

Daily Journal

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TOP VERDICTS OF 2012

TOP PLAINTIFFS' VERDICTS BY DOLLAR

\$112,373,822
Brocade v. A10
Networks Inc.

CASE INFO

Patent, trade secret, copyright and unfair competition

Northern District of California
U.S. Magistrate Judge Paul S. Grewal

Plaintiffs' attorneys: McDermott Will & Emery, Fabio Marino; **Orrick, Herrington & Sutcliffe LLP, Denise Mingrone, Bas de Blank, Annette Hurst;** Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates, Allen J. Ruby

Defense attorneys: Finnegan, Henderson, Farabow, Garrett & Dunner LLP, Scott R. Mosko, Scott A. Herbst.



Courtesy Photo

From left: Fabio Marino, Annette Hurst, Allen J. Ruby, Bas de Blank, and Denise Mingrone.

Heads turned in August when Brocade Communications Systems Inc. and its subsidiary Foundry Networks LLC won a \$112 million jury verdict in federal court against rival A10 Networks Inc. for infringing the San Jose-based networking company's patents and copyrights.

But for Orrick, Herrington & Sutcliffe LLP partner Denise Mingrone, the post-trial injunctions Brocade won against A10 were what stood out most to her.

"In this [legal] climate, it's difficult to

get an injunction in patent infringement and trade secrets," Mingrone said. "The case law is evolving."

Brocade won a narrowly tailored injunction against A10 on certain infringing products. Brocade also won a trade secrets injunction that bars A10 from using certain company source code.

In January, U.S. Magistrate Judge Paul S. Grewal ruled that Brocade will receive \$60 million for copyright infringement and other penalties. But the companies will have a new trial to determine damages for patent infringement, lost profits and reasonable royalties, according to McDermott Will & Emery partner Fabio E. Marino.

Marino, who has been on the matter since the outset, said Brocade's lawyers from three different firms worked well as a team. And certain coordination was necessary, for example, when Marino departed Orrick, Herrington & Sutcliffe LLP for McDermott

in March, less than five months before trial.

"I don't think that impacted the team because it was always the same team working together," Marino said.

Marino, Mingrone and the Orrick team tackled patent infringement, copyright infringement and trade secrets disputes.

Allen J. Ruby, of Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates, was brought in just a few months before trial began to deliver Brocade's opening and closing arguments as well as litigation support.

Ruby said Grewal utilized a novel procedure during the trial, allowing the jury to directly submit questions to witnesses so jurors were clear on previous statements.

"It worked so seamlessly. It added no measurable effect on the timing of the trial, but the insight gained was quite remarkable," Ruby said. "I hope it catches on."

— Kevin Lee