



# Building a Partnership with Outside Counsel

November 25, 2008

## Panelists

**Chris Ekren**, Senior Vice President and Deputy General Counsel, Sony Electronics

**Suzanne Hawkins**, Hawkins Legal Consulting

**David Kleinfeld**, Partner, Foley & Lardner LLP

**Alan Tse**, General Counsel, LG Electronics MobileComm USA

## Topics

- Introductions
- State of Legal Industry
- Practice Excellence and Efficiency
- Alternative Fees/Fixed Fees
- Discussion

## State of Legal Industry--Corporate Perspective

### Corporate Law Departments

- Required to “do more with less”, control internal and external legal costs
- Expect excellent legal service and successful results
- Want law firms to understand the business
- Need to control rising legal costs (focusing on fewer law firms, outside counsel guidelines, close review of invoices)
- Need predictability (budgets)
- Want efficient staffing
- Resisting billing rate increases/don't care about associate salary costs
- Economy bad and getting worse

## Law Firm Perspective

### Law Firms

- Need to pay competitive salaries to attract top talent
- Large, ongoing, and costly investment in technology
- Billing rates are source of friction with clients
- Willing to offer discounts to most valued clients to achieve strong relationships and steady flow of work—
- Discounts alone will not guarantee lower fees or costs





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- Willing to consider alternative and fixed fee arrangements, but pricing the work for mutual benefit is challenging

### **Law Firm/Practice Excellence Objectives**

- Deliver highest quality legal services efficiently and effectively
- Use internal and external technology
- Employ brief banks and other knowledge management tools
- Lower cost of document maintenance and file management
- Develop processes, options and preferred vendors for discovery and e-discovery

### **Law Firm/Practice Excellence Objectives**

- Project managers and plans for case management
- Client scorecards – we want your feedback

### **Billing Issues: Alternative Fee Arrangements**

- Many different types of fee arrangements
- Generally involve both risk and reward for law firms
- Alternatives include:
  - Bulk (Volume) Hourly Rates
  - Blended Hourly Rates
  - Capped Rates, Capped Budget

### **Billing Issues: Alternative Fee Arrangements**

- Fixed fees arrangements provide certainty and require firms to be efficient
  - Fixed Fee Billing ; Fixed Phases for litigation
  - Contingency Billing
  - Incentive Billing

### **General Counsel Reaction**

### **Discussion**

PARTNER

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## DAVID E. KLEINFELD

David Kleinfeld is a partner with Foley & Lardner, where he is a member of the firm's General Commercial Litigation and IP Litigation Practices.

Mr. Kleinfeld has significant experience in representing corporations in litigation involving intellectual property, unfair competition and various business and commercial disputes.

Mr. Kleinfeld was a partner with Heller Ehrman LLP before joining Foley in 2008. His successes while at Heller include a complete defense victory by QUALCOMM on patent infringement claims after a three-week jury trial involving position location technology; a plaintiffs' jury trial victory on behalf of QUALCOMM and against Trimble Navigation regarding defective GPS receivers; and a defense victory on behalf of Ernst & Young regarding accounting malpractice and related claims. He defended QUALCOMM in litigation brought by more than 120 plaintiffs, in eight consolidated cases, seeking in excess of \$150 million for claimed damages related to lost stock options. A complete defense victory was achieved in the trial court following the granting of 10 successive summary adjudication motions. Mr. Kleinfeld also defended QUALCOMM in class action litigation brought by former employees seeking damages of over \$500 million. He obtained dismissal of claims by 97 percent of the class and the action was subsequently settled with payment made entirely by third parties. In addition, Mr. Kleinfeld represented QUALCOMM in five consolidated cases including patent and license disputes with Motorola, in which claims for injunctive relief and damages were successfully resisted.

Mr. Kleinfeld's additional previous representations include:

- Represented Washington Mutual and Hewlett Packard in class action litigation.
- Represented the City of San Diego in litigation relating to the multibillion dollar underfunding of the San Diego City Employee Retirement System.
- Represented Jostens, Mail Boxes, Etc. and Kaplan in litigation including unfair competition and theft of trade secret claims where he obtained permanent injunctions and other relief.

He has extensive experience in lender liability defense and served as lead counsel for Mitsui Manufacturers

Bank in obtaining the first reported appellate decision to establish that banks are not liable for tort damages of breach of standard commercial loan agreements.

Mr. Kleinfeld was part of the trial team that obtained a defense verdict and award of attorneys and accounting fees in excess of \$1 million from the advisory jury in *Grivas v. Security Pacific National Bank*. He was also part of the trial team that obtained a defense verdict and award of \$3.5 million to the bank from the jury in *Bianchi v. Bank of America*.

Mr. Kleinfeld is listed by *San Diego Magazine* as one of San Diego's top business and intellectual property litigators and by *California Law Business* as one of California's top rainmakers. He is included in *The Best Lawyers in America*®, 2008 edition, in the areas of commercial and intellectual property litigation and *Superlawyers.com* as one of the top San Diego intellectual property lawyers in 2008.

Mr. Kleinfeld graduated from the New York University School of Law (J.D., 1980) and received his undergraduate degree in government from the Wesleyan University (B.A., *cum laude*, 1977).

Mr. Kleinfeld is author of "New Local Rules Pave the Way to Speedier Patent Trials," *San Diego Daily Transcript*, June 12, 2007.

Mr. Kleinfeld is a member of the State Bar of New York; State Bar of California; State Bar Litigation Section Executive Committee; Founding Master J. Clifford Wallace American Inn of Court; and San Diego County Bar Association. He is a member of the Committee of Adoption of Local Patent Rules of the United States District Court Southern District of California; and a member, executive committee and member, and board of directors of the San Diego Opera. He is a former member of the Board of Governors of the San Diego Association of Business Trial Lawyers and American Arbitration Association.

Mr. Kleinfeld is admitted to practice in California and New York. He is admitted to practice before the U.S. District Court for the Central, Northern, Eastern and Southern Districts of California; U.S. District Court for the Southern and Eastern Districts of New York; U.S. Court of Appeals, Ninth Circuit; U.S. Court of Appeals, Second Circuit; U.S. Court of Appeals for the Federal Circuit; and the Supreme Court of the United States.

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## Kleinfeld among IP, litigation team joining Foley

By **DOUG SHERWIN**  
*The Daily Transcript*

SAN DIEGO — Former Heller Ehrman attorneys continue to find new homes with the latest group landing in the San Diego offices of **Foley & Lardner LLP**.

Noted litigator David Kleinfeld headlines a team of 10 attorneys and one patent specialist being added to Foley's litigation and intellectual property departments.

Former Heller Ehrman partners Kurt Kjelland, Dan Silverman, Chad Fuller and Barry Tucker also are making the move to Foley along with associates Steve Moore, Sam Hellfeld, Richard Thill, Nicole Cunningham and Tammy Boggs. Bob Palmer also joins as a patent specialist.

"I was gratified by the outpouring of support and interest in me and my team," Kleinfeld said. "The dissolution of Heller Ehrman was a sad event. I have a great deal of respect and am very proud of what we accomplished at Heller Ehrman.

"I'm sorry to see a great institution come to an end, but it's time to write the next chapter."

Kleinfeld, Fuller, Silverman and Tucker will join Foley's national litigation department while Kjelland will join Foley's national intellectual property department. All five attorneys will be members of Foley's national IP litigation practice group.

Kleinfeld had been with Heller Ehrman for almost 10 years, serving as co-chair of its complex commercial litigation practice, before the firm announced its dissolution last month.

Throughout his career, Kleinfeld has been widely recognized as one of the top business litigators in California.

His practice focuses on intellectual property and complex commercial litigation, including high-stakes, "bet the company" matters. Recently, he successfully defended **Qualcomm** (Nasdaq: QCOM) on all patent infringement claims after a three-week jury trial involving position location technology.

He also represented **Washington Mutual** (OTC: WAMUQ) and **Hewlett Packard** (NYSE: HPQ) in class-action litigation as well as the city of San Diego in litigation related to the multi-billion dollar underfunding of the San Diego City Employee Retirement System. Other representative clients include **Kyocera**, **SAIC**, **Bank of America** and **Ernst & Young**.

"David and his team bring a significant level of patent litigation experience and a strong track record of success that further advances our reputation and capabilities both nationally and in Southern California," said Sharon R. Barner, chair of the firm's intellectual property department.

"In addition, the team's deep experience in the electronics industry will serve as a natural complement to our representation of Japanese corporations in U.S. intellectual property matters, leveraging our Tokyo presence."

Kjelland focuses his practice on patent litigation with substantial experience in high-stakes patent and trade secret cases. His cases have spanned the technology,

biotechnology, pharmaceutical and consumer products fields.

Silverman's practice focuses on intellectual property and complex commercial litigation. His intellectual property litigation experience ranges from defending and prosecuting numerous misappropriations of trade secrets lawsuits, software license agreement disputes, and patent and trademark infringement disputes.

Fuller focuses his practice on a wide variety of litigation matters, including intellectual property, complex commercial, consumer and securities litigation. He is currently the co-chair of the litigation section of the San Diego County Bar Association.

Tucker focuses his practice on intellectual property and commercial litigation.

Kleinfeld said his clients were pleased with the move.

"They're very gratified that I was able to keep the muscle of my whole team in tact and that was an important part of this decision," Kleinfeld said.

Kleinfeld said he and his team received offers from numerous firms. They chose Foley, in part, because of the Chicago-based firm's international platform and its midwestern values.

"Foley seems to be operating with a good business discipline," he said. "They have a good sense of what it has been and where it needs to go to secure its future, and a lot of firms don't have a handle on that."

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### **Christopher Ekren**

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Chris Ekren is the Senior Vice President and Deputy General Counsel of Sony Electronics Inc. In his primary role, Chris manages the legal affairs of the Sony's core consumer and components product groups with revenues over \$US 17 billion and supervises the attorneys and other legal professionals who provide services to those groups. In addition he supports directly Sony US electronics new business development and advanced technology activities.

Chris received his law degree from the University of Chicago after graduating from Rice University. He is an internal champion of Sony's workplace diversity initiatives and active with several local and Silicon Valley community organizations.

### **Alan Tse**

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Alan K. Tse is General Counsel of LG Electronics MobileComm U.S.A., Inc., the nation's #2 mobile phone manufacturer with annual US sales of over \$5 Billion. He is responsible for all legal matters for LG's mobile phone business in North America and sits on the company's six member senior management committee. Prior to joining LG, Mr. Tse was the Vice President and General Counsel of Ligos Corporation, a venture capital backed software company based in Silicon Valley and prior to Ligos, Mr. Tse was the Vice President of Strategic Development and General Counsel of Centerpoint Broadband Technologies, Inc., a Silicon Valley telecommunication equipment company where he helped raised over \$200 million dollars of venture capital financing. Mr. Tse started his career as a business and technology attorney at Brobeck Phleger and Harrison LLP in their Silicon Valley office representing leading technology companies and venture capitalists. Mr. Tse is the co-founder and serves on the Board of the Asian American Legal Foundation and also serves on the Board of Directors of the Association of Corporate Counsel, San Diego Chapter. Mr. Tse is a frequent speaker at national legal conferences on the roles and responsibilities of the General Counsel and was named one of the best lawyers under 40 by the National Asian Pacific American Bar Association in 2005. Mr. Tse holds a B.A. in Economics and Political Science from the University of California at Berkeley where he earned *Phi Beta Kappa* honors and graduated *cum laude* from Harvard Law School.

# SUZANNE HAWKINS

## Profile and Objective

High-powered; innovative, strategic and operational global leader; committed to key role as member of senior legal executive team. Recognized expert in transactions, contract management, litigation and dispute resolution, Six Sigma process improvement, intellectual property, vendor and outside counsel management. Driven to use experience at General Electric Company, AmLaw 50 firms and advising law departments to improve delivery of legal and business services to support business growth. A unique leader with substantive and operational experience delivered with the highest integrity.

## Professional Experience

### **Hawkins Legal Consulting**

Current

Performing contract, technology and vendor management services for major defense contractor, and consumer good manufacturer. Requested to serve as Executive Director of Business Ethics Leadership Alliance recently formed by Ethisphere Institute to promote higher business ethics.

### **Heller Ehrman, LLP**, Chief of Practice Excellence

NY, NY 2007-2008

Substantive leader working with litigation, transactions, intellectual property, employment and other practice groups to develop and implement strategic initiatives to elevate the delivery of legal services. Specific work with clients concerning global issues including suppliers and competitors in China.

### **Huron Consulting Group**, Managing Director

NY, NY 2006-2007

Successful practice in Legal and Business Consulting Group; handled significant engagements for Fortune 50 corporations in contract process management; litigation and dispute resolution, technology negotiations and implementations; analysis of outsourcing opportunities; review of employment functions and other strategic and operational law department initiatives.

### **Hildebrandt International**, Vice President

Stamford, CT 2004-2006

Law department and law firm consulting practice; analyzed legal and business processes at Fortune 100 corporations using Six Sigma methodology and technology; achieved measurable improvements in intellectual property and licensing processes, litigation and compliance organizations, contract management; cost reductions through tough vendor negotiation.

### **General Electric Company**, Senior Counsel, Legal Operations

Fairfield, CT 1996-2004

Promoted to positions with increasing authority from transaction counsel in Germany (1992-1995) to senior executive position as right hand of Senior VP and General Counsel, Ben Heineman. Superb organizational and leadership skills running first class law department. Substantive expertise in litigation, intellectual property, global issues including dealings with suppliers, customers, competitors in China and other countries, technology and vendor contract negotiation.

### **Curtis, Mallet-Prevost Colt & Mosle**

Frankfurt, Germany 1993-1994

Represented global corporations in commercial contracts, acquisitions and arbitration.

### **Dedicated Outside Counsel (GE)**

NY, NY 1988-1992

Analyzed and resolved numerous contract and sales representative claims and litigation for GE Power Systems and GE Plastics; achieved multi-million dollar award in international construction dispute; developed Early Warning System, conducted contract training for business people.

**Weil, Gotshal & Manges** NY, NY 1982-1988  
Corporate litigator and advisor in intellectual property, real estate, commercial, and employment matters. Lead role in precedent setting patent and trade secret case for Fortune 5 corporation.

**Wein, Malkin & Bettex** NY, NY 1980-1982  
Litigation department, associate: handled real estate, commercial, IP litigation.

*Specific Accomplishments set forth in Addendum*

Education/Admissions

- **Member of the Bar of the State of New York, Federal Courts** Admitted 1981
- **Six Sigma Green Belt Certified, GE** 1989
- **Georgetown University Law Center, Washington DC** J.D. Cum Laude 1980
- **Georgetown University, Wash. DC BA, American Government** Dean's List 1977

Leadership, Professional Activities

- **Association Corporate Counsel-Americas** 1997-2006  
Member, Board of Directors, Executive Committee 2004-2006
- **Chairman, GE United Way Campaign (CT)** 2002-2003
- **Languages:** French, student of Italian
- Frequently quoted in legal press and speak on topics including technology, process improvement, inside/outside counsel management and outsourcing (articles available upon request)

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*References available, please do not contact current or former employers with prior approval*