

Technology Group Of The Year: Fenwick & West

By Jess Davis

Law360, Dallas (January 16, 2014, 7:57 PM ET) -- Fenwick & West LLP was an all-around technology powerhouse in 2013 as it advised a roster that includes Silicon Valley's biggest names in billions worth of mergers and acquisitions, secured crucial trademark wins and created innovative defenses in securities litigation, earning it a spot on Law360's Practice Groups of the Year.

Among its 2013 highlights was a string of 11 acquisitions for Cisco Systems Inc. with an aggregate value of \$5.6 billion, many of them overlapping purchases that required the firm to meet tight deadlines and with half of the complex deals involving international acquisitions. This included the company's October 2013 purchases of cybersecurity provider Sourcefire Inc. for \$2.7 billion and its \$415 million pickup of flash storage software company Whiptail for \$415 million and Cisco's February purchase of Israel-based software maker Intucell Ltd. for \$475 Million.

The firm devotes 98 to 99 percent of its attention to the technology industry, including life sciences, giving it what firm Chairman Richard Dickson described as a tremendous asset that helps set Fenwick & West apart. With a client roster that includes a who's who of the tech world, including Facebook Inc., Pinterest Inc., Apple Inc., Google Inc., Dropbox Inc., Twitter Inc., Amazon.com Inc, Cisco, Hewlett-Packard Co., Symantec Corp., Electronic Arts Inc., Square Inc. and Spotify Ltd., among others, Fenwick & West also works extensively with startups and through its significant venture capital business to build relationships with the next big tech companies.

"Our focus is a strategic advantage," Dickson said. "Every employment attorney, every antitrust attorney, every corporate attorney spends virtually all their time with tech companies, and that's powerful. It makes them not only someone with subject-matter expertise but also industry expertise. It's all we do."

Other mergers and acquisitions highlights for the tech firm included representing Chinese semiconductor manufacturer Spreadtrum Communications Inc. in a \$1.78 billion acquisition in March by a subsidiary of the state-controlled Tsinghua Group. The firm also represented GoPro camera maker Woodman Labs in a \$200 million partial acquisition by Foxconn Electronics Inc. that valued GoPro at \$2.25 billion.

The firm serves as primary outside corporate counsel for Facebook and represented the social giant in its \$1 billion Instagram acquisition in 2012, followed in 2013 by five acquisitions for Facebook between April and September. Fenwick is also primary outside corporate counsel for cloud-sharing site Dropbox, leading to its purchase in March of email app Mailbox and advising on three other tech company buys

for Dropbox this year.

On the securities litigation front, Fenwick lawyers scored dismissals in four separate significant class actions within weeks of one another for Green Dot Corporation, Equinix Inc., Symantec and Cisco. In June, a California federal judge threw out a putative class from Equinix shareholders that challenged financial disclosures following the company's \$700 million acquisition of competitor Switch and Data Facilities Co. Inc.

And in August, Symantec beat back a putative class that alleged the company and its directors failed to disclose essential financial information in a proxy statement before a vote on executive compensation under the "say-on-pay" provisions of the Dodd-Frank Act. The firm says its defense strategy helped tech companies stave off a potential new wave of class action litigation challenging executive pay disclosures in similar allegations. Shortly after the Symantec ruling, Fenwick got a similar suit brought by the same plaintiff against Cisco tossed.

And on Dec. 13, Fenwick lawyers landed a precedential ruling from the Federal Circuit in favor of South Korea-based client Suprema Inc. that held the U.S. International Trade Commission can't issue an exclusion order based on the theory of induced infringement when the alleged direct infringement happens only after the product is imported into the U.S. and then used in combination with a particular software. The ruling effectively shrinks the jurisdiction of the ITC and requires complainants to establish that direct infringement occurred before or at the time of importation.

"Our victory for Suprema has changed that landscape," Dickson said. "It's a meaningful development, and other parties will really benefit from that ruling."

In 2013, Fenwick's lawyers also won a four-year dispute to register the "tweet" mark for client Twitter after the U.S. Patent and Trademark Office first suspended the company's attempt to trademark the term because of allegedly similar marks held by other companies. And they guided client Pinterest Inc. to a \$7.2 million win in a trademark dilution case against a cybersquatter who registered similar domain names that linked would-be Pinterest users to casinos and other advertising links.

Along with high-profile litigation wins and major transactions, Dickson said a crucial key to Fenwick's place in the tech sector has been its venture capital practice, with the firm representing 500 privately held venture-backed companies. He said the firm's work helping venture capitalists invest in "what will be the next big companies" feeds its mergers and acquisitions practice and helps establish relationships with smaller companies early that can scale up as tech startups grow.

"It's a very rewarding practice," Dickson said. "We work with a lot of companies that are trying to change the world."

--Editing by Christine Chun.