

Litigators of the Week: A Complete Non-Infringement Scorecard For Intel and Wilmer in Round 2 with VLSI

Wilmer's William "Bill" Lee, Mary "Mindy" Sooter, and Joseph Mueller convinced a Waco, Texas jury that Intel didn't infringe two microprocessor patents. The win comes a month-and-a-half after Intel was hit with a \$2.175 billion damages verdict in the same courtroom.

By Ross Todd
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Down in Waco, Texas, the patent litigation equivalent of Ali-Frazier has been unfolding over the past couple of months.

In early March, a jury in U.S. District Judge Alan Albright's courtroom hit Intel with a **\$2.175 billion patent infringement verdict**—a huge win for VLSI Technology LLC that netted their lawyers at **Irell & Manella Litigator of the Week honors**.

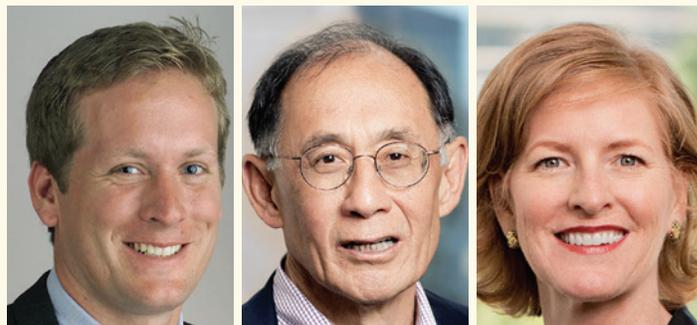
This week back in the same courtroom against the same opponent and law firm, Intel's defense lawyers at **Wilmer Cutler Pickering Hale and Dorr** scored a very different result in a case where VLSI was seeking \$3 billion. After about a day and a half of deliberations, a separate Waco jury found Wednesday that Intel **did not infringe** any of the asserted claims of two VLSI microprocessor patents in the second round.

With that result, Wilmer's **William "Bill" Lee**, **Mary "Mindy" Sooter**, and **Joseph Mueller** take possession of the Litigator of the Week championship belt. The parties have another trial scheduled before Albright this summer. (Boxing had its "Thrilla in Manila." Will patent litigation have a "KO in Waco"?)

Lit Daily: Who was your client and what was at stake?

Bill Lee: We represented Intel. The trial was one case in a global war between Intel and the model of hedge fund backed non-practicing entities. VLSI is a two-person company which was formed and is managed by the large hedge fund Fortress. Fortress, in turn, is owned by the Japanese conglomerate Soft-Bank. Fortress negotiated the purchase of older patents from NXP, and formed VLSI to acquire the patents. VLSI then sued Intel. VLSI has no other business than suing Intel.

The war is now being fought in California, Delaware, West Texas and China, where VLSI has asserted more than 23 different patents. In each case, VLSI claims enormous amounts of damages. Intel has responded by filing an antitrust case in



Courtesy Photos

L-R: Joseph J. Mueller, William "Bill" Lee, and Mary "Mindy" V. Sooter of Wilmer Cutler Pickering Hale and Dorr.

California, a contractual claim in the Delaware Chancery Court and multiple IPR petitions at the Patent Office.

What's the story of the patents that underlie this case?

Mindy Sooter: The two patents involved in this trial resulted from work done around 2000 at SigmaTel. The named inventors were working on chips for use in devices such as a MP3 player. The work resulted in chips that Apple used in its first-generation iPods; those SigmaTel chips were, as a result, quite successful. Apple decided to use a different chip for its next generation iPod and SigmaTel struggled financially. SigmaTel was eventually acquired by Freescale which was then acquired by NXP. After the initial products, little was done with the patents and they sat on the shelf until Fortress negotiated their sale in 2019.

Who all was on your team and how did you divvy up the work?

Joe Mueller: Bill, Mindy, and I were among the members of the in-court trial team. We were joined by **Jim Wren**, the Leon Jaworski Professor of Trial Practice at **Baylor Law School**; **Gil Gillam** of **Gillam & Smith**; and **Steve Ravel** of **Kelly Hart**—all fantastic trial lawyers. The trial team,

of course, had the support of a wonderful team that did critical and tireless work. The “on the ground” team in Waco included many lawyers and staff from WilmerHale. Among the senior lawyers in Waco were **Arthur Coviello, Felicia Ellsworth, Lauren Fletcher, Jordan Hirsch, Greg Lantier, Dominic Massa, Chip O’Neill, Kate Saxton, Josh Stern, Louis Tompros, and Calvin Walden.**

What is the feeling like for a litigation team who gets hit with a \$2-plus billion verdict who has to come back into the same courtroom to defend the same client against the same plaintiff on such a short turnaround?

Mueller: We did not have time to agonize about the first verdict—we had lots of work to do. We had to turn our attention to post-trial briefing immediately. In that same time period, we had summary judgment and Daubert hearings for the second case. And, of course, we needed to prepare our strategy for the second trial—including deciding how to pick a jury in the face of a prior verdict in a relatively small venue. It was an around-the-clock effort.

I’ve heard that your team took a different approach from the first trial by waiting until the end of the case to note that VLSI didn’t use the patents in any products. Was that change intentional?

Sooter: This was less an intentional decision than it was the result of Judge Albright’s rulings and VLSI’s decision not to have anyone testify in court. Judge Albright precluded us from discussing Fortress or its involvement in any way. We actually discussed in the opening and elicited through cross examination the facts that VLSI does not conduct research, does not make products, does not sell products and has no patents of its own. But, without a VLSI representative in the courtroom, there was not much else to do until the closing.

Bill, you began your closing argument by saying you’d lost track of the number of people your opponent had called a liar in his closing. And then you didn’t call out the credibility of any of their witnesses. What was the strategy behind that decision?

Lee: It was less strategy and more truth. My experience in cases such as these is that most fact witnesses are doing their best to tell the truth, as they remember it. That was true of the named inventors in this case and that was true of the Intel engineers who testified in person and by deposition. We were able to marry the testimony of the fact witnesses presented by both sides. As I said in our closing, we did not need to call folks liars to win.

What was the jury makeup compared to the previous trial?

Mueller: The jury was definitely different. We had four women and three men. Several had some college education,

and one had a master’s degree in a scientific discipline. The entire jury was incredibly attentive throughout the trial. Even at the end of the longest days, the jurors seemed to keep their focus and follow the evidence closely. **Morgan Chu** said in his closing argument that he thought this was one of the most dedicated juries he had ever seen, and we agree.

What has it been like trying two cases where the audio has been made publicly available? Do you get a lot of input from other lawyers who are listening in?

Lee: We have tried cases such as the Apple-Samsung cases or the **Harvard affirmative action case** where the proceedings were publicly available in overflow courtrooms. So, that aspect of the case was not terribly different. What was different was the attendance in the courtroom itself. Under the protocols adopted by Judge Albright and the parties, the courtroom itself was sparsely populated. We did receive advice from many observers, but I learned long ago to trust what the trial team was seeing in court.

The Irell team that you’re up against told me they took a bus tour of Waco and learned all about the houses that Chip and Joanna Gaines have built around town after their win. Have you had a chance to celebrate your defense victory in any way?

Sooter: We did enjoy our time in Waco, but we all went home. That was our celebration.

What will you remember most about handling this matter?

Lee: What the three of us will remember most actually is not the result of both trials. The trials occurred in the midst of a pandemic. For both Intel and the outside lawyers, we, of course, wanted to prevail. But, our highest priority was getting everyone to Waco and home healthy and well. We gave every member of the team the opportunity to stay home and support the trial team remotely. We emphasized that the health and safety of each of them and their families was paramount. Every single person came without hesitation. We took many precautions while there (daily antigen testing and PCR testing every three days, with a medic on staff full time) but it was nonetheless a situation of unknown risks and challenges. Notwithstanding all of this, the folks on the team worked tirelessly and well with incredible enthusiasm and energy. I will never forget what each of them did in the midst of a pandemic and will forever be grateful to them.

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