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Appellate Lawyer of the Week: Daniel Ravicher

by Marcia Coyle.

November 6, 2012 [National Law Journal](#) - Daniel Ravicher has been called a Robin Hood and a gadfly. He is happy to claim both. And whatever the title, he is a man with a mission.

Ravicher is executive director of the Public Patent Foundation (PubPat), a nonprofit legal services organization that fights bad patents and bad patent policies.

"As a nonprofit, we look to be a voice in the patent system for the general public who, in most circumstances, doesn't understand how the patent system relates to them," he said. "We speak up for consumers, researchers, people too poor to have access to technologies, part of the reason is the existence of undeserved patents or unsound patent policies."

So why has Ravicher filed an amicus brief in a trademark case in the U.S. Supreme Court? Already LLC ("Yums") v. Nike, with arguments on Nov. 7, arose out of an infringement lawsuit by Nike against Yums and a particular shoe design. Yums counter-sued, claiming Nike's trademark was invalid. Shortly afterwards, Nike dropped its lawsuit and promised it would not assert its trademark against any of Yums' current or prior footwear. Yums, however, wanted to pursue its own claim against Nike. The district court held it no longer had jurisdiction over Yums' claims, and the U.S. Court of Appeals for the Federal Circuit affirmed.

In the Supreme Court, the justices are asked whether a district court loses jurisdiction after a trademark holder ends its infringement action and promises not to assert its trademark against the other party's existing commercial activities. The case, according to some patent experts, has serious implications for patent law.

And that is why Ravicher is in the case supporting Yums. "The ability to challenge bogus patents in the courts is critical to empowering the public to defend itself from what I call a completely out-of-control, rubber stamp patent office that is 100 percent captured by private interests who seek underserved monopolies from the people," said Ravicher. "There aren't a lot of ways for people to defend themselves from illegal patents. Nike is about whether the owner of a bogus intellectual property right can pick and choose when to assert that right and deny people the right to challenge it."

A military brat who graduated from college with a degree in materials science, Ravicher went on to law school at the University of Virginia where he edited the law schools' journal on law and technology. With his engineering and law background, he started practicing law with the now defunct Brobeck Phelger & Harrison doing technology transactions. The September 11 terrorist attacks, he said, reignited a desire to do public interest work. (continued on page 2)

"I knew there was a need for this entity, a nonprofit," he recalled. "When we started the Foundation, 'we' was just me. I started with the Echoing Green Foundation, an organization that gives start-up money to people who want to do social work. Then I started teaching at Cardozo School of Law and using students to help on projects. We got funding from the Rockefeller Foundation and the Open Society. We moved into adding on a litigation phase."

Ravicher is co-counsel with the ACLU on the Myriad Genetics breast cancer litigation. "We are a good partnership," he said. "They didn't have patent expertise and we didn't have litigation strength."

His foundation does about two-thirds litigation and one-third counseling and other policy work. It is handling false marking litigation and has pending a case against Monsanto for its genetically modified seeds.

"We are not an academic organization," said Ravicher. "We really try to change the lives of clients we represent specifically or the public in general. Our donors don't want us to do pyrrhic victories or just give a good college try. Our supporters give us money to make a change in the lives in the people we represent."

While the Supreme Court's popularity has taken a hit since its ruling in last term's healthcare challenge, Ravicher is a big fan.

"The Federal Circuit is very divided at the moment," he said. "There are judges with a broad perspective on life and government and those with special interests. The only sane actor I see in the entire patent system at the moment is the Supreme Court. Congress is just in the pockets of corporate stakeholders. Obama's patent reform exacerbated the problem."

"Thank god we have the Supreme Court. I think they have it out for judicial activism. The common theme is the Federal Circuit is being as judicial activist as the 9th Circuit has been."

Ravicher calls himself "half academic, half pragmatist" and he is content with that balance.

"I don't know that I'd want to be a full-time academic," he said. "But part of my work is to share my ideas with others, especially young members of the community. I don't like students being indoctrinated in this pro-government position that a lot of patent law professors have. I enjoy the academic environment, but I like having feet in both worlds."

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