

# THE AMERICAN LAWYER

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SPECIAL ISSUE

## Litigation Department OF THE Year



**WHEN WE STARTED** our Litigation Department of the Year competition ten years ago, we weren't sure if it would catch on. We knew we were asking a lot from firms—requiring them to sift through their litigation matters, choose the best results, and summarize complex cases succinctly. But a decade later, here we are presenting the results of our sixth biennial competition.

As usual, the task of picking winners and finalists involved some excruciating decisions. The submissions—which covered the two-year period ending July 31, 2011—were impressive, and stand as a testament to the excellent work done by the firms of The Am Law 200.

For the first time since we started this project, we changed the format for all four competition categories: general litigation, product liability, labor and employment, and intellectual property. We gave firms more flexibility to select the cases they wanted to present, and we asked each firm to submit an essay on why it should be a finalist. We also invited firms to nominate a partner as Litigator of the Year.

After months of reading, vetting, and interviewing, we arrived at four law firm winners, 11 runners-up, and 14 honorable mentions. We also chose three lawyers for Litigator of the Year, and five as finalists. Congratulations to all of these firms and individuals, and our thanks and appreciation to all the firms that participated in the 2012 contest.

PHOTOGRAPHY BY MIKE MCGREGOR



## Patently Driven

As other IP specialty firms disappear, **FINNEGAN** continues to flourish, racking up wins—for clients large and small at every major litigation venue—that are also helping to shape the future of intellectual property law.

**M**CKOOL SMITH NAME partner Mike McKool had just scored a \$290 million jury verdict in a patent case his firm had taken on contingency. But because the losing party was Microsoft Corporation, McKool wasn't celebrating just yet. The software giant is known for getting substantial damage awards in patent disputes slashed on appeal. Which is why, in May 2009, McKool urged his client in the case, Canadian software developer Infrastructures for Information, Inc. (i4i), to bring in the man McKool calls "the best": Finnegan, Henderson, Farabow, Garrett & Dunner name partner Donald Dunner.

Dunner did not disappoint. At oral arguments before the U.S. Court of Appeals for the Federal Circuit, Microsoft's lawyers from Weil, Gotshal & Manges argued that the district court judge had erred at every step in the case. Dunner, who says he spent more than 100 hours preparing for the argument, always had a quick retort. In March 2010 the Federal Circuit affirmed i4i's win across the board. "I never want to do it again," says i4i founder Michael Vulpe, who had the extra satisfaction of seeing the U.S. Supreme Court affirm the Federal Circuit's ruling, "but if I had to, I'd use Finnegan."

Dunner's i4i win is one reason Finnegan claims our intellectual property litigation department title. The IP-only firm locked up the contest with a spate of victories in every major IP litigation venue, pleasing their clients and shaping the future of patent law.

That was true in *Bilski v. Kappos*, which produced one of 2010's most-anticipated pat-

ent rulings. Reading only the first page of the Supreme Court's *Bilski* opinion could leave one thinking Finnegan had lost the case. After all, the Court unanimously rejected firm client Bernard Bilski's bid to patent a mathematical model designed to help commodities traders hedge weather-related risks. But, as the technology community knows well, Bilski's shaky patent application wasn't the only thing at stake when Finnegan partner J. Michael Jakes took on the Supreme Court appeal.

Indeed, by the time it made its way to the Court, *Bilski* had become a flashpoint in the debate over what exactly qualifies as patentable subject matter. Sixty-eight amicus briefs were filed in the case, including many urging that "business method" patents in general—and software patents specifically—be invalidated. Before a packed gallery, Jakes, in his Supreme Court debut, convinced the slimmest majority of justices that Congress had meant for business methods to be patentable. In its decision, the Court also sided with Jakes's argument that there should be no exclusive test for weighing the validity of a method patent.

Among those to welcome the ruling: the Biotechnology Industry Organization (BIO), which had filed an amicus brief describing the biotech industry's reliance on method patents. As soon as the decision came down, the trade group issued a statement praising the Court for affirming "that the patent system was designed to be broad and inclusive in order to promote innovation."

*Bilski* was just one of many boosts Finnegan

By  
**JAN  
WOLFE**

gave the biotech and pharmaceutical industries in the period covered by this year's contest. In one en banc Federal Circuit appeal closely watched by drugmakers, partner Charles Lipsey reversed a \$65 million jury verdict Ariad Pharmaceuticals had won against his client Eli Lilly and Company. In addition to helping Lilly, the ruling also benefited "tens (perhaps hundreds) of drug companies," according to *Nature Biotechnology*, which ran an editorial calling Ariad's suit "bad news for innovative drug developers, bad news for patent examiners, and bad news for the courts" because it would have "fence[d] off whole swaths of biology."

In the same case, the court also backed Lilly on a question that had long split the patent bar: Does the Patent Act require inventors to include in their patent applications a detailed "written description" of their invention? By answering "yes," the court provided much-needed clarity, says Lilly vice president and general patent coun-

**Practice Group Size** Partners: 109  
Associates: 155  
Counsel: 19

**Practice Group** 71%  
as Percent of Firm

**Percent** 74%  
of Firm Revenue 2010

**On the Docket:** *Defending Cephalon, Inc., in generic challenge to Nuvigil; advising Abbott Laboratories on Zemplar litigation; representing Rambus, Inc., against Mediatek Inc. at the ITC.*





sel Doug Norman. “That was the culmination of a 16-year journey over several cases,” he says.

Lilly, which Finnegan has represented in IP litigation for three decades, may have been the client with the most at stake over the past year and a half. Two of its top-grossing drugs, Cymbalta, an antidepressant that accounted for \$3.3 billion in revenue in 2010, and the best-selling osteoporosis treatment Evista, were up for review under the Hatch-Waxman Act, which allows generic drugmakers to challenge a brand-name drug manufacturer’s patents in court years before they expire. Wins for generics in such cases typically send a brand-name drug’s profits into a tailspin.

Displaying what Norman calls “leadership” and “stand-up advocacy skills,” Lipsey fought off both challenges, preserving their market exclusivity into 2013 (Cymbalta) and 2014

(Evista). The dual wins gave Lilly a huge boost amid speculation that it might be forced to merge with a rival to counter a drop in revenue as patents on another major drug, Zyprexa, neared expiration.

Finnegan has also established itself as a go-to firm for tech clients doing battle at the International Trade Commission—a red-hot forum for patent disputes because of its speedy rulings and ability to deliver injunctive relief largely unavailable in the federal courts. In July 2010 partner Doris Johnson Hines scored a much-needed ITC win for Rambus, Inc., by convincing a panel of judges to ban the importation of products containing nVidia Corporation’s high-end graphics cards. In the wake of the ruling, which forced nVidia to pay Rambus a licensing fee, Rambus’s stock price rose 8 per-

**FROM LEFT:**  
*Charles Lipsey,  
Christine Lehman,  
J. Michael Jakes,  
Doris Johnson Hines,  
James Monroe*

cent even as it remained mired in litigation against every major rival.

While Finnegan’s gross revenue dipped 8.7 percent between 2009 and 2010, according to the most recent Am Law data, the

\$383.5 million the firm took in shows it remains strong as other IP-only shops either fold or get swallowed up by large general practice firms. And those who call Finnegan home are quite content to stay right where they are. “There isn’t one of us that hasn’t been offered a job somewhere else for more money,” says Lipsey. “But there’s a sense of long-term loyalty to the firm that you don’t see in these jobs where whole sections come and go depending on the profitability of the business.”

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**FINNEGAN**

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