

How 7 IP Firms Weathered The COVID-19 Pandemic

By **Dani Kass**

Law360 (December 21, 2020, 4:47 PM EST) -- Intellectual property firms ranging from just a handful of lawyers to several hundred attorneys said the COVID-19 pandemic was a logistical curveball, but their industry has largely been insulated from the worst of the pandemic's financial woes.

Law360 spoke with seven IP firms that span in size and location to get a snapshot of how the novel coronavirus pandemic impacted the industry.

While adjusting to working remotely and the uncertainty of 2020 took some getting used to, every firm said patent work has remained steady. Two of the seven firms instituted a pay cut — each of which has since been reversed — but none had to furlough or lay off employees. And each firm has found silver linings in this new era of remote work.

"The first few months were 'How [will the firm] survive this?'" said Sterne Kessler Goldstein & Fox PLLC managing director Michael Ray. "The second half has been, 'All right, let's get back to [being] proactive. Let's look for opportunities.'"

Overall, attorneys said Patent Trial and Appeal Board proceedings have continued without a hitch, and the Federal Circuit has likewise stayed on track, albeit remotely. The main cog in the wheel would be jury trials, which have all but come to a halt.

Still, companies are pursuing new patents, especially in life sciences and telecommunications, and firms said their work has been steady, if not increasing.

"Once we all adjusted and got to realize that we were going to be remote for a while, it turned back to business as usual," said Caryn Borg-Breen of Green Griffith & Borg-Breen LLP. "For IP, it's not been bad."

Lowenstein & Weatherwax LLP

Size: 12 attorneys, 2 staff

Location: Los Angeles

Nathan Lowenstein said his PTAB boutique has had a record year.

"We've added attorneys. Every associate got a pay raise this year. We even gave a mid-year bonus," he said. "We've had, I think, by far our most successful financial year, our most productive year. We've had a large string of victories."

The firm's work has been "largely unaffected" by the pandemic, as PTAB proceedings made a seamless switch to remote hearings.

However, he said that in about 10 years, patent litigation over pandemic-tied innovations will likely be coming through its doors.

"If you're talking to me in 2030, I wouldn't be surprised at all if we're dealing with these sorts of cases," he said.

Green Griffith & Borg-Breen LLP

Size: 13 attorneys, 7 staff

Locations: Chicago and Middleton, Wisc.

While the lack of predictability about how COVID-19 would impact law firms financially was scary at the outset of the pandemic for this Midwest boutique, Borg-Breen said 2020 ended positively.

"We haven't had to let anyone go," she said. "We held back a little bit on some bonuses early on, but we've since fulfilled those. We're doing raises. We're doing all the things we normally would have done. It's just been a little delayed because we wanted to see how things panned out."

Being small meant that some of the bigger logistical issues were less complicated to handle, like being able to easily talk with all employees directly, but it also meant that the partners had to be the ones who made those decisions on how to get through the pandemic, Borg-Breen said.

"There's nobody to do that for you," she said.

Initial fears about losing work or having matters put on hiatus turned out to be unfounded, she noted. During the pandemic, Borg-Breen argued the first-ever remote hearing before the Federal Circuit, and the firm also picked up new clients, including one filing for patents in diagnostic and nasal therapies to treat COVID-19.

"It could have been really terrible for us, but it worked out," she said.

Harrity & Harrity LLP

Size: 37 attorneys, 24 staff

Location: Fairfax, Va.

Harrity & Harrity's staff was already three-quarters remote before the pandemic hit, said John Harrity.

"We were ready for it," he said. "We were already paperless — we had done that several years ago. It was probably as seamless a transition for us as possible."

He said the firm has been continuously growing, and with a dozen new attorneys added in 2020, it marked its biggest year for hiring.

While Harrity said the firm had always allowed for flexibility with attorneys, such as letting them choose their own hours, it extended that same freedom to support staff during the pandemic.

"[We're letting them start] as late as 3 p.m. so that they could do their homeschooling if they have young kids and then start their day after that's over," he said. "We're put in this really awkward position with this, especially with virtual learning. If you have small kids, what are you supposed to do? We didn't want our parents to have to choose between teaching their kids or working. We gave them an opportunity to be able to keep doing both."

The patent preparation and prosecution specialists say they've seen particular growth in the telecom sector, which has blown up in the remote work environment.

Internally, the firm has used that remote technology to try and keep its employees connected to each other, including with virtual happy hours and live meditation sessions.

"It's necessary during a situation [like] we're in — the inherent stress that's involved with the pandemic and the uncertainty that's around it," Harrity said.

Merchant & Gould PC

Size: 89 attorneys, 100 staff

Locations: Alexandria, Va.; Atlanta; Denver; Knoxville, Tenn.; Minneapolis and New York

CEO Chris Leonard said Merchant & Gould created a readiness plan to go remote right before lockdowns were issued across the nation. The pandemic forced the firm to take risks on technological changes that it may have more hesitantly implemented in normal times.

"If we hadn't had COVID-19, and we just decided as a firm in March 2020 that we're going to go to this new way of operating, you can only imagine all the different iterations you'd go through to get there," Leonard said. "COVID-19 forced us to do that very quickly."

From the beginning, the firm was determined not to make any pay cuts or layoffs, and it has been able to hold to that, he said. The firm also kept up its summer program and was able to offer jobs to students.

"We decided at the very outset of this that we were going to try to beat the odds on this thing and try to maintain our operations as is, with the only real difference being that everything would be done remotely," he said. "So far, that's actually worked out for us."

Even once the pandemic ends, Leonard said the firm is more likely to be flexible with its employees. The pandemic burst the idea that there's a one-size-fits-all approach, he said.

"If we have individuals that need to alter their normal way of operating, in terms of hours or billable requirements, we're going to look for ways of accommodating that," he said. "We recognize that this pandemic, because of the depth of the problem and also the amount of time it has stayed with us, has changed the way we operate."

Sterne Kessler Goldstein & Fox PLLC

Size: 155 attorneys, 228 staff

Location: Washington, D.C.

When the pandemic began, Sterne Kessler had clients put holds on big projects, including suits and patent challenges that hadn't been filed yet, managing director Michael Ray said.

In response, the firm's directors took a 10% pay cut. But he said that the anxiety stemming from uncertainty ended up being for naught, and it has since been able to reinstate pay. New attorneys and staff have been brought on as well, and the firm is set to have a good financial year.

Additionally, he said patent prosecution work, particularly in life sciences, had stayed steady from the beginning.

"What we had seen initially, the concern of our clients was just like for all of us, it was the uncertainty. Uncertainty is everything," he said. "The immediate reaction for many clients was 'stop.' ... Now we're actually seeing an uptick in clients coming to us with new projects. It seems anxiety is often worse than the actual event."

To keep the firm connected during this time, Ray said it has sent out care packages and put together clubs for things like hiking or Peloton. He also said it is actively looking for a new office, even with three years left on its lease.

"We pay a lot of money for Class A office space in downtown D.C., and this has allowed us to step back and say, 'Do we need that much office space?'" Ray said. "We're thinking we now need significantly less space because we're going to be more permissive with our work-from-home [policy, and] we expect to see more staff working remotely full time. ... We're trying to design some really innovative space that will allow us to use less space, but have it be better."

Finnegan Henderson Farabow Garrett & Dunner LLP

Size: 350 attorneys and other IP professionals, 300+ staff

Locations: Atlanta, Boston, Palo Alto, Calif., London, Reston, Va., Seoul, Shanghai, Taipei, Tokyo and Washington, D.C.

Finnegan is the only other firm in this group that reduced pay, but those who took a hit during the May cuts were **fully repaid** by November.

"We talked to the Finnegan team in terms of this being a proactive measure, and even when we implemented it, we explained at that time that our hope was to be able to restore it by the end of the year," said managing partner Anand Sharma. "It was well-received across the firm because we also talked about how we didn't want to do layoffs."

The firm has several offices in Asia, so Sharma said it had a preview of what was to come in the U.S. Finnegan announced on March 13 that the firm would be switching to remote work, but he pointed out that it had started preparing to go fully remote well in advance.

"I often think about the process improvements that are going to come out of this experience," he said. "It's almost as if COVID-19 has caused a rising tide across the firm. There may have been some attorneys or staff members that were very adept at technology and all the different ways to use it, and now I'd say most, if not all, of us are there."

Mark Sweet, the firm's chair, said it has been flexible with schedules, particularly with parents. But it has also established caregiver hours, where associates and staff members can get billable-hour relief when dealing with remote learning, childcare, eldercare or other issues.

"With associates and staff, it was the childcare that was really causing people a lot of stress and anxiety," Sweet said. "That flexibility was something that people were looking for."

Fish & Richardson PC

Size: 360 attorneys, 811 staff

Locations: Atlanta; Austin, Texas; Boston; Dallas; Houston; Los Angeles; Munich; New York; San Diego; Shenzhen, China; Silicon Valley; Minneapolis; Washington, D.C.; and Wilmington, Del.

John Adkisson was **elected** president and CEO of Fish & Richardson in late February and was almost immediately thrown into preparing the firm for the pandemic.

"It was certainly a baptism by fire," he said. "Three weeks into the job, you're confronting questions about 'Do we close offices?' and 'How do we move our entire workforce to a work-from-home situation?' It was a very challenging first couple of months being president."

But Fish & Richardson had its best-ever year in 2019, and that financial position provided an element of certainty, he said. The firm didn't end up having to undertake any pay or staff cuts, and attorneys were already used to working across offices, meaning working remotely was already a known element of the job.

In particular, the firm's patent prosecutors had a great year of work in 2020, Adkisson said, with increases in patents from across industries, including biotech, computer science, electrical engineering, and oil and gas. The firm's litigators faced a bit of a rougher year given court unpredictability, but they've still been getting "big-ticket litigation" from clients, he said.

Fish & Richardson has also started a network for working parents to connect with each other and expanded its relationship with a daycare center to help parents. It likewise provided a stipend that could be used to pay for someone like a neighbor to take care of children, Adkisson said.

"I think our people have noticed ... the fact that we have stood by our people through this time," he said.

--Editing by Steven Edelstone.