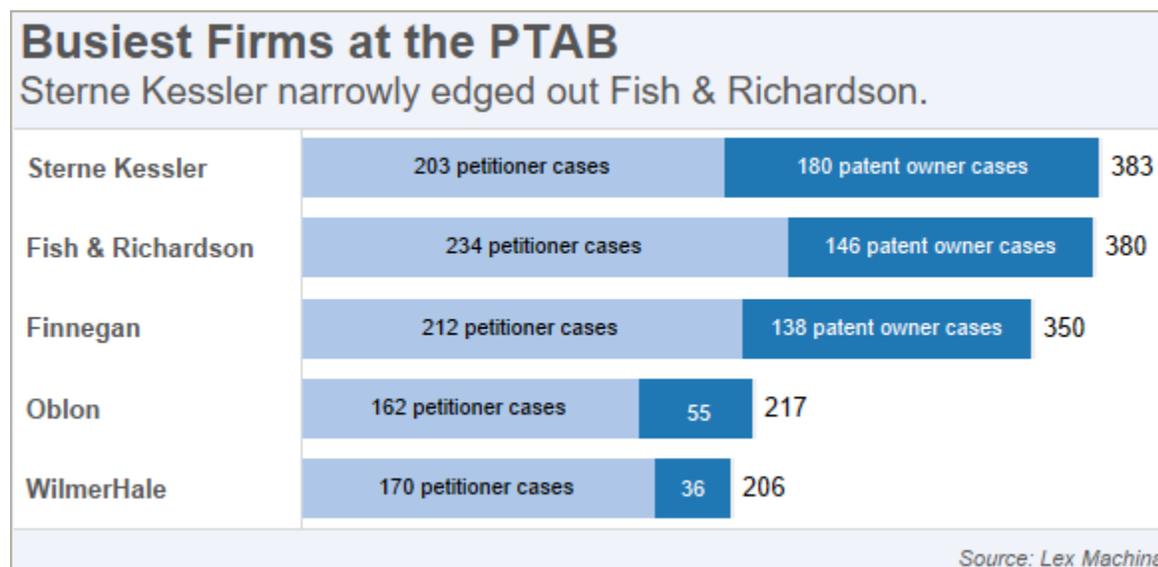


3 Major Firms Handle The Most AIA Reviews

By Ryan Davis

Law360, New York (January 21, 2016, 9:00 PM ET) -- There have been more than 4,300 petitions challenging patents in America Invents Act reviews since the system became available in 2012, but three major intellectual property boutiques stand out from the pack by working on more such cases than any other firms, according to data released on Thursday.

Sterne Kessler Goldstein & Fox PLLC, Fish & Richardson PC and Finnegan Henderson Farabow Garrett & Dunner LLP top the list of busiest firms at the Patent Trial and Appeal Board, with each representing clients in more than 350 AIA review proceedings, the data analytics firm Lex Machina has found.



Lex Machina, which like Law360 is part of LexisNexis, analyzed data about all of the AIA reviews that have been filed through December 2015, including those that are pending, for its Patent Trial and Appeal Board 2015 Report.

According to Lex Machina's data, Sterne Kessler has worked on a total of 383 AIA review cases since 2012, including 203 in which it represented the petitioner and 180 in which it represented the patent owner. The firm handled more cases for patent owners than any other firm.

Fish & Richardson came in a close second, with 380 total cases. That includes 234 cases in which it

represented the petitioner, the most of any firm, and 146 cases in which it represented the patent owner. Finnegan has worked on a total of 350 AIA review cases at the PTAB, including 212 on the petitioner's side and 138 on the patent owner's side.

Following those firms, Oblon McClelland Maier & Neustadt LLP landed in fourth place in terms of overall number of AIA review cases. It handled 217 cases, including 162 for petitioners and 55 for patent owners, followed by WilmerHale with 206 total cases, all but 36 of them representing the petitioner.

Lex Machina also crunched the numbers of other PTAB data, including which companies are filing the most AIA review petitions. Tech giants that are frequently the subject of patent infringement suits have made the most use of the PTAB proceedings to date, with Apple Inc. and Samsung Electronics Co. Ltd. leading the way, the report found.

"It's not shocking to see those two at the top of the list," said Brian Howard, Lex Machina's legal data scientist. He noted, however, that the frequent rivals differ in that Apple has never had any of its patents challenged at the PTAB, although Samsung has.

Apple has filed 252 petitions challenging patents under the AIA, including 197 inter partes review petitions and 55 petitions under the AIA's covered business method review program.

Samsung took second place with 155 total petitions, 141 for inter partes review and 14 for business method review. In addition, 11 of Samsung's own patents have been challenged under the AIA to date, all by Nvidia Corp., which is locked in an infringement dispute with Samsung.

After Apple and Samsung, the most frequent filers of AIA petitions are Google Inc., LG Corp. and Microsoft Corp., according to Lex Machina's data.

Howard said that the report also challenges the popular notion that the PTAB is a "death squad" that is aggressively invalidating patents at a high rate. People making such arguments tend to look only at the results of cases in which the PTAB instituted review of a patent, he said, and ignore the fact that the PTAB never institutes review of many patents that are challenged.

"If you look at the whole picture, you see that the sense that the PTAB is ruling overwhelmingly one way or another is not the case," Howard said. "The results are more evenly distributed among outcomes."

The report found that in 20 percent of cases that have reached a resolution to date, the PTAB decided not to institute a review, and 19 percent of cases were settled before an institution decision was reached.

The third most common outcome in AIA reviews is victory for the petitioner, the report found, since 18 percent of cases that have reached a resolution have resulted in all the challenged claims being held unpatentable. There have been fewer cases in which that has happened than cases in which the PTAB declined to review the patent at all, the report notes.

Another 5 percent of petitions resolved with the patent owner disclaiming the claims, and 3 percent of cases resulted in all the challenged claims being upheld in a final written decision. Three percent of cases resulted in mixed findings, according to the report.

The report also noted that the level of experience among PTAB judges varies widely. Judges Joni Chang

and Kevin Turner, for instance, have worked on more than 300 AIA trials, and many other judges have handled only a few cases. That makes it important for litigants in AIA reviews to know their audience.

“Knowing who the judges are and what they’ve done can be tremendously helpful,” Howard said.

--Editing by Stephen Berg.

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