

The Firms That Landed The Most Patent Suits Last Year

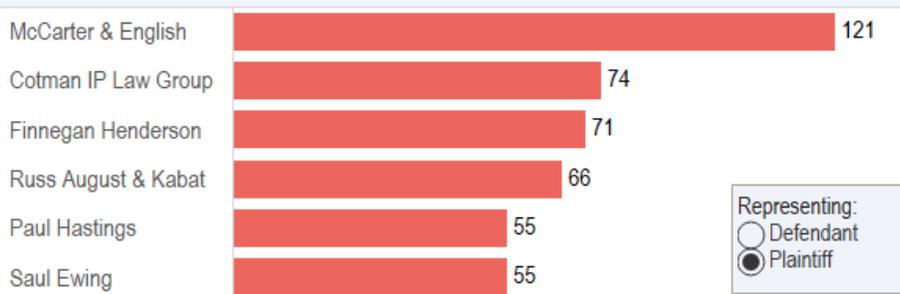
By Erin Coe

Law360, San Diego (March 15, 2016, 5:40 PM ET) -- A new Lex Machina report highlights the firms that worked on the most new patent litigation last year at the district court level for plaintiffs and defendants. Here, Law360 takes a closer look at the top firms in each category.

As part of Lex Machina's patent litigation report for 2015, which is set to be released Wednesday, it found that McCarter & English LLP handled the most newly filed patent cases for plaintiffs, holding a steep lead with 121 cases. Meanwhile, Fish & Richardson PC amassed the most new patent cases on the defense side, with a whopping 287 cases, more than triple the number of cases landed by the next firm.

The Top Patent Litigation Firms

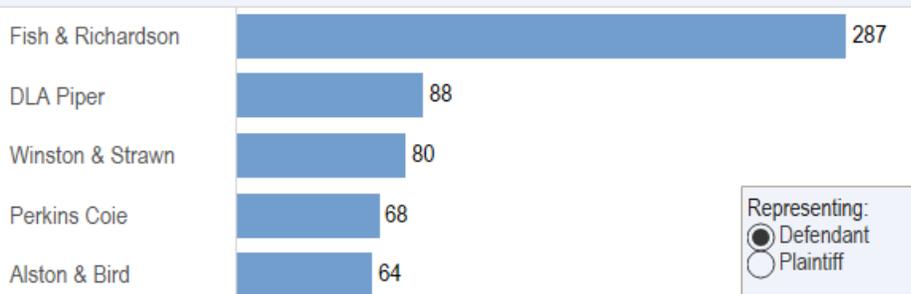
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Source: Lex Machina

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This portion of the report focused on large national or international firms and boutiques with a national reach. The report also separately looked at firms based primarily in the patent hot spots of Texas and Delaware.

McCarter & English has spent a lot of energy building a strong intellectual property team and it has become the biggest practice at the firm, with 94 IP attorneys out of its 400 total lawyers, according to partner Lee Carl Bromberg.

“We’re a strong believer in putting together a litigation team with both technically adept people who understand the medical device, pharmaceutical or computer device at issue in the case and those who can stand up in the courtroom and try cases,” he said. “Some firms have a wall dividing these people, but we have a very integrated IP group here.”

While the firm has traditionally played a big role in Abbreviated New Drug Application cases in New Jersey, Delaware and other jurisdictions, it also has drawn clients from the software, industrial equipment and medical device areas and become attuned to patent validity challenges at the Patent Trial and Appeal Board.

“These procedures are a way to challenge patents at the agency instead of, or in addition to, court,” he said. “We have become adept in our strategy of using those proceedings, and that may contribute to our appeal to clients as well.”

Kurt Glitzenstein, leader of Fish & Richardson’s litigation practice, said the reason defendants keep turning to the firm boils down to its unmatched experience in the patent area. The firm, which has about 360 IP attorneys, tried 12 cases last year, including nine in district courts across the country, and it also boasts talent with highly specialized knowledge, employing 300 attorneys and staff with technical or science degrees, of which nearly 90 have Ph.D.s.

“It’s important to be able to understand the technology and be able to communicate with clients,” he said. “We speak with clients in the language they are comfortable speaking in and can translate that into plain-spoken English so that it’s easy to understand the defenses we take in the courtroom.”

Fish & Richardson also is a heavy player in PTAB proceedings, which are part of building an effective patent defense, according to Glitzenstein.

“Post-grant proceedings are routinely considered in clients’ overall patent strategies,” he said. “We are able to seamlessly meld the key litigation strategy with the key patent office strategy for defendants. We understand the holistic strategy in order to mount a comprehensive defense.”

The other five firms that took up the most patent cases for plaintiffs are Cotman IP Law Group, with 74 cases; Finnegan Henderson Farabow Garrett & Dunner LLP, with 71 cases; Russ August & Kabat, with 66 cases; and tied for fifth place, with 55 cases, were Paul Hastings LLP and Saul Ewing LLP, according to the Lex Machina report.

Cotman is a small firm based in Pasadena, California, with five IP attorneys who primarily represent nonpracticing entities on the plaintiff side, according to Rasheed McWilliams of the firm. He said he used to work at Fish & Richardson representing Microsoft Corp., Apple Inc. and other large electronics companies, and other lawyers at Cotman also had experience defending large companies against nonpracticing-entity and competitor suits.

“Plaintiffs are looking for attorneys who have represented large companies and know how they think and how they litigate,” he said. “They also are looking not just for litigators, but actual trial lawyers. ... The fact that lawyers at our firm are planning for trial from the beginning makes clients feel more comfortable with our ability to push a case forward and get a business result, whether that’s indeed going forward to trial or having a negotiated resolution.”

Finnegan managing partner James Monroe said the firm’s appeal for plaintiffs in patent cases is its tenacity in protecting what clients consider the crown jewels of their IP.

“We are an IP-only firm, but we are essentially the equivalent of a general practice firm in the IP world,” he said. “Given our size, there is no area of IP law for which we do not have specialists, and we draw on that breadth of IP experience to handle the increasingly complex IP issues that our clients face. Similarly, in the patent arena, we have one of the largest groups of engineers and scientists at any firm. We have someone who has experience in almost any technical area that might arise.”

Russ August is focused on representing patent holders, and Marc Fenster, head of the firm’s IP department and a former Irell & Manella LLP lawyer, said he founded the practice in 2003 with the goal of putting together a top-quality trial group made up of former Irell and other attorneys on a more flexible platform when it came to rates and fee arrangements and with fewer conflicts than most national firms.

“We take a very strategic and creative approach to representing patent holders, particularly in multidefendant cases,” he said.

Paul Hastings also is known as a go-to firm for plaintiffs in the patent area, according to Yar Chaikovsky, global co-chair of Paul Hastings’ IP practice.

“Paul Hastings has a track record of winning for those whose intellectual property rights are infringed and setting precedents while doing so — and we have that trial success in all venues,” he said.

Following Fish & Richardson on the defense side, DLA Piper and Winston & Strawn LLP were next in line to represent defendants in the most new patent litigation last year, with 88 cases and 80 cases, respectively, according to the Lex Machina report. Perkins Coie LLP and Alston & Bird LLP rounded out the top five, with 68 cases and 64 cases, respectively.

John Allcock, global co-chair and U.S. chair of DLA’s IP and technology practice, said the firm’s national and global footprint makes it distinct from its competitors. The firm has about 180 IP lawyers in the U.S., and some of its clients include Samsung Electronics Co. Ltd., Toshiba Corp. and Sophos Ltd.

“We have people on the ground in our patent group in all 10 of the top 10 filing venues in the U.S., including Texas, Delaware and Florida,” he said. “The other thing that is different from most people on the list is we have significant presences in all of the technology communities in the U.S. and around the globe. And we also provide services in corporate and licensing matters and general commercial disputes to represent technology companies in a broader way than a purely patent boutique would.”

Winston’s trial experience is one of its main attractions, according to David Enzminger, co-chair of the firm’s IP practice. The firm, which has nearly 200 IP lawyers, including 80 with technical backgrounds, notched 19 jury trials over the last three years.

“We get good results for clients, and we have a deep bench of litigators who can try cases,” he said, noting the firm had more than 20 partners who served as first chair on patent trials.

While he noted that, anecdotally, the patent litigation market appeared to be on a downward trend, Winston expected that its busy 2015 would likely continue this year.

“I don’t think there is tremendous growth because the industry is down a bit, but we do seem to be holding our own,” Enzminger said.

--Editing by Mark Lebetkin and Kelly Duncan.

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