

Russ August & Kabat's Patent Work Pays Off

ZANE HILL - NOVEMBER 11, 2024



Larry Russ, left and Marc Fenster pose in Russ' office at Russ August & Kabat in Brentwood. (Photo by David Sprague)

What started off as a dice roll of a new practice group at **Russ August & Kabat** has turned into the breadwinner of the Brentwood law firm.

Formed in 1990 as a general practice law firm, the operation took on a patent litigation practice in 2003 that has since ballooned into the firm's largest group and is now the firm's leading source of revenue by a mile.

This trajectory began with the hiring of **Marc Fenster** to kickstart the patent litigation operation, after firm co-founder **Larry Russ** spent the better part of a year trying to "seduce him" over from **Irell & Manella**. Fenster's team is now more than 30 strong.

"If you look at the resumes of these folks, one is smarter than the other," Russ said. "It's just really an amazing team, and they show it. They're not just talking about it. They deliver that expertise each case, and they're a nightmare to deal with."

That nightmare has been lucrative. In the past half-year alone, three of the team's patent trials – all with Fenster as lead counsel – have secured nearly a billion dollars in awarded damages to Russ August & Kabat's clients.

Building a foundation

When Russ – alongside **Jules Kabat** and the late Richard August – opened the firm 34 years ago, he included with it practice groups in antitrust action, complex litigation, unfair competition, trademark, real estate and copyright cases.

"The firm grew to about 12-to-14 lawyers," Russ recalled, "and what I decided to do was look for some niche practice that had potential and wasn't going to have us competing with firms all over the United States, because fees were becoming flat and I was looking for something else to do."

Enter Fenster, who came to know Russ by recommendation of a mutual friend at the local **Latham & Watkins** outpost. After persuading Fenster to lateral over from Irell – where he worked under **Morgan Chu**, a legend in the patent law community – Russ let him get to work.

"The long and short of it is that we started getting more patent cases and hiring more lawyers," Russ said. "It's been a long process. Marc's now been with the firm for 21 years and has done an absolutely astounding job and has become just really one of the premier trial lawyers in the country today."

Fenster, too, saw an opportunity to branch off and chart his own path. At Irell, like other large law firms, his work was mainly on the defensive side, where industry giants could pay for large legal teams. Fenster was curious about coming at it from the plaintiff's side, fighting for the inventors themselves.

"And then I met Larry and had an opportunity to start a plaintiff's side practice that I thought there was a need for, to represent patent holders and inventors that had a flexible platform and had a really high quality, deep bench, because I didn't really see that in the market," Fenster said. "Small firms would represent inventors, and they'd have one or two really great lawyers, but then they'd hire like a small firm, and so we'd beat them up when we were at Irell."



Russ August & Kabat building in Brentwood. (Photo by David Sprague)

Finding the expertise

As a teenager who was on the debate team, Fenster said he wanted to go to law school. Since he also enjoyed math and science, Fenster's father wanted him to explore engineering. As it happened, there was a legal article written at about that time stressing the need for more attorneys with technical backgrounds.

So in the end, Fenster did both.

"Back then, there were too many lawyers – maybe now still – but back then, there was a niche for lawyers with technical backgrounds," he said. "I went into bioengineering with the idea to go to law school and go to patent law. Luckily, I liked it."

It's a path that has informed his hiring practices. Although not a requirement by the firm, 24 of 30 attorneys in Russ August & Kabat's patent litigation squad have at least one technical degree – whether it's physics, chemistry, electrical engineering, computer science or microbiology.

And given the onset of remote working options, the firm has been able to cast a wider net. It employs attorneys in markets such as Texas, Northern California, New York City, Delaware and Illinois.

"The strategy was, we're going to build a team and we have now 30-plus lawyers with technical degrees, so we can field a team as big as the other side on every case," Russ said. "That makes a huge difference if you're representing the plaintiff and you're not going to get trounced by a firm that's going to work you to death or overwhelm you."

Raking in victories

It's been a good year for Russ August & Kabat.

A team of its attorneys successfully took on **Amazon.com Inc.** in a Texas case on behalf of client **AlmondNet Inc.** The jury in that case sided with AlmondNet, finding that Amazon infringed on two of its patents for personalized ad targeting software and ordering nearly \$122 million in damages to the plaintiffs.



Another case saw Russ August & Kabat representing **MR Technologies** in its suit against **Western Digital** related to patent infringements on hard drive storage technology. Not only did Fenster and his team win a \$262 million judgment for MR Technologies; they also secured \$117 million in pre-judgment interest for their client. And then the firm took on Western Digital again, this time securing a nearly \$316 million verdict in favor of client **SPEX Technologies**. A representative for the firm added that it hoped to additionally recover \$200 million in interest.

Although the firm would not discuss specific figures, Russ did note that patent litigation's revenue numbered higher than all of the firm's other practice groups combined. And while they believe they're at the sweet spot in terms of team size, they remain open to hiring the right attorney at any given time.

"If we get approached by some attorney that is uniquely talented and comes from a great firm and has all this experience, we'll hardly ever say no. It doesn't matter whether we need that person at this moment or not, we're just not going to pass up on great talent, and we'll figure out a way to use that person," Russ said. "That's pretty much organically how we've done it. Sometimes we've been approached by lawyers that we didn't really need yet, but we said, 'No, we can't pass this person up.'"

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