

The 7 Firms GCs Want To Hire For IP Litigation

By Ryan Davis

Law360 (October 17, 2018, 8:03 PM EDT) -- Intellectual property litigation is becoming increasingly complex with ever-higher stakes for companies, and seven firms stand out for general counsel as being able to deliver the top-shelf results in IP matters, according to a report released Wednesday.

Fish & Richardson PC, Jones Day, Kirkland & Ellis LLP, Orrick Herrington & Sutcliffe LLP, Perkins Coie LLP, Sidley Austin LLP and WilmerHale were named IP litigation powerhouses in the BTI Litigation Outlook 2019 report, an annual analysis of the legal landscape conducted by BTI Consulting Group of Wellesley, Massachusetts.

There was significant turnover in this year's list, compiled through hundreds of interviews with general counsel, with only one firm, Jones Day, returning from last year's edition.

The report also found that the IP litigation sector is expected to grow faster than any other in 2019, from \$3.17 billion this year to \$3.33 billion next year, a 5.1 percent growth rate. That is the case even though the number of companies facing IP litigation has dropped from 68.7 percent last year to 62 percent this year, since the scale and complexity of IP litigation has been increasing.

"This high projected growth for 2019 means the companies with IP litigation matters on their hands are funneling substantially more dollars to this area than in 2017 and 2018," the report said.

The legal landscape in general is seeing "the biggest changes of the last 12 years," BTI President Michael Rynowecer said, with companies reporting that they are involved in increasingly complicated and high-stakes litigation across all practice areas. In the IP space, that has translated to companies finding large firms more appealing, he said.

2019 IP Powerhouses
Fish & Richardson
Jones Day
Kirkland & Ellis
Orrick
Perkins Coie
Sidley Austin
WilmerHale
2018 IP Powerhouses
Cooley
Cravath
Dentons
Jones Day
Latham & Watkins
Paul Weiss
Skadden
Wachtell Lipton
2017 IP Powerhouses
Cravath
Dentons
Jones Day
Latham & Watkins
Skadden
Wachtell Lipton

"IP litigation is an area that is getting more and more attention from general practice firms," he said, noting that only one of the seven powerhouse firms, Fish & Richardson, is an IP boutique.

Large boutiques like Fish & Richardson are still able to attract clients, but smaller boutiques have been cutting back on the number of IP litigation matters they handle, according to Rynowecer. That has created opportunities for general practice firms to take some of that work, particularly those that offer a full array of IP services, he said.

"One of the big things we heard is that clients want IP litigation firms to somehow be involved from the beginning," he said. "If they filed the patent or crafted the initial strategy, a firm is in a much better position to help when litigation pops up months or years down the road."

The firms that were named as powerhouses are those that are skilled at determining how important an IP matter is for the client and tailoring their services accordingly, Rynowecer said.

"These firms are very good at sorting that out and knowing which strategy to take at the beginning, whereas other firms don't have that nuanced look," he said.

Mark Selwyn, co-chair of the IP litigation practice at WilmerHale, said that clients are increasingly dealing with cases that span multiple countries around the world, the intersection of IP and competition law, and other challenging matters that the firm is well-positioned to work on.

"We're having one of our busiest years ever and clients are coming to us with more and more really complex, cutting-edge issues," he said.

WilmerHale has over 100 lawyers and technical specialists with technical degrees and has frequently "played an important role in coordinating massive global patent litigation across jurisdictions," both of which are appealing for clients, he said.

In addition, the firm has had 11 different attorneys handle 23 appeals at the Federal Circuit over the last two years, worked on eight patent cases at the U.S. Supreme Court over the last five years and handled over 300 America Invents Act reviews at the Patent Trial and Appeal Board.

"We make sure we are leveraging the knowledge we've built up over time to employ best practices at all stages and deliver high-quality services in the most efficient manner for clients," Selwyn said.

At Fish & Richardson, the firm's extensive IP experience is also a key part of its appeal to clients, said Kurt Glitzenstein, the leader of the litigation practice group, who noted that the firm has 423 attorneys and technical experts with degrees in science and technology, 87 of which are Ph.D.s.

"In every facet of experience, we have a demonstrated track record of trying a significant number of high-stakes cases in courts around the country," he said.

He noted that the firm handled 42 patent trials between 2015 and 2017, which amounts to 11.5 percent of patent trials held in the U.S. during that time. It also worked on 25 percent of cases at the U.S. International Trade Commission last year and appeared in 105 appeals at the Federal Circuit in 2017, 42 more than the next most active firm.

“Clients are very sophisticated in this space and understand the importance of deep expertise” in each the four main areas of patent litigation: district court, the appellate level, the ITC and the Patent Trial and Appeal Board, Glitzenstein said. “We’ve seen over and over the exceptional benefit of offering integrated services for clients.”

Increasingly complex IP matters have also been a recurring theme for Orrick, said Jared Bobrow, co-chair of the firm's global intellectual property practice group. The firm has offices in China, Japan and Taiwan, jurisdictions where IP litigation has recently become more prominent.

"There are a lot of disputes and litigation in Asia that were not there several years ago. As disputes move in that direction, we're well-positioned to handle them," Bobrow said.

In addition, the firm has extensive experience in all areas of IP: patents, copyrights, trademarks and trade secrets, which Bobrow said is somewhat unusual for a full-service firm and sets Orrick apart when clients have matters that cut across various areas. The firm is able to use its reach in both geography and expertise to aid clients, he said.

“There’s a strong culture here of collaboration and integration that allows us to work on complex cases really well," he said.

--Editing by Aaron Pelc.