



COOLEY GODWARD
ANNUAL REVIEW
2005

Cooley Godward LLP

Dear Clients and Friends,

Before too much time passes in 2006, we want to thank you once again for entrusting us with your most complex business and litigation needs and to reflect briefly on what we were so proud to have accomplished for our clients and as a Firm in 2005.

2005 was a year that added to our Firm's legacy of excellence and underscored our commitment to delivering work of the utmost quality, supporting clients' business goals, observing the highest ethical standards and emphasizing teamwork and mutual respect. Acknowledgment of these core values and our professional success is reflected in Cooley's debut on the *American Lawyer's* "A-List" of the top 20 national law firms in 2005. We take pride in this accomplishment, as it reflects the fact that we have achieved our goal of providing you with valuable legal services that support your most critical business endeavors.

We look forward to the new opportunities that await us this year and to working with you to ensure your continued success.

Very truly yours,



Stephen C. Neal

Chairman and Chief Executive Officer

2005 ACCOLADES & TALENTED PARTNER ADDITIONS

*Building on Our
Legacy of Excellence
in 2005*

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Cooley maintains its long history of excellence because of our people. Our attorneys, paralegals and staff work together to support our clients and to make the Firm a success. This teamwork, combined with superior legal expertise and a shared vision, sustains Cooley's status as one of the country's elite law firms.

In terms of Firm and individual accolades, 2005 was a notable year, with a long list of our partners and practices being recognized by national and international legal and business publications for their expertise. Among the many accolades that were bestowed last year, our placement on the *American Lawyer's "A-List"* was perhaps the most gratifying because it was awarded based on Cooley's deep and long-standing commitment to pro bono, our efforts to promote diversity and the overall satisfaction of associates across the Firm.

With the ever-present goal of enhancing the quality and breadth of services that Cooley provides to its clients, throughout 2005, we welcomed several talented lateral partners. Among the eight lateral partners who joined us last year, five are resident in our new Washington, DC office that opened in September 2005.

The first partners in our Washington, DC office were **Tami Howie**, who focuses on corporate and securities law with an emphasis on representing emerging growth and technology companies; **Margaret Kavalaris**, who also engages in a general corporate finance and securities practice with an emphasis on representing venture-backed, emerging growth companies; and **Michael Marinelli**, who heads our International Trade practice and concentrates on the federal regulation of international trade, both outbound (export compliance) and inbound (customs), as well as compliance with the Foreign Corrupt Practices Act and USA Patriot Act. Tami, Maggie and Michael all joined us from DLA Piper Rudnick Gray Cary.

Toward the end of 2005, **Michael Tuscan** and **Erich Veitenheimer** joined our DC office from Morgan Lewis where they were partners and co-chairs of the life sciences intellectual property group. Both are intellectual property litigators, focusing on patent-related matters for life science and biotechnology companies.

Elsewhere around the Firm, **John Hale** joined our Palo Alto office as a partner in the Credit Finance group. John focuses his practice on venture lending and credit finance and supporting the Firm's corporate, mergers and acquisitions and general business practices. Prior to joining Cooley, John was co-chair of the debt finance group at DLA Piper Rudnick Gray Cary. **Tom Reicher**, a partner in our Compensation & Benefits practice, rejoined the Firm's San Francisco office from Howard, Rice, Nemerovski, Canady, Falk & Rabin, PC where he was a director. And just before the end of 2005, **Steve Strauss** joined our San Diego office from Procopio Cory Hargreaves & Savitch where he was head of litigation. Steve focuses on complex commercial, intellectual property and patent litigation.

As of the first of this year, thirteen associates were formally admitted into the partnership based upon their proven substan-

tive legal skills, dedication to client service and other contributions both within and outside the Firm. The partnership class of 2006 is comprised of Litigation attorneys **Matthew Brigham** (Intellectual Property—Palo Alto), **Dr. Michelle Rhyu** (Intellectual Property—Palo Alto), **Whitty Somvichian** (Complex Commercial—San Francisco) and **Dr. Edward Van Gieson** (Patents—Palo Alto). Our newly elected Business partners are **Keith Berets** (Technology Transactions—Colorado), **Darren DeStefano** (General Business—Reston), **Jennifer Fonner DiNucci** (Mergers & Acquisitions—Palo Alto), **Mark Goldberg** (Real Estate—San Francisco), **Shane Goudey** (Venture Capital—Palo Alto), **Gordon Ho** (General Business—Palo Alto), **Ryan Naftulin** (General Business—Reston), **Frank Rahmani** (Emerging Companies—Palo Alto) and **Jane Ross** (Mergers and Acquisitions—Palo Alto).

AN UNWAVERING COMMITMENT TO PRO BONO

In 2005, Cooley attorneys and paralegals again contributed many thousands of hours in pro bono service that included both litigation and transactional matters and involved attorneys from all offices and practice groups. Although public commendation is not the motivation behind our pro bono commitment, we are proud to have received significant recognition for our pro bono efforts from the ABA Business Law Section, which selected Cooley as the recipient of the Section's "2005 National Public Service Award." Our annual pro bono commitment ranges from the staffing of community clinics, to the handling of numerous asylum and guardianship matters, to our representation of individuals and classes in precedent-setting impact cases of national scope and importance.

One such case in 2005 was *Santillan v. Ashcroft*, in which Cooley secured important civil rights for thousands of legal immigrants in a national class-action lawsuit against the Department of Justice and the Department of Homeland Security (DHS) for denying proof of status to lawful permanent residents. The suit charged that DHS immigration services offices consistently and wrongfully rejected lawful permanent residents' requests for documentation of their legal status. In August, Judge Marilyn Hall Patel of the U.S. District Court, Northern District of California, granted the plaintiffs' summary judgment motion in full, ruling that the DHS policy of withholding documentation from persons already determined to be lawful permanent residents by immigration courts was arbitrary and capricious and violated DHS's nondiscretionary duty to issue documentation in a timely manner. In December, the Judge issued a permanent injunction, which ensures that class members will receive their documentation, enabling them to obtain employment, drivers' licenses and social security cards. The *National Law Journal* selected *Santillan* as one of the top four pro bono matters in the country in 2005.

Among the other substantive areas in which Cooley defended the interest of, and secured rights and benefits for, its pro bono clients were children's rights, capital punishment, criminal law (sentencing guidelines), *habeas corpus*, international human rights and prisoner civil rights. We also advised dozens of nonprofit organizations in matters ranging from employment to trademark and intellectual property.

WE ARE PROUD TO
HAVE RECEIVED
SIGNIFICANT
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OUR PRO BONO
EFFORTS FROM THE
ABA BUSINESS
LAW SECTION.

CUTTING-EDGE LITIGATION

In 2005, Cooley's litigation attorneys enjoyed immense success in helping clients protect their business interests and assets, handling hundreds of cases in over 80 state and federal courts (including Bankruptcy Courts and Courts of Appeal), arbitral forums and administrative bodies across the country, including the United States Patent and Trademark Office. Across virtually every substantive discipline, Cooley's litigators achieved outcomes that defended, preserved and advanced the critical business interests of our clients. Following are a few examples of the tremendous work performed by our litigators:

Our **Antitrust & Trade Regulation** team obtained complete U.S. regulatory clearance—without any divestitures—from the Antitrust Division of the Department of Justice (DOJ) for the \$3.4 billion merger between **Adobe Systems Incorporated** and Macromedia, despite significant competitive questions posed by the DOJ. Shortly thereafter, our team also obtained complete U.S. and EU regulatory clearance for the \$5.85 billion merger between Oracle Corporation and **Siebel Systems, Inc.**

In the area of **Complex Contract, Commercial and Healthcare Litigation**, we successfully obtained dismissal of all claims against PacifiCare Health Systems, Inc. in a coordinated multi-district class action in Florida, brought on behalf of all doctors in the United States. One of the largest, most high-profile litigations in the country, the lawsuit asserted far-reaching claims against the HMO industry. The plaintiffs sought many billions of dollars in alleged damages, and the case has resulted in over twenty reported decisions, including by the United States Supreme Court (in a case successfully argued by Cooley). Based on several motions filed by Cooley, the Court eliminated all claims against PacifiCare after more than five years of litigation.

In the **Intellectual Property** arena, we persuaded the U.S. Court of Appeals, Federal Circuit to rule in favor of our client **AT&T Corporation** in a closely watched patent case. The Court held Microsoft Corporation liable for infringement under 35 U.S.C. Section 271(f) based on its exportation of infringing Windows software on “golden master” disks for copying abroad by third-party computer manufacturers.

Cooley's **Trademark** litigators defended **NCsoft and NC Interactive**, publishers of the popular online game “City of Heroes,” against claims that the game can

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be used to infringe Marvel's copyrighted characters and that the Digital Millennium Copyright Act provides no defense. The case culminated just before trial with the parties reaching an extremely favorable settlement for our clients, whereby they can continue providing "City of Heroes" without change.

Attorneys from Cooley's **Intellectual Property Litigation** and **Internet Law** practices filed an *amicus curiae* brief in the United States Supreme Court on behalf of **nine emerging technology companies** in *MGM Studios Inc. v. Grokster, Ltd.*, a landmark case involving secondary liability for copyright infringement based on peer-to-peer file sharing over the Internet. The Court's unanimous opinion cited the Cooley-authored brief, and Justice Breyer's concurring opinion sounded many of its themes.

In a case closely followed by officers and directors of public companies around the country, as well as the attorneys that counsel them, Cooley **Securities Litigation** attorneys secured a major victory against the Securities & Exchange Commission in the first litigated

matter involving **Regulation FD or "Fair Disclosure."** In August 2005, the United States District Court, Southern District of New York, dismissed in full the SEC's complaint against **Siebel Systems, Inc.** and two of its senior officers, alleging claims for violating the regulation. Regulation FD was promulgated by the SEC in 2000 for the purpose of regulating selective disclosure of material, nonpublic information to investors. In rejecting the SEC's claims against Siebel for alleged selective disclosures, the Court stated, "Applying Regulation FD in an overly aggressive manner cannot effectively encourage full and complete public disclosure of facts reasonably deemed relevant to investment decision making." The SEC decided not to appeal the Court's precedent-setting decision.

In addition to other significant results obtained by members of the foregoing practice groups, attorneys in our **Appellate; Creditor's Rights & Bankruptcy; Employment & Labor; Trademark, Copyright & Advertising;** and **Venture Capital Litigation & Dispute Counseling** practice groups garnered important victories and provided critical pre-litigation advice for a wide range of Firm clients.

INNOVATIVE, FORWARD-THINKING LEGAL ADVICE

2005 was another banner year for Cooley's Business department, ranking first in the U.S. for the number of healthcare clients securing capital and second for the most IT clients securing capital. We also coordinated the first-ever corporate partnering deal in the Taiwanese biotech industry, as well as the largest Phase I deal in biotech history. And, we continue to be one of the most active firms in the country for the number of new venture capital and private equity funds formed, with 60 in 2005.

In 2005, Cooley handled **86 merger and acquisition** transactions in a broad range of industries, including software, life sciences, medical devices and telecommunications, with total value in excess of \$20 billion. Notable among the 2005 deals were **Adobe Systems Incorporated's** acquisition of Macromedia, Inc., a transaction valued at approximately \$3.4 billion; **Applied Materials, Inc.'s** acquisition of wafer clean technology and intellectual property from SCP Global Technologies, Inc.; **Siebel Systems, Inc.'s** sale to Oracle Corporation for \$5.85 billion; and **Stentor, Inc.'s** (a leading provider of picture archiving and communication systems) sale to Philips Medical Systems for \$280 million.

We also represented **eBay Inc.** in a number of acquisitions, including:

- ▶ Rent.com, a privately held online classified site, for approximately \$415 million
- ▶ Skype Technologies S.A., a leader in Internet telephone technology and products, for up to \$3.9 billion, including \$2.5 billion at closing
- ▶ Shopping.com Ltd., a leader in online comparison shopping and consumer reviews, for approximately \$620 million
- ▶ VeriSign, Inc.'s payment gateway business by PayPal, Inc. (an eBay subsidiary) in a \$370 million transaction

In 2005, Cooley's dominant **Emerging Companies** practice helped hundreds of entrepreneurs form companies in a wide range of technical disciplines, including communications, wireless networking, enterprise software, network security, semiconductors, clean technology, drug development and medical devices. Cooley represented either the issuing company or the investors in over 280 deals in 2005, totaling more than \$2.8 billion.

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Among the companies advised by Cooley in financings last year were **Alba Therapeutics Corporation** (\$30 million Series A financing); **Avidia Inc.** (\$28.5 million Series B financing); **Cerexa Inc.** (\$50 million first round of venture funding); **Cortina Systems** (\$30 million preferred stock financing); **Replidyne Inc.** (\$63 million convertible preferred stock financing); **Solidus Networks, Inc.** (Pay By Touch Solutions) (\$130 million in debt and convertible notes); **Webroot Software, Inc.** (\$108 million Series A financing); and **Xencor Inc.** (\$20 million preferred stock funding). Notable among this list are Avidia Inc., one of the largest preclinical deals of 2005, and Webroot, one of the largest venture investments ever made in the software industry.

Among the financings in which Cooley represented the investors were **Affymax Inc.** (\$60 million in preferred stock financing), **Nano-Tex** (\$35 million Series A financing); **Picolight Inc.** (\$27.5 million preferred stock financing); **RAMSAFE Technologies, Inc.** (\$5 million Series A financing); **T-RAM Semiconductor** (\$40 million in preferred stock financing); and **Yipes Enterprise Services, Inc.** (\$24 million preferred stock financing).

According to IPO Vital Signs, Cooley was the top Bay Area **IPO** issuer's law firm and tied for fifth nationally for issuer representation, the highest-ranking Northern California firm. Cooley represented 11 issuers or underwriters in IPOs that raised a total of \$810.5 million, including **Ad.Venture Partners, Inc.**, **CryoCor, Inc.**, **Favrille Inc.**, **Gladstone Investment Corporation**, **HoKu Scientific, Inc.**, **Rackable Systems, Inc.**, **Website Pros Inc.**; and **XenoPort, Inc.**

Cooley also represented issuers or underwriters in 24 follow-on public offerings with aggregate proceeds totaling over \$1.7 billion, including **Amylin Pharmaceuticals Inc.**, **Myogen**, **ONYX Pharmaceuticals Inc.**, **Telik Inc.** and **URS Corporation**.

Among the transactions in which Cooley represented **Investment Banking** clients in 2005 were **CIBC World Markets/Pharmaxis Ltd.** (\$31.4 million follow-on offering of ADSs); **Morgan Stanley/Threshold Pharmaceuticals, Inc.** (\$65 million follow-on offering); **UBS Securities and CIBC World Markets/CoTherix, Inc.** (\$58.5 million follow-on offering); **Lehman Brothers and SG Cowen/Sunesis Pharmaceuticals, Inc.** (\$42 million IPO); **Wedbush Morgan Securities/TAC Acquisition Corporation** (\$120 million IPO); **CIBC**

World Markets/SeraCare Life Sciences, Inc. (\$49.3 million follow-on offering); and **CIBC World Markets and Piper Jaffray & Co./CoTherix, Inc.** (\$35.6 million follow-on offering).

Our **Fund Formation** practice enjoyed another robust year, which included advising on the following formations: **Menlo Ventures X, L.P.**, a \$1.2 billion fund investing in emerging growth companies of all stages within the technology sector; **Versant Venture Capital III, L.P.**, a \$400 million fund investing in early stage healthcare companies; **ChrysCapital IV, LLC**, a \$550 million fund investing in India-based growth-stage companies; and **Paul Capital Top Tier Investments III, L.P.**, a \$620 million fund making investments in venture capital funds sponsored by top quartile performing managers and select emerging managers who focus on growth industries, such as healthcare and technology.

The dominance of Cooley's **Life Sciences** practice was unabated in 2005. Cooley was named the most active IPO issuer's counsel nationwide for life sciences companies, handling nearly 25 percent of all life sciences IPOs, and the Firm ranked third for life sciences underwriter representation (IPO Vital Signs). The 2006 edition of *The Best Lawyers in America* ranks Cooley first among U.S. and California law firms for the number of attorneys included in the **Biotechnology Law** category. Cooley serves as counsel to nearly 30 percent of the 159 companies on the NASDAQ Biotechnology Index and more than 50 percent of the 17 companies on the AMEX Biotech Index. The Firm also represented issuers or underwriters in 5 public offerings that raised over \$256 million and 20 follow-on offerings that raised over \$1.45 billion.

Cooley client **Anadys Pharmaceuticals** received "The Most Creative and Significant Deal" award during the 18th Annual Biotech CEO Meeting in Laguna Niguel for its collaboration with Novartis to develop and commercialize Anadys's proprietary compound ANA975 and additional TLR7-based therapeutics for hepatitis C and hepatitis B. The award was determined based on voting by biotech industry CEOs. Cooley represented Anadys on the transaction—the **largest Phase I deal in biotech history** (*BioWorld*, June 2005).

In the second largest biotech deal in 2005, Cooley represented **Protein Design Labs Inc. (PDL)** in a broad collaboration with Biogen Idec for the joint development, manufacture and commercialization of three Phase II antibody products.

Cooley represented **Gilead Sciences Inc.** in its renegotiations with F. Hoffman La Roche Ltd. for the licensing of Gilead's Tamiflu. As a result of the settlement, Gilead received \$80 million immediately as an adjustment of past and current royalties, and Gilead will receive future royalties in the range of 14 – 22 percent. Gilead also obtained an agreement that the future commercialization of Tamiflu would be conducted on a more collaborative basis.

Our **Technology Transactions** group (TTG) counseled clients at the forefront of innovation. For example, we represented **TiVo Inc.** in its strategic agreement with Comcast Corporation to develop a version of the TiVo service and make it and TiVo's interactive advertising capability available to Comcast customers in the majority of Comcast's markets around the country. This was TiVo's first licensing deal with a major cable operator.

We represented **BroadSoft Inc.**, a leading provider of network communications platforms (including VoIP solutions), in their negotiations with Verizon Communications. This led to Verizon's announcement that it now offers an enterprise version of its iobi integrated voice and data messaging service for Eastern-seaboard residents from Maine to Virginia, using BroadSoft's application platform.

Our TTG attorneys also represented **AOL, Inc.** in its agreement with Omniture, Inc. to provide analytics across AOL's worldwide properties and services. AOL will be using the Omniture technology to analyze Web traffic across certain properties and services.

Cooley's Business attorneys deftly worked cross border on many **international** transactions in 2005, including representing **AbGenomics Corporation** in the first corporate partnering deal for the Taiwanese biotech industry. AbGenomics completed an exclusive collaboration and licensing agreement with Boehringer Ingelheim International GmbH, giving Boehringer Ingelheim worldwide exclusive rights to develop, manufacture and commercialize any products with AbGenomics's antibody product for autoimmune diseases.

We counseled **Continuous Computing Corporation**, a provider of high-availability platform solutions headquartered in San Diego, California,

in its acquisition of certain assets, including products and intellectual property, from the Shenzhen product division of UP Technologies Ltd., a Chinese company with headquarters in Beijing.

Cooley also advised **Shazam Entertainment Ltd.**, a UK-based supplier of digital audio recognition technology and services, in the sale and license back of certain Shazam intellectual property assets to Landmark Digital Services, a subsidiary of Broadcast Music, Inc. (BMI), the New York-based performing rights organization.

Our **Credit Finance** group was active in syndicated lending transactions on behalf of many companies, including **PacifiCare Health Systems, Inc.** (\$850,000,000) and **URS Corporation** (\$675,000,000). Our **Venture Lending** practice was substantially enhanced with the arrival of new partner John Hale and his team. We believe Cooley is now the leading provider of venture lending legal services nationally, having **represented venture lenders in over 125 deals** and **companies in over 90 deals** in 2005.

Despite the general pull back in the convertible notes market, our **Debt Securities** group continued to represent convertible notes issuers in the Rule 144A market, including **Nektar Therapeutics** in its issuance of \$275,000,000 of 3¼ percent Convertible Subordinated Notes due 2012. We also continued to represent investors, including the **lead hedge fund investor** in the purchase of \$250,000,000 of non-recourse loans and high-yield notes issued by Duloxetine Royalty Sub as part of the monetization of the royalty stream of Quintiles Transnational Corporation's Cymbalta drug.

Our **Land Use & Zoning** team continued to oversee dozens of Northern Virginia's highest-profile and most complicated rezonings in 2005, including **Hospital Corporation of America's** zoning request for a medical campus (over 1 million sq. ft., including a 180-bed hospital and two 200,000 sq. ft. office buildings) proposed in Loudoun County, Virginia; **Wilmore Properties, Inc.'s** land use, zoning and entitlement issues associated with one of the country's largest, most successful and high-profile shopping centers, Tysons Corner Center Mall; and **Reston Town Center's** rezoning, development plan and special exception approvals within the 450-acre, 7+ million sq. ft., mixed-use Town Center.