

California Powerhouse: Cooley

By **Y. Peter Kang**

Law360, Los Angeles (May 19, 2015, 10:24 PM ET) -- In 1959, Cooley LLP helped form pioneering chip company National Semiconductor Corp., one of the original companies that gave Silicon Valley its name. More than 50 years later, the Palo Alto-based firm continues to be a leader in technology-related matters while carving out a considerable niche in finance and high-stakes litigation.

Since its humble beginnings as a two-man partnership founded in San Francisco in 1920, Cooley has grown to employ 850 attorneys in 12 offices worldwide, with 400 lawyers based out of four locations in the Golden State. The firm advised on a staggering 50 initial public offerings and nearly 200 mergers and acquisitions deals in 2014 while providing litigation counsel to high-profile clients such as Google Inc., Facebook Inc. and Gilead Sciences Inc., earning it a spot on Law360's California Powerhouses list.

Cooley, which counseled managers on more venture funds than any other law firm since the industry began in the U.S. in the late 1950s, ranked as the No. 1 firm in the formation of venture funds in 2014. The firm also serves as primary fund counsel to more than 350 investment fund organizations and represents more than 5,000 growth companies in a wide array of industries.

In 2014 alone, Cooley handled more than 195 M&A transactions and advised on more U.S. IPOs than any other law firm. One reason for the uptick in IPOs the firm handled last year is Cooley's growing reputation among companies that are looking to go public, according to Eric Jensen, a Cooley partner based out of the firm's Palo Alto and San Francisco offices and a member of its management committee.

Jensen estimates that about one-third of the 50 IPOs the firm handled in 2014 came from companies that hadn't worked with the firm from the get-go, as is usually the case.

"Five years ago, you pretty much went public with who represented you from day one," Jensen told Law360. "Increasingly, because companies are hiring general counsel, they say, 'This is the most important transaction we're going to do, let's get someone with experience.' These are companies that sought us out, that heard about us and chose us to do their IPO. That's a huge trend that we're riding."

Still, Jensen says the firm's "bread and butter" over the last three decades continues to be nurturing small tech and life sciences companies from their infancy all the way to their public debuts. It's this close attention to clients that has allowed the firm to gain the reputation it has made in Silicon Valley and beyond and sets it apart from its larger New York-based counterparts, he says.

"You have to work with the venture capitalists and the angel investors and work with people who may

not be high profile, who come to you and ask to help form a company,” he says. “Ultimately, some of them don’t make it, but there’s always a percentage that go public.”

Not everyone can be the next Snapchat, he adds.

“We have to kiss some frogs and work with some companies that ultimately shut down, but that’s the cost of doing business,” Jensen says.

One of the companies that turned out to be a prince is New Relic Inc., a software analytics company that blew past its IPO price of \$22 per share when it debuted last December and raised the company about \$110 million. Cooley has served as company counsel for San Francisco-based New Relic since 2007 and continues to advise the company on private financings and strategic acquisitions.

Cooley also advised on 2014’s largest biotechnology IPO by market capitalization when it helped bring out FibroGen Inc., a company developing treatments for anemia. The November IPO raised \$146 **million** for FibroGen, which is also based in San Francisco.

Looking ahead, Jensen, who says 2014 was an unprecedented year for the firm’s handling of IPOs, remains cautiously optimistic about the environment for 2015. With eight IPOs already in the bag in the first quarter, he estimates Cooley will handle about 40 by year’s end.

“We’ve seen a lot of life sciences deals and less tech deals, but I think it’ll be good for both, particularly in September when you see a lot of good companies go public,” he says.

Cooley’s work last year in the M&A arena was equally robust, with 195 transactions advised on in 2014, an increase of about 30 percent over the previous year.

Headlining the many notable deals was the \$5.4 billion acquisition of Cooley client URS Corp., a civil engineering company based in San Francisco, by Los Angeles-based rival AECOM Technology Corp. in a cash-and-stock deal that included the assumption of URS’ debt. The deal, which closed in October and was led by San Francisco-based partner Sam Livermore, was among the top 10 M&A transactions in California for 2014, according to Cooley.

Barbara L. Borden, head of Cooley’s M&A practice and based out of San Diego, led the Cooley team that advised medical device maker Volcano Corp. on its \$1.2 billion sale to Royal Philips NV. The deal was announced in December and marked Philips’ largest acquisition in more than five years.

After representing the San Diego-based company for years, Borden told Law360 it was nice to counsel Volcano on its own sale as a final farewell.

“I worked with Volcano for more than eight years on various buy-side M&A matters, so it was a fitting end with a long-time client to work on the sell-side deal,” she said.

Borden also helped shepherd a deal made in March 2014 by client Horizon Pharma PLC to acquire Vidara Therapeutics International Ltd. for \$660 million. A year later, Horizon announced it would acquire Hyperion Therapeutics Inc. for \$1.1 billion in an all-cash transaction.

Another recent deal Borden and Cooley advised on was Teva Pharmaceutical Industries Ltd.’s \$3.5 billion takeout of Cooley client Auspex Pharmaceuticals Inc., based in La Jolla, California.

Going forward, Borden says she expects the M&A environment to remain healthy.

“The market rewards public companies that maintain high revenue growth rates and many companies use M&A activities to diversify product offerings and enhance growth at rates that cannot be achieved through pure organic growth,” she says. “The robust IPO market has also created more public company targets and strategic buyers often have significant cash available for acquisitions and the ability to finance transactions on attractive terms.”

On the litigation side, Cooley has more than 100 litigators in California as part of its 300-attorney-strong nationwide litigation practice. The firm has established itself as a litigation force on the West Coast, representing high-profile tech and life sciences companies, including Facebook, Google, eBay Inc., Gilead Sciences, LinkedIn Corp. and Qualcomm Inc.

Last year, Cooley delivered a major win for Gilead Sciences in its patent licensing dispute with F. Hoffmann-La Roche AG over the rights to the groundbreaking hepatitis C drug Sovaldi, which Gilead sells for a premium of about \$1,000 per pill. The August 2014 ruling by a New York arbitration panel is of tremendous value to Gilead, as Sovaldi is expected to generate more than \$10 billion in sales per year, according to Cooley.

Another major victory occurred last year when Cooley helped Google shoot down a bid to certify a class of people accusing the tech giant of illegally capturing data from Gmail messages. U.S. District Judge Lucy Koh ruled in March 2014 that individual issues regarding users' consent to the alleged email scanning practices would “overwhelmingly predominate” over common issues and therefore render class treatment inappropriate.

Cooley says the decision helped California-based Google dodge billions of dollars in possible damages, given the billions of emails sent by more than 400 million Gmail users.

The firm, which represents Facebook in all of the social media stalwart's privacy and patent matters, recently proved its mettle when it helped the company and another Cooley client, Instagram LLC, defeat a patent infringement suit brought by patent holding company TLI Communications LLC. A Virginia federal judge tossed the case in February, ruling that the patent held by TLI was directed to an abstract idea and was therefore invalid.

In a little-publicized and rare case, Cooley was able to obtain a withdrawal of a guilty plea for a Canadian-Israeli businessman who the U.S. Department of Justice claimed used his online payment processing company to help sell invalid prescription drugs over the Internet. Cooley had taken over after defendant Nathan Jacobson's former Canadian counsel pressured him to plead guilty.

Michael Attanasio, partner in charge of Cooley's San Diego office and head of the firm's litigation department, told Law360 that the granting of the motion to withdraw the guilty plea was “an extraordinary outcome” that he had never seen in his 25 years of experience as a former federal prosecutor and trial attorney.

“The most rewarding part of the case was observing Mr. Jacobson, having been completely exonerated, reunite with his family and friends, free from the threat of prosecution and incarceration,” Attanasio said.

Looking ahead, Attanasio said he expects to see class actions and privacy and data breach-related litigation to escalate in the future as the economy and technologies continue to evolve.

“Cooley is uniquely positioned to represent its clients based on its long experience and expertise in these areas,” he said.

Whether it be representing clients in IPOs in the red-hot technology and life sciences sectors, advising on billion-dollar tie-ups or dealing with the complexities of high-stakes litigation, Cooley is well positioned out West, an outcome probably not foreseen when its two founders started their fledgling operation nearly 100 years ago.

--Editing by Kelly Duncan.

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