

Litigator of the Week:

Alan Fisch of Fisch Hoffman Sigler LLP

By Jan Wolfe • July 3, 2013

Defense wins in the supposedly plaintiff-friendly patent litigation hotbed of the Eastern District of Texas are becoming much more common. But we were still impressed on June 28 when it took a federal jury in Marshall, Tex., just 75 minutes to return a verdict that the Gap Inc. doesn't infringe on patents owned by a non-practicing entity called Alexsam Inc. We were even more impressed when one of the jurors sent us an effusive e-mail praising Gap's lawyers at Fisch Hoffman Sigler, who were led by EDTX veteran Alan Fisch.

Alexsam sued several big retailers in 2010, alleging infringement of patents on a process of activating and recharging gift cards. Alexsam's targets included McDonald's Corp. and Barnes & Noble Inc. Alexsam's lead counsel is the Chicago-based firm Fitch Even Tabin & Flannery.

Fisch, who represents most of the defendants, took the cases with him when he left Kaye Scholer last year to start his own boutique with Jason Hoffman and Bill Sigler.

Seven cases were consolidated for an April jury trial on the validity of Alexsam's patents. Alexsam prevailed against Fisch and his clients, setting the stage for separate trials on

whether individual defendants infringe the patents. The first trial, against Barnes & Noble, kicked off in May, with Alexsam seeking \$72 million. Fisch served as lead counsel and won a complete defense verdict on June 7. It was Fisch's third career jury trial win in Marshall.

Alexsam's \$34.5 million infringement case against Gap went to trial June 21, giving Fisch a chance to improve his EDTX win-loss record to 4-1. Fisch handled openings, closings, and a few key witnesses. His law partner Sigler examined three of Alexsam's four experts.

They pulled off the win by thoroughly discrediting Alexsam, according to juror Kristen Tackett. "The GAP Inc. team of lawyers were able to clearly explain and show the jury the facts pertaining to how the Gap obtains and processes their gift cards. ... Alexsam Inc. could not do this," the Marshall resident told us in an e-mail. She added that two of their expert witnesses "failed on the witness stand."

Alexsam has other gift card patent trials pending, including ones against McDonald's and Home Depot Inc. Fisch is expected to serve as lead counsel in all of them.

