



Trial Pros: Fish & Tsang's John van Loben Sels

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[John van Loben Sels](#) is a partner at [Fish & Tsang LLP](#) and manages the firm's Silicon Valley office. He specializes in intellectual property litigation and is responsible for prosecuting and defending patent infringement, trade secret, copyright and other IP matters in courts across the United States.

He has worked on patent infringement cases in both federal courts and at the [U.S. International Trade Commission](#) in Washington, D.C.



Q: What's the most interesting trial you've worked on and why?

A: My most interesting — and fun — trial involved the [Mentor Graphics](#) hostile takeover attempt of my client, QuickTurn Design Systems. The trial took place in Delaware Chancery Court approximately three months after Mentor Graphics launched John van Loben Sels its unsolicited bid to acquire my client. In the short time between the complaint's filing and the trial, I traveled throughout the United States taking and defending expedited discovery, learning the rules of corporate governance and shareholder value from two of the greatest lawyers who ever worked in the field — Jamie DiBoise and David Berger — while the three of us were at [Wilson Sonsini Goodrich & Rosati PC](#). We took the case to verdict, which we lost, and to an appeal to the Delaware Supreme Court, which we also lost. But our efforts were not in vain, because our efforts gave our client time to find the white knight it needed to fend off the unwanted Mentor Graphics advance. It was a great way to learn the importance of always keeping the client's big picture needs in the forefront of everything we do.

Q: What's the most unexpected or amusing thing you've experienced while working on a trial?

A: The most unexpected and amusing (only in retrospect) experience I had in trial did not concern a surprise witness or courtroom outburst; rather it was my own reaction to the spotlight during my first big patent infringement trial before the International Trade Commission. ITC cases are famous for their rapid pace and large trial teams, and my experience was no different. We went from the filing of the complaint to a full trial on the merits concerning two patents and a host of accused semiconductor devices in about nine months. I was serving as second chair for the respondent (defense) and my first big performance in front of a large cadre of experienced trial lawyers came on the first day of trial; the cross-examination of the petitioner's CEO. Though I was fully prepared, I was nervous, and had started wearing glasses just a few months before the trial. Three questions into my examination sweat started running into my eyes and fogging my new glasses so I could barely see my outline. Rather than freak out, I turned the removal of my glasses into a dramatic gesture, as if I had planned it all along. It solved the problem, and nobody on the team was the wiser. Until now.

Q: What does your trial prep routine consist of?

A: One of the most important lessons I've learned is that preparation for trial must begin at the start of the case. Whether representing a plaintiff or defendant, I try to understand the facts I will need to present in order to win, and which witnesses and documents I will have to muster to convince the jury of my fact-based arguments. Then when it comes time to actually prepare for trial, I know I'll have the ammunition I need. My primary focus before trial immediately is on the key cross-examinations that will be necessary. Of course, presenting my own client's witnesses and allowing them to tell their story is vital, but it is also more

controllable. There is nothing more effective at trial as securing a key admission from an adverse witness, or catching one in an obvious lie, so I spend a lot of my time reviewing the depositions of those key witnesses (as well as the exhibits I used at those depositions). By the time of trial, I have a tight and easily readable outline with my key points tied to the relevant prior testimony and documents.

Q: If you could give just one piece of advice to a lawyer on the eve of their first trial, what would it be?

A: Every judge is different, and has his or her preferences and pet peeves; these can run from the mundane to the most vital points. While you can learn many of these things by reviewing the court's standing orders, there is simply no substitute for experience. So if at all possible, attend a session or two of another's trial with your judge. Pay attention to how the court handles objections, proffers of evidence, the availability and use of audio/visual equipment and take notes. Develop a relationship with the clerk so that there will be no logistical surprises on the day of your trial and you can focus the substance of the presentation of your client's case.

Q: Name a trial attorney, outside your own firm, who has impressed you and tell us why.

A: Robert Van Nest of [Keker & Van Nest](#) put on a particularly impressive defense in the first [Oracle](#) v. [Google](#) trial in the Northern District of California. He was forceful with the court when necessary, without being disrespectful. Mr. Van Nest had ready grasp of key details and presented his case to the jury clearly, modestly and without condescension. He took the time to make a complex technical case understandable to the lay jury. It was an impressive display.