

Litigator of the Week: Stephen Korniczky of Sheppard Mullin

By **Scott Flaherty**

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Sheppard, Mullin, Richter & Hampton's Stephen Korniczky didn't just soundly defeat a patent infringement lawsuit against his client, HTC Corp. After six years of litigation—and some help from his big brother—Korniczky turned the tables so thoroughly on his opponent's lawyers that they're now on the hook for as much as \$4.7 million in sanctions.

U.S. District Judge William Hart in Chicago ruled Jan. 8 that attorneys at the prominent IP firm Niro, Haller & Niro, including name partner Raymond Niro, are jointly and personally liable for attorney fees and costs assessed against their client, Intellect Wireless Inc.

The decision comes more than four years after Korniczky and his team uncovered evidence that Intellect's CEO, Daniel Henderson, misled the U.S. Patent and Trademark Office about the company's patents for displaying caller ID and other images on wireless phones. And it caps almost a year of wrangling over how much, if anything, Niro and others at his firm knew about Henderson's conduct before the litigation began.

Hart invalidated Intellect's patents in 2012, finding that Henderson submitted a number of inaccurate declarations to the PTO, including statements that he'd built and demonstrated a working prototype picture phone in the early 1990s. The U.S. Court of Appeals for the Federal Circuit affirmed that ruling in 2013.

In his decision last week, Hart held that Raymond Niro and three of his current and former partners and associates are jointly and personally liable, along with Intellect, for HTC's attorney fees and costs. The judge still hasn't ruled exactly how much they owe; HTC is seeking \$4.7 million plus some additional fees, while Niro has argued for a lower tab of \$2.3 million or less.

The sanctions are the latest twist in a case that's been full of them. In addition to forming a basis for HTC's inequitable conduct defense and the fee dispute, Sheppard Mullin's accusations about Henderson's conduct led to the PTO's suspension of the Boston-based lawyer Robert Tendler, who handled the prosecution of Henderson's patents.

Korniczky has been at the helm for HTC throughout, with partner Martin Bader serving as second chair. Korniczky also had the chance to team up for the first time in his career with his brother, Paul Korniczky, a Leydig, Voit & Meyer partner who served as local counsel with others from that firm.

Paul Korniczky is older than his brother by one year. Earlier in their lives, the pair sometimes squared off in the same weight class in judo

tournaments, with the elder Korniczky once beating his younger brother on his way to the finals of a national competition. But the two put aside their competitive natures on the HTC case.



Stephen Korniczky

"This is the first time I've had the opportunity to work on a major litigation with my brother," Sheppard Mullin's Korniczky said. "It was a nice opportunity to actually fight on the same side as my brother rather than against him."

Intellect Wireless first sued HTC in 2009, as part of a spate of similar lawsuits against wireless companies. Several of Intellect's targets, including Apple Inc., Samsung Electronics Co., Verizon Communications Inc. and Kyocera Corp., agreed to licensing deals. (As Hart noted in last week's ruling, Intellect, by its own estimation, has taken in as much as \$23 million from settling infringement suits based on Henderson's caller ID and image patents.)

HTC opted to fight on, even before Korniczky and his team discovered compelling evidence that Henderson and his patent prosecutor engaged in inequitable conduct that could undermine the validity of the patents. By asserting the defense, HTC and Sheppard Mullin set themselves apart from nearly 20 other companies—and more than a dozen other law firms—that neglected to pursue an inequitable conduct argument.

"We identified this inequitable conduct defense in our initial proposal to represent HTC," Korniczky told us. "At the beginning, we saw that there was some smoke there, but we didn't know how big the fire was going to be until we got through discovery."

Beyond the victory for HTC, the strategy adopted by Korniczky in the case has paid off for Sheppard Mullin in other ways.

While the HTC case was pending, Intellect Wireless separately sued Hewlett-Packard Co., Palm Inc., Dell Inc. and Sharp Inc. over the same patents. HP and Palm eventually retained Sheppard Mullin in that case, something Korniczky attributes at least in part to the approach he and his team took in defending HTC. A Chicago federal judge has granted summary judgment of noninfringement in favor of HP and Palm, and Korniczky said there's a pending motion for attorney fees against Niro in that case as well.