

## 6 IP Boutiques Punching Above Their Weight

By Erin Coe

*Law360, San Diego (September 25, 2015, 3:32 PM ET)* -- Between corporate spending cuts to intellectual property litigation and talent poaching by bigger firms, IP boutiques face a bruising legal market, but some specialty shops are getting ahead of the competition, landing big-name clients and notching wins in court and at the Patent Trial and Appeal Board.

After IP suit spending by corporate legal departments peaked at \$2.89 billion in 2013 and 2014, it began decreasing this year and is expected to drop to \$2.72 billion in 2016, an almost 6 percent decrease from 2014, according to a report this week by BTI Consulting Group, which surveyed more than 300 in-house attorneys. And many BigLaw firms are showing interest in having a greater presence in the IP marketplace, playing an active role this year in picking up practice group leaders from struggling boutiques.

"IP boutiques are having a bit of a rough time," said Michael Rynowecer, BTI's president and founder. "Large firms are trying to poach partners of boutiques, which could lead to a talent and client issue if departing partners take clients with them."

And as boutiques increasingly fight with larger firms over a shrinking amount of lucrative patent litigation work, they also are facing tremendous pricing pressure in IP prosecution matters and in the defense of suits brought by nonpracticing entities, according to experts.

At the same time, large firms like Norton Rose Fulbright and Fenwick & West LLP have seen groups of their lawyers leave to form boutiques over the last year, while firms like Loeb & Loeb LLP and King & Spalding LLP have seen IP lawyers move on to existing IP-focused firms.

"As general practice firms grow to include larger full-service IP practices, spin-off boutiques are often the result of particularly entrepreneurial lawyers who encountered frequent client conflicts or required more flexibility over their billing rate structure," said Dan Binstock, co-head of the partner and practice group division at attorney search firm Garrison & Sisson Inc. and a former IP attorney at Finnegan Henderson Farabow Garrett & Dunner LLP.

The number of IP boutiques tends to multiply as the economy expands, according to Ginger Manizza, president of Premier IP Staffing Consultants Inc.

"There's always a steady market in IP, but as the economy grows, we tend to see more IP boutiques and more lawyers feeling confident in leaving big firms," she said. "Many cater to small and midsized

companies that can't afford the major New York and San Francisco firms. There is a marketplace for IP boutiques because some clients don't want to pay \$600 or \$350 an hour, while some IP boutiques can bill out \$200 an hour."

The boutiques that are keeping competitors on their toes are those that handle patent litigation, which is typically large, complex and profitable, and those that are adept at building strong relationships with clients, according to experts.

"The boutiques that are successful have attorneys whose clients have become dependent on them," Binstock said. "These attorneys are indispensable to clients not only because of their legal acumen but also their unique familiarity with the clients' business itself. The two can't be separated."

Here, legal experts highlight IP boutiques that are standing out from the pack:

### **Durie Tangri LLP**

**Attorneys:** 22

**Office:** San Francisco

In 2009, Daralyn Durie and four other IP partners broke off from Kecker & Van Nest LLP to form the San Francisco-based litigation boutique, which has a strong focus on patent, copyright and trademark matters.

The firm has since grown to 22 attorneys and has represented large companies like Google Inc., Genentech Inc., LinkedIn, Twitter and Ticketmaster LLC, along with smaller businesses, such as Fitbit and Snapchat, according to its website.

"Durie Tangri is a very successful and well-regarded boutique," said Gloria Noh Cannon, a principal at Lateral Link Group LLC. "In a very short period of time, it's done really amazing work and built quite a presence."

Although the IP boutique arena is known for being heavily dominated by men, this boutique is unusual in that one of its leaders — Durie — is a woman.

"The boutique is well respected in the patent litigation area ... and the fact that one of its named partners is a woman is notable," said Natasha Innocenti, who leads legal recruiting firm Major Lindsey & Africa's partner practice in San Francisco and Silicon Valley.

The firm also bolstered its IP team with more female talent in July, luring high-stakes patent and technology litigator Sonal Mehta from Weil Gotshal & Manges LLP.

This month, Durie Tangri was among a group of firms that helped Newegg Inc. convince the Federal Circuit to revive a bid by the online retailer and other companies for attorneys' fees in a patent infringement suit filed by an Acacia Research Corp. subsidiary over a camera clip. A federal judge in 2012 allowed the plaintiff to dismiss its claims against Newegg after the U.S. Patent and Trademark Office rejected the asserted claims of the patent, but the judge denied the defendants' motion for fees in 2013.

The boutique also secured a win for Zynga Inc. this month when a California federal judge ordered Segan LLC to pay \$1.19 million in attorneys' fees to the online gaming company and additional sanctions for

filing a “totally unreasonable” infringement suit over a patent covering character icons that can interact with websites.

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### **Erise IP PA**

**Attorneys:** 14

**Offices:** Kansas City, Kan.; Denver

The firm, founded in 2012 by two former partners at Shook Hardy & Bacon LLP, specializes in intellectual property and high-tech matters.

“Erise IP is one of the best patent-focused firms in the nation,” said Dennis Crouch, co-director of the Center for Intellectual Property and Entrepreneurship at the University of Missouri School of Law and editor of website Patently-O. “They are especially known for handling high-value complex technical disputes. Much of their work involves cases where patents are being asserted in court while also being challenged in the new administrative trial proceedings [at the Patent Trial and Appeal Board].”

David Warren of Warren Recruiting said Erise “offers a great balance of bright attorneys, smart work and fair billable rates.”

The firm has grown to 14 attorneys and is located in Overland Park, Kansas, and Greenwood Village, Colorado, according to its website. Companies like Ford Motor Co., Sony and Garmin International Inc. have all turned to the boutique for representation.

Nabbing a victory for Ford and other automakers in June, Erise and other law firms convinced the PTAB that several claims in a cruise control patent owned by a unit of Empire IP were invalid as anticipated. The case stemmed from a series of patent infringement suits lodged against various car companies — which include Ford, Jaguar Land Rover North America Inc., American Honda Motor Co., Toyota Motor North America Inc., Volvo Cars of North America LLC and Subaru of America Inc.

The boutique also was among the firms that helped Garmin in May fight off a patent suit brought by patent licensing company Silver State Intellectual Technologies Inc., which sought \$30 million in damages and targeted 150 Garmin GPS products. A Nevada jury found that the four patents on GPS technology asserted against Garmin were invalid as obvious.

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### **Lando & Anastasi LLP**

**Attorneys:** 29

**Office:** Cambridge, Mass.

High-performing boutiques like Lando & Anastasi are not just able to provide strong technical and legal guidance to clients; they are able to put their advice in the context of clients’ business, according to Rynowecer.

“They know how a patent application or process fits in with a client’s product line,” he said. “And they are able to adjust how they advise on a matter, taking a more aggressive approach when protecting technology that a company is basing its growth on than when it’s providing ancillary protection for an

existing product line.”

The Cambridge, Massachusetts-based boutique litigates and provides counsel on an array of IP matters — patent, trademark, copyright and trade secret issues — and it also offers licensing and transactions services. The firm, founded in 2003, has 29 attorneys and serves various industries, including life sciences, software, cleantech and medical devices, according to its website.

The firm scored a win for AllPure Technologies Inc. in January when the Federal Circuit refused to rehear en banc a panel’s affirmation that AllPure did not infringe a patent for a device for withdrawing fluid from a container owned by Merck KGaA unit EMD Millipore Corp.

Lando & Anastasi also has helped clients before the Trademark Trial and Appeal Board. In February 2014, the TTAB found that a registered mark may be modified to include a more specific color description, ruling that the firm’s client Covidien LP could request that Masimo Corp.’s trademark for red medical cables be revised to contain a narrower color definition.

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### **Osha Liang LLP**

**Attorneys:** 38

**Offices:** Houston; Austin; Silicon Valley; Washington, D.C.; Paris; Tokyo; Hangzhou, China

Founded in 1998, Osha Liang is one of the oldest firms on the list and focuses on intellectual property matters, ranging from patent litigation to portfolio management, on a global basis. In addition to Texas, the Houston-based firm has offices in California, Washington, D.C., France, China and Japan.

According to the firm’s website, no partner “owns” a client. While a single lawyer may be appointed as a primary point of contact, the firm says, a team is assembled based on experience and technical background, and each project is staffed “to yield the highest quality work product.”

“Osha Liang specializes in software, and that has appeal because software companies want to be represented by a firm that understands the technology,” Rynowecer said.

The firm also serves pharmaceutical, financial and oil field businesses as well as other sectors.

In addition to having a solid grasp on their clients’ business, savvy boutiques like Osha Liang don’t wait for clients to come to them with problems, according to Rynowecer.

“They sit in on key meetings and offer guidance rather than wait to hear what the clients’ ideas are first,” he said. “They are proactive and unequivocal about their recommendations.”

Clients are moving in the direction of only giving boutiques work if there is an extra level of understanding and trust, according to Rynowecer.

“Boutiques that are in a constant dialogue with clients, that are arranging quarterly meetings to see what companies’ product development looks like and that are asserting themselves as part of clients’ teams — those are things boutiques are doing to show they have an unmatched understanding of their clients,” he said.

The firm, which lists 38 attorneys, strengthened its IP team in May by picking up Jeffery Langer, who previously served as Philip Morris International Inc.'s senior patent counsel. He concentrates his practice on internationally focused IP transactions and prosecutions.

Also in May, the firm netted a win for auto parts maker Valeo North America Inc. at the PTAB, which held that nearly all of the claims of the four Magna Electronics Inc. patents for rear-view cameras that Valeo was accused of infringing were invalid as obvious.

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### **Dovel & Luner LLP**

**Attorneys:** 8

**Office:** Santa Monica, Calif.

The boutique in Santa Monica, California, was formed in 1998 by Greg Dovel and Sean Luner, former attorneys at Kaye Scholer LLP, and it now has a total of eight attorneys.

The firm is highly selective in its hiring process, considering only top graduates, such as the top 10 percent from Harvard Law, according to Michael Allen, managing principal of Lateral Link.

In addition, it often represents clients in major matters on a contingency basis, and given its small size, the firm is more profitable than most large firms because of the contingency work it handles, he said.

“The firm is very unique because it’s small but profitable and has highly successful attorneys with top pedigrees who earn above-market compensation,” he said. “Associates at Dovel & Luner likely make as much as Wachtell associates.”

It helped patent licensor Network-1 Technologies Inc. hold onto its Ethernet patent in August when the Federal Circuit affirmed a PTAB ruling that the patent asserted against Sony, Dell Inc. and other companies was not anticipated by prior art. Greg Dovel noted at the time that it was one of the first PTAB cases to be reviewed by the Federal Circuit.

It also was one of the firms that helped technology licensing company SimpleAir Inc. score an \$85 million verdict against Google. In March, a Texas federal jury found that Google’s cloud-to-device messaging services infringed a network messaging and data transmission patented owned by SimpleAir. The case is pending an appeal at the Federal Circuit.

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### **Bragalone Conroy PC**

**Attorneys:** 11

**Office:** Dallas

The Dallas-based boutique got started by two former McKool Smith PC lawyers with expertise in IP and complex commercial litigation in 2013, making it one of the newest boutiques on the list.

“Another IP boutique that is making a name for itself is Bragalone Conroy,” Warren of Warren Recruiting said. “In just two-and-a-half years, it has ... built a Texas-sized reputation in IP litigation. With a team of experienced and aggressive lawyers, I think it is a firm to watch.”

Over the last couple of years, the firm has targeted companies like LG Electronics Inc., AT&T Inc., Apple Inc., Sprint Corp., Mercedes-Benz U.S. International Inc., Best Buy Co. Inc. and Hewlett-Packard Co. in infringement litigation on behalf of patent holders. The firm lists 11 attorneys.

Bragalone Conroy is representing Wi-LAN USA Inc. in a patent dispute over television technology with LG, which in September asked the Second Circuit to reverse a Manhattan federal judge's order compelling arbitration with the patent-licensing plaintiff.

Its clients also have included Cellular Communications Equipment LLC and Innovative Display Technologies LLC, a Plano, Texas-based subsidiary of nonpracticing entity Acacia.

--Editing by Jeremy Barker and Kelly Duncan.

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