

# MIKE HARTMANN

## Understanding the People Behind Patent Litigation

by Keith D. Picher

Patent law sometimes seems esoteric and impersonal. But behind many controversies are real, human stories, says H. Michael Hartmann, a partner at **Leydig Voit & Mayer Ltd.**

Hartmann, 60, relates the tale of Otto Wichterle, a professor who earned precious little from inventing the soft contact lens in the 1960s because he lived in Communist Czechoslovakia. Hartmann appears in a 2005 documentary about the scientist titled *Troublemaking Genius*.

Wichterle and the United States Patent Development Corporation retained C. Frederick Leydig, who mentored Hartmann. The first defendant, Bausch & Lomb, was the exclusive licensee, but it wanted to break the patents. It had been teetering financially before introducing its line of soft contacts. Bausch accepted the patents and settled after about a year.

In the trial of another infringer, Leydig had Hartmann examine some witnesses and handle legwork.

Hartmann says there was “a lot of jockeying by greedy business folks” who wanted to take advantage of Wichterle. His government did not treat him well, either. Czechoslovak officials grudgingly allowed Wichterle to travel to the United States to testify once they realized their stake in the proceeds was at risk. Hartmann recalls that Wichterle was accompanied by a state-appointed “companion” during his trips to the United States.

An ophthalmologist who left Czechoslovakia after working with the inventor testified that the lens patents were invalid since the lens never worked on humans. It had been tested only on rabbits, he said.

Hartmann and his team traveled to Prague, where they found the expert’s own research documents. One included his handwritten “7/7”—the metric equivalent of 20/20 vision—in its margin. Eye-chart measurements made no sense for rabbits, nor did another phrase which said a research participant was allowed to bring home the pair of lenses.

The judge said the expert became “the most thoroughly discredited witness...this Court had ever seen.”

“Many lawyers don’t have the opportunity to participate in a case like that in a lifetime,” Hartmann says. It hooked him on litigation.

Leydig, now retired, describes Hartmann as very able and bright. Leydig says he enjoyed traveling with his protégé on many cases and seeing how effectively Hartmann adopted computer technology into his



practice. “I had no problem turning over clients to him with great confidence,” Leydig adds.

### Life in the United States

Hartmann was born in Frankfurt, Germany, three years after World War II ended. When his father, a former officer in the German army, died in 1961, the family considered moving to the United States.

Well before arriving in Colorado Springs in 1964, Hartmann knew he would study science or engineering. He never considered law, a fairly exotic career choice on the European mainland. But German children were routinely steered toward science and engineering. His German language skills proved to be a blessing. Hartmann also studied the Queen’s English beginning in fifth grade, although his vocabulary was limited when he reached the United States at 16.

He soon overcame the challenge and entered the Colorado School of Mines, a small college that focused on mineral engineering. His petroleum engineering major led to a dozen job offers stretching from Saudi Arabia to Alaska. He signed on with Mobil Oil in New Orleans.

Hartmann worked on the methods and procedures for drilling wells and on getting oil to shore from the Gulf of Mexico. Preventing high-pressure blowouts and dealing with

deadly hydrogen sulfide—which could render metal components as brittle as glass—were staggering challenges. At night, Mobil paid for MBA studies at Tulane.

Soon, Hartmann learned that lawyers, not business grads, were calling the shots. Thoughts of a law career solidified when he married, partly because his father-in-law was a Chicago attorney who worked for Allstate. Hartmann left the oil business and became a full-time law student at DePaul.

Except for a summer stint in 1975 at a partnering patent firm in Stuttgart, Germany, Hartmann has worked exclusively at Leydig Voit & Mayer.

“I was apprehensive [about that summer], having been away from Germany for about 10 years,” Hartmann relates, “but somehow the language was still there.”

He has kept his German skills active over the years. In college, he translated technical documents. Today, he reads the German political weekly *Der Spiegel*. From time to time, his colleagues seek his help with patent claims and documents written in German. Speaking regularly on the telephone with his German clients is a lot like going home, Hartmann says.

### Transforming His Skills for Clients

As his law firm grew from 18 to 80 lawyers, Hartmann’s practice encompassed patent

litigation, licensing, technology transfer, international joint ventures, and client counseling. Hartmann says Leydig Voit & Mayer does not just help clients who are in trouble: “We try to keep people from getting into trouble in the first place.”

Hartmann says specialty patent firms continue to thrive because, unlike at huge corporate law firms, attorney headcounts and offices matter less in his field. “What matters in patent cases is knowledge and experience in patent law,” he says, “and I think clients are realizing that more and more.”

He does not limit his patent work to any industry or technology. For example, Hartmann counseled Mandy Haberman, the British pioneer who invented the spill-proof “sippy” cup. Haberman had previously invented a feeding bottle to help children who, like her daughter, had congenital conditions that make sucking difficult. After Haberman saw a toddler spill currant juice on her friend’s carpet in 1990, she discovered a way to prevent such mishaps.

As a private inventor, she did not have the resources for prolonged U.S. litigation, so she opted for a partial contingency arrangement with federal litigation in the Western District of Wisconsin—home of the so-called “rocket docket.” The lawsuit named Playtex Products Inc. and Gerber Products Company.

Playtex faced greater exposure, and it settled. Gerber went to trial. The jury ruled that Haberman's patent was invalid and that there was no infringement. The trial judge overturned the jury's infringement verdict, but the Federal Circuit reversed each finding on appeal, saying the patent was valid but not infringed.

In the September 2008 *WORLDExtra's IP Supplement*, Haberman says the court's declaration of validity happily led to new licensing revenues.

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Hartmann worked on a much larger case with Sidley Austin's David T. Pritiken and Leydig Voit & Mayer's John B. Conklin to defuse a demand exceeding \$1 billion when Eolas Technologies sued Microsoft. The lawsuit claimed Internet Explorer infringed on Eolas' interactivity feature.

Early in the lengthy litigation, Hartmann advised Microsoft to pursue a complex, parallel strategy that led to an interference ruling. "The interference was like a hand grenade in a basement with the pin pulled," he says, "and fortunately, it went off at the right time." Settlement demands suddenly became much more reasonable, he says.

He also represents Pall Corporation, a global leader in the field of filtration, separation, and purification in many industries. Hartmann helped the company succeed in having its patent for nylon membranes used in biotech and pharmaceutical applications declared valid and infringed in trials in Boston and London. He also enforced Dr. David Pall's blood filtration patent, which Pall invented after his wife died due to complications from required transfusions.

Eric Krasnoff, Pall's chairman and CEO, describes Hartmann as a pleasure to work with. Krasnoff says Hartmann has a disarming sense of humor. The two share a passion for tennis, though Hartmann prevails on the court. "He won't talk to anyone who won't play tennis with him," Krasnoff jokes, "but he's very gracious in victory."

Currently, Hartmann is engaged in a trade secret case, *USG v. Lafarge*, with damage claims exceeding \$100 million. It grew from a patent controversy that could have been settled, involving gypsum wallboard manufacturing. Hartmann represents the plaintiff, which alleges that former employees took large amounts of technical data, including password-protected CDs, when Lafarge hired them.

Michael M. Geoffrey, counsel at Reed Smith LLP and formerly the chief intellectual counsel of USG, says Hartmann is an innovative lawyer who understands the practical implications of his work.

"He tries to provide counsel that takes into consideration the client's business and economic issues," he says, "and he doesn't do it in a vacuum."

As Hartmann insists, patents involve real, human stories. ■