

THE RECORDER

www.therecorder.com

FRIDAY, SEPTEMBER 27, 2002

Carr's Ride

As marquee firms face layoffs and sliding profits, Silicon Valley boutique Carr & Ferrell may be hitting its stride

By BRENDA SANDBURG
RECORDER STAFF WRITER

John Ferrell used to feel pretty lonely when he did on-campus interviewing at Stanford University.

While students bustled around the larger firms, they barely noticed Ferrell, of Palo Alto's Carr & Ferrell.

"I would sit by myself for several hours drinking hot chocolate waiting for a student to stop by to be recruited," Ferrell said.

This year, however, he's no campus wallflower. Students were lined up to talk to him when he was at Stanford on Monday. And they knew who he was.

"Students used to ask, 'Who are you with?'" Ferrell said. "Now when they come in they've done their research on you."

Ferrell's campus experience shows how the 40-attorney Carr & Ferrell has benefited from the bursting of the technology bubble. The firm is itself a technology boutique, with half its practice devoted to intellectual property and the other half split between litigation and corporate work for startups



SHELLEY EADES

BOOMING DURING THE BUST: Barry Carr, left, and John Ferrell said they had trouble recruiting lawyers during the tech boom — but are now having no problems attracting attorneys.

and venture companies. But it stood on the sidelines during the dot-com boom and watched as big tech firms like Cooley Godward; Brobeck, Phleger & Harrison; and Wilson Sonsini Goodrich & Rosati hired top talent and swelled their coffers with an avalanche of work.

While marquee firms have struggled with the downturn, laying off associates and, particularly in Brobeck's case, dealing with excess real estate, Carr & Ferrell is on a growth curve.

In June the firm hired John Montgomery away from Brobeck, where he was co-chair of the firm's global venture capital practice. And it lured back former patent partner Charles Katz, who left three years ago to become corporate counsel at Gemfire Corp. In the

past couple of months the firm has also hired four associates, a new chief operating officer formerly with Townsend and Townsend and Crew, and a chief financial officer from Los Angeles-based Lewis, D'Amato, Brisbois & Bisgaard. The firm also hired its first-ever information technology manager and public relations manager.

"We didn't overbuild during the boom period," said firm co-founder Barry Carr. "Now we're probably one of the few firms in the Valley actively hiring."

FORMERLY OF FENWICK

Four associates from Fenwick & West founded Carr & Ferrell, which celebrated its 10th anniversary this month. Since its beginnings above an

Italian restaurant, the firm has carved out a niche in Silicon Valley. Primarily known for its patent prosecution work, the firm also has a six-attorney corporate group that represents venture firms and startups and an eight-attorney litigation practice that handles suits involving \$500,000 to \$5 million in damages.

While Carr & Ferrell doesn't have the name recognition, depth of resources or diverse practice groups of the top tech firms in the Valley, its profitability is close to that of the big players.

Last year, the firm had about \$15 million in gross revenues and profits per partner of about \$600,000, just below Brobeck's profits of \$660,000. This year the firm is on target to generate close to \$20 million in gross revenue, double what the firm generated in 1998, although Carr said profits per partner will be down about 10 percent.

Carr & Ferrell uses a formula-based compensation system in which partners' income is based on how much revenue they generate, the amount of business they bring in and the profitability of the people in their group.

In an interview at their offices on East Bayshore Road, Carr and Ferrell talked about the history of their firm and its current growth in the post-boom period.

Given their limited resources, they were unable to compete with the brand-name tech firms during the 1990s. "As our neighbors grew, we watched from the sideline with a little frustration," Ferrell said.

He said he had wanted to double the size of the firm during that period, but Carr balked at spending \$8 per square foot per month. Ferrell now lauds the frugality of his partner. The firm pays less than \$3 per square foot for its offices — and given the low overhead is able to attract laterals and pay them well. The firm subleased additional space from Brobeck's old digs, located across the parking lot from Carr & Ferrell's headquarters.

The firm has bolstered its corporate practice with the addition of Mont-

gomery, who brought about two dozen startup companies and venture capital funds with him from Brobeck.

Montgomery, who was in France working on two transactions, said in a phone interview Thursday that he likes working in a smaller, more entrepreneurial shop where there is "more elbow room and less politics."

When he decided to leave Brobeck, he thought he needed to be in either a global law firm that gave his clients access to lawyers in foreign jurisdictions or a firm with robust IP capabilities.

"When I listed the pros and cons of all my choices, Carr & Ferrell came way out ahead," he said. "I can offer clients a more competitive billing rate and an IP protection practice."

Montgomery said he has reduced his billing rate to \$350 to \$400 per hour, which is comparable to what a senior associate at Brobeck bills, to adjust to the more frugal economy.

Carr & Ferrell's corporate clients include Worldview Technology Partners, TDF Ventures, SK Telecom, Longboard Inc., Radical Entertainment Inc. and Co-Design Automation Inc. Carr represented Co-Design in its acquisition by Synopsys Inc. last month for about \$36 million.

On the IP side, the firm does opinion work and litigation analysis for several firms, including Wilson Sonsini Goodrich & Rosati, and patent prosecution work for Apple Computer Inc., Sega Corp., Polycom Inc. and IDEO Product Development Inc. The firm filed patent applications for IDEO's PalmPilot design and its design of Handspring Inc.'s Treo, a combination handheld computer, cell phone and wireless access device.

The firm is also representing a few companies in litigation with the estate of Jerome Lemelson, the inventor who has sued dozens of companies for infringing his so-called submarine patents.

As to what differentiates their firm from others in the Valley, Carr and Ferrell point to the way they staff projects. Typically one partner and one associ-

ate handle litigation and transaction matters. For corporate clients, Carr said he and his colleagues offer senior level one-on-one mentoring and counseling that startups need.

Fenwick & West partner David Healy, who worked with Carr when he was at Fenwick, refers corporate work to his former colleague.

Carr has a "hands on, roll up your sleeves" approach, Healy said. "Some investors do multiple investments and come back to Barry because he's a good lawyer and has good judgment and second because he has a good cost structure."

Carr is "great at counseling technology companies," added Robert Feldman, the head of Wilson's litigation department. "He's a class act. He knows exactly what he's talking about."

Wilson Sonsini, which sends Carr & Ferrell prosecution work, has another connection to the firm. Marc Rosati — the brother of Wilson name partner Mario Rosati — is counsel at Carr & Ferrell.

Carr & Ferrell's clients also have high praise for the firm.

"I'm very impressed with the caliber of people they have and the attention we get," said Anne Jordan, general counsel at PeopleSoft Inc. and a former partner of the firm. Carr & Ferrell handles all of PeopleSoft's patent work, as well as some copyright, trademark and litigation work.

Right now, the firm sees itself in a position to build a bigger presence in Silicon Valley and raise its profile. Carr said the firm has had almost a stealth profile, and many people are shocked to learn there's a 40-person law firm that they've never heard of.

"Our firm is at an inflection point," Carr said. "There's a lot of instability in the legal market and we don't have a legacy of overhead built into our structure, so we're an attractive alternative to top flight people."

Reporter Brenda Sandburg's e-mail address is bsandburg@therecorder.com.