

How Some IP Boutiques Are Thriving Amid Patent Law Shifts

By **Ryan Davis**

Law360 (May 23, 2019, 7:09 PM EDT) -- While some intellectual property boutiques saw their headcounts drop last year amid a changing patent landscape with less litigation, others have bucked the trend and added attorneys. Here's how leaders of those firms say they've been able to thrive in the current patent environment.

The rise of America Invents Act reviews as a way to challenge patents and a concurrent decline in infringement litigation — with fewer patent cases filed in the U.S. in 2018 than in any year since 2011 — appear to have taken a toll on some IP boutiques last year.

According to the latest Law360 400, which ranks the largest U.S. firms by attorney headcount, half of the 10 largest IP specialist firms saw their ranks dwindle in 2018 compared to the year before. But other firms that have bolstered their ranks credit their diversified practices and strong client relationships for their growth.

At Wolf Greenfield & Sacks PC, the total number of attorneys rose from 97 to 104 over the past year, a 7.2% increase that was the greatest of any of the 10 largest IP boutiques ranked by Law360.

The Boston-based firm, which opened a second office in New York in 2016, has an overarching strategy of focusing on high-value work that is critical for its clients and helps the firm forge strong bonds with them, said president and managing partner Tim Oyer.

“We aim for long-term relationships with our clients, rather than just simply getting a particular case for the revenue it would bring in,” he said.

Instead of bidding to work on a small part of a major company’s vast patent prosecution portfolio, work that Oyer described as “fungible” and could be done by different firms, Wolf Greenfield prefers to represent its clients in as many of their IP issues as possible and handle their most important cases, he said.

That strategy has strengthened the firm and “gives us the solidity not to be buffeted by trends in the market,” Oyer said. “The result has been growth year after year.”

Sterne Kessler Goldstein & Fox PLLC also grew its attorney ranks last year from 126 to 131, a 4% increase. Managing director Michael Ray credits the success of the firm, which has a single office in

Washington, D.C., to having strong practices in all areas of patent law, from district court litigation to PTAB work to Federal Circuit appeals to prosecution.

"One significant driver of our growth and success is our diversity of practices," he said, noting that "it may be a bit strange to hear an IP specialty firm say that."

When PTAB proceedings became available in 2012, Sterne Kessler already had expertise in previous patent office proceedings like reexaminations and interferences, and realized that the AIA "was really a significant change in the law and was going to have a significant impact on patent practice," Ray said.

The firm put together a practice group dedicated to AIA reviews early on and "got into some of the very first proceedings, got the experience and leveraged that," he said. The firm's PTAB practice has been ranked as one of the busiest in a Lex Machina report.

Now that AIA reviews have become so prominent, Sterne Kessler has been able to use what it learned in those proceedings in its patent prosecution work to get stronger patents for clients, Ray said.

"Our clients now understand that to have a patent that's going to survive those proceedings, it needs to be well-written and well-prosecuted," he said, adding that the firm is now making a push to hire more attorneys in its prosecution practice to meet increasing demand.

J.C. Rozendaal, who joined Sterne Kessler as co-chair of the trial and appellate group in 2017, said Sterne Kessler's strengths in many areas of patent law all inform each other. For instance, he noted that the firm handles numerous Federal Circuit appeals, which helps attorneys at the firm working on other types of cases.

"That gives us a finger on the pulse of law and the developments in the way the court is thinking that allows us to write patents and craft district court arguments in a way that's going to be maximally effective on appeal," he said.

Oyer also stressed the importance of Wolf Greenfield's diversified practice. He said around 30% to 40% of its work comes from litigation, with the remainder in other areas like patent prosecution and cases at the Patent Trial and Appeal Board. That ratio has helped insulate the firm from fluctuations in the number of suits being filed from year to year.

"We have times that are busier and lighter in litigation like everyone else, but it doesn't affect us as much as a firm that has a lot of litigation," he said.

The firms also credited their internal culture for helping them retain the attorneys they already have and attracting new hires. Oyer said Wolf Greenfield strives to treat all its employees as colleagues and family and "create a scenario where they want to come to work every day."

By doing that, "we can attract the cream of the crop, get them here and hold them here," he said.

Sterne Kessler has focused on organic growth from within, with less of an emphasis on lateral hires from other firms, Ray said. Having so many attorneys come up together at the firm creates a collegial atmosphere, particularly since everyone at Sterne Kessler works in the same office, where they can see each other and work together on a daily basis, he said.

"I think the partners feel like it is their firm," he said. "And if there's something they don't like, they'll work to change it rather than looking for another platform for their practice."

--Editing by Kelly Duncan.

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