

PB Litigation SITREP¹

Welcome to **PB Litigation SITREP**, Pierce Bainbridge Beck Price & Hecht LLP's monthly newsletter bringing you the latest news and insights on high-profile litigation and legal practice innovations that are rapidly changing the marketplace for lawyers and clients alike.

MISSION CRITICAL: TECHNOLOGY

Artificial Intelligence: A Quantum Leap

Big Law's playing field is leveling due to the advent of Artificial Intelligence, which has rendered the old way of litigating and winning effectively obsolete. Thanks to AI, clients will no longer depend on hundreds of associates billing thousands of hours for legal research or document review. In the past, large, deep-pocketed entities have often prevailed by fighting wars of expensive attrition that their adversaries cannot sustain, regardless of the legal merits of the underlying disputes. But now start-up and leanly run ventures need no longer hesitate to seek vindication of their intellectual property rights due to lack of financial resources – AI eliminates that advantage and democratizes the litigation battlefield. Pierce Bainbridge knows that computers will never replace top-notch talent, but it also knows that the best lawyers in the world use every tool available to them to secure every possible advantage in the courtroom.

For this reason, we have partnered with a cutting-edge AI system that we want you to know about: **ROSS Intelligence**. ROSS uses natural language processing and machine learning to identify relevant case law, statutes and regulations. It delivers comprehensive legal research results – as well as information from unpublished sources – instantly. Our partnership with ROSS also means that cutting-edge features will emerge from the direct experiences of Pierce Bainbridge lawyers: together we are creating a de facto laboratory of litigation support tools and sincreasing efficiency in the process.

Machine learning expedites and increase the effectiveness of lawyers' legal research time and obviates the need for lawyers to spend endless time on legacy systems that were built from outdated technology, saving significant billable hours.

Pierce Bainbridge was founded on the principle of passing this kind of efficiency on to our clients. We provide the same high-quality service available from other major law firms but at a lower cost to our clients.

For more info on ROSS Intelligence and how it is revolutionizing the legal research world, check out their feature-loaded website at <https://rossintelligence.com> or reach out to your Pierce Bainbridge contact.

¹Military acronym for Situation Report.



AREAS OF OPERATION: PATENT

In the wake of the Supreme Court's decision in *Cuozzo Speed Technologies, LLC v. Lee*, 579 U.S. ____ (2016), which upheld the Patent Trial and Appeal Board's ("PTAB") practice of applying the "broadest reasonable interpretation" during Inter Partes Review ("IPR"), the PTAB announced a proposed rule in May 2018 that would apply the same standard to claim construction in IPR that is followed at the district court. Some of the goals of the proposed rule were "to ensure consistency in claim construction between the PTAB and proceedings in district court or at the ITC, and to increase judicial efficiency." The final rule became effective as of November 13, 2018, and applies to all petitions for IPR, post-grant review ("PGR"), and the transitional program for covered business method patents ("CBM"), filed on or after November 13, 2018.

There has been concern expressed that the adoption of what many view as a narrower claim construction standard may lead to a shift in the number of patents that are invalidated at the PTAB. In practice, however, it is unclear how frequently the current claim construction standard actually differs from the broadest reasonable interpretation standard. Patent practitioners will be closely monitoring any trends that emerge from the application of this new claim construction standard.

² See <https://www.uspto.gov/about-us/news-updates/uspto-announces-notice-proposed-rulemaking-claim-construction-standard-used>

³ See <https://www.federalregister.gov/documents/2018/10/11/2018-22006/changes-to-the-claim-construction-standard-for-interpreting-claims-in-trial-proceedings-before-the>

Pierce Bainbridge deploys innovative technology and applies disruptive organizational principles to obtain the best litigation results for our clients. With offices in Los Angeles, New York, and Washington, DC, which are staffed by some of the market's most aggressive and talented litigators, and the ability to deploy legal talent to every corner of the world at a moment's notice, we have adopted the most current Digital Age concepts to win in both the courtroom and the boardroom.

DUST-OFF: LITIGATION

600 lb Gorillas Prevails

In *600 lb Gorillas Inc. v. Fieldbrook Foods Corp. et al.*, the plaintiff **won** a three-week-long jury trial in the United States District Court for the District of Massachusetts. Plaintiff, a novelty dessert company, called 600 lb Gorillas, was founded and owned by Chris and Paula White. It was truly a David versus Goliath contest in which the jury accepted the couple's contention that their supplier, Mr. Cookie Face, which was a subsidiary of industry giant Fieldbrook Foods, had destroyed their once-promising business by secretly altering a key recipe and watering down the product. The jury rejected Mr. Cookie Face's alternative explanation that Gorillas had failed due to market competition.



The case was all about the value of a brand, especially brands predicated on quality. In Gorillas' case, the brand was built, in significant part, with a guarantee of high-quality, all-natural ingredients. Its biggest product was its chocolate chip cookie and vanilla bean ice cream sandwich containing 14% butterfat.

In 2011, Gorillas entered a verbal contract with Mister Cookie Face to produce the sandwiches; the agreement expressly included the 14% specification. Mister Cookie Face was itself a family-owned business at the time. But later that year, Fieldbrook Foods Corp, which in turn is owned by Arbor Investments, acquired Mister Cookie Face. By 2013, the new ownership of Mister Cookie Face was producing a product that simply failed to comply with the original quality assurance agreement, including the 14% specification, as tests by several independent laboratories confirmed. Gorillas began receiving a flurry of complaints from customers who said the ice cream was "watery" and "too icy." Additionally, production by Mister Cookie Face was neither on schedule nor in sufficient volume to meet Gorilla's demand or keep store shelves stocked.

Gorillas brought claims for breach of contract, breach of the duty of good faith and fair dealing, negligent misrepresentation, as well as unfair/deceptive trade practice claims under Massachusetts's consumer protection statute, Mass. G. L. Ch. 93A. Mister Cookie Face was found liable for breach of contract, misrepresentation, and breach of the duty of good faith and fair dealing. The jury entered a net award in favor of Plaintiff in the amount of \$455,000.

Pierce Bainbridge attorneys John Pierce, Andrew Lorin, Michael Pomerantz, Douglas Curran, and Conor McDonough collaborated on this victory, assisted by head paralegal Grace Chang and litigation fellow Andrew Cometa.

600 lb Gorillas Inc. v. Fieldbrook Foods Corp. sends a welcome message at various levels. It was a demonstration of what the new efficiencies of technology and seamless teamwork can deliver. The case also sent a message about the importance of quality in today's marketplace – that customer care can be fought for and successfully defended, that family-owned businesses can prevail against impersonal and much wealthier corporate interests, and that even a verbal contract can be enforced if the cause is just and the advocacy compelling.

STRIKEFORCE: LATERAL HIRES

Craig Bolton (Partner): Corporate counselor extraordinaire Craig focuses on complex commercial and intellectual property disputes. A former Wilson Sonsini litigator, he has represented corporations at every phase of their life cycles, from start-ups to Fortune 100 companies. He has been recognized each of the past four years by Super Lawyers as a New York Rising Star.

Patrick Bradford (Partner): Government guru Patrick joined us most recently from the New York City Council where he was Chief Litigation & Ethics Council. Prior to that, he was General Counsel of the New York State Park System (under appointment by Governor Cuomo) and a partner at Davis Polk. His specialty areas include antitrust, securities enforcement, corporate investigations, and FCPA matters.

Tillman Breckenridge (Partner): Appellate animal Tillman joins us from Bailey & Glasser. His previous firms include Reed Smith, Fulbright & Jaworski, and a boutique appellate firm. He is a DC SuperLawyer, a member of Virginia's Legal Elite, and was named to Savoy Magazine's Most Influence Black Lawyers in America. He is an adjunct professor at William & Mary Law where he directs the Appellate & Supreme Court Clinic.

Krissie Darr (Chief Marketing Officer and Of Counsel): Business development and marketing master and white-collar whiz, Krissie joined us from Linklaters. Before that, she practiced at another boutique as well as at Willkie Farr & Gallagher and Steptoe & Johnson.

Daniel Dubin (Associate): Former district court clerk-master Dan represents entrepreneurs and Fortune 500 across California and beyond.

Shira Feldman (Associate): EDNY eagle Shira joins us most recently from Judge Irizarry's chambers.

Michael Hatley (Associate): Former Fulbright-er Michael joined from Gilbert where he litigated high-stakes insurance disputes.

Jeff Newton (Partner): Lethal litigator Jeff previously practiced at Paul Weiss and was a former law clerk on the Second Circuit and in the SDNY. Jeff has experience on both the plaintiff and defense side in securities class actions, unfair insurance practice cases, reinsurance coverage matters, white collar, and regulatory defense and investigations, and civil rights actions.

John Polizzotto (Chief Financial Officer and Chief Operating Officer): Finance and operations overlord John joins us most recently from Seeger Weiss and brings 30 years of experience leading law firms and institutions.

Vince Sherman (Of Counsel): Internal investigator and complex commercialist Vince's stints include Freshfields, Sullivan & Cromwell, the Securities & Exchange Commission, and the U.S. Air Force.

Minyao Wang (Of Counsel): Commercial counsel, China chief, and trial trailblazer Minyao joins us most recently from Robins Kaplan. Prior to that, he spent five years at Quinn Emanuel.

We'll keep you updated in the next issue of PB Litigation SITREP.