
Federal Circuit Reversed \$74M Judgment in Favor of Cisco

DECEMBER 31, 2015

On December 28, 2015, WilmerHale achieved a significant victory for Cisco Systems, when a panel of the Federal Circuit unanimously reversed a \$74 million judgment against Cisco after concluding that plaintiff Commil USA, LLC had failed to prove at trial that Cisco's products actually infringe Commil's patent. The case was on remand to the Federal Circuit after the Supreme Court's decision in *Commil USA, LLC v. Cisco Systems, Inc.*, 135 S. Ct. 1920 (2015).

In 2007, Commil sued Cisco for direct and induced infringement less than five months after acquiring the patent-in-suit from a venture capital fund. The case was twice tried to juries in the Eastern District of Texas, where Cisco was represented by other counsel. Cisco was found liable for direct infringement in the first trial, and Cisco was found liable for induced infringement at the second trial. The second jury awarded Commil nearly \$64 million in damages for inducement, and the district court entered a final judgment of \$74 million in 2011 after adding costs and interest.

WilmerHale was lead counsel for Cisco on its appeal, which Partner Bill Lee argued to a panel of the Federal Circuit in December 2012. The original panel unanimously agreed that Cisco was entitled to a new trial on induced infringement because of an error in the jury instructions. Commil sought rehearing by the en banc Federal Circuit, which was denied over the dissent of five judges who thought that a good-faith belief of invalidity could not serve as a defense to inducement. Commil then successfully petitioned for certiorari to the Supreme Court.

Partner Seth Waxman presented argument for Cisco at the Supreme Court in March 2015. The Supreme Court reaffirmed that a good-faith belief of *noninfringement* was a valid defense to inducement, but held that a good-faith belief of invalidity was not. The Supreme Court did not disturb the Federal Circuit's ruling that the jury had been given an erroneous instruction on inducement.

After WilmerHale, on behalf of Cisco, requested that the Federal Circuit address the noninfringement arguments that it had declined to address in the original appeal, the Federal Circuit issued its decision in favor of Cisco reversing the \$74 million judgment against it.

The WilmerHale team included [Bill Lee](#), [Seth Waxman](#), [Bill McElwain](#), [Mark Fleming](#), [Felicia Ellsworth](#) and [Eric Fletcher](#). Co-counsel included a team of lawyers from Simpson Thacher and

Bartlett LLP.