

Rising Star: Milbank's Lauren Drake

By **Matthew Bultman**

Law360 (September 12, 2019, 5:51 PM EDT) -- Milbank LLP's Lauren Drake helped fend off challenges to patents for the blockbuster cancer drug Rituxan and played a role in convincing the Federal Circuit to strike down the U.S. Patent and Trademark Office's controversial policy on attorneys fees, earning her a spot among the intellectual property attorneys under 40 honored as Law360 Rising Stars.

THE BIGGEST CASE OF HER CAREER:

Before joining Milbank in August, Drake spent close to eight years at Irell & Manella LLP, where she accumulated a good deal of experience representing companies in the pharmaceutical and biotechnology industries.

She was, for example, part of a team that represented Genentech as it defended against challenges to Rituxan patents at the Patent Trial and Appeal Board. Of the 25 IPRs that Irell defended, 23 ended with no patent claims being found invalid.

One of the most important cases to her personally was a dispute between PDL BioPharma and Merck over the manufacture of Merck's cancer drug Keytruda. PDL was a longtime client and Drake had worked closely with the company throughout her time at Irell.

The case, in which PDL alleged that Merck infringed one of its patents, was the last in a series of patent disputes over a family of related patents. It settled in 2017 following a claim construction hearing in New Jersey federal court, with Merck agreeing to pay \$19.5 million.

"It was important to me that we got an excellent result in what was likely to be the last case involving that patent family," Drake said.

WHY SHE BECAME AN IP ATTORNEY:

Drake earned her undergraduate degree in biochemistry and molecular biology from the University of California, Santa Barbara. But

RISING
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STAR



Lauren Drake
 Milbank

Age: 33

Home base: Los Angeles

Position: Partner

Law school: Loyola Law School,
 Los Angeles

First job after law school:
 Associate at Irell & Manella LLP

she didn't enjoy being in a lab. A legal research and writing class helped steer her toward the law school route.

From there, patent litigation was an obvious choice.

"Being an IP attorney allows me to combine what I enjoyed about both," she said. "I enjoy learning about new technology while helping clients address challenging legal issues."

HER MOTIVATION:

Between the time she graduated from UC Santa Barbara and started law school at Loyola, Drake worked as an event coordinator at a hotel, helping organize corporate events. While she describes it as a great job, she said she often found herself looking at the clock, waiting for the day to be over.

"Whenever I am at a point where I feel tired or a little defeated, I think back to those times and try to appreciate how lucky I am to have a job that is constantly challenging and exciting," she said.

OTHER NOTABLE CASES:

Drake was part of a team that convinced the Federal Circuit in 2015 to rule a Sequenom patent covering prenatal genetic tests was invalid because it was directed to a natural phenomenon. The invalidation of the patent allowed her client, Ariosa Diagnostics Inc., to continue selling its only product, the Harmony Prenatal Test.

More recently, Drake has been involved in NantKwest's challenge to the USPTO's policy that patent and trademark applicants who appeal rejections to a district court pay the agency's legal bills, regardless of who wins the case.

Sitting en banc, the Federal Circuit stuck down the controversial policy in July 2018 after finding it violated the so-called American Rule against such awards. Drake argued the case at the district court level and had a major hand in briefing at the Federal Circuit.

"We always thought there were important policy implications," she said. "Having to pay the USPTO's attorneys fees whether you win or lose would be cost prohibitive for some applicants."

The USPTO has asked the U.S. Supreme Court to hear the case.

— *As told to Matthew Bultman*

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2019 Rising Stars winners after reviewing more than 1,300 submissions. Attorneys had to be under 40 years old as of April 30, 2019, in order to be considered for this year's award. This interview has been edited and condensed.