

# THE AMERICAN LAWYER

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## SPECIAL REPORT

# LITIGATION

## ★ DEPARTMENT OF THE YEAR ★

The American Lawyer's biennial selection of the nation's top litigation departments and litigators.

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### How We Select the Litigation Department of the Year

This year's contest covers litigation matters between Aug. 1, 2013, and July 31, 2015. Last April, we contacted all Am Law 200 firms and some smaller firms, soliciting entries in this year's general litigation contest, as well as practice-specific contests in intellectual property, white-collar/regulatory work and product liability.

Firms were asked to provide, among other things, lists of and details about their 12 most notable results, a description of their two biggest losses, details of new matters, references and information about the size and financial performance of their practices or departments. They were also asked to submit an essay, arguing for their selection as Litigation Department of the Year.

We received 64 submissions in the general litigation contest, 25 in the intellectual property contest, 10 in the white-collar/regulatory contest and nine in the product liability contest. Teams of American Lawyer reporters and editors evaluated all of the submissions on the basis of reporting and conversations with clients and colleagues at rival firms, among other things. The general litigation category was evaluated by David Bario, Emily Barker, Michael Goldhaber, Jennifer Henderson and Ginny LaRoe. This team also selected

the Litigators of the Year and the Honorable Mentions. The IP category was evaluated by Scott Flaherty, Nell Gluckman and Lisa Shuchman. White-collar/regulatory was evaluated by Jenna Greene, James Schroeder and Julie Tiedman, while product liability was evaluated by Susan Beck, Kim Kleman and MP McQueen.

On the basis of their reporting, the teams pared the submissions to a short list of finalists: six in general litigation, four in IP, three in product liability and two in white-collar/regulatory.

A three-person panel from each finalist firm then met with the reporter teams in their category in two-hour question-and-answer sessions in our office. The purpose of the sessions was to elaborate on and clarify the submissions. After the sessions, each reporting team then embarked on a final round of reporting and interviews before meeting to select the winner in its respective categories.

Our next Litigation Department of the Year contest will be published in January 2018 and will cover matters from Aug. 1, 2015, to July 31, 2017. Solicitations and instructions for submissions will be sent out in the spring of 2017.

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# LITIGATION

INTELLECTUAL PROPERTY

★ ★ ★ Winner ★ ★ ★

## Rescue Squad

Time after time, Orrick makes its name by saving the day.

By Nell Gluckman

**I T WAS ONLY EIGHT WEEKS BEFORE THE START OF TRIAL WHEN RUCKUS** Wireless Inc. general counsel Scott Maples realized that his legal team did not have much of a strategy. Then only a year into the job with the Wi-Fi equipment maker, Maples had inherited the case against Netgear Inc., which had asserted patents in U.S. district court in Wilmington after being sued by Ruckus in 2008.

Though Maples says that this wasn't a bet-the-company case from a monetary standpoint, Ruckus considered the case a must-win. Netgear was the first company licensed to sell Ruckus' Wi-Fi antenna, but soon after making the deal, Netgear dropped Ruckus for a company that made the equipment at a lesser cost, according to Maples. Ruckus' founders felt as if they'd been stabbed in the back.

As Maples remembers it, when he asked the in-house IP lawyer about plans for a mock trial, he got a blank stare. Ruckus' outside counsel, a small boutique, had done some work on the case, but Maples felt he needed bigger guns.

Desperate, Maples called Orrick, Herrington & Sutcliffe's Neel Chatterjee on a Saturday. Within four hours, Chatterjee had a team assembled. By the following Tuesday, the Ruckus and Orrick team members had already met to begin working out a plan.

"Because of how short a time we had and the emotionally charged nature of the case, they built a great team, worked long hours and worked in an environment that is sometimes challenging for law firms because of the amount of collaboration we required," Maples says.

The Orrick lawyers decided to put one of Ruckus' founders, trained as an engineer, on the stand, something Maples describes as "super-nerve-racking." Orrick's Nagendra Setty went on long walks with him, preparing him to testify. "They probably walked the entire town of Wilmington," says Maples.

While Netgear's counsel at Faegre Baker Daniels honed in on Ruckus' marketing documents to show infringement, Orrick delved into the technology of the antenna to defend its client. In the end, Ruckus fought back Netgear's infringement claims.

With 97 lawyers, Orrick's department wasn't the biggest or best-known in our IP competition. But time and again, we heard stories like Maples', lauding Orrick's ability to jump into a case and successfully dig its clients out of a hole, even with little time to prepare. What's more, the firm successfully demonstrated this across an impressive range of venues, using novel strategies, cementing its position as this year's IP winner.

"Orrick has exceptional strength across its copyright and patent practices, both at the trial court level and at the appellate level, which makes it

very unusual," says Daralyn Durie, of the IP boutique Durie Tangri, which often serves as co-counsel with Orrick.

The firms worked together to defend Dish Network Corp. against copyright claims brought by ABC, CBS, Fox and NBC. The broadcasters alleged that the recording device and commercial skipping capabilities that Dish Network added to its Hopper digital video recorder infringed on their right of reproduction and distribution. The case was tried in U.S. District Court for the Central District of California, with Jenner & Block and Wil-

liams & Connolly representing the networks.

In the middle of the case, the U.S. Supreme Court handed down a decision in favor of the broadcast networks in *ABC v. Aereo*, which had the potential to derail Dish's case. Rather than follow a precedent set by *Aereo*, as Fox's lawyers suggested, the Orrick team, led by Annette Hurst and Peter Bicks, argued that Dish's technology simply allows people to transmit a show to themselves and skip commercials—something TV watchers have been able to do

since the days of VCRs. In a decision issued in January, U.S. District Judge Dolly Gee largely agreed.

Hurst takes pride in this case, which she calls a win for consumers and an example of the firm "getting outcomes that actually help people." She also touts the firm's ability to turn around seemingly lost causes. That was the case when Oracle Corp. brought on Orrick to represent it before the U.S. Court of Appeals for the Federal Circuit against Google Inc. Oracle alleged in 2010 that Google infringed Oracle's copyright on thousands of lines of computer code found in its Java platform.

In his brief, Orrick's E. Joshua Rosenkranz argued that what Google did was analogous to writing a book—Harry Potter was the example he employed—using the chapter names and first sentence of each paragraph and paraphrasing the rest. The court reversed a 2012 decision by U.S. District Judge William Alsup, who found that the Java programs could not be copyrighted. Orrick will represent Oracle when the case is retried in San Francisco in 2016.

Rosenkranz's clients praise him for his ability to communicate complicated topics simply. "As an oral advocate, he is superb: well-prepared, effective, responsive to the court and to the point," Oracle associate general counsel Deborah Miller says. "He and his team are also extraordinarily easy to work with, even with a demanding client like Oracle."



FROM LEFT Lisa Simpson, Alex Chachkes, Annette Hurst, Denise Mingrone, Neel Chatterjee

**Practice Group Size and Revenue:** Partners 39 Associates 52 Other 6

**Department as Percentage of Firm 11% Percentage of Firm Revenue, 2014 15%**