

Leading IP Firm Pioneers Data-Driven Alternative Fee Structures

► **When it comes to patent litigation, Fish & Richardson knows no peer. That's why it's known as the innovators' innovator.**

CCBJ: Fish handles more cases in district court, at the International Trade Commission (ITC), and at the Court of Appeals for the Federal Circuit than any other firm. Why is the firm in such high demand?

Kurt Glitzenstein: Clients trust us with their most important matters because we win. No firm in the world can match Fish's winning track record in intellectual property (IP) trials. In 2018, Fish won 14 patent cases in district courts and 23 patent cases at the Federal Circuit, and we successfully resolved over 300 other patent cases.

We completed a staggering 21 trials last year, and our trial lawyers are in court nearly every day. We know how to present the facts and the law in ways that are clear and compelling to judges and juries, and that is why we outperform other firms in high-stakes patent infringement actions.

In 2018, Fish filed appearances in 197 new district court patent cases, 66 more than our nearest competitor; appeared in 202 new Patent Trial and Appeal Board proceedings, 36 more than our closest rival; and handled almost 17 percent of all new ITC patent cases. On the appellate side, Fish was the busiest firm at the Federal Circuit in 2018, filing appearances in 109 new patent cases (47 more than the next most active firm). We are in such high demand because we aren't just IP litigators. We are trial lawyers with unrivaled expertise and skill.

What makes Fish's ITC practice so unique?

Fish was among the first pioneers to recognize the power of patent actions in the ITC and was active in the ITC long before the rush to appear in its chambers. In fact, one of our attorneys teaches (with an ITC judge) the first ever law school class in the country dedicated to Section 337 cases. We have played a pivotal role in creating law at the ITC, from changing the law regarding downstream products, to advancing the standards for when so-called patent trolls can litigate in the ITC, to conducting unprecedented hearings before the full commission regarding public interest issues. We know the process, we know the judges, we know the law, and obviously, we understand patents better than anyone. That is a winning combination.

Amidst all that success, Fish has offered an alternative fee arrangement (AFA) program for the past 10 years. How has it evolved, and how does it benefit clients?

Fish started its AFA program in early 2009 to create fee arrangements that are tailored to our clients' business needs and objectives. In 2018, 31 percent of our collections were from AFAs. Our AFAs are data driven. Because of our extensive experience, we have the ability to predict how much work will be needed to win in a particular case, based on all the variables involved, and to create a fee that represents an outstanding value.

In our long-running AFA for Microsoft, we showed that it was possible to price complex patent litigation cases using a fixed fee, giving them the confidence to move most of their remaining legal work to alternative

fee arrangements. Both Microsoft's and Fish's interests were aligned by focusing on lowering costs while still delivering exceptional results.

We are proud of the thoughtful and intentional way we have developed AFAs that work for our clients. In a BTI Consulting Group survey, Fish was one of just a few firms, and the only IP firm, that corporate counsel found to be the best at making AFAs a successful cost-control tool.

One of the many benefits of having these conversations with our clients at the outset of a case is that it ensures that everyone is on the same page. We discuss schedule. We talk about when the case will be busy, and when it might slow down, so clients know when their scientists, engineers, and businesspeople will need to engage. We explain how the case is likely to unfold on the merits. Importantly, we make sure that we know their commercial objectives. We then come up with a creative and flexible proposal that takes into account all of these considerations.

Do you offer other fee innovations?

We price many of our matters with a set monthly fee schedule, however, we also craft collared-fee deals and blended-rate arrangements. In addition, we're very willing to explore bonus payments for achieving specified objectives or milestones. We understand that



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clients are generally very open to paying for success, and we are confident enough in our diligence and our abilities in the courtroom to make that option available.

What brought Fish to open an office in Shenzhen, China, earlier this year?

One of the largest growing segments of our practice is U.S.-based work for clients who are outside

the United States. I personally handle work for a significant number of clients in Europe. We have been enormously successful developing work from clients in Asia, including South Korea, Taiwan, Japan, and China. With respect to China, Fish has helped China's leading companies obtain, enforce, and defend their intellectual property rights in the United States and Europe for many years.

We are proud of the thoughtful and intentional way we have developed AFAs that work for our clients.

Our Shenzhen office gives us a base of operations to meet the needs of clients in Asia on the ground, in real time, whenever they need us. Shenzhen is a particularly good fit for Fish. Known as the Silicon Valley of China, Shenzhen boasts the highest number of PCT (Patent Cooperation Treaty) applications of any city in China. The city is home to some of China's most innovative companies, accounting for almost 50 percent of Chinese PCT filings.

How does Fish stand out from its competitors?

First, we have the deepest bench of seasoned IP trial lawyers. We don't rely on one or two superstars to try all of our cases. Over 100 of our attorneys have led or co-led a trial team.

Second, we have more lawyers with science and technology degrees than any other firm. Clients don't have to spend time teaching us their technology.

Third, we serve clients by forming customized teams that deeply understand their clients' industries and technologies. Clients value our ability to collaborate. Attorneys at Fish like one another and enjoy working together. Clients notice that.

Our clients recommend us to their peers because we understand their business needs and their technology, are deeply committed to their success, use cutting-edge tools to deliver the best value, and because we get the best results. ■