



## GPM Litigation Spotlight: October 2016

October 26, 2016

On Wednesday, October 5, 2016, Loren Hansen argued in the United States Court of Appeals for the Federal Circuit on behalf of AmeriTrak, a client of Gray Plant Mooty. Six days later, the Federal Circuit affirmed a previous district court victory for GPM's client. This win at the Federal Circuit was the pinnacle of the case, but the base upon which it sat is perhaps more noteworthy.

AmeriTrak, a Minnesota company, was sued by a competitor in the U.S. District Court in Colorado. The competitor alleged that AmeriTrak infringed five patents, and that AmeriTrak had violated the Lanham Act. GPM's litigation team quickly identified that the expense of prolonged litigation could destroy AmeriTrak, even though the allegations themselves lacked merit. With that in mind, the team identified and successfully implemented a strategy to win as cost effectively as possible.

First, because the concept of patent claim construction is primarily a question of law, the District Court agreed with the GPM team that discovery should be stayed until the court determined the scope of the claims. This stay was critical in minimizing the expense to the client.

Second, based on a developing area of the law, GPM's litigators brought a Rule 12 motion on the pleadings, arguing that the competitor's patent claims were nothing more than abstract ideas that lacked an inventive concept. The court ultimately agreed with the GPM team and granted the motion.

Third, GPM's attorneys analyzed AmeriTrak's insurance policy and tendered the claim to its insurance company. The insurer denied coverage and filed a declaratory judgment suit in Minnesota state court. The GPM team responded with a counterclaim asking the court to compel the insurance company to defend the claim. On cross-summary judgment motions, the court agreed with AmeriTrak that a duty to defend was triggered by the Lanham Act claim.

When all was said and done, the competitor's patents were affirmed to be invalid, and AmeriTrak's insurer was found to have a duty to defend AmeriTrak. Dean Eyler, Richard Landon, and Loren represented AmeriTrak in the Colorado case and in the Federal Circuit. Rick Kubler and Richard represented AmeriTrak in the Minnesota declaratory judgment case. They were assisted by many.



Find out more about GPM's Litigation Practice Group.