

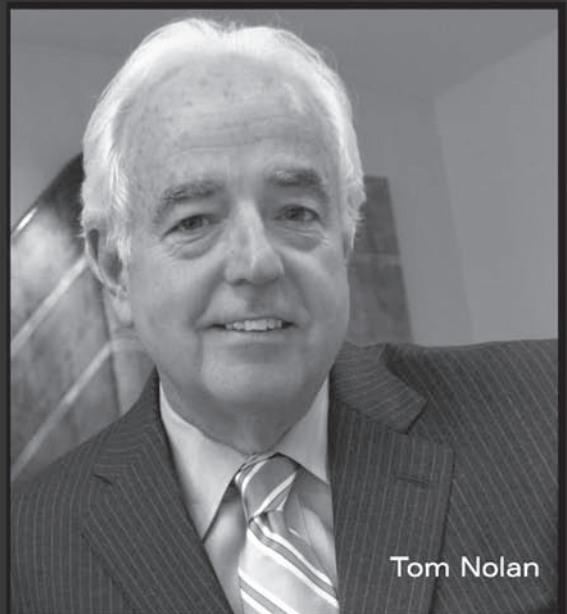
# Daily Journal

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## Intellectual Property



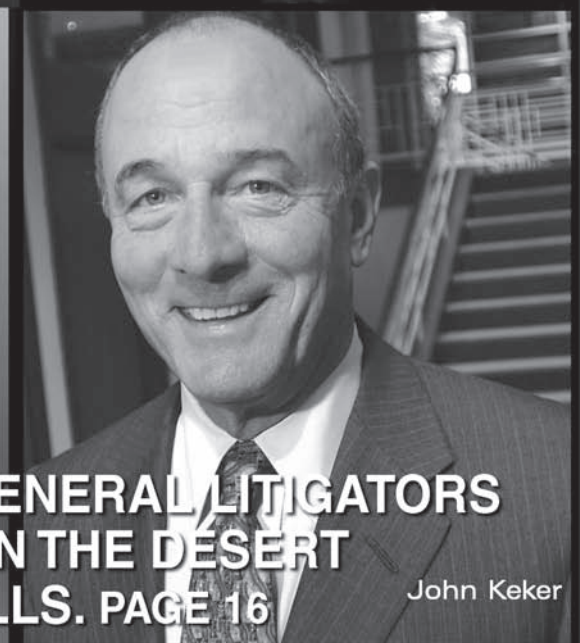
John Quinn



Tom Nolan

### GIRL FIGHT

THREE OF CALIFORNIA'S BEST GENERAL LITIGATORS  
ARE GETTING DOWN AND DIRTY IN THE DESERT  
OVER A COUPLE OF PLASTIC DOLLS. PAGE 16



John Kecker

# Intellectual Property

## Barbie vs. Bratz Draws Top-Litigator Trio

By Jason W. Armstrong  
Daily Journal Staff Writer

RIVERSIDE — Three of California's most aggressive and highest-profile litigators are set to square off this summer in one of the state's hardest fought and highest stakes intellectual property trials in recent memory.

The involvement of Thomas J. Nolan, John W. Kecker and John B. Quinn in the potentially multibillion-dollar case — a fierce tug-of-war between Barbie maker Mattel Inc. and rival MGA Entertainment over rights to MGA's wildly popular Bratz dolls — signals intellectual property fights have perhaps irreversibly moved beyond the purview of specialists. None of the lawyers practice intellectual property exclusively. Nolan cut his teeth trying antitrust cases, Quinn has handled all sorts of business disputes and Kecker regularly dabbles in criminal defense, among other things.

Nolan, a partner with Skadden, Arps, Slate, Meagher & Flom in Los Angeles, is representing Van Nuys-based MGA against allegations that it persuaded a doll designer who conceptualized Bratz while working for Mattel to give the idea to MGA. Kecker, name partner with San Francisco's Kecker & Van Nest, is going to bat for the former Mattel designer, Carter Bryant, who allegedly breached a contract with his then-employer not to share his Bratz drawings.

Nolan and Kecker both deny claims by El Segundo-based Mattel's attorney, Quinn, name partner with Los Angeles's Quinn Emanuel Urquhart Oliver & Hedges, who alleges their clients illegally schemed to keep Mattel from launching the lucrative Bratz line, which dented Barbie's profits.

The three litigators are scheduled to begin battling for their clients before a jury on May 28 in the courtroom of U.S. District Judge Stephen Larson in Riverside. *Bryant v. Mattel Inc.*, CV04-9049 SGL (C.D. Cal., filed 2004).

The jurors will have a front-row seat for a show by three lawyers who each have amassed an impressive string of national headlines for massive verdicts and settlements in intellectual property cases and other areas of complex business litigation.

Nolan, 59, a graduate of Los Angeles's

Loyola Law School, was chief of special prosecutions at the U.S. attorney's office and litigated at Jones Day and Howrey before joining Skadden four years ago as co-chair of the firm's West Coast litigation practice.

He tried his first intellectual property case 20 years ago, representing Jordache in a battle with rival Guess over ownership of Guess jeans.

On the antitrust front, Nolan, while at Howrey, persuaded a federal jury a decade ago to award Litton Systems \$250 million in the aerospace giant's case against competitor Honeywell Inc. A federal judge upheld the award, which was trebled, and the parties ultimately settled.

A Harvard University Law School alum, 56-year-old Quinn practiced business litigation in New York and Los Angeles before starting what is now Quinn Emanuel Urquhart Oliver & Hedges in 1986.

In one of the biggest trade secrets cases in history, Quinn won a \$1.1 billion settlement for General Motors in a 1996 case in which the automotive giant accused Volkswagen and GM's former head of sourcing in Detroit of stealing secret GM documents.

Kecker, a Yale Law School graduate who co-founded his firm 30 years ago, has represented some of the world's most prominent corporations in intellectual property brawls and some of the most well-known lawyers and businesspeople against malfeasance allegations.

His patent fights include representing Xilinx Inc. in an infringement case against competitor semi-conductor giant Altera Corp. The case settled in 2001 after nearly nine years of litigation with Altera paying Xilinx \$20 million in licensing fees. Kecker's notorious criminal defense cases include those of powerhouse plaintiffs' lawyer William S. Lerach, who pleaded guilty to paying kickbacks to clients, and Mississippi class-action king Richard "Dickie"

Scruggs, who admitted trying to bribe a federal judge.

While they're often tapped to try complex business litigation, all three attorneys are increasingly hunted down for their intellectual property prowess. It's a

different story than two decades ago, when companies in intellectual property jams looked mostly to specialists — certified patent lawyers or attorneys with engineering or science degrees, according to legal experts.

More companies hire general litigators in such cases because they more often are able to convey convoluted legal concepts in terms jurors can easily understand, said James P. Bennett, a San Francisco-based partner with Morrison & Foerster.

Bennett helped represent Altera in the Xilinx case.

General litigators tend to be good at "teaching a jury," Bennett said.

Edward C. Kwok, a name partner with San Jose-based intellectual property boutique MacPherson Kwok Chen & Heid, said many well-known

small IP firms have "disappeared or been absorbed into general practice firms" in the past 20 years.

He said economics have played a part in the trend, as well as "general practice firms investing heavily into IP" and "very good general trial lawyers learning the skill well over the years."

While Nolan, Kecker and Quinn have all dealt with the rigors of intellectual property clashes, the so-called Bratz vs. Barbie case is turning out to be anything but typical.

The dicey duel has all the trappings of a juicy suspense flick: allegations of evidence tampering, spats between attorneys and clients, and accusations of unethical witness handling provide a backdrop for the litigation.

In addition, document production, depositions and discovery issues are happening at a dizzying pace.



**'This is the heaviest litigation matter I've ever been involved in. I've never seen anything like this and I don't think anyone else has.'**

**Thomas J. Nolan**  
Skadden, Arps, Slate,  
Meagher & Flom

"This is the heaviest litigated matter I've ever been involved in," Nolan said. "I've never seen anything like this and I don't think anyone else has."

The legal dogfight over the edgy, hip-hop style Bratz dolls with wide, long-lashed eyes, pouty lips and oversized sneakers started in April 2004, roughly three years after they hit store shelves and eventually began to outsell Barbie.

That year, Mattel sued Carter Bryant, an MGA freelance designer and former Mattel doll designer.

Mattel claimed Bryant helped MGA develop the Bratz concept while still working for Mattel.

MGA intervened in the case later that year, asserting its ownership to the Bratz line.

In November 2006, Mattel filed counterclaims against Bryant, MGA Chief Executive Officer Isaac Larian, MGA and certain foreign affiliates.

Mattel's complaint, among other things, accuses Bryant of breach of contract, breach of loyalty duty and breach of fiduciary duty. Mattel's allegations against MGA and Larian include unfair competition and aiding and abetting Bryant's breaches.

Among other allegations, Mattel claims MGA hired away three Mattel employees in Mexico. The toymaker's complaint also contends that the employees "stole virtually every category of Mattel's sensitive and trade secret business plans and information" to benefit MGA markets.

In court papers, Quinn contends that Bryant, who initially worked for Mattel from 1995 to 1998, signed a confidential "information and inventions agreement" when he returned in January 1999 after a several months leave. In signing the document, Quinn alleges, Bryant agreed not to divulge the company's trade secrets, and concurred Mattel would own any inventions he created.

However, according to Quinn, Bryant

sketched out Bratz designs and pitched them to MGA officials while working for Mattel. He left Mattel in October 2000.

MGA knew Bryant was breaching a confidentiality agreement, but worked with him anyway to develop the Bratz concept, Quinn argues.

MGA "met with Bryant, paid for his designs, and contracted with him for his services, all the time knowing [he] was a Mattel employee," Quinn said in court papers.

Nolan, in court documents, said MGA believed Bryant worked on Bratz "outside the scope of his duties to Mattel."

He said Mattel's claims have "no merit."

"Given that Mattel's claims were devised to force MGA out of business, it comes as no surprise that such claims are factually and legally untenable," Nolan wrote in court papers.

Keker, in court filings, denied that Bryant had a fiduciary duty to Mattel. And he said Bryant's Bratz sketches aren't considered "inventions" as specified in the agreement.

"Bryant contends that the agreement does not mean what Mattel claims, because that interpretation would be unconscionable and violate California's principles of interpretation for contracts of adhesion," wrote Christa M. Anderson, a Keker & Van Nest partner with is co-counsel with Keker in the case.

Also, Bryant's employment with Mattel was "at will," Keker contends in court papers, so he was free to work for a competitor at any time.

"Any work Bryant created related to his Bratz ideas during the time period that he was still employed by Mattel constituted lawful steps by Bryant to prepare to embark on a new career," Anderson wrote.

In its case against Mattel, MGA claims its own product was infringed, arguing Mattel created dolls that too closely resemble the Bratz line to "stifle MGA as a competitor."

Mattel has denied those allegations.

Damages in the litigation are unspecified. But lawyers have said in court papers

that they could reach "billions."

Among a series of dramatic twists and turns in the case, MGA's former counsel, law firm O'Melveny & Myers, suddenly quit in a dispute with the company over who should serve as lead trial attorney.

Lawyers close to the case said MGA did not want O'Melveny partner Daniel Petrocelli to sit first chair in the trial. Petrocelli has declined to comment on the issue. MGA subsequently hired Nolan to try the case.

Larson is scheduled to hear a motion later this month by Quinn seeking to disqualify Nolan and the rest of the Skadden firm from the case. Quinn argues the firm "knowingly violated its ethical duties" by retaining as an expert a former Mattel manager and legal consultant who gave the firm confidential in-house information about its rival's trade secrets and case strategies.

Nolan has denied wrongdoing and labeled the motion "another example of Mattel's scorched earth litigation style."

In another twist, Nolan and Keker are accusing Quinn and his legal team of witness tampering for allegedly seizing boxes of documents from the homes of two former Mattel employees who allegedly also worked on the Bratz concept at the company. Nolan and Keker contend Mattel lawyers used "manipulative interrogation techniques" on the witnesses. Mattel has denied the allegations.

"There is no evidence that Mattel engaged in 'coercion,' 'intimidation,' or 'threats,' or acted 'corruptly,'" Quinn wrote March 31.

Larson is scheduled to review the issue April 14.

Mattel, MGA and Bryant each have filed motions for partial summary judgment. Larson is scheduled to hear those motions April 23.

Though the case has seen its share of drama, Quinn said the litigation has not been acrimonious.

"I think the lawyers have dealt with one another very professionally," he said.