



INTELLECTUAL PROPERTY

Top Lawyers 2023



MARK SELWYN

WILMERHALE | PALO ALTO

Litigation

As co-chair of WilmerHale's intellectual property litigation group, Mark D. Selwyn has established a globe-spanning reputation for his work defending standard essential patent cases.

"One of the things that we've observed and has certainly been a characteristic of my practice is the growing globalization of IP disputes and the importance of having a global IP strategy, especially in areas

where the technology is one that does not stop at the border," the Palo Alto-based attorney said.

A prime example of this global strategy in action is Selwyn's work leading Apple Inc. in patent litigation against telecommunications firm Ericsson, which settled in December. The litigation involved cases in locations including Brazil, Colombia, Belgium, Germany, the Netherlands, the U.K. and the U.S.

"That was a case that was to determine a FRAND licensing rate for the parties' global standard essential patent portfolios and was really one of the first jury cases of its kind in the U.S.," Selwyn said.

He is also leading Apple's litigation against Masimo Corp in a high-profile federal case in the Central District of California concerning Apple Watch technology. The case ended in a mistrial last week, with a retrial to come.

Selwyn represented Apple, Cisco Systems Inc. and Intel Corporation in a challenge under the Adminis-

trative Procedure Act regarding the "NHK-Fintiv Rule" precluding an inter partes review (IPR) when parallel district court litigation exists.

"We challenged that rule as unlawful and asked that it be revoked under the Administrative Procedure Act, so that couldn't be used as a basis for [the Patent Trial and Appeal Board] to be denying institution of meritorious IPR petitions," he said.

Selwyn led the plaintiffs to a federal circuit reversal of Northern District Judge Edward J. Davila's dismissal of the case, which remains ongoing.

"Law and technology is constantly evolving," he said of his work in IP litigation. "Put those two together and there is enormous opportunity for creativity and innovation. It requires you to be constantly studying, learning and thinking in a proactive way."

—Skyler Romero