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SPECIAL
ISSUE

◆ LITIGATION INTELLECTUAL PROPERTY FINALIST ◆

FISH & RICHARDSON

◆ LITIGATION DEPARTMENT ◆ of the YEAR



THIS IS OUR FIFTH BIENNIAL Litigation Department of the Year competition. It has become a cliché to note that we've never had a tougher time picking finalists and winners from the scores of submissions. Nevertheless, it's true. The last two years have been a time of unprecedented upheaval for American businesses—and for the lawyers who serve them. To quote a partner from one of our finalist firms, the economic meltdown resulted not just in litigation, but in conflagration. The firms we chose in the overall contest and in the three practice area competitions—product liability, labor and employment, and intellectual property—didn't just survive this trial by fire. They were forged into stronger, faster, smarter litigation departments.

As before, we invited every firm in The Am Law 200 to report on litigation activities in a 19-month period, this time January 1, 2008–July 31, 2009. Every submission was read by at least three *American Lawyer* journalists. We vetted the strongest entries with calls to clients and opposing counsel. Panels of reporters and editors picked finalists in each category and invited those firms to our offices in New York to plead their cases. At the end, we arrived at the results that follow: four winners, 12 runners-up, and 24 honorable mentions. Congratulations to all of them.

—ALISON FRANKEL

PHOTOGRAPHY BY MIKE MCGREGOR

By Joe Mullin

Perfecting the Art of War



When it comes to flipping courtroom losses upside down, FISH & RICHARDSON knows its stuff. Just ask Microsoft.

NO FIRM IN THE COUNTRY handles more patent litigation than Fish & Richardson, according to sibling publication *IP Law & Business's* annual survey. What makes the firm a finalist in this year's IP competition, though, isn't the sheer volume of its caseload, but the extraordinary perseverance its lawyers have shown in turning big verdicts against its clients to dust.

Fish partner John Gartman says he and his colleagues know that victory can come at any point: summary judgment, trial, via posttrial motions, or on appeal. "We focus on winning the war," he says. "We understand there are going to be ups and downs in litigation." Two big defense wins for Microsoft Corporation show how Fish turns a "down" into an "up." In September the judge overseeing an infringement suit that

Uniloc Corporation Pty Ltd filed against Microsoft tossed a \$388 million jury verdict against the software giant. Responding to Fish's posttrial motions, the judge ruled that the jury "lacked a grasp of the issues before it." The key to pulling such defense victories from the jaws of defeat? Partner Frank Scherkenbach says a consistent approach builds credibility with judges. "You've got to know before you walk into trial how you'll win on [judgment as a matter of law] and appeal," he says.

The Uniloc reversal paled next to an even bigger about-face: Gartman's 2007 obliteration of Alcatel-Lucent's \$1.5 billion win against Microsoft for allegedly infringing MP3 digital music patents. Upheld on appeal in 2008, the reversal started a series of defense wins that effectively ended Alcatel-Lucent's patent war against Microsoft—with the latter clearly on top.

By way of background: Alcatel-Lucent, armed with the world-famous Bell Laboratories patent portfolio, claimed to own patents on the most widely used digital audio and video formats. Its goal: To extract royalty payments for any device that played an MP3 or a DVD.

As the MP3 case unfolded, Gartman defended Microsoft against Alcatel-Lucent's

FROM LEFT:
Michael McKeon,
John Gartman,
Katherine Kelly Lutton,
Ruffin Cordell,
Frank Scherkenbach

video patents at a separate 2007 jury trial—and won, though a top standards-setting group had blessed the patents, and Dell Inc. and Gateway, Inc., had agreed to pay licensing fees for them.

Fish's video patent win was upheld on appeal in 2008. And in September the U.S. Court of Appeals for the Federal Circuit modified Alcatel-Lucent's lone win. (While the court affirmed that Microsoft's Office software infringed the patent at issue, it ordered a retrial on damages.) Except for that pending matter, Microsoft and Alcatel-Lucent reached a global settlement in early 2009.

Elsewhere, Fish compiled a robust record at the International Trade Commission, winning five cases in the last two years, and helping clients like ASUSTeK Computer, Inc., fend off litigation that could have kept key products out of the United States. Fish represents one side or the other in one of every four ITC cases filed in 2008—third-best among all firms. Along with its skill at handling suits in the U.S. district court for the Eastern District of Texas—where Fish lawyers won two rare summary judgment motions—the firm is on track to dominate two of the nation's hottest patent venues.

The Fish docket is mostly defense cases, but the firm can flex its enforcement muscles. Case in point: Fish helped Callaway Golf Company win an injunction blocking the sale of Acushnet Company's Titleist Pro V1, which generated \$1.9 billion in sales in 2008. While that win was sent back for a retrial due to a technical issue, Callaway GC Michael Rider says he has no qualms about hiring Fish to handle all his patent litigation: "They know the patent law absolutely cold, and know how to try patent cases."

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}	PRACTICE GROUP SIZE	<i>Principals: 94</i>	}
		<i>Associates: 122</i>	
		<i>Counsel: 6</i>	
}	PRACTICE GROUP as Percent of Firm	55%	}
	ESTIMATED PERCENT of Firm Revenue 2009	52%	

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