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Rising Star: Covington & Burling's Brianne Bharkhda

By **Dani Kass**

Law360 (May 31, 2022, 2:02 PM EDT) -- Covington & Burling LLP partner Brianne Bharkhda has defended patents for major drugmakers who sell the blockbuster cancer drug Imbruvica and antidepressant Trintellix, earning her a spot among intellectual property attorneys under age 40 honored by Law360 as Rising Stars.

HER BIGGEST CASE:

In August 2021, U.S. Chief District Judge Colm F. Connolly in Delaware held that four patents covering the blockbuster cancer drug Imbruvica were valid, meaning Alvogen Pine Brook's proposed generic version infringed.

Bharkhda was representing the patent owner, AbbVie's Pharmacyclics LLC — which sued alongside the drug's co-developer, Johnson & Johnson's Janssen Biotech Inc. unit — including at the October 2020 bench trial. The stakes were high, given that AbbVie had more than $8 billion in sales for Imbruvica in 2020, making it one of the best-selling drugs in the world.

The Covington partner said her work in the trial included cross and direct examinations of expert witnesses, but that the real challenge was preparing for Judge Connolly's first virtual trial.

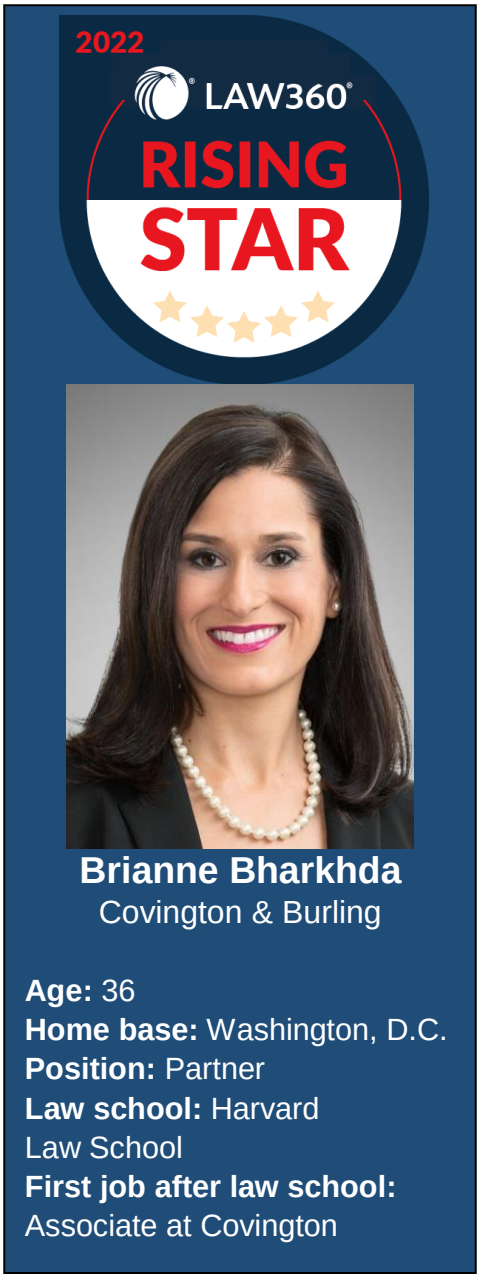
"We were uncertain exactly how smoothly it would go, how the technology would work," she said. "Overall, I think the technology platform worked better than anticipated, and the trial went more smoothly than anticipated. We won on all issues."

Alvogen has appealed the ruling, but oral argument has not yet been set at the Federal Circuit.

HER MOST INTERESTING RECENT CASE:

Bharkhda brought home another remote patent trial win in October 2021, this time over blockbuster antidepressants made by Takeda Pharmaceutical based on patents licensed from Denmark's H. Lundbeck A/S.

Then-U.S. District Judge Leonard P. Stark refused to invalidate any of the



patents for Trintellix — formerly known as Brintellix — which Takeda and Lundbeck had asserted when 16 companies filed applications to market generic versions. Only six companies went all the way to trial, where the branded companies were able to win on validity and score two injunctions. Lupin Pharmaceuticals, Sandoz and two others were not enjoined.

This litigation was particularly complex given the number of generic-drug makers and issues at hand, Bharkhda said.

"All of the defendants were taking unique noninfringement approaches, and it had a number of interesting and novel legal issues," she said. "For example, there were issues relating to induced infringement of method patents — looking at drug labels and information outside drug labels — to decide whether there had been induced infringement."

WHY SHE'S AN IP ATTORNEY:

Bharkhda said she wanted to be a trial lawyer "for as long as I can remember." While she doesn't have a technical background, she said patent litigation provided "an abundance of opportunities to get meaningful experience in the courtroom" early on.

"Early in my career, IP litigation allowed me to stand up in court and argue motions and claim construction hearings, and then get jury and bench trial experience," Bharkhda said. "I ended up finding the work really fascinating."

In particular, she said it's meaningful to represent clients who are "working on cutting-edge technology and making major contributions to society."

HER PROUDEST MOMENT AS AN ATTORNEY:

As an associate in 2012, Bharkhda experienced her first Federal Circuit victory. She was part of a team representing Medeva Pharma Suisse and Warner Chilcott as they tried to block generic versions of the ulcerative colitis treatment Asacol.

In particular, Bharkhda said she helped draft a motion to dismiss an invalidity counterclaim filed by Par Pharmaceuticals, which had hoped for a declaratory judgment of noninfringement or invalidity. The successful dismissal motion claimed that Par lacked standing.

Par was given permission in 2011 to file an interlocutory appeal on novel standing questions at issue, but the Federal Circuit summarily affirmed in January 2012.

When the case returned to district court, Par and another generic-drug maker abandoned their attempts to get their versions of Asacol on the market before the patents expired.

— As told to Dani Kass

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2022 Rising Stars winners after reviewing more than 1,350 submissions. Attorneys had to be under 40 as of April 30, 2022, to be eligible for this year's award. This interview has been edited and condensed.

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