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IP LAND

Swords & Shields

Patent litigation has become big business for firms. Who's winning it?

By Mark Voorhees

WHEN BUILDING PATENT PORTFOLIOS, many companies, especially in the computer and telecommunications industries, go for big numbers. They want to amass a sizable quantity of patents, so that if one or two are invalidated, there are hundreds more to fall back upon. IBM Corporation is the master of that strategy.

For IP litigators, this pile-them-high strategy doesn't at first look like a winner. The most interesting and lucrative assignments are few and far between. There just aren't that many cases with thorny issues of fact and law and the potential for big money damages and crippling injunctions. It turns out, however, that the firms that handle the most patent cases are also generally acknowledged

to be at the top of their field.

In our third annual survey of the firms handling the most patent cases, Chicago's Kirkland & Ellis, Boston's Fish & Richardson, and **Cleveland's Jones Day** are the top three finishers. This trio would make most shortlists of quality U.S. patent trial firms.

The survey ranks firms based on the number of times they were hired by plaintiffs and defendants involved in patent cases filed in 2002. We conducted the survey using data from CourtLink, a LexisNexis service. We supplement that data with additional research.

The survey does not measure success or calculate the complexity of cases, but it does provide a rough guide to the firms that general counsel call when the chips are down. On the following pages, we publish the names of those firms that were hired in at least 20 cases filed in 2002.

All rankings are imperfect, and ours falls short in highlighting the achievements of talented firms that may handle huge cases, but not lots of them. Boston's Hale and Dorr; Los Angeles's Irell & Manella; and San Francisco's Kecker & Van Nest are all shortlist IP trial firms that have beaten many of the top firms on our list. In William Lee, Morgan Chu, and John Kecker, respectively, each

firm has a giant of the IP trial bar. But the firms themselves didn't make our cutoff.

Even with that qualification, our ranking does offer a grid with which to gaze at the business of IP litigation and make observations.

- We said this last year, and we will say it again: “Boutique” firms are holding their own. Among the top 20 firms, eight are IP boutiques—nine, if you count Washington, D.C.’s Howrey Simon Arnold & White. Kenyon & Kenyon of New York, a seventh-place finisher, won the fourth-largest IP verdict in 2002 and also picked up a healthy docket of new cases, weighted heavily toward the lucrative biotechnology and pharmaceutical fields.

The top boutiques are not building numbers by taking the cases that large general practice firms don't want. Their client rosters are enviable. The top-finishing boutique, Fish & Richardson, is representing Microsoft Corporation, Intel Corporation, and E.I. du Pont de Nemours and Company, among many others, on IP litigation matters.

Last year was not a great one generally for boutiques. San Francisco's Flehr Hohbach Test

TOP OF THE HEAP: FIRMS THAT FILED THE MOST CASES IN 2002

FIRM	TOTAL CASES	PLAINTIFFS	DEFENSE
1 Kirkland & Ellis	49	23	26
2 Fish & Richardson	42	12	30
3 JONES DAY	38	14	24
4 Morris, Nichols	35	20	15
4 Sidley Austin Brown & Wood	35	14	21
6 Foley & Lardner	34	15	19
7 Kenyon & Kenyon	33	9	24
7 Morrison & Foerster	33	8	25
9 Barnes & Thornburg	31	22	9
9 Orrick	31	4	27
11 Dorsey & Whitney	30	21	9
11 Fish & Neave	30	20	10
11 Knobbe, Martens	30	14	16
11 McDermott, Will	30	8	22
15 Howrey Simon	29	13	16
16 Finnegan, Henderson	26	9	17
16 Potter Anderson	26	12	14
16 Weil, Gotshal	26	9	17
19 Fulbright & Jaworski	25	10	15
19 McAndrews, Held	25	12	13
19 Merchant & Gould	25	16	9
19 Perkins Coie	25	15	10
19 Townsend and Townsend	25	12	13
24 Michael Best	24	7	17
24 Niro, Scavone	24	17	7
24 Richards, Layton	24	10	14
24 Young Conaway	24	10	14
28 Latham & Watkins	23	10	13
28 Morgan, Lewis	23	10	13
28 Pillsbury Winthrop	23	10	13
28 Quinn Emanuel	23	7	16
32 Blank Rome	21	10	11
32 Mintz, Levin	21	14	7
32 Workman, Nydegger	21	10	11
35 Alston & Bird	20	7	13
35 Fenwick & West	20	8	12
35 Fitzpatrick, Cella	20	9	11
35 Goodwin Procter	20	7	13
35 Hogan & Hartson	20	8	12
35 Pennie & Edmonds	20	10	10
35 Robins, Kaplan	20	15	5

Albritton & Herbert disappeared by joining Minneapolis's Dorsey & Whitney, a general practice firm that had a large IP footprint even before the acquisition. San Jose's Skjerven Morrill disbanded. But among boutiques that have appeared in either of the past two surveys, Los Angeles's Lyon & Lyon was the only casualty.

We are not Pollyannaish about boutiques. Like bankruptcy firms before them, they may eventually vanish. But the best of the breed are sizable and savvy; don't count them out yet.

- The most active firms keep on ticking. After three years, we have running data on the firms that constantly do well in this survey. Six of the top ten firms have made our list three years in a row: Fish & Richardson; Milwaukee's Foley & Lardner; Jones Day; Kenyon & Kenyon; Wilmington's Morris, Nichols, Arsht & Tunnell; and San Francisco's Morrison & Foerster. Only one of the top ten firms in this year's list, Chicago's Sidley Austin Brown & Wood, has never before made an appearance. Nineteen of the 41 firms that we list here have made our list in all three years.

(These statistics may underrepresent the year-after-year consistency of firms, because for the year 2000 we did not ask firms to supplement CourtLink data. Kirkland & Ellis did not make the list that year, but might have because of its strong defense work; in 2001 and 2002, the firm was defense counsel in many cases not originally reflected in the CourtLink data.)

The firms at the top of our list have been handling patent trials for a long time. That's certainly true of the boutiques, but also true of the megafirms. Among the general practice firms within The Am Law 200, Kirkland & Ellis, Jones Day, Foley & Lardner, Sidley Austin, and Morrison & Foerster were the top five finishers. With the possible exception of Sidley Austin, those firms broke into the field early and have never looked back.

THE SWORDS: TOP PLAINTIFFS FIRMS

FIRM	CASES
1 Kirkland & Ellis	23
2 Barnes & Thornburg	22
3 Dorsey & Whitney	21
4 Fish & Neave	20
4 Morris, Nichols	20
6 Niro, Scavone	17
7 Merchant & Gould	16
8 Foley & Lardner	15
8 Perkins Coie	15
8 Robins, Kaplan	15
11 JONES DAY	14
11 Knobbe, Martens	14
11 Mintz, Levin	14
11 Sidley Austin	14

THE SHIELDS: TOP DEFENSE FIRMS

FIRM	CASES
1 Fish & Richardson	30
2 Orrick	27
3 Kirkland & Ellis	26
4 Morrison & Foerster	25
5 JONES DAY	24
5 Kenyon & Kenyon	24
7 McDermott, Will	22
8 Sidley Austin	21
9 Foley & Lardner	19
10 Finnegan, Henderson	17
10 Michael Best	17
10 Weil, Gotshal	17

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