
ITC Decides in Favor of WilmerHale Client Philips Regarding Joint Licensing of CD-R/RW Technology Patents

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WilmerHale secured an important victory for US Philips Corporation, a US subsidiary of the Dutch technology company, before the International Trade Commission on remand from the firm's previous victory before the Federal Circuit. In a 108-page opinion, the Commission held that Philips' package licensing of its patents for recordable and rewritable compact disc technology, including joint licensing with two other companies, did not constitute patent misuse on any of various theories put forward by unlicensed manufacturers, a Commission administrative law judge, and the Commission's staff. As a result, the Commission issued a general exclusion order barring infringing discs from entering the US and cease and desist orders against the Taiwanese manufacturers and US importers that were the named respondents (whose discs had previously been held to infringe Philips' patents).

WilmerHale had previously won a victory for Philips at the Federal Circuit, reversing the ITC's initial determination that Philips' package and pool licenses improperly "tied" certain essential and supposedly non-essential patents. On remand, the Commission considered an array of alternative theories of misuse, including several variants of price fixing, price discrimination, and collusion, rejecting them all. The WilmerHale team representing Philips on remand included Doug Melamed, Bill Kolasky, Ed DuMont, Jonathan Cedarbaum, [Mike Esch](#), Ben Mizer, and Mike Spence.