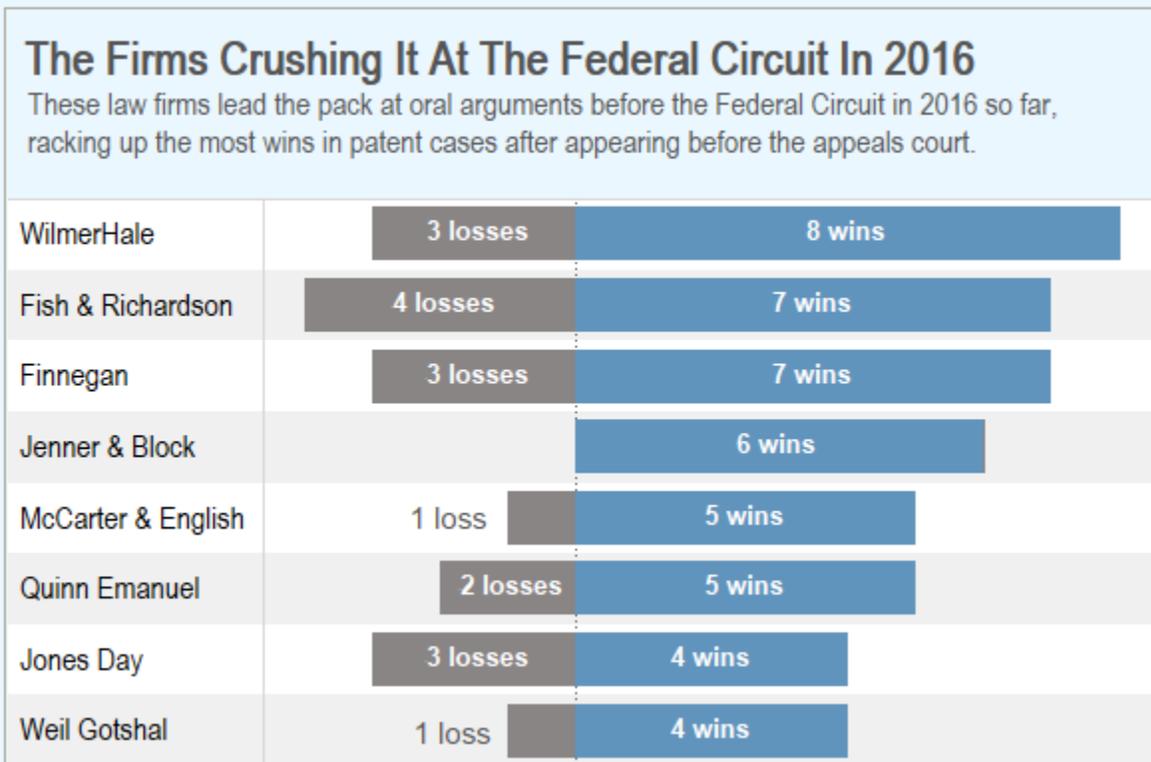


These Law Firms Are Dominating The Federal Circuit In 2016

By **Jacqueline Bell**

Law360, New York (August 12, 2016, 7:32 PM ET) -- Law360's midyear snapshot of patent opinions issued by the Federal Circuit reveals eight firms are coming out on top after oral arguments, chalking up wins in high-stakes intellectual property battles before the federal appeals court.

In Law360's review of patent opinions issued in the first half of 2016, WilmerHale is leading the pack, scoring eight wins during that period for companies including Medtronic Inc. and Apple Inc. The firm also convinced the Federal Circuit to remand a decision from an America Invents Act proceeding, a feat that gave Nike Inc. another shot at saving part of a footwear patent from an Adidas AG challenge.



WilmerHale partner Mark Fleming attributes the firm's victories at the Federal Circuit to the deep bench of talent the firm can call upon for appellate and intellectual property litigation.

"Our teams leverage subject-matter expertise, strong brief writing and oral advocacy skills, and familiarity with the court and its procedures, to achieve great results for clients in all sectors and of all sizes," Fleming said.

Waging a patent fight before the Federal Circuit has always been a high-risk endeavor, but as appeals from relatively new proceedings created by the America Invents Act wind their way to the federal appeals court in greater numbers, attorneys who navigate these appeals are increasingly working in uncharted waters.

But many of the firms that topped Law360's scorecard of firms that presented at oral arguments before the Federal Circuit are taking the lead in these cases, scoring wins for clients as well as shaping patent law.

Intellectual property boutiques Finnegan and Fish & Richardson are no stranger to AIA proceedings, and both scored remarkable victories in the first half of 2016 on appeals from the Patent Trial and Appeal Board, among other cases.

Fish & Richardson scored for Cutsforth Inc. a rare complete reversal of an inter partes review decision from the PTAB, as well as a victory for Shaw Industries Group Inc. in a fight over a yarnmaking machine patent with a ruling that may reduce estoppel risk for all inter partes review challengers.

John Dragseth, co-chair of the appellate practice at Fish & Richardson, said the firm's record over the past five years has included many appeals at the Federal Circuit that have redefined the practice of patent law.

"It is especially satisfying when we not only win for our clients, but can bring clarity to novel legal questions confronting the patent bar, which benefit everyone who works in the field," Dragseth said.

Finnegan's tally of wins in the first half of 2016 includes a victory for Medtronic Inc. unit Covidien LP in a fight with Johnson & Johnson, a score for Abby USA Software House Inc. in a \$107 million case over text recognition patents, as well as an unusual Federal Circuit finding that the PTAB used an incorrect claim construction in an AIA review which handed a win to Finnegan client PPC Broadband Inc.

Erik Puknys, a partner at Finnegan, said much of the firm's success can be attributed to its roster of talented attorneys with a track record of parachuting into seemingly impossible cases after a party has already lost before a lower court.

"Our advantage is just the experience we have, and knowing what arguments are going to be more successful on appeal," Puknys said. "That's what Finnegan brings to the table. All of us have a lot of experience jumping in after the disaster has struck and seeing what we can do to salvage the case."

Most firms on Law360's scorecard enjoyed victories in cases both from the PTAB, where a growing number of cases the Federal Circuit handles originates, and district court, the more familiar venue for patent disputes.

Jenner & Block, for example, has been enjoying an impressive winning streak in 2016, with six wins to its

name and zero losses, including a win for a rival of farming and construction equipment giant John Deere upholding a jury verdict and a victory in a paper shredding patent fight from the PTAB.

That's not to say that district court cases aren't where the action is. Quinn Emanuel, for its part, put up a number of show-stopping wins in the first half of the year in cases that originated in district court, including a major victory for Samsung in a yearslong patent dispute over smartphones that overturned a \$120 million jury verdict against Samsung that Apple had scored in California federal court.

Weil Gotshal also scored wins in cases that stemmed from district court proceedings, nabbing a victory for Adobe Systems Inc. in fight over a digital-rights management patent, and a win for Samsung in a semiconductor patent row.

For many firms though, some of their most talked-about wins came from AIA cases that involved companies that are hardly household names. Jones Day secured one of those rare Federal Circuit rulings that faulted a decision of the PTAB for client SAS Institute Inc. in its fight with ComplementSoft LLC.

McCarter & English secured a victory for Waters Technologies Corp. in a dispute over its chromatography patent, a case in which the Federal Circuit threw out an appeal by Agilent Technologies Inc. challenging a re-examination decision that favored Waters Technologies, and finding that Agilent lacked a cause of action because it had not requested the reexamination.

Scott Christie, a partner at McCarter & English, said the firm's growing body of work with AIA proceedings and subsequent appeals has helped its attorneys develop a good rule of thumb: Do the work long before the appeal stage.

"It's really important to get it right at the PTAB. Follow the rules explicitly and make sure your briefs are top notch," Christie said.

And when preparing for high-stakes oral arguments before the Federal Circuit, mock hearings with a sharp, well prepared, aggressive team are critical, he said, before an attorney actually steps before a panel of skeptical Federal Circuit judges.

"As much as you think you know the issues, there's no substitute to actually having to be on your feet and being vigorously questioned," Christie said.

--Editing by Rebecca Flanagan and Jill Coffey.

Methodology: Law360's analysis looked at opinions and judgments issued between Jan. 1 and June 30, 2016, 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 as well as the occasional patent dispute from another forum. Law360's Federal Circuit scorecard looks at law firms that scored at least four wins in a review of opinions issued between Jan. 1 and June 30.