

LAW WEEK

COLORADO

TOP LITIGATORS

2016

These six litigators have proven their abilities to tell a story in the courtroom and succeed in trial



DAVID SIPIORA

BY HANNAH GARCIA
LAW WEEK COLORADO

Last year, David Sipiora found himself stuck in a hotel room in Taiwan for seven days, only escaping the rigor of discovery to get outside for two hours during the week.

It was a challenging trip, he said, with an ornery opposition, a big gap between time zones and only three hours of sleep a night. The case was certainly trying, a test of patience and perseverance, he said.

"It was just a huge, huge morass of facts in a hard-fought discovery," said Sipiora, an intellectual property litigator and partner with the Denver office of Kilpatrick Townsend & Stockton. "It was an ordeal. They (the opposition) make it so hard for you, and personally inconvenience you, thinking you'll back off. And we said no, we'll do it."

For that case, Sipiora was lead counsel on a team defending a cell phone camera lens manufacturer from infringement claims exceeding \$100 million in damages regarding a large number of patents pertaining to the lenses' optics. Although the case is currently on appeal, Sipiora and

his team won on summary judgment after demonstrating to the judge the actions that gave rise to the patent infringement claims happened entirely overseas and therefore beyond the scope of U.S. law on 99 percent of the claims, and the case was dismissed.

Sipiora also led a team last year that prevailed representing another manufacturer, this time a producer of mass transit technology, against five claims of infringement related to "contactless" cards that let passengers through access points for buses and trains by holding one of the cards close to a scanner. The judge sided with Sipiora's client on four of the five claims, ruling the patents invalid because they were not cognizable, only abstract ideas. That case is also on appeal.

Although he originally thought he would be an environmental attorney, Sipiora can easily pinpoint the origin of his affinity for patent law and all its nuance and complexities. When he clerked for a federal judge in California, he was junior to a senior clerk who "hated patent cases," he said, laughing.

"So I got every patent case, and I loved

LITIGATOR SPOTLIGHT

David Sipiora
Kilpatrick Townsend & Stockton

LAW FIRM SIZE

Large - 620 attorneys

PRACTICE AREA

Intellectual property, copyright, patent litigation, trademark, trademark and trade dress litigation, trade secret, transactional intellectual property, licensing

PRIMARY ACCOMPLISHMENTS IN 2015

- Led a team in a patent infringement defense with claimed damages over \$100 million, which resulted in summary judgment and dismissal

them," he said. "I got a heavy dose, and I have not looked back."

He also uses his skills for pro bono work. When the Institute for Life and Care, an organization dedicated to "helping professionals" such as ER nurses and first responders who experience burnout, called looking for an intellectual property attorney, Sipiora told the nonprofit he could do the work for free.

"To me, it's just a great thing they do," Sipiora said. "I will be more involved with them. I basically provide IP guidance, how to make the organization more effective. They have a lot of good ideas."

Sipiora attributes his own success as a litigator to a consideration of the jury, a collective of civilians charged with making decisions without the ability to educate themselves on the finer points of the law while listening to highly educated litigators distill high volumes of context and complexities into laymen's language. In patent law, where every piece of a case is complicated — the facts, the technology, the law itself — it's paramount to package it together so the jury can understand the arguments.

"It's so easy to lose people in the thick- et if you have too many things out there, so you find the two or three themes, then stick to those, as painful as it is," Sipiora said. "But if you try to capture every single point, you will lose the jury. A point needs to relate back to the theme, and the themes have to be comprehensive."

And there is also a need for solid experts on the stand, and Sipiora prefers the kind who don't typically testify in court.

The Harvard-educated attorney referenced a past case revolving around modems that involved layers of intricate mathematical equations: "If you had three years of calculus, you could unpack it."

When the opposing counsel cross-examined one of his witnesses and accused him of changing his position, Sipiora responded by asking him if he had ever made such a logical switch when asked to do so by the attorneys who hired him.

With a little bit of resentment, his expert responded, "no."

"He was flint-like, rock-solid," Sipiora said. "The reasoning had to be scientifically sound. He would not bend, even for who was paying him, and that is who I want on the stand. I get experts who actually believe what they say, who can't be bought."

When it comes to convincing a jury his version of reality is accurate, Sipiora said all of it was part of establishing what he called "a baseline of veracity." He gains credibility by making concessions, by treating everyone involved with a bit of dignity and with rabid preparation.

"It's a truth process, and if we're not right about something, we're not going to fight it," Sipiora said. "We fight about everything all day long, but we're also looking for truth at the atomic level. Honesty translates in the courtroom the same way it does in real life." •

— Hannah Garcia, HGarcia@circuitmedia.com

