# GO FOR IT!: Cross-Examination To Closing: How To Win An Intellectual Property Trial Before A Jury

*Raymond P. Niro*
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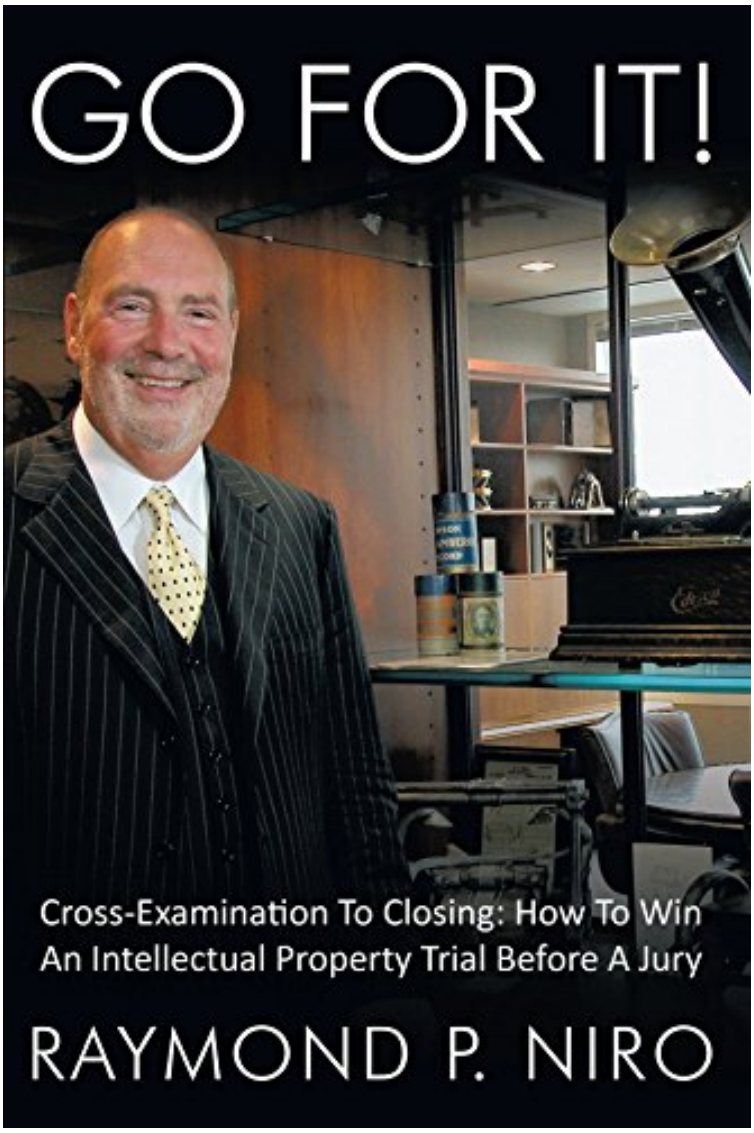




#3197311 in Books 2009-11-04 2009-11-04Original language:EnglishPDF # 1 9.00 x 1.02 x 6.00l, 1.14 #File Name: 1449032699406 pages | File size: 16.Mb

**Raymond P. Niro : GO FOR IT!: Cross-Examination To Closing: How To Win An Intellectual Property Trial Before A Jury** before purchasing it in order to gage whether or not it would be worth my time, and all praised GO FOR IT!: Cross-Examination To Closing: How To Win An Intellectual Property Trial Before A Jury:

0 of 0 people found the following review helpful. Fun to read, interesting, controversialBy rbnnEntertaining and

instructive (and at times mesmerizing) account of some key moments in Raymond Niro's intellectual property trials. Most of these highlight cross examinations, although there is some attention paid as well to the closing argument. They typically involve key moments in trials, in which the outcome of the trial hinges on a few minutes of crisis.Unlike technical treatises, this book is fun and easy to read - there is no agonizing hairsplitting on the hearsay rule or authentication. Nor will you find much about claim construction or Markman hearings. But at the same time, the book is much more informative and much more candid than the more self-adulatory popular books that trial lawyers usually write, for example the ones by Edwards or by Boies. The author spends his time on specific, detailed questions of trial strategy and gives long excerpts from cross examinations in which he shows how devastating a good cross can be. So it's much more strategic, specific, and insider-oriented than the usual popular books - yet at the same time the book is accessible to laymen.Apart from the cases, Niro does an excellent job setting up the human interest aspects of the cases, making the reader actually care about them. His prose style is engaging and witty, fun and easy-to-read.There are two types of cases discussed here: trade secret and patent (with one exception, a lawyer dissolution dispute). The trade secret case presentation is very strong and convincing. In one case, the author criticizes the judge's JNOV verdict overturning a jury award for his client, and from the presentation I agreed with him. There was a wonderful case involving misappropriation of a trade secret for making Italian sausage in which his client wound up winning $15M from one defendant. The plaintiff then settled with Pizza Hut, the other defendant, for another $15M, although it sounded like more was deserved. The author somehow makes what might seem like a dry tale interesting if not fascinating, as we learn some details about how to make Italian sausages.The patent cases are also excellent, although unfortunately given the space there was little time to discuss claim construction and the legal aspects in quite as much detail, but the presentations are still terrific.Niro's ability on cross is amazing, seeming superhuman at times. He continually and hilariously ties up opposition expert witnesses in knots. They wind up speechless, befuddled, not knowing what hit them. He seems to be able to memorize the body of literature in a field better and faster than experts who've been studying it for years. Any contradiction between an expert's testimony at trial and at deposition he instantly seizes on.Some of the cross examination moments I find especially interesting were these:- In the Pizza Hut case, he brilliantly undermined an expert in meat preparation technology by constantly referring to his own books and the breadth of his own research to show he had overlooked combinations of elements.- In USM v. Detroit Plastic, he draws out an opposition expert on his technical education. The next day, the expert has to return and admit that his entire testimony about his education was fabricated - and he had to retain his own criminal attorney for perjury.- In one case, he gets an expert to say that he would be amazed if a certain technology existed, and of course then Niro introduces evidence of that technology. This just gives a flavor, the actual development is much more interesting in the book, and there are many other great examples.Of course, detractors might notice that some of the author's actual arguments, no matter how persuasive to the jury, are sometimes not logically correct:- For example, in Calabrese v. Square D, defendant's opening had analogized a network circuit saying it broadcast "in the same way a radio signal is broadcast" (p. 6). On cross, Niro got the expert to admit that the circuit did not broadcast like a radio "over the air" (p. 8). Even though this does not actually undermine the defendant's earlier statement, (and in circuit theory a "broadcast" circuit is simply any one-to-many network, wireless like a radio or not) one can easily see how a jury could feel that it did.- In MuniAuction v. Thomson, the author notes that 18 features of the defendant's web-based auction system were identical to the features of the plaintiff's patented system (p. 202). Niro then gets an expert to note that if there were two ways to select each of these features (things like "timestamps" and "web browser" and "centralized server"), and they were each selected independently, then there would be only a 1 in 262144 chance the systems would have matched by chance. He uses this to support an inference of copying by the defendant. Of course, it does not actually support any such inference, because the features are not independent. To the contrary, the "features" are all obvious and necessary ways to implement any web-based auction system, but neither juries nor judges are educated in either computer science or probability, and Niro's argument was very effective although it was nonsensical from the point of view of strict logic.- In IMS v. Haas, Haas was sued for patent infringement on a computer controlled machine design system by IMS. Niro argued that because licensees had paid millions ($1.75M in one case) to IMS to license the patent, the patent was valid: "if they believed the patent was patent was valid, why would they do that?" Of course, they would do that because it costs well over $1.75 million to defend a patent suit, even if the defendant prevails; and there is always a risk of an adverse outcome no matter how strong the legal case. But juries do not understand the realities of patent litigation costs and risks.- Also in the IMS case, Niro argues that patent examiners are "trained in the technology" (p. 256) which, of course, is utterly incorrect for software - one of the chief complaints of software companies on the receiving side of dubious patent litigation is that patent examiners often have no substantive training in computer science and thus allow well-known or obvious ideas to be patented.- In Black Decker v. Bosch (pp. 225ff), Niro eviscerates famous Harvard electronics expert Paul Horowitz, by drawing him out about his work on SETI. Niro subtly mocks SETI until Horowitz overreacts with an impassioned but out-of-place defence of the program his work on it. Certainly, SETI and Horowitz's work on it could seem improper to a lay jury, but as a matter of strict logic, Horowitz's SETI work does not bear on the credibility of his technical opinions on electronic theory.But Niro is not writing a treatise on patent reform. He's showing lawyers and also interested lay persons how a top lawyer

strategizes, how he uses and marshals all the facts and testimony and documents at his disposal, within the boundaries of the law. Niro is much more open and candid about strategy than most lawyers, and that makes this book much more fascinating and instructive than others. (Most trial attorney books paint the attorney as someone on a divine mission to redress the wrongs of the world, which is rarely how things work out in practice).The one additional feature I would have liked was a link to the full trial transcripts and filings. But that's probably not realistic.In conclusion, this is an excellent book that should be read by anyone interested in intellectual property law or in trial practice. I think it will be interesting and instructive both to supporters and detractors of the big-case style litigation: supporters to figure out how to win, and detractors to figure out what in the system needs improvement. And it's a great character study of Niro himself.0 of 0 people found the following review helpful. A fabulous readBy Technophobe01I really enjoyed reading this book. It truly captures the core of what a litigation case is about - persuading the jury. A case is not about right or wrong it is about getting a jury to choose who presented the best argument of right or wrong. If you work with patents read this book - it opens up the court room to the reader. Highly recommended.0 of 0 people found the following review helpful. Informative and easy to readBy RonGreat easy to read book for inventors to learn how lawyers like Niro can recover damages for stolen IP.

Intellectual property trials are not typically known for courtroom drama or excitement but, in Go For It, Ray Niro provides a first-hand account of electrifying moments in the cross-examination of witnesses whose testimony could make or break the case. Then, on to closing argument: the case is already won. Or is it? This book gives examples of how to draw on emotion to achieve multi-million dollar verdicts not once, but nearly every time. What is the common trend in these cases involving inventors of everything every thing from DeWalt power tools to Internet auctions to secret formulas for precooked Italian sausage? Take a ride through each case, their defining moments and the formula for successful advocacy with actual trial testimony from eighteen different cases spanning two decades. Ray Niro is quite the story-teller, drawing on his childhood and family experiences to bond with jurors in the most complex kinds of cases.

About the AuthorRaymond P. Niro is a nationally recognized trial attorney specializing in the enforcement of patent, trade secret and related intellectual property rights. He has been trial counsel in hundreds of intellectual property cases. In 1997, he was named by The National Law Journal as one of the ten top trial attorneys in the United States and, in 1999, one of the ten heavy hitter litigators in the State of Illinois. Since 1996, he has won verdicts and settlements for his clients totaling more than $1 billion. In 2006, Mr. Niro tried 6% of all the patent cases that went to verdict and, in the first six months of 2007, recovering the 11th, 15th and 35th highest verdicts in that time, each resulting in a finding of willful infringement, an injunction and cumulative damages of more than $100 million. Mr. Niro frequently represents individual inventors and small companies that support their enforcement and licensing efforts. As a consequence of a lawsuit one of his clients brought against Intel in 2001, the term patent troll was coined. Sandberg, B., The Recorder, Trolling for Dollars, July 30, 2001. Mr. Niro graduated from the University of Pittsburgh, with high honors, in Chemical Engineering in 1964 and received his Juris Doctorate from George Washington University Law School in 1969; graduating with honors. Mr. Niro has given presentations on trial advocacy at Harvard, George Washington, DePaul, John Marshall and other national universities, the American Bar Association, American Intellectual Property Law Association, Intellectual Property Law Association of Chicago, Legal IQ, Intellectual Property Owners Association, Licensing Executives Society (USA and Canada) Inc. and The Sedona Conference. He endowed a Chair in Intellectual Property Law at DePaul University and Lecture Halls at the George Washington University Law School and the University of Pittsburgh Swanson School of Engineering.