

The Top 25 Icons Of IP

By Erin Coe

Law360, San Diego (January 24, 2016, 7:26 PM ET) -- Law360 is proud to unveil a new series honoring those who have shaped today's intellectual property landscape, highlighting litigators who have never let a complex set of facts keep them from resonating with jurors, judges who have handed down rulings that illuminate the law and leaders who have built the U.S. Patent and Trademark Office into the go-to venue for patent validity fights.

A panel of Law360 editors and intellectual property attorneys selected 25 lawyers who have made an indelible mark in the IP area. We will profile one of these attorneys each week over the next several months, highlighting the court victories, precedent-setting judgments and regulatory efforts that earned these attorneys a spot on Law360's list of Icons of IP:



- Samuel Baxter, McKool Smith PC
- Juanita Brooks, Fish & Richardson PC
- Dale Cendali, Kirkland & Ellis LLP
- Morgan Chu, Irell & Manella LLP
- Andrew Culbert, Microsoft Corp.
- Theodore Davis Jr., Kilpatrick Townsend & Stockton LLP
- Donald Dunner, Finnegan Henderson Farabow Garrett & Dunner LLP
- Daralyn Durie, Durie Tangri LLP
- David Kappos, Cravath Swaine & Moore LLP
- Rachel Krevans, Morrison & Foerster LLP
- Michelle Lee, USPTO director
- William Lee, WilmerHale
- Mark Lemley, Durie Tangri LLP
- Mike McKool, McKool Smith PC
- Paul Michel, former Federal Circuit chief judge
- Raymond Niro, Niro Haller & Niro Ltd.
- John Quinn, Quinn Emanuel Urquhart & Sullivan LLP
- Joseph Re, Knobbe Martens Olson & Bear LLP
- Terry Rea, Crowell & Moring LLP

- **Edward Reines, Weil Gotshal & Manges LLP**
- **Robert Greene Sterne, Sterne Kessler Goldstein & Fox PLLC**
- **Robert Van Nest, Kecker & Van Nest LLP**
- **Jane Wald, Irell & Manella LLP**
- **T. John Ward, Ward Smith & Hill PLLC**
- **Seth Waxman, WilmerHale**

Becoming an icon does not happen overnight. It can take attorneys years of practicing law, building trust with clients and colleagues, and engaging the community at large through writing and speaking opportunities before they might emerge as thought leaders in the IP space. Icons also tend to go against the grain, ready to challenge the foundations underlying IP law or the traditions of how the law is practiced.

"An icon is someone who takes the hard cases," said William Atkins, a partner at Pillsbury Winthrop Shaw Pittman LLP. "Even though people say you have no chance of winning, your idea bears fruit and turns the law around — that's an icon."

Icons are often the attorneys who clients turn to first when they are facing the most complex, high-stakes matters that threaten their livelihood or present great opportunity, and they are the ones who other attorneys are often flocking to work with, according to Kent Zimmermann, a legal industry strategist at Zeughauser Group LLC.

"Icons can usually get an audience and open doors to help a firm gain access to highly sought-after clients," he said. "They also usually assist the firm in attracting and retaining star talent."

Among the attorneys who have landed a spot on Law360's list is seasoned litigator Donald Dunner of Finnegan Henderson, who played a key role in the 1982 formation of the Federal Circuit, which is known for overseeing appeals of patent cases.

"When I think of an icon, I think of Don Dunner: someone who is so thoroughly immersed in IP law that he is given and gets great opportunities, like arguing before the Federal Circuit and Supreme Court," Atkins said.

Another winner, Fish & Richardson's Juanita Brooks, moved over to the patent bar after decades as a public defender and criminal defense lawyer and is skilled at trying complicated patent cases without getting bogged down in the technical weeds.

"Juanita is able to come to the table and effectively channel how a normal person may view a case, and she is able to distill complex technical issues into an understandable and persuasive story that will resonate with everyday jurors," said Ahmed Davis, a principal at Fish & Richardson who has worked with Brooks for years.

Paul Michel, who handed down rulings at the Federal Circuit for more than two decades and served as chief judge from 2004 to 2010, also made Law360's list.

"He helped shape the legal landscape on many thorny legal issues in the IP area for years," said Davis, who clerked for Michel from 2001 to 2002. "He remains active as a speaker on issues that are relevant and important to the patent bar ... and he is still impacting the patent bar on a national level."

In addition, Law360's list features Cravath's David Kappos, who directed the USPTO from 2009 to 2013 after coming over from IBM Corp. He was instrumental in laying the groundwork for the Patent Trial and Appeal

Board, which has become a popular avenue for accused infringers to challenge the validity of patents.

"He led the America Invents Act charge to change the law, created the PTAB and made a real difference," said Neil Smith, a Rimon PC partner who served as the first administrative patent judge on the PTAB for the USPTO's Silicon Valley, California, satellite office.

Over the years, these icons have seen radical shifts in the IP area, particularly with the America Invents Act taking hold in 2012 and the U.S. Supreme Court becoming more involved in reviewing IP cases.

With the AIA shifting patent validity fights from the district court to the patent office, the biggest impact on the IP landscape is the overwhelming strategic role that inter partes reviews now play in nearly every single patent suit, according to Davis.

"The impact of what is happening at the PTAB now drives countless decisions, from whether to file a declaratory judgment action asserting invalidity, the implications that has from an estoppel standpoint, and what the intersection is between an inter partes review and pending litigation," he said. "Understanding AIA reviews has become imperative in order for lawyers to fully and effectively advise clients and hold themselves out as attorneys at the vanguard of IP law."

The Supreme Court also has been more vocal in patent cases in recent years, deciding a record six cases in the 2013-2014 term, ruling on three in 2014-2015, and picking up three so far this term.

"The Supreme Court rarely has taken up a case to pat the Federal Circuit on the back and say, 'Good job' — it's usually an admonishment that the Federal Circuit is overextending the law, applying bright-line rules unnecessarily or administering IP law as if it is unique from many other areas of law," Davis said.

The IP legal market also has changed over the last 20 years from an area that was once dominated by IP boutiques and now has been infiltrated by general practice firms eager to gain a piece of big-ticket patent litigation.

Coinciding with a more crowded legal market, IP litigation demand is on the decline and prosecution work is becoming more commoditized, leaving some IP boutiques struggling and looking to combine with larger firms.

"With the exception of the bet-the-farm-type cases, there is increased rate pressure and competition," said Dan Binstock of legal recruiting firm Garrison & Sisson Inc. "IP lawyers who distinguish themselves are able to serve as both legal and business advisers. They can wear both hats seamlessly and clients keep their fingers crossed for this broader perspective when they use outside counsel."

While becoming a high-quality lawyer can help accelerate the path to star status, it's often one part of a long list of ingredients that go into making an IP icon.

"Attorneys who are seeking to become an iconic lawyer need to have a specific plan to do that, including raising their profile in the patent bar, speaking and writing as much as possible, and being at the cutting edge of new legal issues," Davis said.

--Editing by Katherine Rautenberg.

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