

## Rising Star: McKool Smith's Josh Budwin

By Kelly Knaub

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McKool Smith PC's Josh Budwin has helped the firm secure three massive, nine-figure patent verdicts for ParkerVision Inc., Versata Software Inc. and Medtronic PLC totaling more than \$768 million over the past seven years, earning him a spot on Law360's list of top IP attorneys under 40.

The 34-year-old Rising Star most recently played a key role securing a \$15 million verdict — announced Jan. 16 after a four-day trial — on behalf of Droplets Inc. against Overstock.com Inc. and Sears Holding Corp. Budwin helped draft the Markman brief before trial, argued a portion of the Markman hearing, worked on motions to compel and to strike expert testimony, and presented a Droplets inventor as a fact witness on direct examination. The IP principal also presented the plaintiffs' infringement expert on both direct examination and during the validity rebuttal — testimony that had a significant impact on the jury's final verdict, the firm learned in a post-trial interview with the jury's foreman.



A Philadelphia native who has been with McKool Smith for nearly 10 years, Budwin said that patent litigation is very complicated and that it's necessary to teach the jury law and technology they may be unfamiliar with in a very short time. He said his team had nine hours to put on their whole case in Droplets, from start to finish.

"At the end of the day, as I've learned from the really experienced trial lawyers I work with, many of whom started out trying cases other than patent cases, you need a story that's about people that jurors can resonate with and understand," he said.

Budwin said that even though a case and its technology is very complex and there isn't a lot of time, it's necessary to identify somebody — usually the inventor — who can come in and tell the invention story, along with the struggles and challenges in getting the patent and in trying to enforce it against the defendant.

Budwin also played a crucial role in securing a \$173 patent infringement verdict on behalf of Florida-based ParkerVision against California-based Qualcomm Inc. in October 2013. From pretrial to the end of the trial's second phase, the IP expert drafted the claim construction briefs, handled part of the

Markman argument, presented ParkerVision's infringement expert on direct examination, cross-examined Qualcomm's validity expert, and cross-examined Qualcomm's corporate representative and company engineer. The jury determined that ParkerVision's patents were both valid and infringed by Qualcomm.

The Rising Star said the ParkerVision case was particularly challenging because of the technology, which involved four patents for radio frequency technologies; the quality of McKool Smith's opposing counsel, which included teams from New York-based Cravath Swaine & Moore LLP and Cooley LLP in California; and the trial's immediately following a U.S. International Trade Commission case Budwin had been involved with. In the ITC case, which settled in January, Budwin represented Ericsson Inc. in patent infringement litigation against Samsung Electronics Co. Ltd.

Budwin also helped secure a \$345 million verdict for Versata against SAP America Inc. and a \$250 million verdict for Medtronic against Boston Scientific Corp. and one of its subsidiaries.

Being adept at time management and having a self-awareness of what you can do and what you need to rely on other people to do are necessary to succeed, Budwin said, noting that a forgiving spouse who understands that you can't always control your own schedule is one of the most important factors.

As for advice he would offer to younger attorneys, Budwin said he would tell them to make time for the important things in life — which for him is his family and being able to travel — and to follow the lead and advice of the people who have come before them.

"The people that we've worked with who have been trying cases for 25 and 30 years have a lot of experience, and you need to take advantage of that. But don't be afraid to put your own spin on it. And don't be afraid of making a mistake," Budwin said. "You're going to make mistakes, and you just have to be willing to learn from them and adapt from them and try to correct them after you make them."

--Editing by Edrienne Su.