

# THE AMERICAN LAWYER

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## Litigation Department OF THE Year



WILMERHALE



**WHEN WE STARTED** our Litigation Department of the Year competition ten years ago, we weren't sure if it would catch on. We knew we were asking a lot from firms—requiring them to sift through their litigation matters, choose the best results, and summarize complex cases succinctly. But a decade later, here we are presenting the results of our sixth biennial competition.

As usual, the task of picking winners and finalists involved some excruciating decisions. The submissions—which covered the two-year period ending July 31, 2011—were impressive, and stand as a testament to the excellent work done by the firms of The Am Law 200.

For the first time since we started this project, we changed the format for all four competition categories: general litigation, product liability, labor and employment, and intellectual property. We gave firms more flexibility to select the cases they wanted to present, and we asked each firm to submit an essay on why it should be a finalist. We also invited firms to nominate a partner as Litigator of the Year.

After months of reading, vetting, and interviewing, we arrived at four law firm winners, 11 runners-up, and 14 honorable mentions. We also chose three lawyers for Litigator of the Year, and five as finalists. Congratulations to all of these firms and individuals, and our thanks and appreciation to all the firms that participated in the 2012 contest.

PHOTOGRAPHY BY MIKE MCGREGOR

## Winning Combination

Born of a 2004 merger, **WILMERHALE** is invariably on the short list for big-ticket IP cases—especially ones likely to go to the US Supreme Court.

By **ROSS TODD**

**L**ITIGATORS RARELY GET TO REVERSE their biggest loss. Rarer still is the chance to overturn the biggest patent damages award in history. A February 2011 ruling by the US Court of Appeals for the Federal Circuit allowed WilmerHale Partner William Lee to do both.

The ruling came about a year and a half after a federal jury in Marshall, Texas, found that Humira, a major arthritis drug made by WilmerHale client Abbott Laboratories, infringed a patent issued to Johnson & Johnson's Centocor Ortho Biotech, Inc., and New York University. The verdict included a \$1.67 billion damages award against Abbott. Says Lee: "Happily you don't lose cases of this magnitude very often. If you do, then you don't have them to lose." Abbott rejected his offer to bring in another firm for the appeal—a decision that paid off when the Federal Circuit found the patent claims at issue invalid due to insufficient written description.

WilmerHale lawyers are such Federal Circuit fixtures that in one week during the period covered by our Litigation Department of the Year contest, Lee and former U.S. solicitor general Seth Waxman argued two appeals apiece. Twelve other WilmerHale lawyers also appeared before the court over the contest period, scoring wins for TiVo Inc., Intel Corporation, and U.S. Philips Corporation along the way.



**FROM LEFT:**  
 William Lee,  
 Michael Summersgill,  
 Lisa Pirozzolo,  
 Seth Waxman,  
 Mark Selwyn

Since teaming up in a 2004 merger, Harvard University alums Lee, 61, and Waxman, 60, have worked to meld the appellate bonafides of DC's Wilmer Cutler Pickering (Waxman's premerger home) with the IP litigation prowess of Boston's Hale and Dorr (Lee's). Seven years on, WilmerHale is invariably on the short list for big-ticket IP cases, especially those likely to go to the US Supreme Court. Now, says Waxman, "the most important thing for the two of us as aging warriors is to make sure that when we leave, the practice will be even stronger."

They appear to be succeeding at that as well, with their alma mater indirectly helping the cause. The case in question pitted WilmerHale and Waxman client Roche Molecular Systems, Inc., against Stanford University—and, broadly, industry against academia—at the Supreme Court in a dispute over patent rights to an important AIDS test. WilmerHale's task: to argue for upholding patent law precedent, specifically that an inventor of record retains his right to a patent even if federal funds helped fuel the research behind the invention. When Harvard joined an *amicus* brief opposing Roche, Waxman,

then president of the college's Board of Overseers, asked Roche's in-house team to let WilmerHale Partner Mark Fleming, 38, take over. Says Waxman: "To [Roche's] undying credit, [the] general counsel said, 'I still remember the time when I was a young lawyer and somebody gave me the opportunity to do something really big.'" Fleming won a 7-to-2 decision that marked the Court's first affirmation of a Federal Circuit ruling over the solicitor general's opposition.

On the trial front, Lee and Partner Amy Wigmore went before a jury in a dispute involving a drug patent held by Wyeth (now part of Pfizer Inc.). In the case, WilmerHale sued generic drugmakers on Wyeth's behalf in Federal District court in Newark over their versions of gastric acid-disorder treatment Protonix. The jury found the patent valid in April 2010, and the generics now face a possible trial on damages tied to Wyeth's lost sales. Given that Protonix brings in about \$2 billion in annual domestic revenue, Lee could be on the right side of a ten-figure damages award this time around.

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<b>Practice Group Size</b>	<i>Partners:</i> 67 <i>Associates:</i> 47 <i>Counsel:</i> 28
<b>Practice Group as Percent of Firm</b>	13%
<b>Percent of Firm Revenue 2010</b>	10%