



'It's All About Personality': Co-Counsel for Netlist on Their 'High-Wire Act'

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Netlist's recent £445 million win against Micron was down to a collaboration honed over many years, finds Sarah Speight, who spoke to co-lead counsel Jennifer Truelove of McKool Smith and Jason Sheasby of Irell & Manella.

Semiconductor manufacturer [Netlist](#) was awarded a massive \$445 million recently, beating back chipmaker [Micron Technology](#) in a Texas court.

The [jury found](#) in their May 23 verdict that Micron had wilfully infringed two of its computer memory patents.

[CK Hong](#), Netlist's chief executive officer, said it was "the second time in just over a year that a jury has found wilful infringement of our patents by a global semiconductor manufacturer", referring to a \$303 million patent infringement verdict against [Samsung](#) in April 2023.

Part of the reason behind this success was, according to Netlist's dual-team counsel, a refined "high-wire act" between co-leads [Jennifer Truelove](#), principal at McKool Smith; and [Jason Sheasby](#), a partner at Irell & Manella. All backed by an "amazing group of attorneys" doing the heavy lifting.

Truelove and Sheasby started working together pre-COVID-19 and this was their sixth trial as a duo.

They talk to **WIPR** about how they won for their client in this most recent case, including the benefits of the "fascinating" *voir dire* system in Texas, and tips for working with another firm on the same side.

WIPR: What was it about your dual-team strategy that led to this success for Netlist, hot on the tails of the win against Samsung?

Jennifer Truelove: What I bring to the table is my knowledge of this venue, of the East Texas area, [and my] connections here. I live here, I work here, and practise primarily in this court. So that is a plus, obviously.

And Jason is just an incredible strategist in general. He is probably one of the smartest attorneys that I've ever come across, not to mention a very, very capable trial attorney. He sees the case from all areas. Sometimes you try a case with someone who's just really good on the technical side, sometimes you try a case with somebody that doesn't get the technical side, but they appreciate maybe damages or just understand the liability.

Jason sees the whole picture, and is able to map out a complete trial strategy. Then I bring the local flavour to the case. Over the last several years it has been a really good collaboration.

Jason Sheasby: There's so much chaff out there, so much noise. And Jennifer will come in, and force the team to focus, focus, focus on what's going to be most impactful and meaningful to the jury. One of her great skills is the skill of winnowing.

What was the biggest challenge for your team in ensuring Netlist's win in court against Micron, and how did you overcome it?

JS: The process in East Texas is fascinating, because there's a *voir dire*, which is 30 minutes in which Jennifer gets to speak to the jury, and she can't be an advocate. But she can begin to expose them to the values and the concepts that are going to be most important in the case.

That 30 minutes is extremely crucial. Jennifer approaches it in a lot [more] different ways than I've seen almost any other attorney approach it, which is that she's looking to begin to tell our story. She's not just looking to get data points for making a jury selection; her ability to begin to tell our story in that first 30 minutes before it even happens is absolutely crucial.

JT: We do a really good job, like I said, of putting together a strategy, and it doesn't just start with opening statements and continue on through the witnesses, and then closing. It begins with *voir dire*, and that can be, I think, the most complicated part of the case.

When you're putting on your witnesses, you pretty much know what the evidence is, what they're going to say [and] you can put together your open, your close. Cross-examination can be difficult, if you get a tough witness although Jason did really well with that as well.

With *voir dire* you have your strategy, but you don't know which direction it's going to go and what folks are going to say. So it's really important to understand the themes that you're trying to drive home, and how you can get them across to the prospective jurors in a way that they'll understand.

And then you've got to keep them tuned in to the themes that you initially laid out. That's where Jason comes in and does a really great job, telling that story and opening, and then just consistently [working] hard to carry it out with our witnesses throughout the trial.

It doesn't matter how good your evidence is, it doesn't matter whether or not you should prevail. If you don't have the jury engaged in and onboard with your story then it really doesn't matter what you show up with.

JS: It's a high-wire act, right? Jennifer can't be an advocate in the *voir dire* overtly, because she'll get called out by the judge. And so it's really delicate what she's able to do.

JT: When we started working together, there was more noise, I think, with the leading trial attorneys, and opinions on how it should go. And over the course of at least the last three trials, it's just been primarily Jason and I, collaborating from the lead position, and obviously, an amazing group of attorneys at Irell and at McKool that are doing a lot of the heavy lifting and hard work.

We just seem to gel and get along and appreciate each other's strengths and weaknesses. So where one of us needs to pick up the slack we do, and are able to pull together. Like Jason says, it's a pretty amazing high-wire act for trial.

How do you work as co-counsel between two firms on the same side? Do you have any tips for other practitioners doing the same?

JT: A lot of it is about personality, right? This game that we play every day has large personalities in it. If you're going to be a successful trial lawyer, you've got to have that. So it's [about] listening and doing what's right for the case. But, at the end of the day, I think we're just lucky—not everyone finds it this easy to collaborate.

With other firms, it can be more difficult [because the] cultures are different. Like I said, personalities can be really big. So if you're fortunate enough, you can set that aside and get the opportunity to work with a really good trial lawyer from another firm, and focus on being collaborative instead of being protective of your space or the client.

Ultimately, we want to win, of course, and we want to do that for our client, but we want to do what's best for the client. So we set the ego side of things [aside] and just focus on getting the work done in the best possible way.

Netlist was awarded \$425 million for Micron's infringement of US patent 7,619,912; and \$20 million for US patent 11,093,417. Why did the majority of the award represent the '912 patent?

JS: [Micron are] not telling the full story, which is that the '912 patent was issued a number of years ago, [while] the '417 patent was issued recently. So the '912 patent is no more or less valuable in the '417—it's just been pending for longer.

Micron says it will appeal the jury's verdict and "defend the USPTO's ruling that the '912 patent is invalid." What is your response to that?

JS: It's an interesting story because Micron only told half of it, which is that one panel of the [Patent Trial and Appeal Board](#) [PTAB] approved [the '912 patent] as valid, and that was affirmed by the Federal Circuit.

Then another panel has obviously taken a different opinion. And so there's going to be a reckoning at the Federal Circuit as to how to handle the USPTO and its decision to go in the exact opposite direction as it previously went after a decade of analysis. So it's a bit of a bigger story that I think Micron has made it out to be.

JT: I think that's right. Obviously, I think that's the knee-jerk reaction that you're going to get from a defendant when they get a jury verdict returned, like they did. [Micron] knew full well that things aren't over at the PTAB.

I can't think of any case where somebody has been hit for hundreds of millions of dollars, where they don't come out saying they're going to appeal it. So that wasn't surprising.

If Micron appeals, are you confident that it will be an easy conclusion?

JS: Nothing is an easy conclusion in this business! I think it's in God's hands.

JT: Obviously, we're going to continue to fight. We think we've got good patents. We think Netlist as a company is a true innovator in this space. And hopefully, at the end of the day, that's what will prevail—this recognition for them of their hard work, their innovation, which has helped everybody at the end of the day—you, me, everyone.