

These Law Firms Crushed It At The Federal Circuit In 2015

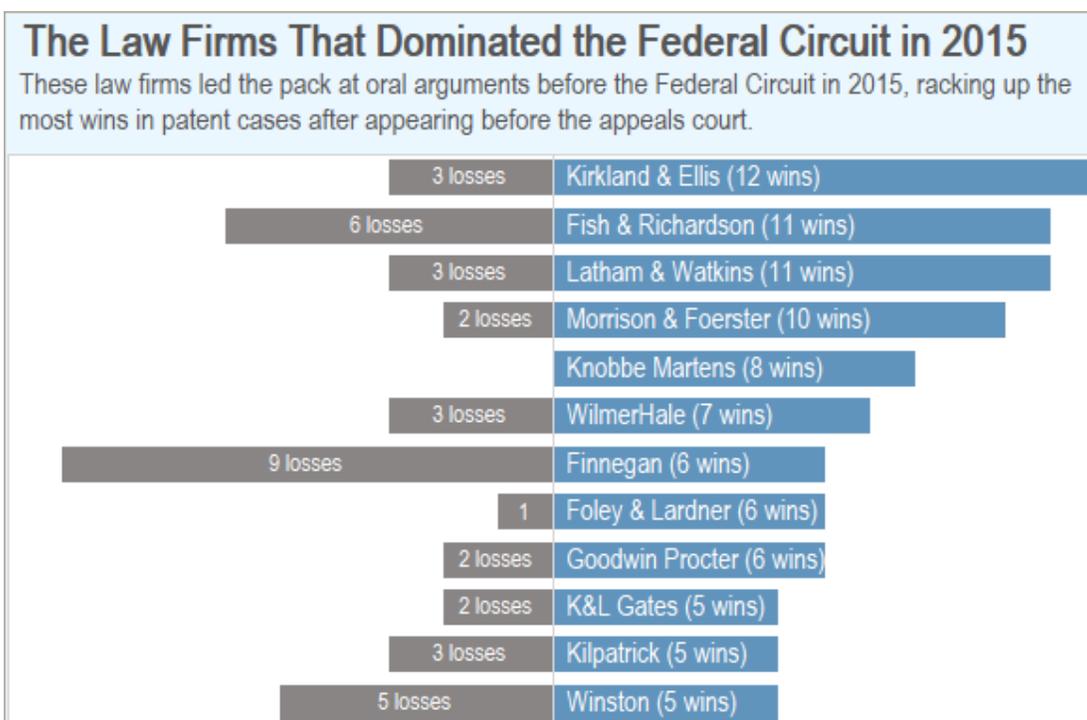
By **Jacqueline Bell**

Law360, Boston (March 8, 2016, 10:30 PM ET) -- Law360's look at patent opinions the Federal Circuit issued in 2015 reveals the 12 firms that scored the most wins in high-stakes battles over patent rights before the federal appeals court.

Kirkland & Ellis LLP nabbed the top spot on Law360's scorecard of firms that presented at oral arguments before the Federal Circuit, where the firm collected 12 wins in patent opinions issued in 2015.

"Clients come to us for high-stakes matters both for trial and on appeal, and we have a very deep bench to handle those cases," said Kirkland partner John C. O'Quinn.

Litigation powerhouses Fish & Richardson PC and Latham & Watkins LLP weren't far behind, each snapping up double-digit wins before the appeals court in Law360's look at opinions issued last year.



"We had a phenomenal year before the Federal Circuit in 2015," said Matthew Moore, the global co-chair of Latham's intellectual property litigation practice. "We are very fortunate to have an incredible team of people focused on our practice before the Federal Circuit."

Morrison & Foerster LLP and Knobbe Martens Olson & Bear LLP also had a standout year at the Federal Circuit, scoring 10 and 8 wins respectively.

Deanne E. Maynard, co-chair of Morrison & Foerster's appellate and Supreme Court practice group said that collaboration is the key to the firm's successes at the Federal Circuit.

"Our patent trial lawyers are dogged in protecting our clients' innovations, while our appellate team regularly consults to position our cases for post-trial success," Maynard said. "Our appellate lawyers then team with our trial lawyers to best present our clients' positions in the Federal Circuit."

Other firms on Law360's list that also notched a productive year include WilmerHale, which managed to flip a loss into a win in 2015 when the full Federal Circuit agreed to hear a battle between Limelight Networks Inc. and WilmerHale client Akamai Technologies Inc., then reversed the earlier panel's finding.

WilmerHale also argued for Apple Inc. at the appeals court in a complex smartphone patent battle with Samsung Electronics Co. Ltd., scoring victories including a May decision that affirmed a jury's finding that Samsung infringed Apple's utility and design patents, and a September decision that a California federal judge should have issued an injunction on certain allegedly patent-infringing features on Samsung smartphones.

"We have a deep bench of Federal Circuit practitioners who combine extensive knowledge of patent law, mastery of the district court record, and excellent written and oral advocacy skills to present the best arguments for our clients. In the last two years alone, we have had more than a dozen different lawyers argue before the Federal Circuit," said Mark Selwyn, co-chair of the intellectual property litigation practice at WilmerHale.

Last year was particularly dramatic at the Federal Circuit because it decided for the first time appeals arising out of patent review proceedings created by the America Invents Act. Those new proceedings at the Patent Trial and Appeal Board, particularly inter partes reviews, have proven extraordinarily popular.

In those appeals, some top Federal Circuit practitioners found themselves on the winning side of historic rulings, as Finnegan Henderson Farabow Garrett & Dunner LLP did when the circuit issued its first decision on a challenge of an AIA business method patent review.

Preparing for oral arguments before the appeals court has always been a risky, high-pressure game, even before the AIA created new possibilities for legal high-wire acts across unknown terrain.

In high-stakes patent cases before the Federal Circuit, a number of law firms often collaborate on an appeal, and the attorney stepping up for oral arguments is bolstered by the work of those at other firms with Federal Circuit expertise.

But attorneys standing alone before a Federal Circuit panel must marshal all that preparation into an effective and targeted argument to win over tough-minded judges, and be ready to think on their feet as the panel fires questions at both sides.

Extensive preparation, as well as a deep knowledge of the ins and outs of the specialty appeals court, is required for any oral argument there. And only a few law firms have the resources to handle those high-pressure oral arguments in large numbers.

Those firms that are tackling notably higher numbers of oral arguments — and betting on wins — all have a deep bench of attorneys who regularly appear before the circuit in patent cases.

Sometimes a virtuoso Federal Circuit practitioner will parachute into a case during an appeal, but some firms say part of the secret to their success is that many of the cases they argue at the Federal Circuit are cases they've worked on throughout the dispute's life cycle — starting in district court or at the PTAB.

For those homegrown cases, the team has a deep familiarity with every nuance of the case, which can put the attorney presenting at oral argument in a strong position to sway the Federal Circuit panel with a grounded argument and give him or her the ability to answer even the most detailed question about the case's history.

"If you have success in the lower courts, a lot of times you're going to have success on appeal," O'Quinn said. "Our good run in the Federal Circuit is in no small part attributable to the good run we've had in district court litigation over the past few years."

And for many firms, thinking ahead to a possible appeal and strategizing early, even at the trial stage, has proven very effective.

"We also have realized great synergies from involving an appellate specialist in our trial teams," Moore said. "As the statistics show, we are proud to have developed a top-shelf Federal Circuit practice."

The opportunities for success at the Federal Circuit are also on the rise: The number of opinions it issues has steadily increased in recent years, as a growing number of appeals come through from the PTAB.

With the Federal Circuit trying to adjudicate even more cases every year, the accomplished attorneys who frequently argue, and win, there may increasingly find themselves in high demand, as more clients try their luck at the specialty appeals court.

Methodology: Law360's analysis looked at opinions and judgments issued between Jan. 1 and Dec. 31 by the Federal Circuit in patent cases. Law360 uses data from PACER and the Federal Circuit's website to compile the data set of opinions and judgments issued by the appeals court, which includes rulings on patent disputes from federal district court, the U.S. Patent and Trademark Office and the U.S. International Trade Commission. Law360's Federal Circuit scorecard looks at law firms that scored at least 5 wins in a review of opinions issued between Jan. 1 and Dec. 31.

--Editing by Jeremy Barker and Edrienne Su.

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