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Q&A With Foley & Lardner's Sharon Barner

Law360, New York (June 03, 2009) -- Sharon R. Barner is a partner with Foley & Lardner LLP in the firm's Chicago office and chair of the firm's intellectual property department.

With both life science and biology in her background, Barner has represented clients in multimillion dollar cases across a broad range of technologies, from genetically engineered foods to computers to satellites. She also represents clients in patent, trademark, copyright and unfair competition disputes, and is a member of the firm's management committee and former chair of the firm's intellectual property litigation practice.

Q: What is the most challenging case you've worked on, and why?

A: I was the primary attorney for a case in Rockford defending Pioneer Hi-Bred, the largest seller of corn seed worldwide. The case was valued at more than \$500 million, at the time. It involved a company who owned patents on the process to make genetically modified corn.

At the start, there were numerous defendants, but over the nearly six-year pendency of the case, all settled, so that by trial time Pioneer was the only defendant. In addition to the story behind the development of the technology, the presentation and simplification of complex technology to the jury was a key issue.

During the trial, I directed over 25 lawyers and experts. The trial was nearly two weeks and ended in a mistrial. The matter settled at the beginning of a new trial.

Q: What accomplishment as an attorney are you most proud of?

A: Achieving success at the highest level of my profession as a nationally recognized IP lawyer, chair of the intellectual property department and member of the firm's

management committee, and leveraging this leadership to improve diversity and the legal community's inclusiveness.

While serving as chair of Foley's IP litigation group from 2003-2006, the number of minorities increased from 13 percent to 16 percent. From 2006-2009, as chair of Foley's 250-plus lawyer IP department, the number of minorities in the IP law department consisted of 12 percent minorities and 23 percent women. In less than three years, Foley's IP law department now boasts 18 percent minorities and nearly 28 percent women.

Q: What aspects of law in your practice area are in need of reform, and why?

A: To strengthen our patent system in a way that supports innovation in the 21st century and beyond requires reform of the patent procurement process and resulting patents as well as reform of district court patent litigation.

The foundation supporting the U.S. leadership in innovation stems from the ability to procure strong patents and enforce those patents against infringers in an efficient and cost-effective manner. As to the USPTO, the length of patent pendency, quality of examination and sheer increase in patent applications threaten to further derail an already over-burdened office.

An inextricable part of patent reform must include addressing district court patent litigation, which is too expensive, too lengthy, with outcomes that are too uncertain — frequently handing the patent owner a “lottery ticket” to a potential multimillion dollar damages award.

Q: Where do you see the next wave of cases in your practice area coming from?

A: Technology stemming from innovation associated with nanotechnology, wireless and Internet-based inventions. We have only just begun to witness the impact of the wireless revolution which will impact nearly all aspects of our daily lives — health care, workspace, home, government ... the potential is incredible.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: Robert Armitage, GC of Ely Lilly. I first got to know Bob Armitage when he worked as an expert in one of my cases. He is incredibly smart, and not only is he knowledgeable about patent law but also about how procurement, protection and enforcement fit into the larger picture of bottom line value for a company.

In the ensuing years, I have interacted and worked with Bob Armitage on the necessity for patent reform and other thorny issues that impact the practice area. Long before patent reform became the focus of the industry, the courts and the Congress, Bob Armitage was a leader focused on the critical need for reform issues in a scholarly and productive way.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: Approach the intellectual property practice in a strategic way, understanding the client's current innovation and products, as well as thinking about what the company's innovation and strategy might be.