

THE APPELLATE HOT LIST

AKIN GUMP STRAUSS HAUER & FELD

COVINGTON & BURLING | **FISH & RICHARDSON**

GIBSON, DUNN & CRUTCHER | IRELL & MANELLA

JENNER & BLOCK | JONES DAY | K&L GATES | LATHAM & WATKINS

MAYER BROWN | MORRISON & FOERSTER | O'MELVENY & MYERS

ORRICK, HERRINGTON & SUTCLIFFE

PAUL, HASTINGS, JANOFSKY & WALKER

ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER

SIDLEY AUSTIN | SKADDEN | STEPTOE & JOHNSON | VINSON & ELKINS

WILMERHALE | WINSTON & STRAWN

TALK ABOUT splitting hairs.

That's what we had to do in preparing our Appellate Hot List this year. This is the second time that we've asked our readers to nominate firms with stellar records in appellate advocacy, and the response was overwhelming. We received dozens of nominations for firms that really have been shaking things up. Deciding which ones deserved recognition was even more difficult than it was last year.

We looked for firms that scored at least one significant appellate win since February 2007, plus an impressive legacy overall. A "significant win" meant prevailing before the U.S. Supreme Court, a federal circuit court or a state court of last resort when the financial stakes were high or an important legal principle was at stake. Government attorneys were not eligible.

The firms on this list contributed in meaningful ways to the most important appeals of the year, whether through drafting the main briefs, presenting oral arguments or as friends of the court.

THE APPELLATE HOT LIST

There simply wasn't room for all the firms that deserve recognition. David Frederick at Washington's Kellogg, Huber, Hansen, Todd, Evans & Figel, for example, has been on quite a hot streak lately; Pillsbury Winthrop Shaw Pittman, meanwhile, had an important hand in the Supreme Court's landmark ruling

reasserting the habeas rights of Guantánamo Bay detainees. We could go on. Settling upon a mere 21 firms was agonizing. We regret that an awful lot of talent doesn't get its due here.

The thumbnail profiles of the firms listed are based on material provided by the firms, court records and reporting by regular contributors Roger Adler and Richard Acello and our editors.

Appellate victories usually are the fruit of collaborations, but space did not allow us to list each firm that contributed to a specific outcome. The accompanying articles highlight cases that had particular lessons to teach.

—MICHAEL MOLINE

Fish & Richardson

Fish & Richardson boasts a century of winning cutting-edge intellectual property appeals. Nearly 30 of its 470 attorneys are members of the appellate team led by Robert E. Hillman, Frank P. Porcelli and John A. Dragseth. The firm encourages trial attorneys to argue their own appeals; the appellate team frequently handles the briefing. Fish has a reputation for "flipping" hard cases that other firms lost at trial.

NOTEWORTHY CASES:

■ ***Lucent Techs. Inc. v. Microsoft Corp.***, 543 F.3d 710 (Fed. Cir. 2008). Lead attorneys John E. Gartman, John W. Thornburgh, Justin M. Barnes, John A. Dragseth and Joseph P. Reid. The Federal Circuit quashed a \$1.5 billion jury verdict against client Microsoft Corp. involving the MP3 digital audio coding standard. The case was part of a six-year, 13-patent battle over what Lucent considered the "crown jewels" of its legendary portfolio. Other companies had purchased licenses rather than risk a court fight.

■ ***Kyocera Wireless Corp. v. Int'l Trade Comm'n***, 545 F.3d 1340. (Fed. Cir. 2008). Lead attorneys Michael J. McKeon and Scott A. Elengold. This case featured a raft of wireless communications companies and the cream of the IP appellate bar. Fish & Richardson filed a brief in this fight over wireless processor chips on behalf of client L.G. Electronics Mobilecomm U.S.A. Although the client's chips were found to have infringed, the court overturned an International Trade Commission policy of excluding nonparties' products containing infringing components.

■ ***Predicate Logic Inc. v. Distributive Software Inc.***, 544 F.3d 1298 (Fed. Cir. 2008). Lead attorneys Christopher S. Marchese, Seth M. Sproul and John A. Dragseth. The firm did without oral arguments—leaving the other side to argue unopposed—in this fight over the client's patent on a way to measure and control software development. On the strength of its briefs alone, Fish won a reversal of summary judgment against its client and established a precedent concerning the interpretation of patent claims as open and expansive or closed and narrow.