

## Recent Intellectual Property Litigation Successes

- *Bracco Diagnostics Inc. v. GE Healthcare* (D.N.J.)

Kramer Levin in March 2009 won a major false advertising victory for Bracco Diagnostics Inc. The U.S. District Court for the District of New Jersey awarded Bracco extremely broad relief against false advertising defendant GE Healthcare, including a permanent injunction barring GE's false claims of superior safety for its Visipaque x-ray contrast agent, an order requiring GE to issue a corrective press release and corrective advertisements and to re-train its sales and marketing personnel, together with \$11.4 million in compensatory damages (one of the largest awards to date in a false advertising action). GE, which had asserted a broad counterclaim against Bracco, was awarded no legal or equitable relief. Central to the dispute were false claims that GE's promotional materials and its sales representatives made to customers regarding the purported superior safety of GE's x-ray contrast agent Visipaque over Bracco's competing Isovue product. Bracco and GE are arch-competitors in the market for x-ray contrast agents, which are one of the largest-selling prescription pharmaceuticals by volume in the U.S.

- *Berger v. Savient Pharmaceuticals, Inc.* (Ky. Cir. Ct.)

In August 2009, the Kentucky Circuit Court granted Kramer Levin's motion for summary judgment ending a lawsuit brought by Dr. Joseph R. Berger against our client Savient Pharmaceuticals. Dr. Berger, chairman of the Department of Neurology at the University of Kentucky College of Medicine, was an inventor on two patents for treating muscle wasting in HIV/AIDS patients. Dr. Berger assigned his patent rights to Savient's predecessor in 1991. In 2007, Dr. Berger claimed that Savient breached its agreement with him when Savient failed to employ Dr. Berger in research studies after 1995. Under Kentucky's 15-year Statute of Limitations, Berger sought the return of his patents and disgorgement of Savient's profits – over hundreds of millions of dollars. Through various legal theories, Dr. Berger attempted to introduce parol evidence, including testimony from the Vice President of Savient's predecessor entity. Kramer Levin, however, successfully opposed the introduction of parol evidence. Based on the four corners of the agreement, the Court found our client did not breach the written agreement. The Court further held that to the extent there was an oral agreement, it was barred by a five-year Statute of Limitations for oral agreements.

- *Keystone Autonics v. Sirius Satellite Radio* (E.D. Tex.)

Successfully defended satellite radio service provider Sirius XM Radio Inc. against a patent infringement action relating to radio devices, brought in the U.S. District Court for the

Eastern District of Texas, resulting in “walk-away” stipulation of dismissal by plaintiff-patentee after a decisive claim construction ruling.

- *Lear Corporation v. TS Tech USA Corp., et al.* (E.D. Tex.)  
Succeeded in obtaining from the Federal Circuit the extraordinary relief of a grant of a petition for a writ of mandamus on behalf of TS Tech in connection with the denial of a motion to transfer venue in a patent infringement case. In a much-cited landmark decision, the Federal Circuit held that the Eastern District of Texas had clearly abused its discretion in denying TS Tech's motion to transfer venue, vacated the district court's denial and ordered the district court to transfer the case to the Southern District of Ohio.
- *U.S. Electronics, Inc. v. Sirius Satellite Radio Inc.*, American Arbitration Association  
In August 2008, an AAA Arbitration Panel issued a 149-page Award dismissing with prejudice all claims of U.S. Electronics, Inc. (“USE”) against our client Sirius XM Radio Inc. (“Sirius”). USE was licensed for a three-year term to develop and market radio receivers and accessories compatible with the Sirius broadcast service. In an arbitration lasting over two years and consuming 20 days of hearings, USE alleged that Sirius breached the parties’ contract in bad faith (so as to overcome limitation of liability provisions) and tortiously interfered with USE’s relationships with retail stores and manufacturers of the receivers. As reflected in the length of the hearings, USE leveled dozens of allegations against Sirius, such as wrongfully withholding from USE a fair allocation of the core chip sets required to make a receiver; favoring another licensee of Sirius; denying USE access to Sirius’ latest technology; and improperly denying type acceptance approval for USE’s proposed products. USE sought up to \$133 million in damages, mostly claimed lost profits attributable to lost sales allegedly caused by Sirius’ supposed wrongdoing. The Panel’s Award—which closely tracks Sirius’ proposed findings of fact and conclusions of law—found in great detail that none of the factual allegations was proved and that Sirius acted in good faith; rejected each claim for liability; and concluded that Sirius’ central legal argument was correct such that the claim for lost profits was also barred by the limitation of liability provisions.
- *Animal Science Products, Inc. v. China Minmetals Corp. et.al.* (D.N.J.)  
In January 2009, a U.S. District Court for the District of New Jersey ruled in an antitrust class action in favor of Kramer Levin clients, Chinese producers of mineral magnesites. US purchasers brought the suits against the Chinese companies, claiming they conspired to fix prices and control supply. The Court dismissed the suit for lack of subject matter jurisdiction, ruled that the Plaintiffs failed to adequately allege a claim for conspiracy to fix prices under Section 1 of the Sherman Act, and required the plaintiffs to re-plead the complaint if they wanted to pursue the lawsuit.
- *Gebre v. Sirius Satellite Radio* (D. Utah)  
Successfully defended Sirius Satellite Radio in a patent infringement action involving navigation system technology, resulting in a favorable settlement.

- *Broadcast Data v. Sirius Satellite Radio* (S.D.N.Y.)  
 Successfully represented Sirius Satellite Radio in a patent infringement brought by a subsidiary of Acacia Research involving over the air transmission of display data, resulting in the plaintiff dropping the case with prejudice.
- *Praxair, Inc. and Praxair Technology, Inc. v. ATMI, Inc. and Advanced Technology Materials, Inc.* (D. Del.)  
 Obtained for ATMI a fairly rare summary judgment of invalidity for indefiniteness against one patent. 231 F.R.D. 457. After eight days of trial, we had the two remaining patents declared unenforceable due to inequitable conduct. 489 F. Supp. 2d 387. The Federal Circuit affirmed the inequitable conduct ruling against one patent and remanded the other two patents for further proceedings after significantly narrowing the claim construction in ATMI's favor. Nos. 2007-1483 (Fed. Cir. September 29, 2008).
- *Neumark v. Toyoda Gosei Co., Ltd., et al.* (S.D.N.Y.)  
 Represented defendant Toyoda Gosei Co., Ltd., a Japanese company which is one of the world's largest producers of light emitting diodes, in a patent infringement litigation involving LED technology which concluded in a favorable settlement.
- *Plasco v. StarTech* (S.D. Tex.)  
 Successfully defended StarTech Corp., a major innovator of plasma arc technology used for waste management, against a patent infringement action brought in the U.S. District Court for the Southern District of New York, resulting in "walk-away" dismissal by plaintiff-patentee shortly after the case was filed.
- *ReSeal International Limited Partnership v. Secondo* (NYS)  
 Successfully represented ReSeal Intl. in a breach of fiduciary duty action to take back ownership of patent rights misappropriated from the company.
- *Humanscale Corporation v. Weber Knapp Company* (E.D. Tex.)  
 Kramer Levin obtained a favorable outcome for its client Weber Knapp Co. in a patent infringement action brought by Humanscale Corp. – a manufacturer of ergonomic products – in the Eastern District of Texas.
- *Savient v. Barr Labs, Sandoz* (D.N.J. and CAFC)  
 Represented patentee in ANDA and non-ANDA patent litigations that reached favorable settlement.
- *Sirius Satellite Radio Inc. v. Advanced Global Technology L.L.C.* (S.D.N.Y.)  
 In September 2008 Justice Bransten of the Commercial Division of the Supreme Court, New York County, granted the motion of Kramer Levin client Sirius Satellite Radio to dismiss the amended complaint of Advanced Global Technology, LLC ("AGT"). AGT develops and distributes consumer electronics products, and it sought to have a Korean

manufacturer, KRI, make HD radios for AGT to sell. KRI, at the time, was the primary maker of Sirius-compatible radio receivers (i.e., radios that receive the Sirius satellite broadcast). Also at that time, AGT was distributing a receiver that was compatible with the XM satellite radio service (XM and Sirius then being competitors). AGT alleged that Sirius tortiously interfered with its prospective business relationship with KRI by threatening to end its relationship with KRI if KRI worked with AGT. On Sirius' behalf, we successfully moved to dismiss the original complaint, and that dismissal was affirmed on appeal—with AGT being given leave to appeal. Justice Bransten held that the added allegations of the amended complaint—that Sirius threatened to withhold payment from KRI and to cancel existing orders for which KRI had ordered the parts, thereby putting KRI in financial risk—did not amount to the crime of coercion, or wrongful means or egregious conduct required to state a claim.