

2009 PATENT LITIGATION SURVEY

**FISH & RICHARDSON # 1
PATENT LITIGATION SURVEY 2009**

A Little Less Buzz

Our survey shows that patent litigators continued to be busy in 2008, though by the time the year ended they were definitely feeling the recession's sting.

—By Joe Mullin

Was there ever any doubt that 2007 would be hard to top on the patent litigation front? It was, after all, a year that saw a big jump in the number of infringement suits filed and an even sharper spike in the number of defendants targeted in those suits. Reaching those figures again in 2008 seemed unlikely even before the recession's toll on the broader economy began to affect patent litigation. And in the year's final quarter, the downturn's impact really kicked in.

By the time 2008 ended, the U.S. Court of Appeals for the Federal Circuit had issued its much-discussed *Bilski* ruling on the patentability of business methods, Congress still hadn't passed patent reform, and the number of patent suits filed was down by about 8 percent from 2007 (the number of defendants dropped by 24 percent). Given the slowdown, it shouldn't be surprising that there's been something of a shake-up in the rankings in the latest edition of our annual patent litigation survey. The survey measures which firms are getting the bulk of this lucrative work.

Another anomaly about last year: In our survey, we used a different definition of how long a case must be active for a firm to get credit for it than we have in the past. This year, we returned to our traditional way of doing things. Once we'd done that, we decided it made sense to compare the 2009 list to the one we produced two years ago (see chart at right). By any measure, Fish & Richardson comes out on top. While the firm's 77-case workload in 2008 represented a 21 percent dip from the previous year, it was down just 3 percent from the 79 cases it handled while claiming the number one spot in 2007. Kirkland & Ellis ranked second, despite taking on a few less cases than it did two years ago. Two other top firms—Foley & Lardner and Howrey—slipped on the list from two years ago, despite essentially taking on a similar number of cases. Jones Day also suffered a modest drop after seeing a 23 percent dip in the amount of new work it took on last year compared to two years ago.

WHICH FIRMS WERE BUSIEST OVERALL?

RANK 2009	RANK 2007	FIRM NAME	TOTAL DISTRICT COURT CASES
1	1	Fish & Richardson	77
2	3	Kirkland & Ellis	57
3	N/A	Quinn Emanuel	54
4	13	Kenyon & Kenyon	52
5	18	Finnegan, Henderson	50
5	7	Niro, Scavone	50
7	11	Morrison & Foerster	46
8	N/A	Wilmer	44
9	5	Howrey	43
9	2	Jones Day	43
9	N/A	Knobbe, Martens	43
12	24	Alston & Bird	42
13	6	Greenberg Traurig	41
14	27	DLA Piper US	40
14	4	Foley & Lardner	40
16	N/A	K&L Gates	39
16	N/A	McKool Smith	39
18	N/A	Akin Gump	35
19	32	Wilson Sonsini	34
20	11	Baker Botts	31
20	9	McDermott Will	31
20	27	Winston & Strawn	31
23	N/A	Covington & Burling	30
23	27	Fulbright & Jaworski	30
25	22	Michael Best	28
25	16	Perkins Coie	28
27	27	Goodwin Procter	27
28	N/A	McCarter & English	26
29	9	Cooley Godward	25
29	21	Ropes & Gray	25
31	18	Kilpatrick Stockton	23
31	32	Morgan, Lewis	23
33	N/A	Gibson, Dunn	22
34	36	Fitzpatrick, Cella	21
34	N/A	Hunton & Williams	21
34	N/A	McAndrews, Held	21
37	18	Sidley Austin	20

FOR THE DEFENSE

RANK 2009	RANK 2007	FIRM NAME	DEFENSE CASES
1	2	Kirkland & Ellis	48
2	1	Fish & Richardson	47
3	5	Morrison & Foerster	42
4	N/A	Quinn Emanuel	40
5	14	Kenyon & Kenyon	36
6	4	Howrey	31
7	24	Alston & Bird	30
7	N/A	K&L Gates	30
9	24	DLA Piper US	28
9	15	Wilson Sonsini	28
11	6	Foley & Lardner	27
12	11	Finnegan, Henderson	26
12	3	Jones Day	26
12	11	McDermott Will	26
12	N/A	Wilmer	26
16	N/A	Akin Gump	25
16	10	Greenberg Traurig	25
18	7	Baker Botts	24
18	11	Perkins Coie	24
18	24	Winston & Strawn	24
21	9	Knobbe Martens	23
22	30	Gibson, Dunn	21
23	19	Goodwin Procter	20

FOR THE PLAINTIFF

RANK 2009	RANK 2007	FIRM NAME	PLAINTIFF CASES
1	7	Niro, Scavone	50
2	3	Fish & Richardson	30
2	N/A	McCarter & English	30
4	14	Finnegan, Henderson	24
5	N/A	Fitzpatrick, Cella	20
5	11	Knobbe Martens	20
5	N/A	Wilmer	20

open for at least two months.) We did not count cases before the International Trade Commission or appellate courts. Some firms listed multiple district court cases with the same plaintiff. If those cases involved the same patent, highly similar technology, or consolidated discovery, we counted them all as one.

METHODOLOGY: Earlier this year, *IP Law & Business* contacted more than 300 law firms and asked them to provide us with a list of patent lawsuits they filed in federal district court in 2008. To be considered for this survey, the cases had to be active as of February 1, 2009. (Measuring cases this way returned us to what had been our practice prior to last year, when we considered any cases filed in calendar year 2007 that remained

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