

Daily Journal

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TOP TRADE SECRETS LAWYERS 2019

Jeffrey M. Fisher

Fisher, co-chair of Farella Braun + Martel's litigation department, has success in representing little guy clients against behemoths. He recently led a team that won a significant jury verdict and enhanced damages in trade secret litigation for client BladeRoom Group against Emerson Electric Co. And he successfully defended startup CNEX Labs Inc. against trade secret misappropriation claims by China's Huawei Technologies Co. Ltd.

"It's been a heck of a run," he said. "We seem to have found a niche in these David v. Goliath situations."

Following a three-week trial in June 2019, a Texas federal jury found for CNEX, clearing it of allegations of trade secret misappropriation, breach of contract and Computer Fraud and Abuse Act and civil RICO claims by smartphone giant Huawei.

"They started by accusing us, but we were able to turn the tables," Fisher said. "We got the documents we needed and were able to piece the puzzle together."

Huawei sought at least \$85.7 million in damages and rights to CNEX's memory control technology, including much of its patent portfolio. "We learned that our client had provided a test circuit board to a university in China under a non-disclosure agreement," Fisher said. "Then we found evidence of a separate agreement between the school and Huawei." CNEX's counterclaims emphasized Huawei's questionable behavior.

Fisher fit the parts together into a story for jurors. "Our client had suspicions, but if Huawei hadn't sued there'd have been no discovery and we wouldn't have found them out," he said. "One of our powerful arguments was that although Huawei knew about the

FIRM
Farella Braun + Martel LLP

CITY:
San Francisco

SPECIALTY:
Trade secrets, patent infringement

patents in question as far back as 2014 but did nothing. If someone robbed your house, you wouldn't sit around for three years—you'd call the police right away."

The jury deliberated less than a day in June 2019 before rejecting all Huawei's claims and finding in favor of CNEX. *Huawei Technologies Co. Ltd. v. CNEX Labs Inc.*, 4:17-cv-00893 (E.D. Tex., filed Dec. 28, 2017).

In March 2019, Fisher prevailed for client BladeRoom Group Ltd., a UK-based data center design company, in a suit alleging that Facebook Inc. together with Emerson stole BladeRoom's trade secrets and proprietary information in connection with the design and construction of a \$200 million data center in Lulea, Sweden. Facebook settled soon after trial began.

"Similar situation to CNEX," Fisher said. "Our client had a non-disclosure agreement with Emerson, but behind our backs they used our technology."

After deliberating less than a day, a San Francisco federal jury awarded BladeRoom \$30 million, which the trial judge doubled



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to \$60 million, added \$17 million in interest and awarded fees and costs to BladeRoom. *BladeRoom Group Ltd. v. Emerson Electric Co.*, 5:15-cv-01370 (N.D. Cal., filed March 23, 2015).

"We'll be seeking around \$20 million in fees and costs," Fisher said.

— John Roemer