

Technology Group

Sullivan & Worcester's Technology Group represents entrepreneurs, emerging companies, public and private companies, private equity investors and financial institutions in a range of industries, such as communications and telecommunications, information technology and software, new media, entertainment, publishing, biotechnology, energy technology, pharmaceuticals, life sciences and medical devices. By efficiently drawing on our collective areas of expertise, we represent our clients in all aspects of their business, including private equity investments, leveraged buyouts and other debt financings, IPOs and public company regulation, strategic alliances, collaborations, joint ventures, licensing, protection and enforcement of intellectual property rights, commercial and intellectual property litigation, mergers and acquisitions, corporate governance, tax, government contracts, legislative and federal affairs, real estate and environmental, and employment and labor.

As a result of the connections we have developed through representations of investors and emerging companies across the country and around the world, we have the ability to be a source of deal flow to our clients, especially in Boston, New York and through our joint venture ZAG/S&W in Israel. We also introduce investors to each other and to potential corporate partners, resulting in co-investment and strategic relationships, and further extending their deal flow pipeline.

The following is a representative sample of recent technology engagements, where our attorneys have acted as counsel:

Venture Capital Financing and Leveraged Buyouts

We represent entrepreneurs and companies as well as a spectrum of private equity investors from angels to venture capital firms, growth capital investors, mezzanine investors and leveraged buyout firms. Our lawyers have also helped form private equity funds that have raised and invested billions of dollars.

Selected venture capital and leveraged buyout transactions in the technology sector include advising:

- Omzest Group, a major investor in energy technologies based in the Sultanate of Oman in Muscat, in a \$25 million Series B preferred stock financing for Ze-gen, Inc., a Boston-based, venture-backed company that uses gasification technology to produce near-zero emissions "syngas" from garbage and other waste products.
- InSite Wireless Group, LLC, owner, operator and manager of communication infrastructure facilities primarily for the wireless and broadcast industries, in a \$15 million investment by Catalyst Investors, a New York-based growth private equity firm.

- Where, Inc., a developer of location-based applications, in its \$11 million Series C financing by Kodiak Venture Partners, GrandBanks Capital and Venrock Capital.
- California Products Corporation, a manufacturer of architectural, sports surfacing and environmental containment coatings, in its sale to Apollo Management, L.P. for \$75 million.
- The Bermudan holding company of a South American telecommunications conglomerate in a \$157 million private equity financing.
- A private equity fund in connection with its acquisition of a communications company in a \$138 million leveraged buy out transaction.
- Fountain Healthcare Partners, an Irish VC firm, in the formation of its €100 million inaugural fund focused on investments in the specialty pharmaceuticals, biotechnology, medical devices and diagnostics sectors.
- A consortium of strategic investors in a \$30 million minority investment in an Internet platform for the electronic trading of petroleum, base metals, natural gas, electric power and related financial instruments.
- Mitralign, Inc. in a \$24 million Series C financing by Oxford Bioscience Partners, Triathlon Medical Ventures, Oakwood Medical Investors, Medtronic and Johnson & Johnson Development Corporation, among others.
- HeartSine Technologies, Inc. in an aggregate \$4 million in bridge financing as well as a \$4.7 million Series E financing by ACT Venture Capital, Enterprise Equity and Vividian Growth Fund.
- Global News Enterprises in a \$7.7 million Series A financing led by Pilot House Investors.
- A U.S. venture capital fund in a \$2 million Series A financing for an Indian company.
- A private equity fund in the acquisition of a majority interest in a chip fabricator in a \$58.5 million leveraged recapitalization transaction.

In addition, we have executed multiple venture financings of technology companies, including Konarka Technologies (DFJ and New Enterprise Associates), Neutral Tandem (Doll Capital Management, New Enterprise Associates), IBRIX (JT Ventures), RateIntegration (Dolphin Equity Partners, JT Ventures), Polnox (MTDC), InSite Wireless (private investors), Sandburst (Greylock, Matrix), Performix (Highland, Atlas), CardioFocus (Oxford SV Life Sciences), and PUT (Oxford, Medica).

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Mergers & Acquisitions

Each year our lawyers are involved in M&A transactions with a value well into the billions of dollars. We provide our clients with strategic guidance and advice from the initial discussion phase through post-closing transitional matters, including structuring the deal; negotiating and drafting letters of intent; supervising due-diligence review; negotiating and drafting the transaction documents; tax planning; coordinating local, special or foreign counsel; and handling multi-jurisdictional closings.

Selected technology M&A transactions include the representation of:

- Ibrix Inc., a Massachusetts-based leader in scalable file-serving solutions, in its acquisition by Hewlett-Packard Company in a reverse triangular merger. The two companies had partnered for three years prior to the merger.
- Dice Career Solutions, Inc., a wholly-owned subsidiary of Dice Holdings, Inc., an NYSE-listed provider of online job search boards and career fairs focused on technology-based jobs, acquired substantially all of the assets of Intravision Software Inc., a British Columbia-based healthcare-specific online job search boards. (www.AllHealthCareJobs.com)
- Emptoris, Inc., a maker of supply and contract management software, in its sale to Marlin Equity Partners for an undisclosed amount.
- Where, Inc. in its acquisition of Zync, a Boston-based start-up that develops predictive web-based technologies that provide users with recommendations for local events and activities based on the preferences of like-minded individuals.
- Iron Mountain Incorporated, a global information protection and storage services provider, with several recent acquisitions in the digital storage area, a strategic focus for the company, including the acquisitions of Mimosa Systems, Inc., ArchivesOne, Inc., Stratify, Inc., LiveVault Corporation, RMS Services – USA, Inc. and Connected Corporation for an aggregate of more than \$550 million.
- Collaboration Online, Limited Company, a privately owned provider of Software-as-a-Service (SaaS) solutions to small and mid-sized businesses in its sale to mindSHIFT Technologies, Inc.
- Retailix, Ltd., an independent provider of software solutions to retailers and distributors worldwide, in:
 - its approximately \$23 million acquisition of TCI Solutions, Inc., a provider of software for supermarket operators with pricing, promotion, order/vendor management and analysis capabilities.
 - its acquisition of Integrated Distribution Systems, LLC, a provider of integrated enterprise software solutions for the wholesale grocery, convenience store and food service distribution industries.
- Performix Technologies (a portfolio company of Highland Capital Partners and Atlas Venture LLP), a software provider for contact centers, in its \$16.2 million acquisition by Nice Systems, a provider of software for analytics of unstructured multimedia content.

- Identify Software, Ltd. in its approximately \$150 million sale by a group of private equity funds to BMC Software Inc.
- SMA L Camera Technologies, Inc. in its acquisition by Cypress Semiconductor Corporation.
- Raytheon Company in its \$120 million disposition of its recreational marine division to Mercury Asset Management, a Merrill Lynch subsidiary.
- Devonshire Investors in its disposition of a telecom division to Brasil Telecom.

Capital Markets Transactions

Our lawyers have represented companies and underwriters in over 75 IPOs and 150 public offerings. In the last several years alone, our lawyers have raised billions of dollars in the public markets, including advising:

- Raytheon in a \$985 million public offering.
- Konarka Technologies in a \$50 million private placement arranged by Lehman Brothers.
- A publicly traded fiber optics cable and sub-component manufacturer in connection with four private placements of common stock in which the company raised, in the aggregate, \$32 million.
- A publicly traded medical devices company in connection with a \$6.3 million private placement of common stock.

Strategic Alliances, Joint Ventures, Licensing and Collaborations

We represent our technology clients in structuring, negotiating and drafting complex commercial agreements, including but not limited to joint venture agreements, sponsored research and development agreements, collaboration agreements, license agreements, patent, trademark, copyright and know-how agreements, supply agreements, distribution, OEM and VAR agreements as well as marketing, advertising, online hosting, professional services, publishing and co-branding agreements. Our recent experience in this area includes advising:

- Konarka Technologies, Inc., a solar technology company, in a \$45 million preferred stock financing and commercial partnership arrangement with Total Gas & Power USA (SAS) and a \$20 million preferred stock financing and commercial partnership arrangement with a large Japanese multinational company.
- A privately held developer of software for use in the commercial real estate market in complex source code cross licensing arrangements.
- Raytheon in a joint venture with Chevron and EDS.
- Bain & Company, a global business consulting firm, with respect to ongoing licensing and partnership agreements.
- The natural gas and/or electric power trading subsidiaries of six of the ten largest utilities in the United States in the formation of a consortium for the purpose of acquiring or developing an internet-based platform for trading natural gas, electric power and related financial instruments.

- A publicly traded fiber-optics cable and sub-component manufacturer in connection with the formation of two joint ventures in which the client provided approximately \$12 million of capital and logistical support to the research and development efforts of certain scientists.
- A private equity fund in connection with a joint venture with a mid-market communications company in which the private equity fund contributed capital and its joint venture partner contributed operating assets.
- A leading communications rating software company in connection with drafting and negotiating a \$3 million master software license agreement, marketing agreement and consulting services agreement.
- Emerging growth companies including several venture-backed software vendors in connection with the preparation and negotiation of complicated and multi-tiered software license agreements with their customers, including many Fortune 100 companies such as UBS and Manulife Financial.
- A North American media publishing conglomerate well-known for its trend-setting magazine, retail stores and clothing line, popular "counter-culture" website and record label in enforcing client's intellectual property rights against the sponsor of a Super Bowl 2008 celebrity party.
- A multi-national gaming company in connection with the preparation and negotiation of trademark and brand licensing agreements as well as product development agreements.
- Clients in both the acquisition of licensing rights and the exploitation of those rights, including preparing and negotiating agreements for technology vendors, including license and technology transfer agreements, distribution, manufacturing, co-packing, supply, development, OEM, VAR and joint-venture agreements.
- A variety of clients as to the benefits and dangers of using open source software.
- Magazine publishing companies on editorial issues including privacy and publicity rights, defamation, fair use and other potential litigation matters as well as advising on content and manner of advertising in print and on product packaging in order to assess risks and avoid litigation.

Intellectual Property

Our IP lawyers focus on all areas of trademark, copyright, trade secret and licensing law, including the preparation and prosecution of trademark, and copyright applications, strategic trademark portfolio development, trade secret protection, due diligence of intellectual property portfolios, preparation of trademark validity and non-infringement opinions and intellectual property litigation support and analysis.

Our experience includes:

- Acting as general intellectual property counsel for LoJack Corporation, a worldwide marketer of wireless security and location products and services.
- Representing Bain & Company on all its licensing work and related intellectual property matters.

Litigation

Our IP and commercial litigators represent technology companies and their investors in a wide variety of litigations, arbitrations and mediations throughout the United States. Our litigators have significant experience in securities litigation, IP litigation and complex commercial litigation.

Our recent experience includes:

- Successfully tried a NASDAQ-listed company's claims against an ASIC developer who had contracted to develop the client's next generation product – the 14 person jury returned a unanimous verdict in favor of the client and awarded the client \$36.7 million in damages, believed to be the largest verdict ever from a state court jury in Massachusetts. The jury also returned a verdict for the client rejecting the developer's approximately \$7 million in counterclaims.
- Successfully prosecuted a NYSE listed company's claims against a former employee who had fraudulently accessed the company's computer system and downloaded confidential and proprietary data. Immediately and successfully moved for, on an *ex parte* basis, the court's leave to conduct the seizure and copying of the former employee's computer files and hard drives to which he had access at his then current employer.
- Successfully obtained preliminary injunction preventing opposing party from terminating certain supply and license agreements thereby preserving client's ability to continue the manufacture and sale of principal telephony product.
- Negotiating a multimillion-dollar settlement of a breach of contract action on behalf of a telecommunications industry manufacturer.

Securities and Corporate Governance

We act as company counsel for publicly traded technology companies, and represent and advise public companies and their directors, independent committees and officers with respect to a variety of securities-related matters, including ongoing reporting requirements and other compliance matters under federal and state securities laws; corporate governance and Sarbanes-Oxley Act issues, policies and procedures; fiduciary duties; stock exchange rules and listing requirements; and compliance programs.

Selected securities and corporate governance experience includes the representation of:

- A publicly traded (NASDAQ) company that designs, manufactures, sells and services production metrology and inspection systems for the semiconductor wafer, semiconductor device, magnetic data storage and optics manufacturing industries. We handle their securities work, as well as corporate governance, employment, financing, litigation and general corporate matters.
- LoJack Corporation in its public securities filings and compliance.
- A telecommunications company in offerings of equity and debt securities of more than \$5 billion, including its initial public offering and a \$662 million ordinary share fixed-price open offer to existing shareholders. We continue to represent the company in securities and other matters.

Tax

We represent technology companies in designing and implementing ownership structures, in particular as it relates to IP, that minimize tax costs, and we provide ongoing advice on ever-changing tax rules, including utilization of net operating losses, depreciation, and tax credits. We also advise our clients on international tax planning, and help them understand and respond to the complicated, multi-jurisdictional tax and legal environments. In this regard, we also assist our U.S. clients in establishing offshore structures that can make their business operations more efficient.

Selected tax representations include advising:

- The leading global provider of automation and optimization software in the plastics injection molding industry in international and domestic tax matters, such as assistance with potential European permanent establishment issues and repatriation of non-U.S. earnings under new Code Section 965.
- The leading global developer of product lifecycle management (PLM) solutions in international and domestic tax matters.

Government Contracting and Finance

We represent technology companies that do business with, and/or receive funding from, government entities. We help our clients compete for and negotiate government contracts and grants, and negotiate subcontracts, joint ventures, and other teaming arrangements. We also bring and defend challenges to contract awards, either in court or before administrative bodies.

Selected experience in the technology sector includes advising:

- Technology firms in negotiating federal grant funding (including SBIRs, CRADAs, and other funding vehicles), with particular emphasis on protecting our clients' intellectual property, and ensuring our clients remain in compliance with various government regulations.
- An Israeli smart-card technology company in challenging a government award decision in the Electronic Passport program.
- Foreign entities, as special counsel, on unusual aspects of U.S. government contracts and grants, including "Buy American" and similar requirements, government-specific cost accounting and revenue recognition issues, government-specific intellectual property issues, and security clearance and other issues specific to foreign entities.
- Foreign firms in crafting business relationships with American firms targeted at the U.S. government market.

Labor and Employment

We advise on employment discrimination, regulatory compliance, benefit plan design and administration, employment-related and benefits-related litigation, human resources management, executive compensation planning, tax, and labor, employee and consultant relations, and contracts.

Selected employment matters in the technology sector include the representation of:

- A supplier of water purification and wastewater treatment equipment and services in employment and benefits matters, including retirement plans, welfare plans and fringe benefits.
- A network solutions provider, which designs, develops, markets and supports networking solutions to address the networking requirements of global enterprises in a range of employment and benefits matters.

ZAG/S&W – A Joint Venture

Our joint venture with a leading Israeli law firm, Zysman, Aharoni, Gayer & Co., is the first of its kind between a U.S.-based law firm and an Israeli-based law firm. The joint venture leverages the high-tech and corporate/securities law expertise of both organizations and creates a seamless legal pipeline for new and existing clients in both regions. Through the ZAG/S&W joint venture, we have instant access to companies and technologies in a country that has a long history of successful venture-backed high tech products and services and attracts millions in venture capital.

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For further information about our Technology Group, please visit our website at www.sandw.com or contact:

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REPRESENTATIVE TECHNOLOGY CLIENT LIST

The following client list provides a snapshot of the wide range of types and sizes of technology clients we represent on an ongoing basis:

- Accelerize New Media, Inc.
- Altran Technologies SA
- American Tower Corporation
- Attunity Inc.
- AutomSoft
- BearingPoint, Inc.
- ClickFuel, Inc.
- ClickSoftware Technologies Ltd.
- Danaher Corporation
- Dice Holdings, Inc.
- Draka Holdings
- Elektrobit Group, Ltd.
- ELIA Life Technology, Inc.
- Enterasys Networks, Inc.
- GTECH Corporation
- HeartSine Technologies
- InSite Wireless, Inc.
- Iron Mountain Incorporated
- Kenexa Corporation
- Konarka Technologies, Inc.
- Level 3 Communications
- Lionbridge Technologies, Inc.
- LoJack Corporation
- Mitralign, Inc.
- MKS Inc.
- Moldflow Corporation
- Neutral Tandem, Inc.
- Nypro, Inc.
- On Track Innovations Ltd.
- Parametric Technology Corporation
- RateIntegration, Inc.
- Raytheon Company
- Retalix Ltd.
- Rimdex, Inc.
- Teradyne Inc.
- Tieto Corporation
- Transdermal Biotechnology, Inc.
- Where, Inc.
- Wolfe Laboratories, Inc.
- Yangtze Optical Fibre and Cable Co., Ltd.