

Law firms report steady increase in IP litigation

Intellectual property law is a solid growth industry in Oregon and across the U.S.

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SPECIAL TO THE BUSINESS JOURNAL

Oregon's intellectual property law industry continues to thrive.

"IP has become the lifeblood of the new economy," said Matt Wilmot of Portland-based Dunn Carney Allen Higgins & Tongue LLP. "We're seeing a lot more small and medium-sized companies that are becoming more vigilant in asserting their IP rights and seeing who will blink first. They're sending a message."

Like many other firms, Dunn Carney has seen a steady increase in a wide range of IP-related business.

"IP litigation is now being seen as a business tool," Wilmot said.

Multimillion-dollar patent lawsuits get the splashy headlines and bring in the hefty retainers, but most IP litigation is fought in the less glamorous trenches, dealing with vitally important issues of confidentiality and noncompete clauses, trademark infringement, copyrights and trade secrets, said Rob Shlachter of Stoll Stoll Berne Lokting & Shlachter PC, a Portland law firm.

Many companies, especially struggling startups, are still reluctant to spend money to protect their ideas, although it may be critical to their long-term survival, he said.

Oregon's IP litigation industry isn't all high tech and biotech — far from it. His firm has worked on cases including everyday products such as guns, knives, potato chips and exercise equipment.

IP law is a solid growth industry in Oregon and around the United States. IP-related inquiries to Shlachter's law firm have



Dejong

doubled over the past seven or eight years, as the United States transitions from an industrial society that produces tangible goods to an information economy based on intangible assets, he said. There'll be even more growth as Portland

continues to develop as a biotech hot spot.

A good share of the firm's IP work deals with issues involving key employees or executives who are leaving a company.

"The employer needs to move very quickly," said Stoll Stoll Berne Lokting & Shlachter's Tim DeJong. "Once IP is made public it's difficult, if not impossible, to unring the bell."

If an employee leaves the company suddenly, make sure they don't take any tangible assets with them and lock down their computer. Sit down with the employee and remind them of their contractual obligations as well.

The firm also receives frequent inquiries from employees preparing to leave a company and want to limit their exposure to litigation. An employee has the right to go about much of the work of setting up a business -- things like developing a business plan and designing letterheads -- as long as they don't do it on their employer's clock.

Craig Bachman of Lane Powell PC is also seeing a significant increase in IP business. When you're talking about IP litigation, you're usually talking about pre-trial activities.

"It's an unusual case that has to be tried," he said. "The level of predictability in court is quite low."

There are two major developments on the patent litigation front.

The April ruling on *KSR vs. Teleflex*

was notable for a number of reasons, not the least of which is that it signals that the U.S. Supreme Court is reversing its historical reluctance to review patent cases.

The ruling makes it easier for challengers to prove that a patent is "obvious" — and therefore should never have been issued. There are many questionable patents floating around and some types of lawsuits may decrease as a result of this ruling.

"The theory is that people are going to be more careful about asserting patents, but it's way too early to know for sure," said John Mansfield, IP litigator at Portland's Schwabe Williamson & Wyatt PC.

The other major development in the patent sector is the proposed Patent Reform Act of 2007. Schwabe Williamson & Wyatt recently sponsored a seminar featuring a House subcommittee lawyer who told attendees that if patent reform is going to pass anytime in the near future, this will be it. The last time the patent law was amended was 1952.

The Patent Reform Act would change the "first to invent" standard in the United States to a "first to file" system, which is the standard used throughout the world, Mansfield said.

Passage would also change the way patent damages are calculated, largely eliminating the practice of "venue shopping" by limiting where patent cases can be filed.

Patent holders often file in the eastern district of Texas, specifically the township of Marshall, where it's a lucrative cottage industry.

"Their juries almost always return verdicts for patent holders," said Mansfield.

Speaking of cottage industries, many new patent attorneys are moving to Oregon, although the cases they work on may not be litigated in this district, said Peter Glade of Markowitz Herbold Glade & Mehlhaf PC, a Portland law firm.