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Q&A With Duane Morris' Anthony J. Fitzpatrick

Law360, New York (July 08, 2009) -- Anthony J. Fitzpatrick is co-chair of Duane Morris LLP's intellectual property litigation practice. His practice focuses on patent and trade secret litigation. Fitzpatrick litigates disputes involving diverse technologies, although he has particular experience in the life sciences, including biotechnology, pharmaceuticals, and medical devices.

Fitzpatrick's work includes disputes concerning the inventorship, ownership, and licensing of patents and other intellectual property. He has an active trial practice before courts and arbitration panels across the country.

Q: What is the most challenging case you've worked on, and why?

A: When I was a senior associate and junior partner, I worked with my great mentor Dennis Allegretti on the defense of a very challenging patent infringement matter. The case had it all: a multitude of difficult factual, legal and strategic issues; excellent opposing counsel; and a demanding judge.

Dennis gave me the opportunity to take a lead role on much of the case, including a trial on patent invalidity, as well as Markman, summary judgment and other significant hearings. I draw on the lessons I learned in that case every day.

Q: What accomplishment as an attorney are you most proud of?

A: I'll list two. First, developing the skills and experience to represent clients in the litigation and trial of complex, high-stakes patent and trade secrets litigation. Every case brings new challenges, every day is different, and I have a lot of fun doing it.

Second, helping to build the IP litigation group at Duane Morris has been a continuing, and ever-growing, source of pride for me. Our practice has expanded dramatically over the past 10 years, both in size and scope. When I joined the firm in 1999, the IP practice

group comprised about 10 lawyers in total, only a handful of which had extensive patent litigation experience.

Now, the group boasts more than 80 lawyers and serves a diverse client base in sophisticated IP cases of all types. Mindful of this achievement, I look forward to the challenges and opportunities that the next 10 years will bring.

Q: What aspects of law in your practice area are in need of reform, and why?

A: On the substantive side of patent law, inequitable conduct is an area that merits clarification. It appears from recent decisions that the Federal Circuit recognizes this need. However, the court declined the opportunity to review en banc at least one recent inequitable conduct case (*Aventis v. Amphastar*). Hopefully, another opportunity will be presented in the near future, and the court will take on the issue.

On the procedural side of patent litigation, the burden and expense of e-discovery is growing daily. Lawyers are trying to address the issue on a case-by-case basis with e-discovery protocols and agreed search terms, but the volume of information seems to be multiplying. I recently heard of a case involving 20 million documents! A comprehensive and structural approach to the issue is in order.

Q: Where do you see the next wave of cases in your practice area coming from?

A: There is already a growing wave of patent cases brought by branded pharmaceutical companies against generic manufacturers under the Hatch-Waxman Act. Duane Morris has developed a significant practice in that area, and we are seeing more and more cases. And if, as expected, Congress passes legislation governing generic biologics in the near future, that wave will only grow.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: Throughout my career, I've had the good fortune to work with and observe several outstanding trial

lawyers, both at Duane Morris and at my two former firms, as well as at other firms across the country. While it's difficult to single out any one person, Dick Renehan of Boston's Goulston & Storrs is one of the finest trial lawyers I've ever seen.

When I was a young associate, before I began to focus my practice on IP litigation, I was co-counsel with Dick on a multidefendant white-collar criminal case in federal court in New Hampshire. The trial lasted six weeks, but one moment stands out: Dick's 30-minute cross-examination of the government's key witness. Their case never recovered, and our clients were acquitted.

Dick is a model of ethics and civility, while maintaining a great sense of humor and not taking himself too seriously, which is an important trait for all lawyers.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: I would offer two pieces of advice. First, we all recognize that these are very challenging economic times. Having worked through several business cycles over the past 20 years, I am confident that we'll soon see the end of this down cycle, severe though it is.

While it may be difficult for new lawyers or law students to find employment at present, over the course of what may be a 40-plus-year career, this will not be an insurmountable hurdle in the long term. Right now, young lawyers interested in IP litigation but struggling to find positions in that area should consider pursuing a judicial clerkship. This is an excellent way to learn the intricacies (and idiosyncrasies) of litigation — and watch top trial lawyers at work.

Second, it's crucial to find and learn from one or more true mentors. Often, I think young lawyers look for jobs at the most prestigious firms, without really thinking about what their day-to-day work lives will be like or how they'll develop and grow as lawyers.

It can be difficult for a young lawyer to find direction for his or her career. It's important to identify and work with a mentor who can teach practical lawyering skills and help one's legal acumen and career advance in a meaningful way.