

Technology Group Of The Year: WilmerHale

By Sarah Martinson

Law360 (March 8, 2023, 2:02 PM EST) -- WilmerHale beat a \$2.75 billion judgment against Cisco on appeal, defeated antitrust claims against Meta in the Ninth Circuit and reached a multimillion-dollar settlement between Intuit and 50 states, earning the firm a spot among Law360's 2022 Technology Groups of the Year.

The international firm's technology practice spans offices worldwide and has about 300 attorneys, including many practitioners with scientific and technical degrees, according to WilmerHale.

WilmerHale's technology group leaders told Law360 that what sets their technology practice apart from other firms is their attorneys' technical expertise and the number of legal areas they cover, including litigation, corporate transactions, intellectual property and regulations.

"The depth and breadth of the practice allows us to be full service for major and emerging technology companies," said Jamie Gorelick, a WilmerHale partner and chair of its regulatory and government affairs department. She is also co-chair of the firm's crisis management and strategic response group.

One of the technology practice's major victories in 2022 was getting a \$2.75 billion patent infringement judgment against tech giant Cisco Systems Inc. tossed by the Federal Circuit over a stock ownership conflict in late June.

In February 2018, cybersecurity company Centripetal Networks Inc. sued Cisco in Virginia federal court for allegedly infringing several of its network security patents, leading to a 23-day bench trial via Zoom in May and June 2020.

Before now-deceased U.S. District Judge Henry C. Morgan Jr. issued his decision in the case, Cisco sought his recusal over his wife's ownership of stock in the company, but the judge denied its request and had the stock put in a blind trust.

In October 2020, Judge Morgan hit Cisco with one of the largest patent judgments in U.S. history, finding that the company had willfully infringed four of Centripetal's network security patents.



WilmerHale challenged the judgment at the Federal Circuit, and the appeal courts axed the ruling, finding that Judge Morgan should have recused himself after he learned of his wife's Cisco stock ownership.

Centripetal asked the U.S. Supreme Court to review the circuit court's decision, arguing that any conflict of interest was resolved by placing the Cisco stock in a blind trust, but the justices rejected the request in December.

WilmerHale partner Mark Fleming told Law360 in an email that the Federal Circuit ruling offers critical guidance about how financial interests should be handled in the middle of a case.

"As the court explained, the short answer is that a judge should divest or recuse, and a blind trust does not qualify as divestiture," Fleming said.

Another victory for WilmerHale came when the Ninth Circuit upheld a lower court's dismissal of antitrust claims against Meta Platforms Inc., formerly Facebook Inc., over its acquisitions of Instagram and WhatsApp.

In January 2020, a group of technology companies launched a proposed class action against Facebook in California federal court, alleging the social media giant intentionally set out to destroy app developers it deemed as potential rivals in a "brazen" anti-competitive scheme.

A few months later, U.S. District Judge Beth Labson Freeman tossed the suit, finding that the companies missed the deadline to file their claims, but left the door open for them to refile their complaint. The app developers hit Facebook with a revised suit a month later, only to have Judge Freeman again dismiss their claims in April 2021 for being too old.

The companies asked the Ninth Circuit to revive their suit, arguing Facebook successfully concealed the reason for cutting off access to its network for years.

In February 2022, the circuit court refused to revive the app developers' antitrust claims, determining that Facebook had no legal obligation to explain its business decisions and the developers couldn't trace their injuries to the company.

"This was an important case that stands for the principles that challenges to long-consummated mergers must be brought in a timely fashion or not at all," WilmerHale partner Sonal Mehta told Law360 in an email.

WilmerHale also helped financial software provider Intuit Inc. secure two victories in 2022 over the company's marketing of its TurboTax as a free tax-filing service.

Last March, the Federal Trade Commission sued Intuit in a California federal court, seeking to block Intuit in the middle of tax season from marketing its TurboTax software as free.

The following month, U.S. District Judge Charles R. Breyer held a hearing where he voiced skepticism about Intuit's ads being deceptive before denying the FTC's request to block the ads the next day.

In May, Intuit, with the help of WilmerHale, struck a \$141 million settlement with all 50 states and the District of Columbia to end claims it duped people into paying for TurboTax when they qualified for free tax-filing services.

"We reached an agreement with the state [attorneys general] and resolved this matter to everyone's satisfaction," said Gorelick, the regulatory and government affairs department chair.

Other important work WilmerHale accomplished in 2022 included advising learning technology company Houghton Mifflin Harcourt on a \$2.8 billion go-private deal and counseling Facebook on congressional inquiries into the Jan. 6, 2021, attack at the U.S. Capitol.

"We have developed a reputation of being able to try in courts across the country and the [U.S. International Trade Commission] some of the most complex technologies," said WilmerHale partner and intellectual property litigation practice co-chair Mark Selwyn. "And that's a skill that only comes over time of being able to take really difficult concepts and to explain them in a way that is relatable to people that do not have a technical background."

--Editing by Daniel King.