

## The Patent for Evolving Intellectually Goes to Baker Botts

*By Jeff Bounds* – (Nov. 22, 2016) – From the moment the first gush of oil erupted from Spindletop Hill in Beaumont in 1901, Baker Botts has pioneered its representation of energy clients, which include ExxonMobil, Halliburton, Chesapeake Energy and Shell Oil.

The Houston-based law firm grew its home office to several hundred and then – like cross-town rival Vinson & Elkins – used its domination in the oil patch to expand to Dallas, Dubai, London and Riyadh.

But behind the scenes at Baker Botts, law firm leaders decided to develop a technology practice in 1990 by hiring 12 lawyers who specialized in patent law. The invention of something called the World Wide Web had occurred only months earlier. The first memory card was developed a year later. It would be three more years before Intel would invent the first Pentium Processor.

A quarter century later, Baker Botts remains a powerhouse in oil and gas. But the 700-lawyer firm, which has revenues exceeding \$700 million, has quietly grown its intellectual property law practice from five to 180 attorneys, making it the largest and one of the most successful IP shops in the U.S. With clients like AT&T, Samsung, Facebook, Hitachi and Cisco Systems, the iconic energy firm has spread into attorney-saturated markets like New York and Silicon Valley.

Perhaps more significantly, revenue from the firm's technology practice now equals that of its energy practice.

"Of our top 10 clients, six are technology companies," says Dallas-based Bart Showalter, chair of the firm's IP practice.

The emergence of a patent litigation haven in the Eastern District of Texas helped spur the



*Bart Showalter*

firm's growth; but the rise of Baker Botts as an IP powerhouse has been far more a matter of design than luck. Through a series of thoughtful lateral hires, carefully constructed mergers and the development of a uniquely nurturing cultural

environment, Baker Botts has emerged as a magnet for IP talent and technology clients on a national and international scale.

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The firm's IP initiative can be traced to a meeting 26 years ago in Dallas between Jerry Mills, a growing force in Texas IP circles, and E. William Barnett, managing partner at Baker & Botts.

Baker & Botts already had 150 lawyers across five offices, including an office in Dallas that opened in 1985. Almost all of the firm's lawyers, however, were involved in energy issues, whether in litigation or mergers and acquisitions. Having held the managing partner's post since 1984, Barnett understood first-hand the dangers of relying on a single industry for revenue, especially one as prone to booms and busts as oil and gas. He had noticed a significant uptick in IP practice, and that is what brought him to Jerry Mills.

Mills' Dallas-based firm, known as Baker Mills & Glast, had 85 lawyers; but Barnett was particularly interested in the 12-attorney IP practice headed by Mills. Like many IP attorneys, Mills had spent most of his 15-year career at intellectual property boutiques. Large firms generally viewed patent application and IP litigation as a niche practice, and tended to hire very few attorneys who specialized in the field. >

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But in 1982, even before the digital revolution and the explosion in patent markets, Mills had seen a growing number of patent lawsuits, and sensed that the time was right to start a group of IP lawyers who would beat the bushes for work, rather than wait for big firm referrals. So that year he and several partners formed Baker Mills, with Mills heading the IP arm.

Mills' courtly manner notwithstanding, he took an aggressive approach, staffing his group with technically trained lawyers who weren't afraid to mix it up in court.

"We did IP, and we did real litigation," Mills says.

The approach got Barnett's attention, and by the time he made his approach, Barnett's pitch was simple: Use our resources to hire the best and brightest patent lawyers, and let's grow this thing. Although Mills was facing middle age, Barnett's offer to build something big was one he couldn't refuse.

"They were all in, and I was all in," Mills says, pointing to perks that helped seal the deal. "I will admit they offered me an enticing financial package."

Even better, Baker & Botts had its Dallas office in the same building. Mills IP group only had to move three floors. "I didn't have to change my parking place," says Mills, who retired in 2007.

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Baker Botts continued its IP initiative with geographic expansion, gaining a foothold in New York with its 1997 purchase of the 100-year-old boutique Brumbaugh Graves Donohue & Raymond. The Baker Botts Big Apple office today has 72 lawyers, half of whom are in IP, according to Robert Scheinfeld, who leads the Manhattan outpost.

Scheinfeld started with Brumbaugh in 1984 out of Brooklyn Law School, and remembers being skeptical when he was at dinner with Mills' group from Baker Botts before the deal was sealed.

Scheinfeld remembers telling the Baker Botts emissaries, "Why would I join a Texas firm? I'm a Noo Yawkuh."



*Robert Scheinfeld*

"They said, 'We have a good culture. If you give us a shot, your practice will grow.' And they were right," Scheinfeld says.

That good culture includes a compensation formula that rewards lawyers for playing nice with each other. In addition to

bringing in new business and billings, partners are encouraged to share work and train young associates, an uncommon approach in big firm law.

By eschewing more common compensation models based only on a book of business, Baker Botts has created advantages in recruiting and retention of legal talent.

IP chair Showalter puts it more bluntly: "How you compensate lawyers is critical to driving their behavior."

"Baker Botts is not typical. That's one of the absolute leaders in the profession," says Joel Rose, who runs a consulting shop for law firms in Cherry Hill, NJ. "They have superior quality lawyers, they take time for training, and they've been able to attract an excellent client base."

August Aquila, CEO of Aquila Global Advisors, a Minnesota-based management consultancy, says the traditional compensation model — based almost entirely on financial contribution to the organization — can encourage silos of talent and workflow that don't always benefit the client. In order to maximize year-end compensation, partners may tend to keep work to themselves, without involving other lawyers in the firm, Aquila says.

"This happens because the current compensation system does not reward partners for developing >

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business with other partners or sharing work,” he says. “If partner A shares with partner B, partner A might lose some income. Hence a partner hoards work, even if he or she is not the best person to do it for a client.”

Moreover, Rose says, the traditional model can be an obstruction to recruiting and expansion. Setting up greenfield offices and making them successful takes time – time that partners can’t otherwise use billing clients or generating revenue. Venturing into new territories can force partners to leave behind large books of business, Rose says. “Unless your people will be compensated effectively, why would they do it?”

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As the Great Recession took hold, Baker Botts took advantage of cheap real estate and hungry talent to expand its IP practice still more. It dispatched Dallas partner Kevin Meek to handle the 2009 launch of an IP practice in Austin. Meek concedes that for him, the decision wasn’t a slam-dunk.



*Kevin Meek*

“I left millions in work in Dallas,” Meek says. “I’m about to wander into the wilderness with a shotgun and a bag, and I don’t even have a tent.”

The office now has 31 lawyers, but in the wake of the 2008 market crash, the outlook was bleak.

“The banks had shut down; there was no lending and no deals,” Meek says.

Long-term thinking and the firm’s compensation structure allowed Meek the personal latitude to develop a thriving new outpost.

“They paid me for years for nothing,” he says. “There wasn’t anything there.”

In 2007, Dallas partner Bryant “BC” Boren agreed to help establish a Silicon Valley office in Palo Alto, just outside San Francisco.



*Bryant “BC” Boren*

“At the time, the Silicon Valley economy was undergoing some seismic activity,” says Boren, whose titles now include firm-wide chair of the IP and technology litigation practice. “We signed some terrific law students and lawyers when other firms were downsizing or reducing their associates’ programs.”

Most of those young attorneys are still with Baker Botts, Boren says, and the Palo Alto office today has 20 IP attorneys and roughly 30 to 40 lawyers overall.

With increasing competition for clients and talent in its technology practice, the firm is using its culture as a weapon as it becomes more aggressive about hiring away other firm’s lawyers.



*John Martin*

“Our objective is staffing matters with the best lawyers for the client’s requirement, regardless of where those lawyers sit geographically or departmentally,” says John Martin, the firm-wide technology chair who in 2013 moved from Dallas to also run the Palo Alto office.

Achieving a significant size has enabled Baker Botts to snag business that it might never have had a hope of landing 25 years ago.

Earlier this year, the firm won an \$8.5 million jury verdict (since reduced to \$8.1 million) for Plano’s Genband against Metaswitch Networks, a rival maker of telecommunications equipment. >

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That verdict, alleging infringement of seven Genband patents, is part of broader litigation that now involves three separate cases. Jody Bishop, who directs Genband's legal projects, notes that the first trial involved allegations of infringement on more than 15 patents.

"It would have been difficult for a smaller firm to take that on," he says.

Size also matters in talent development. For instance, Central Texas lacks large law offices and that geographic reality allows Baker Botts a genuine tactical advantage in its recruitment and development of young talent.

"My partners and I realized that if we could to get 30 lawyers in Austin, we would be a different shop," Meek says. "That means we could ask kids coming out of school, 'Would you rather work selling cars or selling bikes?' Cars are cooler."

The payoff has the potential to be extraordinary. Last year, Baker Botts acquired a large chunk of Vinson & Elkins' IP practice, including a group of Austin experts in life sciences who are "spooky smart," Meek says. The life science group in Austin should grow over time, as UT Austin this summer accepted its first student class at the Dell Medical School.

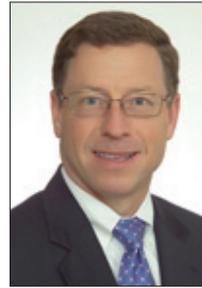
"Today we've got \$25 million to \$30 million of revenue" in Austin, Meek says. "I've got 31 lawyers. My nearest competitor has 19. The rich get richer — I'm going to 50."

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Baker Botts' IP practice is grappling with increased competition, as the number of both attorneys and law firms increases. As managing partners at firms big and small increasingly worry about commoditization of the services they provide, mergers and acquisitions are becoming a more popular way to quickly expand both mindshare and market share.

"In the current environment, the chairs at most firms are having talks with other chairs," says Kent Zimmerman, a Chicago-based principal

at the Zeughauser Group who advises law firms on growth strategies. "It's tough to differentiate a firm. Never in our history have I seen this much activity."



*Timothy Durst*

Tim Durst, who runs Baker Botts' Dallas office and its trial group, says that in the last five to six years, the firm has done a "much more deliberate analysis of where we can make acquisitions laterally that fit into the overall picture of where we're going."

"Rather than look at who is in the market for our technology practice, we look at what we need, go out, be proactive and get it," Durst says.

A perfect example is David Weaver, a partner in Austin. Weaver is a former federal prosecutor who holds an advanced degree in aerospace engineering and worked at NASA. He literally was a rocket scientist.



*David Weaver*

Recently Baker Botts added two seasoned technology partners at its new office in San Francisco, a reflection of its increased willingness to fill gaps via lateral hires.

"In the Dallas area, we're seeing opportunities for lateral recruiting from the upheaval of new firms coming into town," Durst says.

He suggested the firm may follow an industry trend of re-vamping its associates program, which uses internships to see whether law students could make good hires. And the firm has also made changes to attract a more diverse staff.

"We've adjusted where we recruit, how we do our mentorship program and how we organize ourselves in the professional community," Durst said. >

## Five Notable IP Cases Won by Baker Botts

**2016:** Baker Botts represented **Genband**, a Frisco-based real-time communications software provider, which sued its competitor, Metaswitch Networks, for infringing seven of its patents. A jury in East Texas agreed and awarded Genband \$8.2 million. Two months later, Baker Botts represented Genband again. This time, Metaswitch accused Genband of violating six of its patents and demanded \$59 million. The East Texas jury ruled that Genband infringed on none of Metaswitch's patents and found that three of them were invalid.

**2015:** Baker Botts represented Wisconsin-based **Manitowoc Cranes** in claims that China-based Sany Heavy Industry Co. manufactured, imported and sold crawler cranes that used certain variable position counterweight technology that improperly incorporated Manitowoc Cranes' trade secrets. In July 2014, the International Trade Commission agreed. In 2015, the ITC entered a 10-year exclusion order against the Chinese crane manufacturer after finding patent infringement and misappropriation of trade secrets. The U.S. Court of Appeals for the Federal Circuit upheld the decision in October 2016.

**2015:** AT&T hired Baker Botts to defend the Dallas communications giant against allegations that AT&T Family Map and AT&T Navigator and Vehicle Tracker infringed on two patents related to location privacy technology owned by Enovsys. The eight-day trial in federal court in California ended with the jury ruling that AT&T violated none of Enovsys' patents and that three of the patents were invalid.

**2012:** Baker Botts represented **Halliburton**, which accused oil and gas service provider Weatherford International of infringing patented drilling technology that has been used for horizontal drilling and hydraulic fracturing. After an eight-day trial in Dallas, the jury ruled for Halliburton and awarded \$35 million in damages.

**2016:** Technology giant **Samsung Electronics** hired Baker Botts to defend the company against allegations that it infringed a patent involving liquid crystal backlight display inverter circuit technology. Masakazu Ushijima sought \$30 million in damages. A six-day trial in the Western District of Texas court resulted in a complete and unanimous victory for Baker Botts and its client. In May 2016, Mr. Ushijima filed a new case against Samsung and Baker Botts has been hired by Samsung to defend the suit.

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