Litigation Powerhouse: Orrick

By Carolina Bolado

Law360, Miami (August 4, 2016, 10:41 PM ET) -- With extensive trial experience and one of the largest groups of appellate specialists in the country, Orrick Herrington & Sutcliffe LLP is the go-to firm for companies such as Dow Agrosciences, Apple and DirecTV in bet-the-company trials and must-win appeals, landing the firm a spot on Law360’s list of Litigation Powerhouses.

The 481-attorney litigation group is routinely called on to come into a case when it’s headed for trial or going up on appeal because of its vast experience in high-stakes litigation, according to partner Peter Bicks.

“We'll get the call because that's what we've done,” Bicks said. “When you have that kind of track record and experience, it puts you in the position to get those kinds of cases.”

One such case is the $6 billion ongoing patent litigation between Dow Agrosciences and Bayer CropScience. After winning a victory in the Federal Circuit for Dow, the Orrick team in June 2015 helped it secure $5.9 million in attorneys' fees when the judge ruled Bayer had filed a frivolous patent infringement suit.

The $1.5 billion patent infringement judgment that Carnegie Mellon University won against Marvell Technology is another recent victory. Orrick handled the complex appeal in the Federal Circuit, which ended up affirming just $278 million of the award and ordering a new trial to

Litigation Attorneys: 481
Litigation Partners: 155

Big Wins:

US v. Marlene June – The U.S. Supreme Court ruled that the Federal Tort Claims Act's time limits are subject to equitable tolling, extending the time that victims of wrongful government conduct have to file suit.

DirecTV Inc. v. State of Florida – In a win for DirecTV and Dish Network, a Florida appeals court said the state's higher tax rate on satellite services gives an unfair advantage to cable providers that use in-state infrastructure.

Wi-Lan Inc. v. Apple Inc. – Orrick won a complete victory for Apple in its Federal Circuit appeal against Wi-Lan, which had sought $248 million for alleged infringement of a wireless patent.

Good Technology Corp. et al. v. MobileIron Inc. – In a big win for MobileIron, a California jury held that none of its products infringed three of Good Technology's data security patents, two of which the jury found invalid.

Pao v. Kleiner Perkins Caufield & Byers LLC – A jury returned a complete defense verdict for venture capital firm Kleiner Perkins, which had been accused by a former junior partner of gender discrimination and retaliation.

Trial Tip:

“You are not a solo act. You are the captain of a team. Your job is to get the team to fire on all cylinders and to feel valued as part of the team.” — Peter Bicks
recalculate damages. But Joshua Rosenkranz, who heads the appellate litigation practice, said the team was able to win on liability, which put it in a great position to negotiate the $750 million settlement the parties agreed to in February.

“It was huge,” he said. “It was one of the biggest patent verdicts in history, and the end result was a game-changer for the university.”

The Orrick team also won a complete victory for Apple in January when the Federal Circuit ruled that a jury correctly cleared Apple of infringing a Wi-Lan wireless patent. Wi-Lan had sought $248 million in damages.

Its prowess in appeals is the result of a concerted effort over the last few years to build a marquee appellate practice, according to Rosenkranz, who was brought in to build the group seven years ago, when the firm had no distinct appellate group. Now, Orrick has five partners and 21 associates and counsels who do nothing but appeals.

Unlike most other appellate groups, the Orrick group is not focused on what Rosenkranz calls “the star model,” in which a team is built around one big-name appellate lawyer. Instead, he described it as a constellation, with five partners taking leads on cases and the other attorneys working with them.

“What distinguishes us is, if you scan any of our briefs, the heavy emphasis on telling a powerful story and on making things really clear and simple,” Rosenkranz said. “Sometimes we narrow the case considerably in ways that lawyers would be uncomfortable doing. We’re kind of unconventional in our approach to advocacy.”

In April 2015, the team notched a big win in the U.S. Supreme Court in U.S. v. June. A split 5-4 court ruled that the Federal Tort Claims Act's time limits are subject to equitable tolling, siding with a woman who claimed she was falsely imprisoned by the Immigration and Naturalization Service and another woman involved in a wrongful death suit. It was a rare victory against the government, according to Rosenkranz.

“It affects thousands upon thousands of claims against the government,” he said. “It boiled down to a question of fundamental fairness. Are you going to interpret the statutes of limitations harshly for victims of torts when they have a really good reason for blowing deadlines?”

The appeals team also scored a big win for DirecTV and Dish Network in a Florida appeals court last year when the court ruled that the sales tax portion of state law gave an unfair advantage to cable providers that use in-state infrastructure. That case is now pending in the Florida Supreme Court.

With the help of partner Lynne Hermle, Orrick achieved a total victory for venture capital company Kleiner Perkins Caufield Byers in a gender discrimination and retaliation case brought by former junior partner Ellen Pao, who had been moved to an operating role after mediocre performance reviews. Hermle had to fend off media reports of a “boy’s club” atmosphere at the company throughout the case.

“It's difficult to try claims like these — against the backdrop for change in the tech community — to a jury which likely feels strongly about these issues,” she said. “I think it was the perfect storm of a fascinating industry, which people don't really understand, and a complex and interesting issue of gender disparity in the numbers in the industry.”
Hermle said Pao's testimony, in which she suddenly seemed unreliable and contradicted herself, was the turning point that eventually led to the jury rejecting all of her claims.

In another big trial win, Orrick helped MobileIron, a mobile device management company, fend off patent infringement claims brought by rival Good Technology. Orrick partner Neel Chatterjee said Good had been enforcing its patents against large and small companies for the last decade and had been able to get large settlements, but MobileIron wanted to fight the allegations.

“MobileIron didn't think they infringed the patent, and they thought the market had changed significantly in a way that the patents couldn't be infringed,” Chatterjee said. “The other side tried to tell a story of theft and piracy, and we told a story of new innovation.”

Chatterjee and his team were able to knock out one of the four patents on summary judgment and eliminate the potential for damages for two others before trial. In the end, MobileIron won in a clean sweep when a San Jose jury found that it did not infringe on the three patents and found two of the patents invalid.

Another high-profile case was tried in January, when an Orrick team led by Bicks defended Dish Network against allegations from the government that it placed millions of robocalls in violation of the Telephone Consumer Protection Act. In the suit, the largest TCPA case in history, Dish is facing $23 billion in potential fines.

Bicks said Orrick was brought in less than a year before trial and after the judge had issued a 250-page summary judgment order pinning liability on Dish but leaving open what kind of penalty to impose. The Orrick team was able to reopen expert discovery and depositions in a move that they hope will save Dish billions of dollars in fines. The parties are awaiting the final decision from the judge, but Bicks is optimistic.

“I feel very good that the judge said on the record that it was the best tried case that she'd ever seen,” he said. “For our client and our team, it feels good to receive those kinds of compliments.”

Since the high-profile win in the Kleiner Perkins case, the firm has also been hired to defend tech companies like Twitter, Microsoft Corp. and Fitbit Inc. in various high-stakes disputes like a gender class action and trade secrets disputes.

The firm is representing Microsoft in its challenge to the U.S. government’s attempts to seize and turn over customer email content from an Irish server as part of a criminal investigation. Last month, the Second Circuit found in favor of Microsoft, ruling that the government cannot use search warrants to reach customer data stored overseas.

In addition, Orrick is counseling FanDuel, DraftKings and the Fantasy Sports Trade Association on multistate legislative and regulatory matters and just this week won a victory in New York when Gov. Andrew Cuomo signed a bill legalizing daily fantasy sports.

The litigation team as a whole stands out because of its willingness to take on tough cases and try them, and because of its passion for its clients' causes, according to Hermle.

“We are willing to crawl through the trenches for our clients, and that matters to them,” she said. “They
come back to us because they know we share their passion for their causes. Having been in-house, I can really understand the value of that.”

For Bicks, the appeal of handling the biggest and most important matters for clients is “just in our blood and in our culture.”

“There’s nothing more rewarding than being asked to take on a problem that keeps your general counsel and the board and senior management up all night and make them rest better when they know that Orrick is at the helm,” he said.

--Additional reporting by Allissa Wickham. Editing by Christine Chun and Aaron Pelc.

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