

Client Ties Powered Nixon Peabody's Pioneering Third Party Litigation Play

The firm helped connect Longford Capital with UC Santa Barbara to finance a patent battle with Amazon, Walmart and others over LED lightbulb technology.

By Dan Packel

As more capital flows into the coffers of third-party litigation funders, their success depends on finding promising areas to direct their resources. A new deal between litigation funder Longford Capital and the University of California, Santa Barbara suggests traditional law firms can play a role in advancing those ambitions.

Lawyers at Nixon Peabody parlayed their longstanding relationship with the University of California system—and a burgeoning connection with Longford Capital—to structure a novel arrangement backing a patent enforcement campaign against five retailers over energy-saving LED light bulb technology.

“The willingness of any university to take on something of



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LED lighting

this scale and to do some important leadership in technology transfer was, in my mind, going to take a strong relationship with a law firm they really trusted,” said Seth Levy, the Los Angeles-based co-chair of Nixon Peabody’s life sciences practice.

In an unusual move for the opaque litigation finance industry, Longford announced that it was supporting UCSB on

Tuesday, the same day that the university filed a petition before the U.S. International Trade Commission against Amazon, Bed Bath & Beyond, IKEA, Target and Walmart and initiated complaints against the five retailers in California federal court.

The thrust of the fight is that the retail giants allegedly never secured the proper licenses to

sell the LEDs, which, according to Longford and Nixon Peabody, rely on filament LED technology developed by a Nobel laureate-led team at the university. Longford said in its announcement that the market for the bulbs is expected to exceed \$1 billion in sales for 2019.

Longford said it will pay for all the attorneys fees and expenses for the litigation in return for a share of any recoveries, but the specific arrangements are under wraps, including whether Nixon Peabody is also entitled to any share of the potential winnings. ITC specialists Adduci, Mastriani & Schaumberg are serving as co-counsel for the part of the litigation before that tribunal.

But there's more to the story behind this particular battle. As Levy explained, the transfer of technology has evolved since the 1980's Bayh-Dole Act first allowed publicly funded universities to monetize their own inventions, and academic leaders have finally gained a firmer sense of the value of their universities' patent portfolios. They're also aware that certain industry

segments are particularly recalcitrant when it comes to respecting university IP.

Levy added that Longford, among litigation funders, has been at the forefront of recognizing an opportunity.

"In their view, there's a lack of financial resources—not because universities don't have lots of resources, but because universities have lots of other things to spend money on," he said.

By taking advantage of outside funding, he suggested, universities can assure their stakeholders that they are not diverting funds from other priorities to fuel litigation.

Looking for ways to back the university's claims, Longford reached out to Nixon Peabody, according to Levy. Russell Genet, the former Chicago-based head of the firm's IP group, moved to Longford, also in the Windy City, in 2017.

The firm's connection to the University of California system is deeper. Nixon Peabody attorneys have done real estate work for a number of the university's campuses, handled health care matters, and Levy himself has

handled some IP and technology transfer litigation.

"Ultimately, the stars aligned, given our relationship with UCSB and this issue—the explosive infringement we've been seeing over the last couple of years," he said.

While Levy has never litigated cases backed by third-party funders before, he has advised investment banks that directly backed IP litigation in the past. The hope is that these cases settle as quickly as possible. Unlike direct competitors looking to see a rival's product kept off the market, the university wants to see as many of the light bulbs sold as possible.

"Their general mission is to benefit the public," he said. "The energy issues and waste savings associated with this product are enormous."

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