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Old lawyer refines old tricks

Patent law holds an enduring fascination for Donald H. Zarley

BY BETH DALBEY

Speaking above the din of power tools in Suite 200 of Capital Square, Des Moines patent attorney Donald H. Zarley was as eager as a young law school graduate who had just passed the bar exam.

Never mind that Zarley is 72, an age at which many attorneys yearning for a simpler life would have merely retired. "I have a great fascination for patent law and the clients I represent," he said. "My greatest joy is continuing to do that type of work, and it's not something I'm willing to walk away from and spend the rest of my life playing golf and tennis, as attractive as that may be."

For Zarley, a simpler life means shedding the trappings of a large law firm, one he started two years after his graduation from Drake University Law School in 1954. Partners were added over the years, and the practice eventually became known as Zarley, McKee, Thomte, Voorhees and Sease. But, disenchanted with the direction the firm of 18 attorneys was taking, Zarley and his son Tim, also an attorney specializing in intellectual property matters, left in December. Though their office is still in various stages of construction, the father-and-son team hung out the Zarley Law Firm shingle on Jan. 1.

Zarley, described by those who know him as a consummate gentleman, offers only a scant explanation of the split. "I felt I needed an opportunity to change the focus of the law firm to what I remember it to be in years past," he said. "So I set out anew, as I did in 1956."

His boiler-plate philosophy works for all clients, large and small, corporate and individual: "Do a quality job, timely and quickly. That's what folks expect. Do it economically, which is more of a challenge, but it really should be in every lawyer's repertoire.

"The trust and confidence a lawyer has with clients is most important, and a lot is derived through the way services are delivered — the art of being truthful and upfront with clients, the art of being friendly with folks and letting them be comfortable with an area of law that mystifies even judges and lawyers."

Putting that philosophy into practice, "it should not be the luxury of any lawyer to tell clients what they want to hear," Zarley said. "The economic interest of the inventor is always immediately in the forefront of my mind. Nobody wants to expend a lot of a money on a patent application that has no future."

Clients like Townsend Engineering Co. and a host of others made the move with Zarley, as illustrated by the mountains of file boxes stacked around the new office. Al Larson, Townsend's vice president and treasurer, has worked with Zarley for 28 years. He said the decision to keep Zarley as the company's patent attorney was easy.

"He's a straight shooter. There are no games or politics getting played. He doesn't tell you what you want to hear; he tells you the way it is. He's very smart, very straightforward and he doesn't beat around the bush. There's no ego involved."

Besides possessing these sterling personal qualities, Zarley "can think like an engineer and illustrate what an inventor is trying to accomplish," Larson said.

Zarley himself tells the story of a brilliant Iowa



Donald H. Zarley brought a truckload of files — and business — with him when he split from the firm he started in 1956 and rang in the new year with a new practice.

inventor with an eighth-grade education who was unable to describe his inventions or draw them. "But he could see it in his mind and go out to the workshop and build it," said Zarley, who also has a degree in engineering from Iowa State University and keeps his engineering license current with 30 hours of continuing education every two years. "He always tested my skills in cross examination. I asked questions, and while he was answering them, I was drawing. We knew he knew what he was doing."

The gracefully aging Zarley likes to tell people that his first client was John Quincy Adams. It raises a few eyebrows, but it's the truth. A Missouri hog farmer, Adams had invented a hog feeder house and had obtained a patent on a pitched-roof feeder that featured troughs for young pigs below a platform, and he asked Zarley to represent him in a patent infringement lawsuit he intended to file.

Higher-profile cases followed, including one in which he represented the 1951 BigTen trampoline champion, Bill Sorensen of Jefferson, who had returned to his hometown after his graduation from the University of Iowa to start a trampoline manufacturing company. Nissen Corp., a competitor in Cedar Rapids, sued Sorensen for trademark and patent infringement. Depositions were taken across the country and in France, and witnesses included movie stars and circus performers. A judge eventually sided with Zarley's client, ruling that "trampoline" was a generic term.

In another case, he defended Rocky Compiano of Des Moines, who had invented a bowling glove with a triangular cushion in the palm to protect the bowler's hand. "It tilted the ball so when it was released, it did not damage the fingers," Zarley said, still remembering the patent claim. The glove was endorsed in the 1970s by Don Carter, whom Zarley describes as "the Joe DiMaggio of the professional

bowling world, a suave, articulate, good-looking guy." The German manufacturer of an air-hammer work glove with a pad in the palm sued for patent infringement, and Zarley brought in Carter as an expert witness. During a noon recess, Carter went to a nearby bowling alley, wore the German glove as he bowled a few lanes and later testified it was inoperative as a bowling glove.

Those cases were tried — and won — in what Zarley describes as the "dark era" before 1982, when the new federal appellate court for patent and trademark issues removed such issues from the U.S. Circuit Court of Appeals. The pendulum began to swing the other way.

"There was an attitude in the circuit system, and maybe even in the Supreme Court, that to limit monopolies, patents should not be even permitted unless the inventions pushed back the frontiers of science," Zarley said. "Entrepreneurs were discouraged during that dark era. It was very discouraging."

Zarley was one of the early champions of change. In 1971, he wrote a Drake Law Review article advocating a new system that would put patent-dispute cases in the hands of juries and "take factual issues away from judges who were locked into a bad body of law."

"I won't take credit for breaking the dam," he said, "but I recognized jury trials were a good solution."

Though patent law may sound like dull and uninteresting work to some, Zarley wouldn't trade it for a docket full of high-profile criminal cases. A patent application includes a claim, a verbal description of what the invention is claimed to accomplish. "That's where the imagination and power of persuasion comes in," Zarley said. "You cannot make them so broad that they read on prior art, and the more complex the invention, the more crowded the prior art. Even if something is new, if it's close to a prior art, it is likely to get turned down."

For now, someone else will have to reserve the tee and court times. Zarley is having too much fun.

"Every patent is a challenge and I never take it lightly, and I've never filed a mundane patent application in my life," said Zarley, who practices primarily in Iowa, but also has clients in about 20 other states.

Zarley says he's assured of plenty of work in the future. "Patent applications are on the increase, not only here in Des Moines, but throughout the world," he said, pointing out that half of U.S. patent applications are made by foreign nationals. ■

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