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Top 100 Lawyers AND DISTINGUISHED COUNSEL



MIEKE K. MALMBERG

STRIS & MAHER LLP
COMPLEX CIVIL LITIGATION
BEVERLY HILLS

Mieke Malmberg needed a jury to place a dollar value on technology jurors used every day without noticing it. In *IPA Technologies Inc. v. Microsoft Corporation*, the agent architecture at issue traced back to research at Stanford Research Institute, the same work that underlies Apple's Siri. To help the panel see past its own familiarity with the technology, Malmberg's team commissioned a consumer survey, giving jurors data to measure what the invention was worth. The jury found infringement, rejected Microsoft's invalidity defense, and the court entered judgment of \$242 million against

the company, a verdict later counted among the top 50 jury verdicts in the country that year and among the largest patent verdicts in Delaware's history. *IPA Technologies Inc. v. Microsoft Corporation*, 1:18-cv-00001 (D. Del., filed Jan. 2, 2018).

"The case is a reminder of why the patent system exists in the first place: to encourage and protect innovation," said Malmberg, who recently joined Stris & Maher LLP after practicing at Skiermont Derby LLP.

Malmberg also represented HEC Pharm in a Hatch-Waxman dispute over Novartis's multiple sclerosis drug Gilenya. After the district court and a Federal Circuit panel both ruled for Novartis, Malmberg's team petitioned for rehearing and won, invalidating the patent blocking generic entry, then defeated Novartis's stay application at the Supreme Court, opening the generic market nationwide. *Novartis Pharmaceuticals Corp. v. HEC Pharm Co.*, 1:18-cv-01043 (D. Del., filed July 16, 2018).

"That result gave hundreds of thousands of MS patients access to lower-cost treatment, and it's the case I'd point to as most significant to my career in that the moment the mandate issued suffering patients were immediately granted access to the life-saving treatment," Malmberg said. She traces the rehearing win to a return to first principles rather than a louder repeat of the same argument. "That

grounding in fundamentals — rather than relitigating the same arguments louder — is what ultimately persuaded a modified panel to reverse course and issue the legally correct decision," Malmberg said.

Malmberg came to patent law by way of biochemistry, after time in a research lab, drawn by the chance to keep learning new technical fields. She traces her approach to litigation strategy partly to chess, played with her father growing up in a cabin in Alaska. "Since patent litigation is all about strategy — which must be constantly reassessed from day one and requires gaming out several moves ahead — it turned out to be the perfect fit," Malmberg said. She names Rod Dorman and Paul Skiermont, with whom she worked for nearly a decade, as mentors: "Rod Dorman embodied decency and decorum even in the highest-conflict situations — that's been an excellent guidepost for me ever since," Malmberg said.

She continues as lead appellate counsel in several Federal Circuit matters. "Pharmaceutical litigation continues to grow more complex, as brand-name companies increasingly pursue 'follow-on' patents and post-launch infringement actions based solely on labeling instead of actual use. This raises many issues of first impression for courts to grapple with across various areas, including damages," Malmberg said.