IP LAW&BUSINESS

December 2009/January 2010

An ALM Publication

WHO PROTECTS INNOVATION IN AMERICA

THE GUARDIANS

Which law firms do the country's biggest corporations turn to when they need help obtaining, asserting, and defending their valuable intellectual property?

By Erik Sherman

There is no question that intellectual property in general, and patents in particular, form a critical component of any modern corporation's value. And these assets have an outsize value when the corporations in question are the Fortune 100—the 100 largest companies, by revenue, in the United States, companies that between them had a total of $6.58 trillion in revenue in 2008.

It's also safe to say that the law firms that help the biggest corporations obtain, assert, and defend their intellectual property contribute mightily to these companies' ability to capitalize on those innovative ideas. Who are these legal movers and shakers that have what it takes to earn the trust of such top-tier clients? According to the results of this year's "Who Protects Innovation in America" survey, the answer to that question ranges from large national firms that mix IP work with significant corporate practices to midsize regional shops with local expertise to IP boutiques heavy on patent prosecution.

For further insight into how these firms made their way onto our "Who Protects" rankings, we organized the companies on our list by industry and consolidated them into a dozen categories. Analyzing the survey data this way yields some intriguing results—and suggests that for firms inclined to make their mark in the IP area, there are a number of ways to do so.

Where the Top Companies Turn

To earn a spot on our rankings, a firm had to be cited by at least three companies for doing litigation work, four companies for doing prosecution work, or five companies between the two categories. For a more comprehensive look, by company, at all the firms that did IP work for the top 100 companies, according to the methodology explained at the bottom of this page, please go to www.iplb.com/whoprotectschart.

OVERALL

Firm	Number of Mentions
Baker Botts	14
Fish & Richardson	13
K&L Gates	13
Foley & Lardner	11
Alston & Bird	8
Cantor Colburn	8
Greenberg Traurig	8
Kirkland & Ellis	8
Banner & Witcoff	7
Fulbright & Jaworski	7
Howrey	7
Jones Day	7
King & Spalding	7
Morrison & Foerster	7
Sidley Austin	7
Wilmer	7
Brooks Kushman	6
Buchanan Ingersoll	6
Finnegan, Henderson	6
Harness, Dickey	6
Hunton & Williams	6
Husch Blackwell	6
Knobbe Martens	6
McDermott Will	6
Potter Minton	6
Quinn Emanuel	6
Schwegman, Lundberg	**6**
Brinks Hofer	5
Connolly Bove	5
Merchant & Gould	5
Michael Best	5
Morgan, Lewis	5
Ropes & Gray	5
Townsend and Townsend	5
Winston & Strawn	5
Womble Carlyle	5

PATENT PROSECUTION

Firm	Number of Mentions
Baker Botts	9
Cantor Colburn	8
Fish & Richardson	8
K&L Gates	7
Alston & Bird	6
Banner & Witcoff	6
Buchanan Ingersoll	6
Knobbe Martens	6
McDermott Will	6
Schwegman, Lundberg	**6**
Greenberg Traurig	5
Harness, Dickey	5
Hunton & Williams	5
Husch Blackwell	5
Merchant & Gould	5
Townsend and Townsend	5
Brinks Hofer	4
Brooks Kushman	4
Edwards Angell	4
Finnegan, Henderson	4
Foley & Lardner	4
Ingrassia Fisher	4
Ladas & Parry	4
Lee & Hayes	4
McDonnell Boehnen	4
Morgan, Lewis	4
Morrison & Foerster	4
Ropes & Gray	4
Scully, Scott	4
Sterne Kessler	4

METHODOLOGY:
We used Thomson Reuters's Monitor Suite to analyze which firms did the most IP litigation and patent prosecution work for Fortune 100 companies in 2008. To qualify in the litigation category—which includes copyright, patent, trademark, and general IP litigation—a firm had to be among the top ten firms cited by a company for handling at least two matters during that year. In patent prosecution—which covers applications, assignments, and granted patents—a firm had to be in the top five cited by a company for handling at least one matter.

THE BIG LIST

On the surface, there is a lot of consistency in how widely the top companies spread their work. Consider that the 36 firms included in the overall ranking that appears on page 40 were mentioned by companies at least five times for doing either prosecution or litigation work. But only five firms—Baker Botts, Fish & Richardson, Foley & Lardner, K&L Gates, and Greenberg Traurig—got enough mentions to also qualify for spots on our prosecution and litigation lists.

With two exceptions, no firm got more than three mentions from companies in a single industry. The exceptions: Baker Botts and Fish & Richardson (a finalist in this year's IP Litigation Department of the Year contest; see "The Art of War," page 30). Both were named by multiple high-tech and/or telecommunications companies. Baker Botts was cited by Cisco Systems Inc., Hewlett-Packard Company, and Dell Inc. (for litigation and prosecution work), and by AT&T Inc. and Verizon Communications Inc. (doing litigation for both). Fish did litigation and prosecution work for Apple Inc., H-P, and Intel Corporation, and litigation for Microsoft Corporation.

By contrast, the top firm with the most diverse docket was King & Spalding, whose seven mentions came from seven different clients, each of them in a different industry. For example, the firm did litigation work for The Coca-Cola Company (beverage), Chevron Corporation (energy), and International Business Machines Corporation (technology), and prosecution for General Electric Company (diversified financials), The Procter & Gamble Company (household and personal products), Citigroup Inc. (financial services), and Costco Wholesale Corporation (retail). Companies in certain industries, meanwhile, have plenty of work to divvy up. For example, of the 36 firms that earned at least five mentions, all but five earned mentions from either high-tech companies or telecoms.

THE LITIGATION LIST

Dividing the data into separate litigation and prosecution categories yields significantly different rankings. The top 29 firms on our litigation chart received three or more mentions each. While most of them are large firms, some are smaller regional firms such as Texas-based Potter Minton and Delaware-based Richard, Layton & Finger. Why do they rank so high? Because, typically, when big companies hire large firms to litigate in certain jurisdictions (Delaware, say, or the Eastern District of Texas), the large firms tap local firms for special expertise.

The rankings suggest that success in getting litigation work may depend on the ability to specialize. Eight top firms on the litigation list earned an average of at least two mentions in each of the industries in which they had clients among the 100 biggest companies—meaning that more of their work is concentrated in a narrower set of industries.

With eight and six mentions, respectively, two of the top litigation firms—Fish & Richardson and IP Litigation Department of the Year winner Quinn Emanuel Urquhart Oliver & Hedges (see "What Rhymes with Win?" page 26) had four clients between the tech and telecom sectors. Compare that to Wilmer and King & Spalding, with four mentions spread across four different industries. When it comes to litigation, high-tech companies and telecoms stand out, with top industry players using 15 out of the 18 firms to rack up at least four mentions. Given that, between them, these companies account for only 12 percent of the 100 biggest companies, the fact that they hired so many top litigation firms is certainly noteworthy. Is it any wonder that technology companies—frequent targets of so-called patent troll infringement claims—have been a driving force in the push to reform the nation's patent system?

A couple other interesting nuggets: Procter & Gamble, what we consider the only pure household-and-personal-products company among the country's 100 biggest corporations, tapped nine different firms to handle litigation matters. At the other end of the spectrum, only one of the seven health care companies that we looked at used any litigation firms on our list.

THE PROSECUTION LIST

While it may not be as lucrative as litigation, patent prosecution work can be plentiful. Consider that in 2008, Fortune 100 corporations collectively received well over 21,000 patents, according to figures from the Intellectual Property Owners Association and the Patent and Trademark Office.

So who's doing the bulk of that work? Thirty firms earned at least four mentions. At the top of the list, there is little overlap with the top litigation shops. Only two firms—Baker Botts and K&L Gates—climbed into the top four on both lists.

Analyzing prosecution work by industry reveals little concentration. And the firms with the most diverse client lists were IP boutiques Schwegman, Lundberg (four mentions from the tech sector, two from companies in heavy industry) and Lee & Hayes (four mentions split between high-tech and heavy industry). Who says the boutique is dead? ■

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