

# UB Law Forum

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Volume 29  
Number 2 *Spring 2015*

Article 27

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4-1-2015

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UB Law Forum

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### Recommended Citation

UB Law Forum (2015) "A Satisfying Win, All in the Family," *UB Law Forum*: Vol. 29 : No. 2 , Article 27.  
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# A satisfying win, all in the family



The parallel lines of two brothers' careers in patent and intellectual property law converged at last – in a most unusual case.

Until recently, **Paul Korniczky '86** and **Stephen Korniczky '87** had never worked together on a case. That changed when Stephen Korniczky, a partner in the Del Mar, Calif., office of Sheppard Mullin, was asked to represent cellphone manufacturer HTC Corp. against a patent infringement claim. Because the suit was brought in federal district court in Illinois, he needed a local co-counsel. Enter Paul Korniczky, a partner at Leydig, Voit & Mayer in Chicago.

The case was an extraordinary one. The plaintiff, Intellect Wireless, sued several of the major players in the telecom industry, claiming they infringed two patents on a cellphone that transmitted photos. Several defendants settled for as much as \$23 million, but HTC chose to fight the suit.

Quite successfully, as it turned out. As Paul Korniczky tells it: "We were able to show that the inventor had lied to the patent office. To get his patent, he had filed a false declaration claiming he made a picture phone first. He never made a picture phone. The judge found that he lied, and he invalidated the patent."

After the judge's decision, the U.S. Patent Office launched its own investigation. Among the documents it turned up was an email exchange between the inventor and his patent attorney in which the inventor admitted that he never made a prototype of the picture phone. In another email, the inventor's litigation attorney told the inventor that the plaintiff was not saying that it made a working prototype, but it was trying to "convey an impression that we're unsure." "We were able to show that the lawyers knew the inventor was lying and proceeded with this lawsuit anyway," says Paul Korniczky, a member of the Law School's Dean's Advisory Council.

In light of the inventor's and lawyers' conduct, the judge noted that this was



Paul Korniczky '86, above, and brother Stephen Korniczky '87, right



*"Any trial victory is satisfying for you and your client, but it's even more satisfying when you can share it with your brother."*  
– Stephen Korniczky '87

an exceptional case. He ruled that the attorney fees in the case, which spanned six years, must be paid by the plaintiff – and that the plaintiff's attorneys were personally liable as well. The fee award was initially \$4.7 million, but the judge ordered the parties to negotiate a final figure, which may be as much as \$4.1 million.

The patent law bar nationwide is a small one, and the number of patent litigators is even smaller. "We represent some really big companies," Paul Korniczky says of himself and his brother. "People know us, but they get us confused sometimes."

As young men, the brothers trained together in judo and wrestling, and sometimes competed with each other, but this was the first case on which they had worked together as IP lawyers. "It is a lot better working with my brother than competing against him," says Stephen Korniczky.

"The standards for bringing an inequitable conduct claim were recently tightened by the Court of Appeals for the Federal Circuit, and there was concern in the patent bar that the in-

equitable conduct defense was dead," Stephen Korniczky says. "This case showed you can still win an inequitable conduct case if you have the right facts. There had been a lot of talk about passing legislation to curb frivolous litigation that is being brought by non-practicing entities and patent trolls. One side of the discussion says district courts already have the tools to curb frivolous lawsuits that are improperly brought, and the court here wasn't afraid to use them."

The brothers have worked in tandem on a couple of other projects. As students at SUNY Buffalo Law School, they lobbied former Dean Tom Headrick to institute an IP course, covering patents, trademarks and copyrights in a single course. As alumni, they have funded a scholarship for current students looking to practice IP law.

Of the HTC case, Stephen Korniczky says: "Any trial victory is satisfying for you and your client, but it's even more satisfying when you can share it with your brother. And there were times when I was able to save the client money by staying at Paul's house instead of a hotel."