



LITIGATION DEPARTMENTS  
OF THE YEAR

MCKOOL SMITH

# A TRIAL FIRM

WINNER: MIDSIZE FIRM

BY MARY ALICE ROBBINS

**MCKOOL SMITH, HEADQUARTERED IN DALLAS,** describes itself as a trial firm, not a litigation firm.

That means whenever the firm takes on a matter for a client, it has one focus, said David Sochia, McKool Smith’s managing principal.

“We expect the case is going to trial,” Sochia said, noting that beginning with intake, a case is readied for trial. “Even if we don’t go to trial, clients and opposing counsel need to know that we will go to trial,” he added.

Robert Manley, a Dallas principal in McKool Smith, said, “We spend a great deal of time evaluating cases on the front end. We look at every case as if it were a contingent matter.”

McKool Smith’s victories in 2016 ranged from a \$244 million settlement of a class action on behalf of approximately 700 consumer product manufacturers to a \$270 million settlement in patent infringement litigation. On another front, McKool Smith attorneys also scored a complete defense win on behalf of its client in a inter partes trial before the

U.S. Patent Trial and Appeal Board concerning the validity of the client’s patents.

In February 2016, attorneys with McKool Smith and three other firms were able to settle *Dial Corp. v. News Corp.* — a suit in which consumer product makers made antitrust claims against companies for allegedly monopolizing in-store promotions. The settlement terms were reached on the first day of trial in the U.S. District Court for the Southern District of New York.

Lew LeClair, a principal in McKool Smith’s Dallas office, served as co-lead trial counsel for the case, which settled for \$244 million. LeClair and the other attorneys representing Dial and other consumer packaging companies had faced a mountain of discovery documents before the trial began.

“News Corp produced 40 million documents,” LeClair said. “We just had a huge amount of effort and cost that had to go into that.”

Sam Baxter, another principal in McKool Smith’s Dallas office, served as lead trial counsel for BMC Software

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Shown from left to right are McKool Smith principals Christopher Bovenkamp, Sam Baxter, David Sochia, Lewis LeClair and Robert Manley. Sochia is the managing principal.

Enterprise, agreeing to take \$270 million in aggregate charges. Prior to that resolution, BMC had received a favorable Markman ruling on seven of the patents at issue in the litigation. Robert Cote, managing principal of McKool Smith's New York office, represented BMC in the Markman hearing.

In August 2016, McKool Smith secured a defense win for client Parallel Network before the Patent Trial and Appeal Board against Microsoft Corp. and IBM concerning the validity of two of Parallel Network's patents. Microsoft and IBM had submitted multiple requests for inter partes review of the patents after being sued by Parallel Network for patent infringement in the U.S. District Court for the District of Delaware. The patents are directed to systems and methods for managing dynamic web page generation requests.

Inc. in its patent litigation against ServiceNow Inc. in the U.S. District Court for the Eastern District of Texas in Marshall.

"It never got to trial," Baxter said.

ServiceNow announced in April 2016 that it had settled with BMC and Hewlett Packard

"If the patents were invalidated, then the cases would have been done," said Christopher Bovenkamp, a McKool Smith Dallas principal who served as lead counsel for Parallel Networks.

After instituting the trial in July 2015, the PTAB consolidated the requests for inter partes review into two cases. In its final decision in 2016, the PTAB found that Microsoft and IBM failed to prove the unpatentability of the 94 Parallel Network claims that had been at issue.

"One of the things that makes this stand out," Bovenkamp said, "is that in most cases, if there's an institution of trial, the patent owner loses."

Approximately \$170 million in damages are at stake in the cases, which are continuing, he said.

Tom Jarvis, a Washington, D.C., partner in Winston Strawn and chairman of the firm's International Trade Commission practice, has served as co-counsel with McKool Smith attorneys and faced them as opposing counsel.

"They are highly regarded in Texas and across the country," Jarvis said.

He said the McKool Smith attorneys have "deep experience in jury trial work" and also have strong technical experience.

"They are well-known in the patent bar," Jarvis said. ■