

4 Firms Are GCs' Faves For IP Litigation

By Ryan Davis

Law360, New York (September 21, 2015, 9:37 PM ET) -- Thanks to their deep understanding of how intellectual property cases can impact their clients' bottom lines, four firms are most sought after by general counsels facing important IP litigation, according to a new survey.

IP POWERHOUSES				
	2013	2014	2015	2016
Jones Day	★	★		★
Alston & Bird	★			★
Finnegan			★	★
Fish & Richardson			★	
Kirkland & Ellis		★		
Morrison & Foerster		★		
Polsinelli				★
Reed Smith	★			
WilmerHale			★	

Alston & Bird LLP, Finnegan Henderson Farabow Garrett & Dunner LLP, Jones Day and Polsinelli PC were named IP litigation powerhouses based on a survey of 300 corporate counsel as part of the the BTI Litigation Outlook 2016 report by BTI Consulting Group (Wellesley, Mass.).

The in-house counsel who responded to the survey said that they expected their spending on IP litigation to drop to \$2.72 billion in 2016, from \$2.76 billion in 2015 and \$2.89 billion on 2014, according to the report. That puts firms that already have an excellent reputation for IP work in a strong position, said BTI President Michael Rynowecer.

When the IP litigation market was booming a few years ago, clients had less time to research outside counsel and ended up spreading the work around many firms, he said, but with a slowdown in IP litigation work, companies may end up concentrating more work in the hands of a few firms they know well.

"When things are slower, clients are a little more deliberate," Rynowecer said. "They're more selective and more demanding."

The four firms that general counsels identified as their favorites for IP work have an strong sense not only of how their clients' business works, but also how specific cases they are handling could impact the revenue for certain product lines, he said.

"The IP litigation powerhouses are very skilled at knowing whether this is a very strategic issue for their clients or not, are able to adjust their strategy accordingly," he said.

In IP litigation, it is especially important to know whether a case could have major ramifications for a company's core product, as opposed to a product that makes up only a small part of a company's revenue, according to Rynowecer.

Since an understanding of the client's business objectives is key, firms that treat all IP litigation equally are unlikely to garner the deep trust of general counsels, particularly those at somewhat smaller companies, he said.

"When you're dealing with companies that are outside the largest companies in the world, but are still very large companies, an IP case could be at the centerpiece of what you do," he said.

Keith Grady, chairman of Polsinelli's IP practice, said that the firm prides itself in working with clients to understand their business goals and objectives and how best to achieve them.

"We don't follow the sort of scorched-earth tactics that a lot of firms follow," he said. "We try to hone in on the real issue in cases and how to get there in the most efficient way."

Polsinelli did not have a dedicated IP practice until Grady joined the firm eight years ago and began working to establish and expand it, so being named an IP litigation powerhouse after such a short time is "a great accomplishment for the firm," he said.

Polsinelli has had a particular focus in pharmaceutical patent litigation over the last five years, specializing in representing generics makers in Hatch-Waxman Act cases as part of the strategy to expand the IP practice by recruiting attorneys with experience in that area.

Gary Hood, vice chairman of Polsinelli's IP practice, joined the firm as part of that effort and said that the firm's expertise in drug patent cases is helping to set it apart.

"It's been a fairly short period of time in the scheme of things, but we've seen a lot of success in that short time," he said.

Michael Newton, co-leader of Alston & Bird's IP litigation group, credited his firm's success in part to its detailed knowledge of its clients' business and how its clients can benefit from resolving disputes without going to court, with arrangements like licensing deals or acquisitions of accused infringers.

"There are all kinds of business alternatives that are not necessarily litigation-related, and realizing that those are opportunities or mechanisms for getting clients what they want is important," he said.

Newton noted that Alston & Bird has deep bench of attorneys with sophisticated technical and scientific skills, including those with doctorates or an ability to read computer source code. It is also known for having "a high degree of loyalty to clients" that many companies appreciate, he said.

"You won't see us representing two really prominent clients in the same field," he said, meaning that clients know that the firm won't also be representing its biggest competitor.

At Finnegan, the only IP boutique among the four powerhouses, the scientific expertise of the firm's attorneys in a broad range of technologies is a major attraction for clients, said James Monroe, the firm's managing partner.

"Our patent litigators are actual scientists and engineers in addition to being good communicators," he said, and clients know that "if they have something come up, somebody here has that technical background."

While some competing firms tend to suggest that scientists and engineers don't make effective advocates in court, Finnegan believes that attorneys who are scientists know best how to relate to both clients and juries about complex matters, Monroe said.

"We don't need a middleman to simplify the issues," he said. "We hear from clients that they really value our attorneys being able to talk to them on the same level about the details of the case, and then simplify it in the courtroom for the court and for juries."

At Jones Day, the IP attorneys also have subject matter expertise in a diverse array of areas, while the firm's unique culture helps ensure that each case is staffed with the ideal team, said Anthony Insogna, chairman of the firm's global IP practice.

Unlike many firms where attorneys who make the first contact with a client get credit for identifying the case and have priority in handling it, "our partners think about who is the absolutely perfect person to try that case, which is a different philosophy from other firms," he said.

Clients who have worked with Jones Day year in and year out know that's how the firm operates and they have gotten the word out that "you want to have Jones Day handling a matter because they're going to put the right team together that will do everything they can to win the case," Insogna said.

--Editing by Katherine Rautenberg.