

These Firms Crushed It At The Federal Circuit In 2018

By Jacqueline Bell

Law360 (March 26, 2019, 8:23 PM EDT) -- These firms showed the patent world who was boss in 2018, taking on an eye-popping number of appeals and proving their prowess at oral argument by racking up wins in the high-stakes legal battles before the Federal Circuit.

Law360's look at patent opinions issued by the specialty appeals court in 2018 after an oral argument reveals eight law firms that scored at least seven wins in such cases before the Federal Circuit.

At the top of the heap are two powerhouse patent boutiques that were at the top of their game in 2018: Fish & Richardson PC and Finnegan Henderson Farabow Garrett & Dunner LLP.

Both scored double-digit wins before the appeals court in Law360's examination of opinions issued last year.

Fish & Richardson did a staggering number of oral arguments on behalf of clients in 2018, topping the list with 26 and emerging victorious 17 times.

The Firms That Dominated The Fed. Circ. In 2018



A win for BuySeasons Inc. found that patents the company was accused of infringing were correctly nixed under the U.S. Supreme Court's ruling in *Alice Corp. v. CLS Bank International*. A victory for Power Integrations Inc. revived a database patent the Patent Trial and Appeal Board had nixed. And a win for Altaire Pharmaceuticals threw out a post-grant review decision upholding an eye solution patent challenged by the drugmaker.

Kurt Glitzenstein, litigation practice group leader at Fish & Richardson, said the firm has a unique appellate practice that develops top-notch appellate talent.

"Not only do our 26 former Federal Circuit clerks contribute heavily to most of our appellate briefs, but the attorney most knowledgeable about the case argues it on appeal," Glitzenstein said in an email. "This not only combines our command of the law with our command of the record, but it means that essentially all of Fish's powerhouse trial lawyers have extensive appellate argument experience."

Finnegan also argued a remarkable number of cases before the Federal Circuit last year, racking up high-stakes wins including a victory for Sprint that upheld a \$140 million jury verdict in the telecom's favor and a ruling in favor of PPC Broadband Inc. preserving a \$61 million win in a patent infringement case over coaxial cable connectors.

"We've got a pretty diverse practice, and where the Federal Circuit cases are originating, we're active in all those forums as well. I think that's a big part of it," said Erik Puknys, partner at Finnegan and head of the firm's appellate section.

Another factor, said Puknys, is Finnegan's deep bench of appellate specialists.

"If you limit it to just a few superstars that are going to argue, you're going to limit your exposure at that appellate court. We have so many attorneys who are comfortable there," Puknys said.

The pair were closely followed by Perkins Coie LLP, a full-service firm that has landed a spot on the Law360 list for the past three years. Not content to rest on its laurels, Perkins Coie is also tapping new talent for its Federal Circuit team, recently hiring Nathan Kelley, a former U.S. Patent and Trademark Office deputy general counsel of intellectual property law and solicitor.

"We're fortunate to represent leading companies in both the high tech and the pharmaceutical sectors, and we're pleased with the results we achieved for them last year, including wins in several high-stakes, high-profile and complicated cases," Dan Bagatell, chair of Perkins Coie's patent appeals practice, said in an email.

Quinn Emanuel also grabbed the brass ring in eight cases, scoring a victory for Harvard and MIT in a CRISPR patent war as well a win for Sony in a fight over a liquid crystal display technology patent, among others.

Kirkland & Ellis LLP, another regular on Law360's Federal Circuit leaderboard, also nabbed eight wins for a remarkable variety of clients.

"Clients come to us with hard cases. And they come to us to bring creative lawyering to the table and to really put the best foot forward, whether you're the appellant or the appellee," said Kirkland partner John O'Quinn.

The firm scored a win for Apple in a battle with VirnetX over a network security patent, a victory

for Impax and AstraZeneca in a fight over a migraine drug, and a win for JPMorgan Chase & Co. in a case over a firewall system.

"If you look at the cases we've argued over the past year, we're not narrowly focused on communications technologies or so-called 'West Coast tech' or pharmaceuticals," O'Quinn said. "We're doing a lot of everything. The other thing is just the wide variety of issues. Attorneys' fees, to secondary considerations of nonobviousness, to claim construction, to what constitutes prior art. Not a lot of cookie-cutter appeals here."

Three other firms round out the Law360 scorecard, which includes firms that nabbed seven or more wins in 2018: Paul Hastings LLP, Cooley LLP and WilmerHale.

Paul Hastings' standout year at the Federal Circuit included a win for Google in a location patent wrangle and a win for HTC Corp. in a fight involving eight data and video-related patents.

For Yar Chaikovsky, global co-chair of the intellectual property practice at Paul Hastings, says the firm puts a strong emphasis on the briefing and relies on its deep bench of experienced legal talent to nimbly field the oral arguments.

"I think that's ultimately what provides you the winning formula. The facts of the case are a big component. You are dealt those cards, and you have to deal with them. But at the same time, you have to have a persuasive brief and oral argument," Chaikovsky said.

Cooley also nabbed big wins for household names in 2018 in cases examining the standard for patent eligibility set in Alice, scoring victories for Amazon in an Alice fight over an online communications patent, and for Facebook in a spat over a database patent.

WilmerHale's 2018 achievements included an eye-popping win for Apple when the Federal Circuit booted a \$506 million damages award against the iPhone maker. Other wins included securing Medtronic a new shot at invalidating a patent at issue in a \$23.5 million case and a victory for industry group Unified Patents in a brawl over an air bag patent.

Mark Fleming, vice chair of WilmerHale's appellate and Supreme Court practice, said there's not just one secret to the firm's consistent success before the Federal Circuit.

"It's a combination of experience before the court, brief writing that sets up the issues clearly, and oral advocacy designed to be helpful to the judges as they consider the questions before them," Fleming said in an email.

Methodology: A law firm's win-loss record is based on the outcome of cases where a member of the firm argued before the court. The scorecard includes all law firms with seven or more opinions issued that resulted in wins for their clients. In cases where there was not a straightforward ruling on the merits, Law360 sometimes had to weigh a range of factors, including how much of the parties' arguments the court adopted and the likely impact of the ruling, when selecting the winning side.

Law360 treated consolidated cases resulting in a single opinion as one case for the purposes of this scorecard.

--Additional reporting by Matthew Bultman, Ryan Davis, Dorothy Atkins and Dani Kass. Editing by Jill Coffey. All Content © 2003-2019, Portfolio Media, Inc.