

International Trade Group Of The Year: Fish & Richardson

By Sarah Martinson

Law360 (January 17, 2020, 4:02 PM EST) -- Fish & Richardson PC has protected the intellectual property of companies such as headphone maker Bose Corp. and memory device manufacturer Macronix by obtaining exclusion orders from the U.S. International Trade Commission that bar infringing products from entering the U.S., securing its place as one of Law360's 2019 International Trade Groups of the Year.

While Fish & Richardson is mostly known for its intellectual property work, almost all of the firm's 300 patent attorneys have experience litigating cases before the International Trade Commission. The firm's Washington, D.C., office handles the most ITC cases and houses 40 attorneys.

Lauren Degnan, managing principal of Fish & Richardson's D.C. office, told Law360 that the firm's long history of litigating and winning ITC cases distinguishes it from other international trade groups

"We are frequent flyers down at the ITC," Degnan said. "We are knowledgeable about the law and push the issues in the right kind of cases where we can be both successful to get the law clarified in the right way and have it be extremely useful to our clients."

Michael J. McKeon, a principal who has worked at Fish & Richardson for 24 years, told Law360 that the firm's ability to shape international trade law gives it an edge over other law firms.

When Fish & Richardson represented Macronix International in a suit against Toshiba Corp. claiming infringement of memory device patents, the firm was able **to secure** a limited exclusion order from the ITC in October 2018 by proving that a prototype meets the requirements of establishing that a domestic industry is in the process of being formed under Section 337 of the Tariff Act, the firm said.

An administrative law judge had ruled in February 2018 that a prototype doesn't establish that a domestic industry is in the process of being formed under Section 337, which protects U.S. intellectual property to prevent unfair competition, Fish & Richardson said.

In Macronix's case, the firm changed how Section 337 is interpreted by clarifying what "in the process of being established" means for a domestic industry, McKeon said.



Andrew R. Kopsidas, a principal at Fish & Richardson, served as lead counsel in the firm's representation of headphone maker Bose Corp. in litigation against 14 companies over counterfeit earpieces. Fish & Richardson nabbed a rare general exclusion order in October that prohibits infringing products of Bose's earbud patents from being imported into the U.S.

Fish & Richardson estimates that the general exclusion order prevented importers from selling roughly \$30 million worth of counterfeit products through e-commerce platforms such as Amazon, eBay and Alibaba.

Kopsidas told Law360 that general exclusion orders are rare victories, because companies have to prove there is pervasive infringement of their products. In this case, Fish & Richardson was able to prove that all 14 companies were guilty of infringement without a trial, he said.

"Because of the widespread infringement of Bose's patents, the court determined that the only remedy that would really take care of the problem would be a general exclusion order," Kopsidas said.

Another big win for Fish & Richardson, led by McKeon, was its ITC case against Chinese manufacturer Amperex Technology on claims it infringed South Korean company LG Chem's lithium-ion battery patents, McKeon said.

After going to trial, Amperex agreed to license with LG Chem to settle the case before an administrative law judge issued a ruling in February, the firm said.

McKeon is currently representing LG Chem in numerous other cases in the ITC over lithium-ion battery patents.

"You are going to see a lot more of these cases, because lithium-ion batteries are in every product," McKeon said.

Degnan said the firm's attorneys achieve positive outcomes in their cases by using creativity and searching for ways to advance the law in their work.

"We are always keeping an eye out for where there are issues that need clarification ... [and] would help our clients that could be further developed by either the Commission or the Federal Circuit," Degnan said.

--Editing by Nicole Bleier.