

THE AMERICAN LAWYER

JANUARY 2008

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ALM

SPECIAL
ISSUE

LITIGATION INTELLECTUAL PROPERTY WINNER

WilmerHale

LITIGATION DEPARTMENT of the YEAR



THIS IS THE FOURTH TIME we've chosen a Litigation Department of the Year, a now biennial undertaking that has acquired a life of its own. We invited the Am Law 200 firms to compete for the overall title as well as laurels in one of three specialties: Intellectual Property, Labor and Employment, and Product Liability.

We asked the firms to report on their litigation records between January 1, 2006, and June 30, 2007. Specifically, we asked for no more than five examples of "significant achievements" in six categories, ranging from pretrial work to appellate to pro bono. The responses filled two dozen crates and have occupied most of our waking hours since the August 1 deadline.

We read them all, the clear and the confusing, the witty and the turgid. We whittled down the entries to a short list of finalists and then invited each to come to New York to plead their case. Oral argument, as it were, helped some firms. Others should have stayed home. Also, once again, we asked for client references. Note to law firms: Next time, check to make sure these folks actually think as highly of your work as you believe they do.

In the end, our four panels of judges concluded that we were most akin to admissions committees at very select colleges: At a certain point, you get used to rejecting high school valedictorians. This was a remarkably close competition. In our special report we present the four winners, the runners-up, and, in the Department of the Year contest, 18 more who merited special attention. Congratulations! And let the appeals begin.

—ARIC PRESS



An All-Around Champion

The Supreme Court? Got it covered. District courts and the Federal Circuit?

No problem. The ITC and international arbitration? Done that. WilmerHale thrives at every level of the justice system—and it's not just Bill Lee's show.

By Xenia P. Kobylarz

THREE YEARS AGO, when William Lee successfully pushed for his Boston-based firm, Hale and Dorr, to merge with Washington, D.C.'s Wilmer, Cutler & Pickering, he had already peeked into the future of IP litigation. What he saw was convergence: techno-speak for the coming together of distinct technologies into one product, as typified by the latest cell phone. The parallel in IP litigation? A law firm prepared to represent a client in multiple jurisdictions and at all levels of the justice system with consistently good results. In short, Lee divined, an IP litigation department should not be a one-man band, but rather a well-tuned orchestra.

Since then, Wilmer Cutler Pickering Hale and Dorr has been blessed with one opportunity after another to showcase just what a well-rounded, full-service, powerhouse IP litigation group can accomplish. In the last year the firm handled two U.S. Supreme Court cases and 17 Federal Circuit appeals, ten jury trials, ten U.S. International Trade Commission investigations, and two major international patent arbitrations. The firm's masterful handling of these cases has sealed its reputation as a preeminent department in all stages of IP litigation—and made it clear that it's no longer just Bill Lee's show.

WilmerHale got the rare opportunity to show off the full scale of its IP litigation capability with a new client: Broadcom Corporation. The semiconductor chip manufacturer decided to break into the wireless chip market and in 2005 hired the firm to launch an unprecedented and ambitious patent litigation assault against the industry's largest patent gatekeeper, Qualcomm Incorporated. Lee had been lead counsel in a patent case that Broadcom IP counsel Matthew DelGiorno had been involved with while working previously at Finnegan, Henderson, Farabow, Garrett & Dunner. "We really wanted

Bill Lee," DelGiorno says.

The project started with Broadcom filing two patent infringement suits in federal district court and an ITC complaint against Qualcomm. It then mushroomed when Qualcomm lobbed trade-secret theft and patent infringement allegations against Broadcom in four additional suits.

Most companies would have divided the work among several law firms, as Qualcomm did when it hired lawyers at four different firms to handle the cases. Broadcom, however, decided to stick with Lee and his IP group at WilmerHale for all of the litigation. "Not all law firms can do it, but they have a very deep bench of talented people," says DelGiorno. Eventually, more than 100 of WilmerHale's 144 IP attorneys, including a dozen partners, became part of the Broadcom effort.

The group delivered to Broadcom a decisive triple-crown victory, winning not only in the ITC but in both California federal courts against Qualcomm ["Under Siege," December 2007]. Qualcomm is appealing all three cases, but DelGiorno says WilmerHale's well-executed wins have already done damage to Qualcomm's reputation as a licensing juggernaut. "Qualcomm publicly said they've never [previously] lost a case," DelGiorno says. "That shine has come off."

But the Broadcom cases are just part of why WilmerHale won the top honors this year. Lee, as well as partners William McElwain and Amy Kreiger Wigmore, also successfully defeated a generic challenge to client GlaxoSmithKline plc's multibillion-dollar drug Requip, a leading Parkinson's disease medication. After a bench trial in Delaware, U.S. district court judge Gregory Sleet issued a rare oral ruling advising Teva Pharmaceutical Industries Ltd. that the case was not a close call, and that it was "time to

put this one out of its misery." Teva subsequently dropped the suit. In another Glaxo case, Lee obtained a summary judgment ruling that ended Ranbaxy Laboratories Ltd.'s challenge to the patent on Valtrex, a herpes treatment with over \$1 billion in annual sales.

WilmerHale also won several significant IP cases without Lee on the roster. For client STMicroelectronics N.V., James Quarles III vanquished a formidable opponent at the ITC—SanDisk Corporation, a data storage company that has successfully licensed its more than 700 patents covering so-called NAND flash memory products. And partner Mark Matuschak won a pair of tough cases at trial. A veteran patent, trademark, and trade dress attorney, Matuschak had the distinction of obtaining the first jury verdict of patent invalidity from the plaintiffs-friendly district of the Eastern District of Texas in 2006. Oracle Corporation's subsidiary Hyperion Solutions Corporation sued Matuschak's client, OutlookSoft Corporation, for infringement of two financial software patents. The company was demanding \$150

PRACTICE GROUP SIZE Partners: **58**
Associates: **63**
Of Counsel: **23**

PRACTICE GROUP AS PERCENT OF FIRM Partners: **18%**
Associates: **15%**
Of Counsel: **9%**

ESTIMATED PERCENT OF FIRM REVENUE 2007 **13%**

ON THE DOCKET Representing Abbott Laboratories in a suit brought by Johnson & Johnson subsidiary Centocor over Abbott's billion-dollar biotech drug, Humira; gearing up for another trial, this time in California, to enforce Honda's court-validated engine trade dress.



million in damages. His other trial was for American Honda Motor Co., Inc., in August in the Northern District of Mississippi. Three car engine makers based in the state were accused by Honda of infringing its trade dress on Honda Civic GX series engines. (The three had filed a declaratory judgment against Honda.) Honda hired Matuschak a month before trial. It's usually difficult to prove infringement of trade dress, which protects the look of a product—even more so for a car engine. But after a six-day trial, the jury delivered a \$30 million verdict for Honda.

The firm's appellate practice landed more than its share of high-profile cases. Its marquee lawyer, former solicitor general Seth Waxman, was on the losing side of two major patent cases before the high court, *eBay v. MercExchange* and *Microsoft v. AT&T*, but

his selection by both MercExchange LLC and AT&T Inc. speaks volumes. It's an achievement, Waxman quips, any time Justice John Paul Stevens is persuaded to write a dissent in support of a patent holder, as he did in the AT&T case. Waxman, who claims to be a patent law novice, has so far argued seven patent cases at the Federal Circuit in the last three years. He's won five of them, lost one, and is awaiting a ruling in TiVo Inc.'s fight to hold on to a \$94-million jury verdict against EchoStar Communications Corporation. Waxman's group attracts at least a third of the firm's IP clients, according to Lee.

Rounding out WilmerHale's achievement are two big arbitration wins. Partner Mark Flanagan won a \$134 million award for InterDigital, Inc. a cell phone chip design company in King

**From left:
Seth Waxman,
Amy Wigmore,
Mark Matuschak,
Donald Steinberg,
William Lee**

of Prussia, Pennsylvania, against Samsung Electronics Co., Ltd., at the International Chamber of Commerce. Partners Gary Born and David Ogden also used an international arbitration on behalf of two Royal Dutch Shell subsidiaries to overturn a Nicaraguan court order expropriating Shell's intellectual property to satisfy an unrelated \$489 million civil judgment. Under pressure from WilmerHale's investor state arbitration, the Nicaraguan courts and administrative agencies terminated Nicaragua's wrongful seizure of all Shell trademarks and logos in the country. Lee is just fine with sharing the limelight. "I could really get used to this," he says.

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GROOMING AND MAKEUP BY MARTHA FRIEDLANDER

WilmerHale

When it's good, it's very, very good. Wilmer Cutler Pickering Hale and Dorr is known for its leading practices in IP [see "An All-Around Champion"], appeals, international arbitration, and internal investigation. In each area, 2006 and 2007 were standout years.

The firm's white-collar achievements included a deal for The Purdue Frederic Company, Inc., in the OxyContin criminal investigation, and a global civil and criminal settlement for The Boeing Company in its military contracts dispute with the U.S. government. WilmerHale lawyers also represented former senator Bill Frist and congressman Jim Kolbe in congressional investigations; *The Washington Post* and its reporters in the Valerie Plame case; and former Westar Energy, Inc., executive Douglas Lake in the appellate reversal of his conviction.

WilmerHale advised clients in more than 75 international arbitrations, most of them disputes of more than \$100 million. For InterDigital, Inc., for instance, WilmerHale won a \$134 million award against Samsung Electronics Co., Ltd., from an International Chamber of Commerce tribunal. On the defense side, WilmerHale won the dismissal of key claims against its client, a European oil and gas company, in a \$2 billion case before a United Nations commercial arbitration panel.

On appeal, WilmerHale lawyers reversed a \$966 million judgment against several insurers in the Fuller-Austin Insulation Company bankruptcy. They also persuaded the Ninth Circuit to vacate an injunction against the California Pistachio Commission in a First Amendment case. Led by former solicitor general Seth Waxman, WilmerHale argued five cases in the U.S. Supreme Court during the 2006 term. ■

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