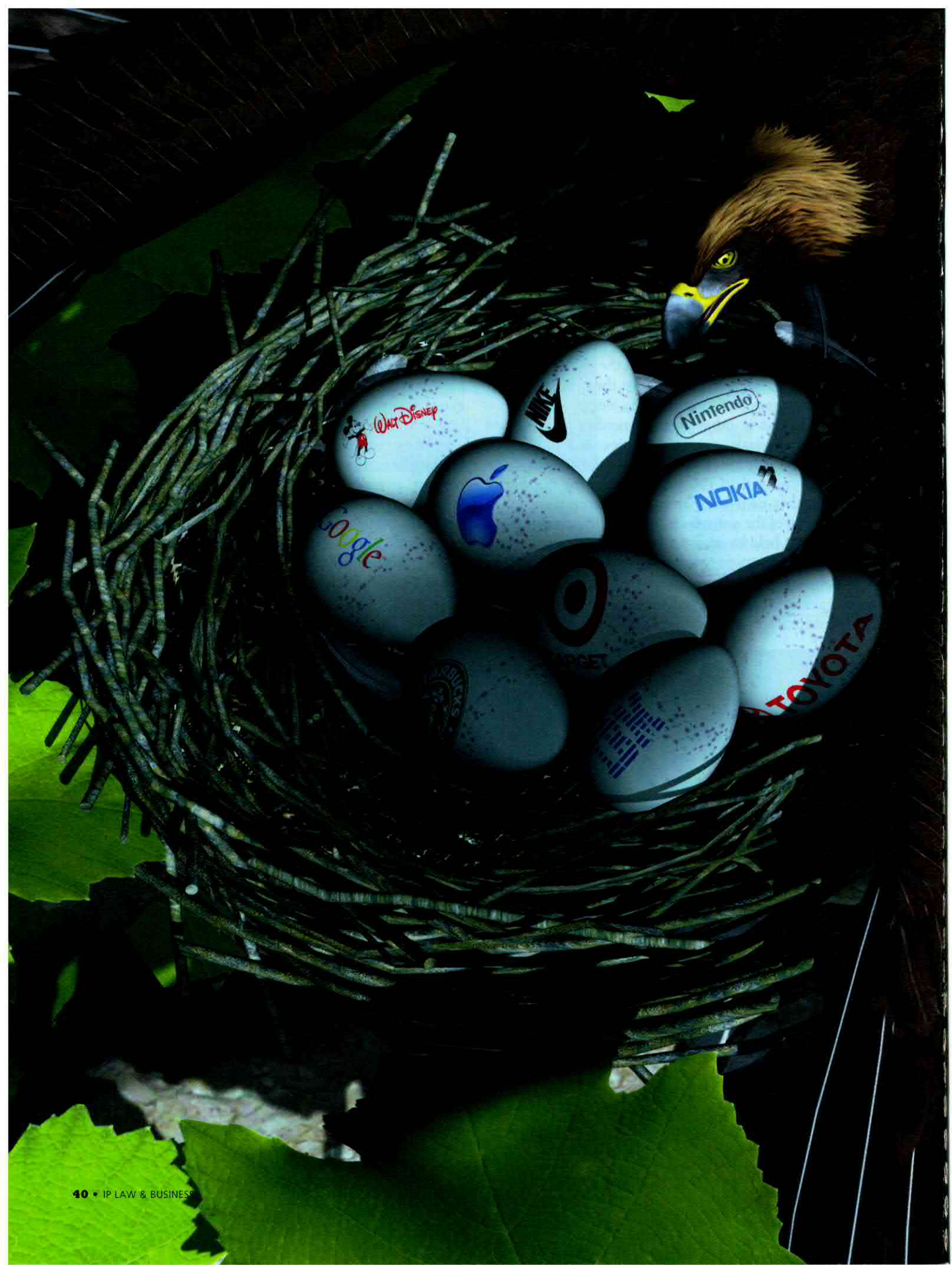


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# Safeguarding The Nest





# Who Protects Innovation in America?

The 50 most innovative companies in the world count on these law firms to protect their patents, copyrights, and trademarks.—By Erik Sherman

**T**his is the second year that we've made the match between *BusinessWeek's* 50 most innovative companies and the law firms that do their IP work. The data is even more intriguing this year, because for the first time we have broken the IP litigation category into three component parts: copyright, trademark, and patent. This lets firms with strengths in each specialty stand out. Patent prosecution, meanwhile, continues with its own separate ranking of firms.

Despite consolidation in the legal industry, not all the work goes to big international powerhouses. Smaller IP boutiques shine in patent prosecution, and medium-sized general practice firms still do work for big companies. But sometimes the connection is forged indirectly, through webs of formal and informal indemnification agreements between big companies and little companies.

For instance, in copyright litigation, two firms based in Manhattan with a handful of lawyers each, Furgang & Adwar and Galvin & Palmer, handled cases for Wal-Mart Stores, Inc.; Target Brands, Inc.; and Amazon.com, Inc. The two firms have a 30-year business relationship and are of counsel for each other. So how did they land such big clients? A matter of circumstance.

One of Galvin & Palmer's clients is Unisar, Inc., a U.S.-based distributor of Taiwanese manufacturer Avita Corporation, which makes, among other things, a mucous extractor for use

## Top Guardians Of the IP Nest

These law firms were mentioned most frequently in four categories of IP work.

Howrey	15
Fish & Richardson	14
Baker Botts	11
Quinn Emanuel	11
Wilmer	9
Kenyon & Kenyon	8
Kirkland & Ellis	8
DLA Piper	7
Fulbright & Jaworski	7
Jones Day	7
Alston & Bird	6
Foley & Lardner	6
Morrison & Foerster	6
Akin Gump	5
Faegre & Benson	5
Finnegan, Henderson	5
K&L Gates	5
King & Spalding	5
Klarquist Sparkman	5
McDermott Will	5
McGuireWoods	5
Shook, Hardy	5
Townsend and Townsend	5



## Law Firms on the Cutting Edge

This year's go-to firms for the world's most forward-thinking companies.

IP Litigation			Patent Prosecution		
<b>Copyright</b>			<b>Patent</b>		
K&L Gates	4	Howrey	11	Fish & Richardson	5
Mitchell Silberberg	4	Boult, Cummings	3	Alston & Bird	3
Furgang & Adwar	3	Fulbright & Jaworski	3	Banner & Witcoff	3
Galvin & Palmer	3	Howard, Phillips	3	Bell, Boyd	3
Hogan & Hartson	3	Quinn Emanuel	3	Cantor Colburn	3
Troutman Sanders	3	Snell & Wilmer	3	Finnegan, Henderson	3
White & Case	3	Bradley Arant	2	Lee & Hayes	3
Baker Botts	2	Christie, Parker	2	Merchant & Gould	3
Eisenberg, Tanchum	2	DLA Piper	2	Nixon & Vanderhye	3
Gardere Wynne	2	Dorsey & Whitney	2	Townsend and Townsend	3
Holme Roberts	2	Faegre & Benson	2	Baker Botts	2
J. Andrew Coombs	2	Foley & Lardner	2	Harness, Dickey	2
McDermott Will	2	Fried, Frank	2	Kenyon & Kenyon	2
Nexsen Pruet	2	Greenberg Traurig	2	Klarquist Sparkman	2
Richman, Lawrence	2	Law Offices of Holihan	2	Marshall, Gerstein	2
Robinson & Cole	2	Honigman Miller	2	McCarthy Tétrault	2
		J. Andrew Coombs	2	McNees Wallace	2
		Jones Day	2	Schwegman, Lundberg	2
		King & Spalding	2	Staas & Halsey	2
		Mayer Brown	2	Sterne, Kessler	2
		Michael Best	2	Stevens Davis	2
		Perkins Coie	2	Sughrue Mion	2
		Richman, Lawrence	2	Westerman, Hattori	2
		Shook, Hardy	2	Wolf, Greenfield	2
		Wilmer	2	Wood, Herron	2
		Winstead	2		

on infants that is sold by Wal-Mart, Target, and Amazon. An individual alleged that Avita had violated his copyright on the device, suing the manufacturer, the distributor, and the retailers. Unisar had promised the three retail giants to indemnify and defend them in the case of litigation. **And so Galvin & Palmer as well as Furgang & Adwar found themselves defending the copyright litigation. (It was easy to win on summary judgement because the inventor only had a drawing, and no patents.)**

Similarly, six-lawyer Manhattan-based Eisenberg, Tanchum & Levy has had Ramones Productions, which owns

the rights to the recordings made by the pioneering punk rock group The Ramones, as a client for a broad range of matters. A former contract musician sued Ramones Productions in a copyright dispute involving the digital distribution of the recordings. The musician also sued Wal-Mart, Apple, Inc., (and Real Networks, Inc. which is not on our list), for distributing the songs. So Eisenberg, Tanchum was lead counsel, even though the retailers had their own lawyers.

Getting a client by proxy isn't limited to small firms. Mitchell Silberberg & Knupp, a well-known IP power, rep-

resents UMG Recordings, Inc., as well as the Recording Industry Association of America, Inc. A musician, the initial defendant in a copyright action, had supplied a recording to UMG, which then made it available through distribution to a number of retailers such as Wal-Mart and Target. So Mitchell Silberberg became counsel of record.

Firms continue to get copyright work in a more traditional way, of course. Microsoft Corporation hired K&L Gates lawyers based in Seattle to sue several companies hawking counterfeit copies of Windows XP and Office 2003 on eBay. K&L Gates also handled two copyright defense cases for The Boeing Co., including one where the aerospace giant had to defend itself against charges that it had illegally copied a New Jersey artist's rendition of the Baikonur Cosmodrome, a Russian space launch facility.

On the trademark front, activity ranges from such international firms as Howrey and Fulbright & Jaworski to regionals like Nashville-based Boulton, Cummings, Conners & Berry. Fulbright lawyers were hired by Starbucks Corp. when the company mounted a second (unsuccessful) trademark challenge to "Mr. Charbucks," a coffee blend sold by New England-based Wolfe's Borough Coffee, Inc. Lawyers

in Fulbright's New York office also helped Research In Motion, Inc. crack down on a producer of fake batteries for its signature BlackBerry device.

Big companies differ in how they dole out their trademark work. Some companies will have one law firm do their trademark litigation throughout the country. Others take a more regional view, sending matters to law firms that operate in the same geographic area as an alleged infringer, depending on the nature of the case and the infringing party. By taking such an approach, companies can often trim their legal costs.

The patent data shows a trend that has been building over time: the domination of IP litigation by big general practice firms that have put increased resources into that arena. In last year's *IP Law & Business's Who Protects Innovation* survey, IP specialty firms accounted for only four of the 31 firms that handled three or more IP litigation matters in the U.S. for the world's 50 most innovative companies. This year the move of patent litigation to general practice firms continued. Of the 22 firms that handled three matters or more, only three were IP specialists: Fish & Richardson, Kenyon & Kenyon, and Klarquist Sparkman. Clearly many innovative companies

in high-stakes patent litigation believe that IP litigation lawyers at general practice firms are more experienced in e-discovery and pack more overall litigation know-how and firepower.

On the other hand, IP specialists are preeminent in patent prosecution. With patents now harder to get for a number of reasons—including the U.S. Supreme Court's marching orders in *KSR v. Teleflex*, which make it easier for the Patent and Trademark Office to deny granting a patent on grounds of "obviousness"—in-depth technical expertise is needed more than ever for effective patent prosecution. Here boutiques dominate, with 20 of the top 25 firms concentrating on IP law. Even so, a handful of general practice firms—Alston & Bird; Baker Botts; Bell, Boyd; McCarthy Tétrault; and McNeese Wallace & Nurick—show that a law firm doesn't have to be devoted solely to IP to get important patent work.

But there is little overlap between the leading patent litigators and leading patent prosecutors. Only three firms—general practice giant Baker Botts, as well as Fish & Richardson and Kenyon & Kenyon—appear on both lists. In a legal world that increasingly prizes specialization, it's harder to do everything superbly. ■

**METHODOLOGY**—*Who Protects Innovation in America 2008* uses a list of companies ranked by *BusinessWeek* and the Boston Consulting Group as The World's 50 Most Innovative Companies. Votes cast in a survey sent to the 2,500 largest global corporations by market capitalization and other business leaders counted for 80 percent of the ranking, stock returns accounted for 10 percent, and three-year revenue and margin growth each accounted for 5 percent.

*IP Law & Business* used Thomson West's Litigation Monitor to find which law firms made new intellectual property case filings, or were issued judicial decisions, for the 50 companies for the time period of July 1, 2007 through June 30, 2008. Litigation Monitor compiles information about lawyers, law firms, roles, representation, and parties from Westlaw documents sourced

from federal and state dockets and decided case opinions. We listed the five firms with the most litigation activity—cases filed or decisions rendered—in copyright, patent, and trademark categories; where there was a tie in the top five, we listed all the tied firms.

Patent prosecution data came from Thomson West's IP Monitor, which compiles patent application data through Westlaw from the Patent and Trademark Office and Derwent. We listed the five firms that filed the most patent applications for each company from January to September 2008, again including more firms in the case of ties. We then counted up the mentions in each of the four categories to compile our most-mentions lists. We didn't include law firms whose primary role was that of local counsel on the most-mentions lists.