

Life Sciences Group Of The Year: Fish & Richardson

By **Dani Kass**

Law360 (February 10, 2020, 1:15 PM EST) -- Fish & Richardson PC helped the Mayo Clinic defeat a diagnostic test patent suit and protected patents covering Allergan's eye medication Combigan, all while getting a pair of biotech companies ready for multibillion-dollar acquisitions, earning the firm a place among Law360's 2019 Life Sciences Groups of the Year.

About a third of Fish & Richardson's 360 attorneys work in life sciences, mostly based in Boston, Minnesota and California. Their reach extends across the U.S., with a few attorneys also based in Munich.

"We've drawn people from all of our offices and all of our practice groups to form this cohesive whole," said practice leader Jonathan Singer, particularly of the IP firm's litigation team. "We've brought together folks from the patent, regulatory, litigation and sometimes where necessary, international trade ... to bring all their specialties in one place for the life sciences. And we've done that since the beginning."

Among the firm's highest-profile life sciences work recently was its representation of the Mayo Clinic as Athena Diagnostics Inc. accused it of patent infringement. The case turned on whether Athena's test for diagnosing an autoimmune disease is valid, or whether it's a natural law not eligible for patent protection.

A Massachusetts federal judge had dismissed the case against Mayo in 2017, saying the patent was invalid because it covered a natural law without adding an inventive concept. The Federal Circuit upheld that ruling 2-1 in February 2019, and both the en banc court and U.S. Supreme Court refused to take up Athena's appeal.

The natural law test was established by the Supreme Court in 2012, during another case where Singer and Fish & Richardson represented Mayo. While the landmark *Mayo v. Prometheus* decision has been particularly controversial for its effect on patent law, Singer said he stands by it.

"I'm proud of that work," he said. "I know it's controversial. I know it's not politically popular, but I'll stand by that work to the end of my career. It was terrific advocacy by our team, and the team is fantastic."



The litigation team also represented Allergan as it accused Novartis unit Sandoz of infringing patents covering the eye pressure medication Combigan. U.S. District Judge William H. Walls had issued a preliminary injunction blocking Sandoz's proposed generic version, which the Federal Circuit upheld in August.

That drug brings in more than \$370 million a year for Allergan, according to U.S. Securities and Exchange Commission filings.

Singer said this has been a long-running litigation, with two trials and four appeals completed and another trial on the horizon.

"The stakes are so high for both sides in these cases, from both a monetary point of view but also a prestige point of view," Singer said, adding later that "it's one of [Allergan's] flagship eye-care products that they've had for a long time."

Principal Juanita R. Brooks was on the first trial in that case and said it's been a "battle" to protect Allergan's IP.

"Hopefully this will finally be the end of the Combigan saga," she said of the upcoming trial.

Brooks more recently represented Illumina Inc. in a patent fight with The Scripps Research Institute. Scripps had sued Illumina in California federal court, alleging that Illumina's BeadChip and other DNA microarray products, which are used in the "genetic analysis, cancer characterization and diagnosis of many diseases," infringed its patented technology.

Illumina won on summary judgment, with a ruling that it didn't infringe, and the Federal Circuit upheld that ruling 2-1 in August.

Brooks called the win "bittersweet" though, as it came down just days after the firm lost principal Craig Countryman to cancer.

"He's greatly missed," Brooks said of the partner she'd worked "hand in hand" with on the Illumina case.

While Singer, Brooks and their litigation colleagues were heading to court, others on Fish & Richardson's life sciences team were building up the patent portfolios of startups and helping them into multibillion-dollar sales.

"I think we've built, over the past 10 to 15 years, a really strong, large group that represents really fast-moving, smart, startup and emerging biotech companies that are really doing disruptive and groundbreaking research that ultimately gets licensed by a larger pharmaceutical or biotech company," said principal Teresa A. Lavoie.

Among those deals were Pfizer's \$11.4 billion purchase of Array BioPharma and Eli Lilly and Co.'s \$8 billion Loxo Oncology Inc. buy.

Lavoie said the firm had been working with Loxo since 2014, providing patent strategy, particularly for its cancer drug Vitrakvi. Fish & Richardson worked with Loxo on a \$1.5 billion deal with Bayer in 2017 and several financial offerings that same year, before the January 2019 Lilly acquisition. Lavoie added

that they only had about two weeks to do all the needed patent work for the Lilly deal to be ready.

Fish & Richardson met Array through Loxo, as the companies had a licensing deal, and picked the former company up as a client in 2015. Since then, they've been providing patent prosecution and regulatory strategy as Array got multiple oncology drugs to clinical trial and Braftovi and Mektovi approved by the U.S. Food and Drug Administration. The firm likewise only had a few weeks to prepare for Pfizer's purchase, which was announced in June.

Between those two deals, Fish & Richardson prepared IFM Tre to be purchased by Novartis for nearly \$1.6 billion.

"It was like boom, boom, boom of these back-to-back major deals," Lavoie said. "It was a hectic year, but exciting."

--Additional reporting by Ryan Davis and Tiffany Hu. Editing by Orlando Lorenzo.