

## Litigators of the Week: Patterson Belknap Scores a \$2 Billion Trade Software Secret Verdict in Virginia for Software Maker Appian

Rival software company Pegasystems referred internally to a developer who had access to confidential Appian code as “our spy.” After a seven-week trial, a Virginia state court jury sided with Appian and their trial team led by Adeel Mangi, Muhammad Faridi and Jeffrey Ginsberg of Patterson Belknap Webb & Tyler.

By Ross Todd  
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Quick piece of advice to any future software executives out there: You might want to think twice about paying an outside consultant north of \$23,000 to look under the hood of a competitor’s design and architecture.

And if you do end up hiring that consultant, you might want to avoid calling them “our spy” in your correspondence with colleagues.

Those lessons are courtesy of a trade secrets trial that wrapped last week against Boston-based Pegasystems. A Fairfax County, Virginia jury found this week that the company, informally known as Pega, stole trade secrets belonging to its rival Appian with the help of an employee of a government contractor who had access to confidential Appian code via his day job. Pega was, ahem, pegged with a \$2.036 billion damages award. Appian’s stock price rose 38% on news of the verdict and Pega’s dropped 21%.

Out Litigators of the Week, **Adeel Mangi, Muhammad Faridi** and **Jeffrey Ginsberg** of **Patterson Belknap Webb & Tyler**, put on further evidence at trial to show Pega executives attended Appian events under pseudonyms and used unrelated family businesses to access Appian’s platform.

Again. Think twice.



Courtesy photos

(l-r) Adeel Mangi, Muhammad Faridi, and Jeffrey Ginsberg of Patterson Belknap Webb & Tyler.

**Who was your client and what was at stake?**

Jeff Ginsberg: We represented Appian Corporation, a publicly-traded, leading provider of enterprise software. Appian’s products include business process management tools, which are used by its customers to automate and measure business processes. Its software products are used by some of the world’s largest companies and government agencies. Pegasystems Inc., also a publicly traded entity, is one of Appian’s biggest competitors. Appian filed this action for trade secret misappropriation in May 2020 after learning that Pegasystems had

hired Youyong Zou, who worked as a developer in the Appian software platform under a government contract, to provide it with access to Appian's confidential and proprietary information—access that Pegasystems could not obtain through legitimate means. Appian sued to defend itself and its intellectual property from Pegasystems' misappropriation, which was part of an illicit scheme to help Pegasystems figure out how to better compete against Appian. Evidence we presented at trial exposed astonishing conduct by Pegasystems' senior leadership, including behavior beyond Zou's corporate espionage to further access Appian's platform using fake names, fake companies, and the unrelated family businesses of Pegasystems employees. The stakes were high because of the massive scale and scope of the misappropriation at issue.

**How did this matter come to the firm?**

Adeel Mangi: I represented Appian in another lawsuit in federal court involving Pegasystems and have known Appian's General Counsel for 15 years. Appian brought us into this lawsuit as lead counsel in August 2021 as discovery was heating up and in anticipation of trial.

**Who all was on your team and how did you divide the work?**

Ginsberg: After we were engaged, Adeel enlisted our partner Muhammad Faridi and me to work with him on the case. We are all experienced complex commercial litigators with extensive backgrounds in intellectual property litigation. We assembled a team that included counsel **Abhishek Bapna** and associates **Clinton Morrison, Matthew Weiss, Maggie O'Neil, Colleen O'Leary** and **Elana Stern**. We also worked closely with Virginia counsel **Sheila Costin** and **Ellen Marcus** of **Holmes Costin & Marcus PLLC**, two experienced and highly regarded complex commercial litigators. They were our co-counsel in all aspects of the case and provided invaluable guidance on both local practice and case strategy. Appian's in-house counsel, **Chris Winters** and **Chris Geyer**, were also critical participants on case direction and strategy. We could not have asked for a more talented and dedicated team.

**How did your client become aware of what was going on at their competitor here?**

Muhammad Faridi: Although Pegasystems engaged Zou in 2012, Appian did not learn of the misappropriation until January 2020, when a former Pegasystems employee involved with its competitive intelligence activities informed Appian of Pegasystems' and Zou's scheme. Shortly thereafter, another whistleblower stepped forward and provided further evidence of the theft of Appian's trade secrets. Once Appian investigated the claims and confirmed their accuracy, it filed suit. More facts regarding Pegasystems' post-Zou conduct emerged during discovery, including critical discovery of videos of online meetings and instant messages exchanged among Pegasystems employees regarding the schemes.

**Mr. Mangi, you kept returning to the terms “shady” and “arrogant” to describe how officials at Pegasystems had conducted themselves in this case during closings? How did you settle on those themes? And how did you try to hammer them home with the jury?**

Mangi: Pegasystems disclosed an internal email where two of its executives, upon first learning of the scheme at their own company, described it using the words “shady” and “arrogance.” As we prepared for closing arguments, it struck me that their own description was the perfect thematic summary of Pegasystems' entire course of conduct. I began our two-hour closing argument with that email and then returned to the themes repeatedly as we went through the extensive record detailing the defendants' conduct, including their trial testimony. Sometimes a defendant's own words are better than any you can come up with.

**You had asked for \$3,032,847,000. Do you know how the jurors got to the \$2.036 billion number?**

Ginsberg: We do not know, but the number is about two-thirds of the unjust enrichment damages that we sought.

**One quick aside: Why did the Goo Dolls keep coming up at trial?**

Mangi: We were again able to make a key point in the case using examples of Pegasystems' own

behavior. In arguing that it was not unjustly enriched by the misappropriation. Pegasystems and its damages expert argued that after all costs and expenses were deducted from the revenue generated from the sale of the software at issue, there was nothing left. In other words, Pegasystems argued that it was not net profitable during the entire damages period and was therefore not unjustly enriched by the misappropriation. We responded by explaining that under Pegasystems' argument, a misappropriator would be able to avoid unjust enrichment damages altogether so long as it carefully spent all the money it received from misappropriation, and that more measured cost deductions were appropriate. To drive this point home, we cross-examined Pegasystems' damages expert, noting that Pegasystems hosts an annual conference each year where it had hired musical acts like the Goo Goo Dolls, Train and Sheryl Crow to perform. Under Pegasystems' argument, it would have been free to exhaust its misappropriation-driven revenues on a private performance from the Goo Goo Dolls, claim that these expenses made it net-unprofitable, and then avoid having to repay those monies to Appian. As happens during trials, the Goo Goo Dolls point took on a life of its own and was effective in driving our broader point home to the jury.

**What are the takeaways from your client's experience in this case? What can other plaintiffs in trade secret cases take from what you accomplished here?**

Faridi: There is no substitute for doing the hard work in discovery to prepare for trial. Proving trade secret misappropriation is no easy feat; neither is proving any resulting damages. Prior to trial we had countless strategy meetings to make sure we were thinking of all the factual and legal issues we needed to address to prove our case, including making sure that we would be able to present all evidence in a smooth and effective manner. Plaintiffs in trade secret cases must always be thinking about trial: how will the facts come into evidence, what themes will resonate with the jury, and how will you prove damages?

**What will you remember most about handling this matter?**

Mangi: This was an extraordinarily intense case from the moment we were engaged. We conducted extensive discovery while preparing simultaneously for and then conducting two back-to-back trials (a statute of limitations issue trial and then, one month later, a seven-week merits trial). In that crucible of intensity, the strength of your team is everything. And there is nothing like trying a high-stakes case with people who are both immensely skilled and talented, and also your close friends. I will remember how, as a team, we not only met the huge challenges but laughed and joked together every day while providing our very best efforts to our client.

Ginsberg: I will remember the dedication of each and every one of our team members, from the partners to the associates to our paralegals and other support staff. It was a long and demanding trial with numerous complicated technical issues. Everyone did more than their share working cohesively as a team. One lasting memory from this case will be getting to watch several of our exceptionally talented junior colleagues examine witnesses at trial and do an excellent job. They worked incredibly hard on the case and seeing them perform at such a high level was particularly satisfying.

Faridi: Given the intensity and the stakes involved, it is often difficult to enjoy being on trial until it is over and you have won. But this trial was different. Our team had such a great chemistry that there was not a single day where we did not share in laughter. Yes, there were some stressful moments too. But we all looked out for each other and that speaks volumes about everyone involved. Everyone — from each of our lawyers on the team, to our legal assistants, and many others — did more than their fair share in every regard. That, along with helping our clients achieve justice in a very high stakes matter, is what made this experience so gratifying.

