

IP

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SWORDS

Our third annual report on patent litigation. Who's winning all the business?

SHIELDS

When building patent portfolios, many companies, especially in the computer and telecommunications industries, go for big numbers. They want to amass a sizable quantity of patents, so that if one or two are invalidated, there are hundreds more to fall back upon. IBM Corporation is the master of that strategy.

This wouldn't seem to be an ideal way to build an IP litigation practice. Quality cases, with thorny issues of fact and law and the potential for big money damages and crippling injunctions, matter much more than everyday disputes. It turns out, however, that the firms that handle

the most patent cases are also generally acknowledged to be at the top of their field.

The survey ranks firms based on how many times they were hired by plaintiffs and defendants involved in patent cases filed in 2002. We conducted the survey using data from CourtLink, an online LexisNexis service. We supplement that data with additional research.

The survey does not measure success or calculate the complexity of cases, but it does provide a rough guide to the firms that general counsel call when the chips are down. On the following page, we publish the names of those firms that were hired in at least 20 cases filed in 2002.

TOP OF THE HEAP: Firms that Filed the Most Cases in 2002

Firm	Total Cases	Plaintiff	Defense
1 Kirkland & Ellis	49	23	26
2 Fish & Richardson	42	12	30
3 Jones Day	38	14	24
4 Morris, Nichols	35	20	15
4 Sidley Austin	35	14	21
6 Foley & Lardner	34	15	19
7 Kenyon & Kenyon	33	9	24
7 Morrison & Foerster	33	8	25
9 Barnes & Thornburg	31	22	9
9 Orrick	31	4	27
11 Dorsey & Whitney	30	21	9
11 Fish & Neave	30	20	10
11 Knobbe, Martens	30	14	16
11 McDermott, Will	30	8	22
15 Howrey Simon	29	13	16
16 Finnegan, Henderson	26	9	17
16 Potter Anderson	26	12	14
16 Weil, Gotshal	26	9	17
19 Fulbright & Jaworski	25	10	15
19 McANDREWS, HELD & MALLOY	25	12	13
19 Merchant & Gould	25	16	9
19 Perkins Coie	25	15	10
19 Townsend and Townsend	25	12	13
24 Michael Best	24	7	17
24 Niro, Scavone	24	17	7
24 Richards, Layton	24	10	14
24 Young Conaway	24	10	14
28 Latham & Watkins	23	10	13
28 Morgan, Lewis	23	10	13
28 Pillsbury Winthrop	23	10	13
28 Quinn Emanuel	23	7	16
32 Blank Rome	21	10	11
32 Mintz, Levin	21	14	7
32 Workman, Nydegger	21	10	11
35 Alston & Bird	20	7	13
35 Fenwick & West	20	8	12
35 Fitzpatrick, Cella	20	9	11
35 Goodwin Procter	20	7	13
35 Hogan & Hartson	20	8	12
35 Pennie & Edmonds	20	10	10
35 Robins, Kaplan	20	15	5

METHODOLOGY

Counting patent cases turns out to be a little like counting votes at a political convention. There are hard counts—those delegates firmly committed to a candidate. And then there are squishy counts, which include those delegates leaning toward a candidate but vulnerable to persuasion.

Some patent cases are easy to tally—others, much more tricky. Here is what we did and why.

We asked CourtLink, an online LexisNexis service that collects docket information from federal courts, to provide us with a list of all patent cases *filed* in 2002. There were slightly more than 2,300, about 200 fewer than the year before. We didn't want to count cases that petered out quickly, so we narrowed the universe to only those cases active as of February 14, 2003, the date CourtLink pulled the cases from their database for us. That left us with 1,690 cases, once duplicate entries were removed. (We didn't look at International Trade Commission cases, but stay tuned. We will in the future.)

We did not make a distinction between firms acting only as local counsel and trial counsel, simply because it turns out to be a difficult line to draw. (What's more, in selecting local counsel, do you want a firm *without* patent experience?) Finally, we did not measure the complexity of cases or a firm's success.

From there, we asked firms with more than eight mentions, as either plaintiffs or defense counsel, to supplement the CourtLink data. In the past, we have found that CourtLink does not capture all representations. Sometimes, only local counsel is named, especially on the defense side. Other times, docket information is simply out of date.

Now comes the squishy part. On the plaintiffs side, we didn't necessarily count all cases. Here's why: We didn't want to penalize firms that filed a single suit against multiple defendants when another firm may choose to file individual cases. So when a firm listed multiple cases with the same plaintiff, we asked them to explain why we should count them separately. If the cases involved different sets of patents, different technology, or different discovery tracks, we counted the cases separately. But if the cases involved the same patent, highly similar technology, and consolidated discovery, we counted them as one. We made these decisions case by case.

At the end of the exercise, we decided to publish only those firms that handled at least 20 cases initiated in 2002.

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