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PERSPECTIVE

Course Correction

Lowenstein & Weatherwax founders didn't know where inter partes review would take them.

By Shane Nelson

Special to the Daily Journal

Patent litigator Nathan N. Lowenstein has a good understanding of just how confusing his area of legal practice can be.

"I don't have a technical degree," he said, noting he knew very little about patent law before he started practicing in the field. "And I know exactly how complicated this stuff is because I've been in the position where someone's showing you a circuit diagram, and it looks like gobbledygook."

The Lowenstein & Weatherwax LLP co-founder said he sees that as a strength, however, because he has a good feel for what a reasonably intelligent person will likely understand and what they won't. That comes in especially handy, he said, in the work his firm frequently does representing patent holders in inter partes review, or IPR, matters before the Patent Trial and Appeal Board.

"If you can take something that's very complicated and explain it in a straightforward, understandable, clear way that inexorably leads to the conclusion you'd like the board to reach, that's a real advantage," Lowenstein said. "And it's perhaps more scarce than you might think."

In 2012, Lowenstein and partner Kenneth J. Weatherwax left Irell & Manella LLP to hang their own shingle, hoping to offer clients "big law quality work at less than big law prices," according to Weatherwax.

"But there was no such thing as inter partes review when we



Justin L. Stewart / Los Angeles Daily Journal

From left, Nate Lowenstein and Kenneth Weatherwax in their office in Los Angeles.

founded the firm," Weatherwax noted.

Created as part of the America Invents Act — signed by President Barack Obama in 2011 — inter partes review allows any party, including accused infringers, to ask the Patent Trial and Appeal Board to reconsider the validity of any patent.

"We knew they were coming, but it was a great unknown," Lowenstein recalled. "It wasn't something we were really planning to specialize in, but over time

we developed a very strong reputation in the space."

Lowenstein said his Los Angeles-based patent firm has handled around 300 inter partes reviews over the last decade.

"The other area that we've quite naturally grown into is Federal Circuit appeals arising from these litigations," Lowenstein added, noting the firm has now handled about 40 of those. "We have a quite good record in those appeals as well. I don't actually

think we've lost any."

The patent boutique enjoyed another victory last week when the U.S. Supreme Court denied a petition by Intel Corp., challenging a U.S. Court of Appeals for the Federal Circuit decision in favor of Lowenstein & Weatherwax's client, VLSI Technology LLC. *Intel Corp. v. VLSI Technology LLC et al.*, 21-888 (U.S. Sup. Ct., filed Dec. 15, 2021).

Lowenstein & Weatherwax has represented VLSI Technology in

several matters against Intel, and Lowenstein said his 11-attorney team frequently squares off against Apple, Google or Microsoft and the big law firms those corporations hire.

"I certainly don't feel that we are outmatched," Lowenstein said. "I feel we have a lot of expertise in this area, and we really know what we're doing. ... The ethos of the firm is it doesn't matter who you're litigating against. You're supposed to out brief that person. You're supposed to out argue them. You're supposed to out think them."

Unlike Lowenstein, Weatherwax does have a technical degree, and he worked for six years as an energy engineer before deciding to pursue a legal career and completing his degree at UC Davis School of Law in 2001.

"You can't fool nature," Weatherwax said. "What I liked about engineer-

ing was: It was real. You cannot fake being good at science because science is what it is."

Lowenstein, who graduated from UCLA School of Law in 2005, insisted as did Weatherwax, that their decision to strike out together has been successful, in part, because they possess complementary strengths as attorneys. Lowenstein said one example is his partner has "an encyclopedic knowledge of patent law."

"He's one of these odd eccentrics who reads cases for fun," Lowenstein said with a laugh. "I'm not that at all. What I think I'm very good at is sizing something up very quickly and presenting something clearly, concisely, persuasively. ... He's a bit more technically minded, a little bit more mindful of the law, whereas I'm a little bit more directed towards the big picture."

Weatherwax agreed with that

assessment, noting part of what he enjoys so much about the law is how it differs from engineering and science.

"Law is about persuasion in a way that engineering is not. You cannot persuade a building not to fall down," Weatherwax said. "You still have to know what the facts are in order to succeed. ... What we do is marshal the facts. You don't win by pounding the tables, or you're not going to win very often. You win by showing why you should win."

Redwood Shores trial attorney Matthew D. Powers has worked with Lowenstein & Weatherwax on inter partes reviews over the years, and he said the patent boutique and its founders are very good at what they do.

"Doing an IPR requires a set of skills, not all of which are often found in the same people," Powers said. "Those include strategic

skills, execution skills, listening skills and judgment. And I think they have all of that in spades."

Powers also said Lowenstein & Weatherwax demonstrates how law firms are evolving.

"They are an example of what the modern law firm is becoming, which is more nimble, more client-focused, smaller, agile, flexible," Powers said, things that the large, historic law firms just aren't."

Lowenstein was said things haven't necessarily worked out for the boutique precisely as he anticipated, but its success has been a gratifying ride.

"It was not a foregone conclusion that we would do what we're doing or we would get any clients," he explained. "It was a bit of a risky move. ... And it may not have been the most likely outcome of the many ways this could have gone, but I'm very happy it went the way it did."