

Litigators of the Week: Orrick and Lee Sullivan Stick Google With Import Ban in Patent Showdown with Sonos

By Ross Todd
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Santa Barbara, California, wireless audio company Sonos Inc. made a big splash in tech circles a couple of years back by [suing Google](#) both in the Central District of California and the U.S. International Trade Commission claiming the company infringed its patent technology.

Our Litigators of the Week this week, Clem Roberts and Bas de Blank of Orrick, Herrington & Sutcliffe, and Sean Sullivan of Lee Sullivan Shea & Smith led a team that prevailed in the ITC case, securing an import ban on not only certain Google smart speakers, but also the Pixel phones used to control. The [ITC ruling last week](#) follows a decision from an administrative law judge at the agency [who last year found](#) Google infringed all five patents asserted by Sonos after a five-day remote trial.

Litigation Daily: Who was your client and what was at stake?

Clem Roberts: Our client, Sonos Inc., is an American success story. It was founded in 2002 and invented what is known today as wireless multi-room audio. They have grown over the years and have had tremendous commercial success and critical acclaim for their products, which combine high quality audio and revolutionary user features making them easy to set up and control. After initially partnering with Sonos, Google developed its own competing audio players and controllers using Sonos' patented technology. Despite Sonos' attempts over many years, Google refused to acknowledge their infringement and take a license. Sonos had no choice but to sue.

Who all was on your team and how did you divide the work?

Bas de Blank: This was a big case with a large team. We were successful because the different attorneys and firms worked so well together to help Sonos. The LS3 firm was extremely familiar with the technology while Orrick had the ITC experience and resources to staff up the case. It truly was a team effort, and everyone contributed, with different attorneys responsible for different aspects. For example, **Jordan Coyle** is an Orrick ITC specialist who handled issues such as domestic industry, jurisdiction, and remedy. Sean Sullivan, **Rory Shea**, **Dan Smith** and **Michael Boyea** of LS3 took the lead on the technical issues for several patents, while **Cole Richter** handled much of the discovery. **Alyssa Caridis** of Orrick and

I were responsible for technical aspects of other patents, and I handled much of the day-to-day operation. Clem Roberts and George Lee of LS3 provided strategic direction.

But, I would be remiss if I didn't emphasize the contributions of the Sonos in-house attorneys. We literally could not have done this without the help and support of **Eddie Lazarus**, **Mark Triplett**, **Alaina Kwasizur** and **Chris Butts**. They not only made sure we had the resources and information we needed, but they provided strategic direction and extremely helpful feedback. The pace of an ITC investigation can be brutal, but they never failed to review drafts or share their thoughts even under tight deadlines.

What do the five Sonos patents that underlie this case cover?

Sean Sullivan: Sonos has an extremely rich and deep patent portfolio. For this case, we selected five patents that cover critical features of any successful smart speaker. The '258 and '953 patent relate to audio players that play the same song at the same time, what we call in "synchrony." The '959 patent relates to audio players that change their equalization settings based on, for example, whether they're the only speaker playing the song or whether there is a second paired speaker.

But Sonos also invented novel ways to control the speakers. For example, the '896 patent covers Sonos' invention of a simple and efficient way to add a speaker to a wireless network, while the '949 patent is directed to a controller, such as a Pixel phone, that allows a user to control the volume of both individual speakers and groups of speakers.

What did the remote trial before the ALJ last year look like? How did you manage your side of things logistically back when the case was tried?

de Blank: We filed our complaint January 7, 2020 just before COVID changed everything. We ended up with an unusually



(l-r) Clem Roberts and Bas de Blank of Orrick, Herrington & Sutcliffe, and Sean Sullivan of Lee Sullivan Shea & Smith.

Courtesy photos

long schedule, which gave Google more time than typical to try to find prior art and develop its defenses. Our trial in February 2021 was virtual, but the chief ALJ's office made the experience technologically seamless. Our trial team was in three time zones; our witnesses were in other locations; and the ITC judge and staff attorney were in D.C. I spent the entire trial in perpetual fear that someone would lose their Internet connection at just the wrong moment. But, despite all of that, the trial went as smoothly as possible. I'm not sure I will ever prefer a remote trial – and starting the day at 5:00 a.m. Pacific time so we can talk before the trial begins in Washington, D.C. wasn't fun – but I'm proud of how everyone worked together to get this done.

Did handling the trial remotely change in any way how you put on your infringement case?

Sullivan: At the end of the day, a trial is still a trial. We did the best we could to put on a compelling case and make clear the scope of Google's infringement. But whether that is for a remote audience or a jury 10 feet away, our job is to present the evidence. That didn't change.

How did you address Google's public interest argument that the exclusion order in this case would go well beyond the world of smart speakers to include products "ranging from smart home assistant devices to smart displays to smart mesh router systems to smart dongles to smartphones to tablets to laptops"?

Roberts: Once Google was found to infringe and all the claims were found valid, their only possible argument was to try to say they should be permitted to infringe because of some "public interest." But, fundamentally, there is no good reason why Google should be permitted to continue to infringe Sonos' patents. Google's products aren't indispensable to some medical need or national security; there are scores of substitute products on the market. To the extent that Google has incorporated Sonos' patented technology into Google's dongles, smart phones, tablets and laptops, it should stop infringing. And, since it wouldn't do so voluntarily, the ITC ordered them to. Furthermore, there is a compelling public interest in protecting the patent rights of a U.S. company like Sonos, as explained by several third-party submissions to the ITC.

The ITC order excludes imports of networked speakers and devices capable of controlling them, including mobile phones and laptops. But there are a few exceptions for Google devices that design around your technology. So what exactly are some of the key products that you expect to be excluded under this order?

de Blank: Despite Google's best efforts, every single asserted claim was found valid and every Google product identified in the complaint was found to infringe. It was a total victory. So, every Google product that infringes the asserted Sonos patents will be excluded. This includes audio players, such as Google's Nest Audio and Nest Mini, and controllers, such as Google's Pixel devices with the Google Home app.

After spending close to two years fighting tooth and nail

to continue to infringe, Google now suggests that Sonos' patents are no big deal, and Google can design around them. Of course, if Google eliminates the patented features, it will not infringe these five patents. But we're already seeing a consumer backlash against Google's proposed redesigns. And, Sonos has a deep portfolio of well over a thousand patents, many of which may be infringed by these new designs.

Do you have any concerns about a potential presidential veto, given the supply chain issues currently affecting the smartphone and electronics industries?

Sullivan: I don't mean to be glib, but, no, we aren't worried that President Biden will step in and say that Google's continued infringement is somehow in the public interest. The supply chain issues, which impact Sonos, as well as Google, are irrelevant. At the end of the day, there is simply no reason that Google should get a free pass to continue to infringe Sonos' inventions.

How does this ITC litigation fit into the broader patent conflict between Sonos and Google, and the company's overall strategy of asserting its patents against larger technology companies?

Sullivan: We had hoped that the ITC's overwhelming decision would discourage Google's continued infringement. Unfortunately, it hasn't, and litigation has ensued in different courts and even different countries. But courts around the world have been vindicating Sonos' rights, and we are confident that regardless of the forum or venue we will prove that Google has improperly used key and critical technology invented by Sonos. We will not stop until Google ceases to infringe. This is the first – not last – step in Sonos' efforts to get the recognition to which it's entitled. Sonos essentially invented the field of wireless multiroom audio, and if other companies want to offer competing products, they must either invent their own technology or license Sonos'. This result shows that even one of the world's largest technology companies cannot simply copy the inventions of a smaller competitor.

What will you remember most about achieving this result for Sonos?

Roberts: This has been one of the highlights of my career. As attorneys, we cannot hope for anything more than the opportunity to help a client that has been truly wronged. In this case, everything lined up. Sonos created this product and was suffering because Google was using its technology. The team was exceptional at every level – the attorneys, paralegals, experts, and staff all contributed. The ITC is a particularly challenging forum, but, at the end of the day, we were able to prove that every single patent claim was valid and that Google had infringed Sonos' key technology. And, we accomplished all of this in the midst of a pandemic that prevented things as simple as getting everyone together to make sure we were on the same page. It is a tribute to everyone that helped us reach this result, and I am proud to have led such a talented team.