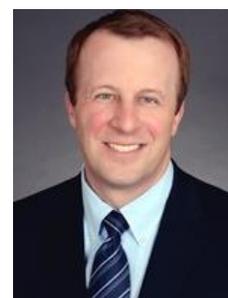


Trial Pros: Kilpatrick Townsend's Steve Moore

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Steve Moore at Kilpatrick Townsend & Stockton LLP focuses his practice on patent infringement litigation in a wide variety of industries. He defends both companies accused of patent infringement and represents patent owners harmed by a competitor's infringement in pursuing patent and related claims. Additionally, Moore has experience in coordinating global patent litigation, resulting in favorable rulings for his clients both in the U.S. and abroad. He also has experience in trade dress claims and commercial litigation matters.



Steve Moore

Moore has experience in patent and commercial litigation cases, including trying numerous patent and commercial litigation cases to a jury. His jury trial experience includes handling several multiweek multipatent cases in which juries have returned verdicts of noninfringement and invalidity for his clients. Moore further has argued at and examined witnesses in Markman hearings, after which courts issued claim construction rulings that have caused cases to resolve favorably for his clients. Moore has also argued before the Federal Circuit on several occasions, including before the en banc Federal Circuit.

Q: What's the most interesting trial you've worked on and why?

A: While this is certainly not the biggest or highest profile case I've tried, a few years ago I tried a patent case relating to wireless headsets that wrapped behind the wearer's head. While patent cases often can be dull, this was not. Our judge was not only a great trial judge, but he was highly entertaining — we repeated his sayings throughout trial in the evenings as we were preparing, and one of our associates even prepared a "greatest hits" compilation from the transcript. One memorable quote was, "Move on counsel, when you get a hit, you don't run around the bases twice."

Additionally, we had really interesting cross-examination with the plaintiff in this matter especially concerning the plaintiff's social media outreach to our client where the plaintiff communicated with our client under a different guise.

We won the case — a verdict of invalidity and noninfringement, and no appeal was pursued by our opponent.

Q: What's the most unexpected or amusing thing you've experienced while working on a trial?

A: In the previously referenced patent case, our team argued that we did not infringe because the

patent required “ear supports,” and our product was held onto the user’s head by placing pressure on the head, above the ears. We supported our argument with an expert witness who placed the headset on a mannequin head with no ears and to show, via photos in his expert report, that it stayed on the head even though there were no ears. We contrasted that to eyeglasses, which needed to be supported by the ears to remain on the wearer.

At trial, our expert was on the stand and we had shown the jury the photos in the report on direct examination. Opposing counsel began cross-examination by dramatically pulling a box out from underneath their table. When counsel opened it, we saw there was another mannequin’s head with no ears. Since the product was made for athletic use, counsel proceeded to place our product onto the head of the mannequin, and then started shaking it around as if the mannequin were running. His obvious goal was to get the headset to come off of the mannequin’s head to debunk our theory that our product does not need ear supports.

However, as opposing counsel started shaking the head, the headphones refused to come off. Gradually, he began shaking it harder and harder, but they still did not budge for 10 seconds or so. Finally, as he was violently shaking the head as hard as he possibly could, the headset came off. Our expert’s response was classic — “With those G-forces, I think you’d break your neck first.” The jury and everyone else in the courtroom laughed.

The demonstration made for an easy reference for me during closing argument as to why we did not infringe. And, the jury agreed. Also, I was reminded again why courtroom demonstrations are almost always a bad idea.

Q: What does your trial prep routine consist of?

A: I like to start the case completely over when I begin my trial preparation. In most cases, I am involved in cases from the beginning; though I have also worked on cases where I was brought in only for the trial. Nonetheless, I approach any trial objectively and like I have never seen the case before — much in the way I looked at cases when I was a judicial law clerk.

In a patent case, I start by reading the patent with fresh eyes from cover to cover. I read the file history the same way, and then I review the key prior art and other documents. Next, I read the expert reports and depositions, followed by the key rulings and briefs. Through all these steps, I try to be as objective as I possibly can about the case. This helps me develop the most persuasive story and evidence for my side of the case.

Q: If you could give just one piece of advice to a lawyer on the eve of their first trial, what would it be?

A: Enjoy it! Trials come along rarely enough that they should be enjoyed, not a subject of stress. While of course trial prep work is inherently stressful, I tend to feel stress more during the preparation phase, or when I wake up early during trial and start thinking about that coming day. When I am in court, I am having fun, and I think that attitude shows to jurors, the judge, and witnesses and that having that attitude can be a real asset to your case and your credibility.

I would advise any lawyer trying their own case to think of it as a fun experience — it is the pinnacle of your role as a litigator, and before you know it, the trial will be over and you will be back to preparing dull discovery objections. So enjoy every minute of it, and do so outwardly, so that the whole courtroom knows you are having fun and thrilled to be there trying your case.

Q: Name a trial attorney, outside your own firm, who has impressed you and tell us why.

A: When I was a senior associate, Bill Boice (Kilpatrick Townsend) and I tried a case. Bill served as overall lead for the case and lead for our client while I was second chair for our client. We tried this case with Frank Smith of Alston & Bird LLP, who represented a co-defendant. Frank had great rapport with witnesses and did a direct exam of our key third-party witness that was very helpful in telling our story. Our team ended up winning a verdict of invalidity and noninfringement of our opponent's patents. I learned a ton about how to try cases from both Bill and Frank during that trial.

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