

Litigation Powerhouse: WilmerHale

By Y. Peter Kang

Law360, Los Angeles (August 19, 2016, 10:02 PM ET) -- Adding to its long-running track record of success in high-stakes litigation, WilmerHale locked down major litigation victories over the past year for a number of high-profile clients including Apple, Intel and Ford, earning it a spot among Law360's Litigation Powerhouses.

The firm's 371-attorney litigation practice, which has 102 partners, punches well above its weight compared with its larger rivals. In the past year, the firm has racked up a number of notable wins in various stages of litigation, which attests to its ability to work collaboratively in covering multiple areas of the law, says Howard Shapiro, chairman of WilmerHale's litigation and controversy department.

"We work very well across the firm and across practices. It's a firmwide approach that emphasizes collegiality and working with teams," Shapiro said. "What we're offering the client is the best combination of skills and experiences to solve each problem."

This all-hands-on-deck approach is embedded in WilmerHale's firm culture, Shapiro said, and allows it to attack any given litigation matter from a position of strength.



Wilmer Cutler Pickering Hale and Dorr

Litigation Attorneys: 371

Litigation Partners: 102

Big Wins:

Core Wireless Licensing v. Apple – WilmerHale won a jury verdict finding that Apple didn't infringe five Core Wireless patents related to modern cellular network standards in a suit seeking more than \$100 million in damages.

Kimble v. Marvel Enterprises Inc. – The firm secured a victory for Disney unit Marvel at the Supreme Court in a dispute over patent royalties for a Spider-Man toy called the Web Blaster. The justices left intact a 50-year-old rule barring royalty agreements that continue after a patent expires.

TVIIM LLC v. McAfee Inc. – WilmerHale helped Intel subsidiary McAfee beat a patent infringement suit brought by nonpracticing entity TVIIM as a jury rendered a verdict of noninfringement and invalidated all claims of TVIIM's computer security patent.

Academy of Motion Pictures Arts and Sciences v. GoDaddy.com –

Following a bench trial, a California federal judge nixed a \$29 million claim, ruling that the academy failed to prove that the domain registrar had acted with a bad-faith intent to profit off its marks.

Eagle Harbor Holdings LLC v. Ford Motor Co. – WilmerHale helped Ford beat a \$275 million suit, the automaker's biggest patent case ever, when a jury said Ford did not infringe four electric systems patents asserted by tech company Eagle Harbor.

Trial Tip: "Put yourself in the shoes of the other party as much as you can, thinking about the issues from their perspective. That will help you avoid the danger of relying only on your own arguments and, as the saying goes, drinking the Kool-Aid." — Joe Mueller, partner

“That’s very much in the client’s interest: to assemble the strongest team in each stage of litigation, in whatever combination of people, talents and experiences will be most successful,” he said.

Partner Joe Mueller, one of the firm’s top intellectual property litigators, said this ethos has fueled the development of WilmerHale’s litigation group in recent years, bridging the firm’s cornerstone practices of IP litigation, commercial litigation, criminal litigation, and government and regulatory litigation.

“What really distinguishes us and drives growth is our ability to work on an interdisciplinary basis across all these practices,” Mueller said. “Our most important cases don’t involve just one set of issues but a varied set of issues. We really thrive on working with our colleagues across practice groups to develop an interdisciplinary strategy approaching a common set of goals using different tools from different areas of the law.”

Mueller led a WilmerHale litigation team that pulled off a successful trial defense for client Apple Inc. in March 2015 by convincing a Texas federal jury that the tech giant didn’t infringe five Core Wireless patents related to modern cellular network standards, in a suit seeking more than \$100 million in damages.

Although Core Wireless had originally accused Apple of infringing 14 patents, Mueller and his team were able to expose the weaknesses of several of the patents and whittled down the claims to a lean five patents before the trial began. The Eastern District of Texas jury spent less than a day in returning a verdict wholly in Apple’s favor, while U.S. District Judge Rodney Gilstrap denied Core Wireless’ contract and unjust enrichment claims.

One key to their success, Mueller said, was breaking down complex technological terms and facts into a framework that made them more palatable to the jury.

“You have to understand the science and convey it in a truthful and clear way, fitting those facts in a larger narrative to capture their attention and imagination [and] to move the jury on an emotional level,” he said. “To distill those facts in a narrative is difficult, but I think we do a good job of it.”

Taking a similar approach, Mueller was also able to lead his firm to victory in a patent infringement dispute lodged against McAfee Inc., a unit of longtime WilmerHale client Intel Inc., by nonpracticing entity TVIIM LLC.

In July 2015, a California federal jury returned a verdict of noninfringement and invalidated all claims of TVIIM’s computer security patent, allowing McAfee to duck claims of \$13 million in damages. In January, TVIIM failed in its bid for a new trial.

Mueller said the key was convincing the jury that the computer code underlying McAfee’s popular antivirus and internet security software products differed from the claims asserted in TVIIM’s patent.

“We wanted to cut through the distractions, letting the jurors focus on the truth of the code and how it actually worked,” he said. “We believed that if they did, they would understand that the software and the code were fundamentally different from the patent at issue in that case.”

Mark Selwyn, co-chair of WilmerHale’s IP litigation practice, said trial experience gleaned by WilmerHale attorneys in cases such as those mentioned above translates into the firm having an incredible depth of first-chair trial experience, allowing it to draw from a pool of courtroom knowledge in any given case.

“That kind of trial experience informs everything that we do, from the pre-filing due diligence to pre-trial motions to the trial itself,” he said. “Having that trial skill and being steeped in it, up and down, is one of the keys to our success.”

One major victory Selwyn highlighted came in March 2015, when a federal jury in Washington state cleared Ford Motor Co. in a \$275 million patent infringement suit brought by technology company Eagle Harbor Holdings LLC, the largest patent case the automaker had ever faced.

Led by Law360 Icon of IP and WilmerHale partner Bill Lee, the firm was able to convince the jury that Ford didn’t infringe four Eagle Harbor electric systems patents and that Eagle Harbor misappropriated Ford’s trade secrets.

Selwyn said the Ford case was notable since it was an across-the-board victory in high-stakes litigation in which Eagle Harbor originally sought \$750 million in damages.

“It was a very great success,” Selwyn said. “The result was really outstanding for the client and our team.”

Mueller gives credit to the firm’s “absolutely superb” appellate practice for not only preserving wins and reversing losses, but providing key insights while any given trial is underway.

“Our appellate lawyers will attend trials and help spot issues that will be significant on appeals,” he said. “We work hand in hand. We have trial attorneys with appellate expertise that know that you have to create a record that won’t just win the day at trial but survive long term on appeal. While we’re trying the case for a jury, we’re thinking prospectively to an appeal and doing our best to have our case survive appellate scrutiny.”

In terms of litigating appeals, Mueller said, “We’re as good as it gets.”

That expertise was evident in June 2015 when WilmerHale secured a victory for Walt Disney Co. unit Marvel Entertainment LLC in a dispute over patent royalties for a Spider-Man toy. The U.S. Supreme Court decided to leave intact a 50-year-old rule barring royalty agreements that continue after a patent expires.

Led by former U.S. Solicitor General Seth Waxman, WilmerHale’s appellate practice has more wins at the Federal Circuit than any other firm so far this year, according to Selwyn.

“What makes our practice impressive is the number of defense lawyers we have arguing at the Federal Circuit, year in, year out,” Selwyn said. “It’s not just one or two lawyers, it’s 10 to 15 lawyers at the Federal Circuit, located at every office in the U.S. We are able to bring real depth of experience and bench strength across the country to our cases.”

Although well known for its continuing success in IP litigation and top-notch appellate practice — a legacy of the specialties of predecessor firms Wilmer Cutler & Pickering and Hale and Dorr, which merged in 2004 — the firm’s litigation group is seeing the biggest uptick in complex litigation arising out of matters involving regulatory issues or government enforcement, Shapiro said.

“We bring a depth of regulatory expertise and experience in government-facing litigation, which is one of our distinguishing features,” Shapiro said. “When you combine that with the unparalleled expertise in the IP litigation team, it’s a forceful combination.”

In late June, led by partner Randall Lee, WilmerHale won a case brought by the U.S. Securities and Exchange Commission accusing two executives at mortgage lender TMST Inc. of hiding \$428 million in losses. After a three-week trial, the jury unanimously cleared TMST CEO Larry A. Goldstone and CFO Clarence G. Simmons III on five counts and deadlocked on five other counts.

That victory is just the latest in a string of cases the firm has taken to trial against the SEC in the last few years with nearly complete success, Shapiro said.

Matt Martens, a partner in WilmerHale's securities litigation and enforcement group and former chief litigation counsel for the SEC's Division of Enforcement, said WilmerHale focuses on bringing in attorneys with government experience.

"It's very much the culture of the firm to have a lot of folks who have government service," he said. "A lot of times that's when you have the best opportunities as a young lawyer to get litigation experience."

Through that government experience, one is able to see nuances in the law in a particular area, Martens said.

"As a result, we have an ability to identify weaknesses and take advantage of them," he said.

The former top SEC litigator said that at WilmerHale, partners are committed to helping younger attorneys gain "on-their-feet" experience, which is critical to the firm's future.

"There is a constant emphasis in developing the next generation and pushing that experience down [the ranks]," Martens said. "We don't just have a few good people at the top, we have depth across the spectrum — even if a person isn't a first chair, they have a lot of experience because of a concerted effort to develop the next generation."

--Additional reporting by Matthew Bultman, Ryan Davis, Bonnie Eslinger and Jody Godoy. Editing by Mark Lebetkin and Philip Shea.