

# THE AMERICAN LAWYER

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## Litigation Department OF THE Year

**SPECIAL  
REPORT**



### **LIBOR, MASSIVE SECURITIES CLASS**

actions against the big banks, billion-dollar patent wins, eye-popping arbitration awards. While the U.S. economy was struggling to return to health over the last two years, big-ticket litigation was clearly a countercyclical buffer. As the financial meltdown turned from headlines in the press to captions on docket sheets, the litigators at The Am Law 200 were front and center. In their lengthy, detailed submissions to us for 2014 Litigation Department of the Year and our three practice areas honors, we were delighted to see how diverse and cutting-edge the firms' results were over our time frame (August 2011 through July 2013).

To draw attention to these efforts, we changed our practice group competitions: We added securities and antitrust along with our traditional, highly competitive IP category. After months of reading the submissions, vetting the firms, and interviewing the finalists at our New York office, we arrived at four winners, 13 runners-up, 10 honorable mentions and six Litigators of the Year. Congratulations to everyone who won, and our sincere thanks to every firm that participated in our contest.

—Robin Sparkman



# iDefense Lawyers

Locked in a worldwide patent fight with Samsung,  
Apple has relied on an army of **WILMER** lawyers.

Wins for the iPhone giant include the first reversal of an International Trade Commission exclusionary order in more than 25 years.

BY ROSS TODD

**N**O IP LITIGATION has been harder fought over the past two years than Apple Inc.'s global patent infringement battle with Samsung Electronics Co. Ltd. In their fierce competition for control of the smartphone and tablet markets, the companies have squared off in courtrooms in 10 countries across four continents. Thanks in large part to a legal strategy devised and executed by its lead outside lawyers at Wilmer Cutler Pickering Hale and Dorr, Apple has managed to avoid being hit with potentially crippling injunctions that would keep its popular iPads and iPhone off store shelves in the United States and abroad. The firm's success on behalf of such a key client is a big reason why Wilmer is our IP Litigation Department of the Year winner.

Coordinating with local counsel around the world, Wilmer lawyers argued successfully that Samsung should not be allowed to block rival products from the market by wielding patents covering the technology that allows products like smartphones to interact seamlessly between brands. While Samsung has asserted such so-called standards essential patents against Apple

more than 40 times outside the U.S., in only three instances have its patents been deemed valid and infringed. Two of those wins, both in South Korea, have been stayed pending appeal; the third, in the Netherlands, is subject to a proceeding to determine what a fair, reasonable and nondiscriminatory (FRAND) licensing rate for the Samsung patents would be. In other words, Wilmer's efforts have gone a long way toward ensuring that patent infringement claims don't come between consumers and their gadgets.

"[*Apple v. Samsung*] is probably a sign of things to come for how litigation will be fought," says Mark Selwyn, the cochair of Wilmer's IP litigation group and one of a group of young partners who has traveled to courtrooms around the globe to coordinate Apple's efforts with local counsel. "We're litigating around the clock, 24/7. The world is becoming a smaller place."

In June, Apple faced a U.S. International Trade Commission exclusion order banning the import of older iPhone and iPad models into the U.S. An ITC panel issued the order after finding that the products in question infringed a Samsung patent even though one of the agency's administrative law judges found no infringement.

Wilmer's William Lee asked the Obama administration, via U.S. Trade Representative Michael Froman, to essentially veto the ITC's decision. In the process, Lee and his colleagues had to address the sometimes differing policy views of the U.S. Agriculture, Com-

merce and Justice departments, as well as the U.S. Patent and Trademark Office, about standard-essential patents.

In making Apple's case, Lee was able to cite the growing international consensus—one he and his colleagues helped forge—that an injunction is not an appropriate remedy for infringement of standard-essential patents. Wilmer's argument paid off in August, when Froman—highlighting the standard-essential patent question—announced he was reversing the ITC ruling. It was the first time in more than 25 years that the White House had overruled an exclusion order. "If you're a really good trial lawyer with really good patent expertise backing you up, that's not enough anymore," says Lee, noting that patent, trade, antitrust and competition issues have become enmeshed.

Lee also led the Wilmer team that defended Apple in its biggest trial win against Samsung over the past two years—the clean noninfringement sweep before U.S. District Judge Lucy Koh in San Jose in August 2012. Wilmer played defense in those proceedings, while a Morrison & Foerster team led by Litigator of the Year winner Harold McElhinny scored a \$1.05 billion verdict in Apple's favor. (The total amount landed at \$930 million after a partial retrial on damages in November.)

Although Wilmer's wins for Apple alone would merit serious consideration for top honors in the IP litigation category, the firm had a host of other impressive results over the past two years.

In a massive case in which it represented Intel Corporation, for example,

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#### Practice Group Size and Revenue

Partners: 36 Associates: 55

Counsel: 26 Other: 1

Practice Group as Percent of Firm 10%  
Percent of Firm Revenue 2012 12%



**FROM LEFT:**

Vinita Ferrera,  
William Lee,  
Joseph Mueller,  
Amy Wigmore and  
Mark Selwyn



Wilmer repelled X2Y Attenuators LLC's bid to persuade the ITC to issue an exclusion order barring the importation of the microprocessors that account for the vast majority of Intel's \$53 billion in annual revenue. Though Lee was originally set to handle the matter for Intel, partner James Quarles took over first chair duties at the August 2012 trial when the Apple case before Judge Koh ran long. The ITC found no infringement in February 2013. (X2Y's appeal was pending at press time.)

At the U.S. Supreme Court in May, meanwhile, Wilmer secured an important 9-0 victory for Monsanto Company affirming a lower court's ruling that an Indiana farmer had infringed the company's patent on genetically altered, herbicide-resistant soybeans. Monsanto general counsel David Snively says he could have hired virtually any lawyer he wanted to handle the case,

but chose Wilmer partner and former U.S. Solicitor General Seth Waxman because of his skill and experience at the Supreme Court. "It was my No. 1 priority to get this right" once cert was granted, Snively says. Writing for the unanimous court, Justice Elena Kagan rejected the farmer's argument that he had the right to plant the beans under the "patent exhaustion" doctrine.

In yet another notable matter, this one for Pfizer Inc., Lee and partners William McElwain and Amy Wigmore scored a \$2.15 billion settlement with generic drug companies Teva Pharmaceuticals Industries Ltd. and Sun Pharmaceuticals Industries Limited related to their at-risk launches of low-cost versions of blockbuster acid reflux drug Protonix. The deal was announced in June 2013 as trial got under way to determine how much the generics owed Pfizer in damages. ■