

## These Firms Handled The Most AIA Reviews Last Year

By Ryan Davis

*Law360, New York (June 15, 2017, 6:55 PM EDT)* -- A handful of major law firms led the pack in landing work representing patent owners and challengers in America Invents Act reviews in 2016, according to data released Thursday, just as the U.S. Supreme Court begins reviewing the legality of the proceedings.

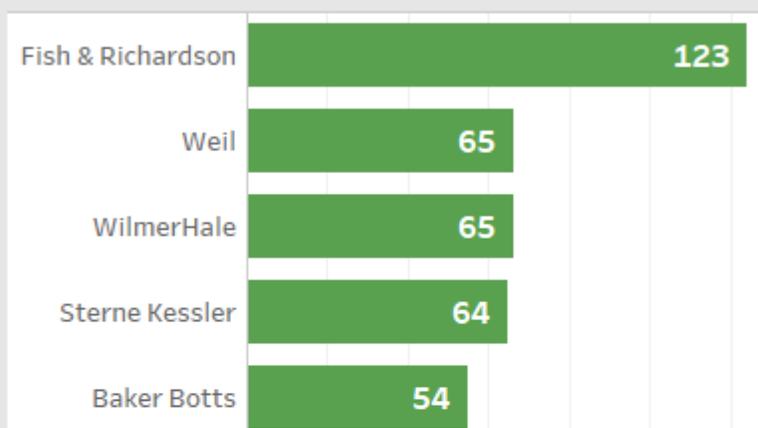
The 2017 Patent Trial and Appeal Board Report by legal data analytics firm Lex Machina was released on the heels of the high court's Monday decision to consider if AIA reviews violate the U.S. Constitution. The report provides a snapshot of the firms and companies that would feel the greatest impact if the justices were to eliminate AIA reviews.

"That case gives us a chance to look at the status of the system, how is it working and who is it working for," said Brian Howard, Lex Machina's legal data scientist.

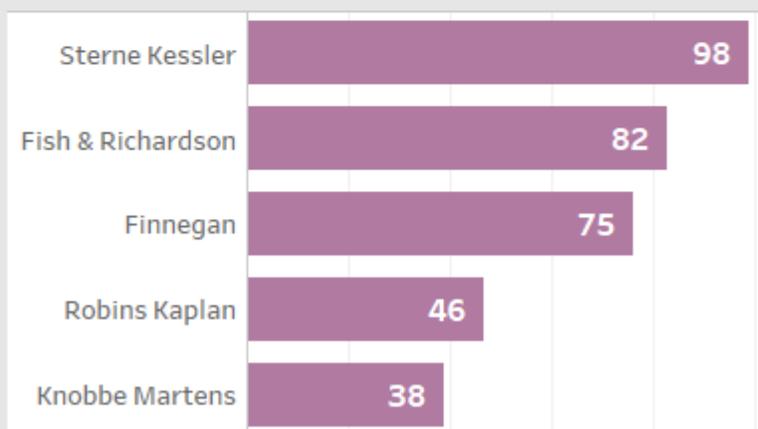
A small group of top firms, many of them IP boutiques, handles a large volume of PTAB work. Fish & Richardson PC far outpaced its competitors in representing companies challenging patents in 2016, handling 123 petitions. It was followed by WilmerHale and Weil Gotshal & Manges LLP, which each worked on 65 petitions last year.

### Busiest Firms At The PTAB

Firms Representing the Most Petitioners in 2016



Firms Representing the Most Patent Owners in 2016



Source: Lex Machina

Fish & Richardson has consistently appeared at or near the top of the list of firms representing petitioners compiled by Lex Machina, which like Law360 is part of LexisNexis, over the past several years. The firm was also No. 1 in 2015, No. 2 in 2014 and No. 3 in 2013, the first full year the AIA proceedings were available.

WilmerHale didn't appear among Lex Machina's list of the top 10 firms for petitioners in 2015, but it was ranked No. 1 in 2014 and No. 8 in 2013. Weil appeared on the list for the first time in 2016.

On Lex Machina's ranking of the top firms representing patent owners in 2016, Fish & Richardson also came in near the top, placing second with 82 petitions. First place went to Sterne Kessler Goldstein & Fox PLLC, which handled 98 petitions. Finnegan Henderson Farabow Garrett & Dunner LLP came in third with 75 petitions last year.

Sterne Kessler has consistently been a top firm for patent owners, also taking first place on Lex Machina's list in 2015 and 2013, along with third place in 2014. Finnegan and Fish & Richardson have both appeared in the top five firms for patent owners almost every year since the AIA proceedings became available.

Over the entire history of AIA reviews, Finnegan, Fish & Richardson and Sterne Kessler are the top three firms on both the petitioner and patent owner sides, Lex Machina found, making the three IP boutiques a dominant force at the PTAB.

The report also shows that major technology companies have made by far the most use of AIA proceedings to challenge patents. If AIA reviews were deemed unconstitutional, they would lose a key part of their legal strategy for when they are accused of infringement.

Since AIA reviews became available, Apple Inc. has filed 370 petitions, followed by rival Samsung Electronics Co. Ltd. with 268, Google Inc. with 180 and Microsoft Corp. with 124.

"All of that goes to support the notion that those doing the most work at the PTAB are large tech companies" that are often the target of infringement litigation, Howard said.

Likewise, the companies that have had their patents challenged most often at the PTAB over the last five years are all nonpracticing entities known for filing scores of patent suits, which have spurred accused infringers to mount numerous challenges at the PTAB.

Zond LLC, which has asserted its plasma generator patents against an array of major semiconductor and razor blade companies, has faced more PTAB challenges than any other company. The 124 PTAB petitions against its patents have led to many decisions by the board finding claims invalid.

Magna Electronics Inc., which has accused numerous auto parts companies of infringing its patents on car camera technology, was second on the list of companies whose patents are challenged most often, facing 71 petitions. It was followed by VirnetX Inc., which has targeted tech giants over its network security patents; major patent licensing firm Intellectual Ventures; and LCD patent owner Innovative Display Technologies.

The report also shows that the vast majority of cases at the PTAB are tied to infringement cases in district court, illustrating what an important part of patent litigation AIA proceedings have become.

In 2016, 88.5 percent of PTAB petitions involved patents that were litigated in district court before being brought to the board, and only 11.5 percent did not.

However, while most PTAB proceedings involve district court litigation, fairly few of the overall number of patent suits filed in district court result in challenges at the PTAB, the report found. In 2016, 13.4 percent of district court patent cases involved a patent that was challenged at the PTAB, while 86.6 percent did not.

“This is only an issue in a relatively small number, actually a minority, of district court cases,” Howard said.

--Editing by Sara Ziegler.