP nabbed a major victory this year for pharmaceutical company Sandoz Inc. in a high-stakes battle over the Affordable Care Act's approval pathway for biosimilars, landing them a spot among Law360's 2015 IP MVPs.

MVP

INTELLECTUAL PROPERTY



Rachel Krevans



Grant Esposito
Morrison & Foerster

Krevans and Esposito, both veteran litigators, brought the heat for Sandoz in its closely watched dispute with Amgen Inc. over their client's new version of Amgen's blockbuster anti-infection drug Neupogen.

Sandoz's drug, Zarxio, was the first biosimilar product to win a green light from the U.S. Food and Drug Administration, and the case contained cutting-edge issues regarding the ACA's Biologics Price Competition and Innovation Act — the statute that created an approval route for biosimilar products.

A key part of the dispute hinged on Sandoz's refusal to fully disclose information to Amgen about its Zarxio application and manufacturing processes. But on March 19, a California district court granted partial judgment to Sandoz, saying that the BPCIA allows an applicant not to hand over certain licensing application and manufacturing information, according to court records.

Given how new the statute in question is, Esposito said that the case posed the challenge of working with Sandoz to craft a solid, compelling take on the law.

"[W]hen you're dealing with brand new act of Congress, the challenge is to come up with a compelling, consistent interpretation that, you know, obviously favors your client but isn't viewed by the trier of fact as overreaching," he said.

On appeal, the Federal Circuit sided with Sandoz on the issue, ruling that the company didn't run afoul of the BPCIA by not forking over its licensing application and manufacturing

information. The appeals court later rejected Amgen's bid to block sales of Zarxio during continued litigation between the companies, and the product is now available in the U.S.

“The impact of the case is it makes these biosimilar drugs available to patients and payers in the United States for the first time,” Esposito noted.

Although they work on opposite coasts — with Krevans based in San Francisco and Esposito in New York — the two attorneys are frequent collaborators, and are in continual communication, Krevans said.

“What can I say? We talk constantly, and only about half of it is about baseball,” Krevans joked, after noting that the two will often hash out “topline strategy” that drives their cases.

They also each bring a unique skill set to the cases they work on, with Krevans offering a deep well of intellectual property. Not only is Krevans chair of MoFo’s intellectual property litigation group, and co-chair of its IP group, she also brings more than 25 years of patent dispute experience, according to the firm.

Notably, she has also been a lead lawyer for Apple Inc. in its IP battle with Samsung Electronics Co. Ltd., recently representing the company as it urged the Federal Circuit not to reconsider its decision requiring Samsung to immediately pay Apple a \$548 million patent infringement judgment.

Although Esposito is certainly well-versed in IP issues, he also handles other commercial litigation, such as securities and product liability issues. For instance, he recently nabbed a dismissal in a suit against Grant Thornton LLP linked to a purported Ponzi scheme by Alphonse "Buddy" Fletcher, according to a MoFo representative.

There may also be fireworks yet to come in the biosimilar case between Sandoz and Amgen since, according to Esposito, its patent issues are now being litigated back in district court. The case will give Krevans and Esposito a chance to keep their collaborative energy cranked up to 11, as they seek to keep the wins coming for Sandoz.

--Additional reporting by Jeff Overley. Editing by Stephen Berg.