

MVP: Covington's Richard Rainey

By **Dani Kass**

Law360 (November 18, 2019, 3:38 PM EST) -- Covington & Burling LLP partner Richard Rainey led the team that persuaded the U.S. Supreme Court to rule that federal agencies can't attempt to invalidate patents through the America Invents Act, earning him a spot among Law360's 2019 Intellectual Property MVPs.

HIS BIGGEST ACCOMPLISHMENT THIS YEAR:

Rainey said the biggest moment of his year was having the justices agree to take up their case in *Return Mail v. U.S. Postal Service*, which would lead to the government being banned from filing patent reviews under the AIA in June.

It was his first case at the Supreme Court; the firm said he led the team on its path to the high court, with partner Beth Brinkmann conducting the arguments before the justices.

"The odds of getting that accomplished are extremely long, and anyone who says they expect the Supreme Court to grant certiorari, I'd have to say is probably not quite accurate," he said. "It's the longest of long shots."

Rainey said he'd been involved in the patent fight between Return Mail Inc. and the Postal Service for about a decade, representing the company whose patent on processing undeliverable mail was declared invalid by the PTAB. He led the Federal Circuit appeal, which ended up in a 2-1 loss, before they got the Supreme Court to turn the case around.

The litigation is now headed back to the Court of Federal Claims.

OTHER NOTABLE CASES:

Also in June, Rainey secured a victory for Israeli defense contractor Elbit Systems Ltd. The panel upheld a \$21.1 million jury verdict against EchoStar Corp. unit Hughes Network Systems LLC for infringing an Elbit satellite communication network patent.



He said one of the most exciting things about that case was who was on the other side: WilmerHale's William Lee.

"He's a legend, a giant," Rainey said. "Bill was my lawyer when I was in-house at GE. We used Bill in some of our most high-profile and challenging matters. I think the world of him. I think he's a phenomenal lawyer. When you have an opportunity to go up against someone like that, for me it was incredibly rewarding and probably a highlight of my career."

Rainey said the case raised interesting damages questions about apportionment and prior licensing agreements, and about whether an unquantified attorney fees award could be appealed. The Federal Circuit said it can't.

Then in February, Rainey brought in a Federal Circuit win for Samsung Electronics America Inc., which was accused of infringing smarTen LLC's health data technology patents. He said the litigation involved a vast amount of claims, all of which were lengthy.

"You're sitting there looking at this, thinking: 'This is really quite an interesting puzzle, how do we carve a path through this?'" he said.

In the end, they successfully argued that the patents were abstract and therefore invalid under Section 101 of the Patent Act.

WHY HE'S AN IP ATTORNEY:

Rainey got his undergraduate degree in mechanical engineering from the Massachusetts Institute of Technology. His interest in patent law was sparked after college when he met with an attorney at his father-in-law's company.

"I don't come from a family of lawyers and I was not exposed to the patent profession growing up," he said. "I happened to have the opportunity to spend a day with this in-house patent attorney, and it just seemed like an interesting profession to me. The intersection between innovation and technology and advocacy. Even today looking back, it's surprising to me that at that age that I was able to appreciate it because I do pinch myself from time to time that I have found a profession that I truly enjoy."

WHAT MOTIVATES HIM:

Rainey said he's motivated by a "tremendous passion" for the work that "rubbed off on him" from a series of mentors.

"I think the stakes we are involved in are high and the issues are complex, but they're also interesting and fun, and I like fun interesting challenges," he said. "I think that's why I get up every day: No two days are alike, no two challenges are the same, no two cases are identical — that is really a great profession to be in."

HIS ADVICE FOR JUNIOR ATTORNEYS:

Rainey credits much of his success to those mentors: Delaware U.S. District Judge Roderick R. McKelvie, now a retired Covington partner; former Chief Federal Circuit Judge Randall Rader; and the recently deceased IP icon Donald Dunner of Finnegan Henderson Farabow Garrett & Dunner LLP. He said younger attorneys should try to find similar leaders.

“I had great mentors who took a personal interest in me, they wanted only the best for me and I don't know that I could ever put in words adequately what that meant to me,” he said. “I'd say to folks coming up, find people around you who will take an interest in you and then listen to what they have to say, even when they're not necessarily speaking to you, because pearls of wisdom come at all moments.”

— *As told to Dani Kass*

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