

Technology Group Of The Year: WilmerHale

By **Bryan Koenig**

Law360, Washington (January 19, 2017, 2:31 PM EST) -- Online and over the air, WilmerHale's winning arguments in high-profile technology fights that included a far-reaching cyberspace copyright dispute and a patent lawsuit over basic functions that undergird everyday smartphone use have helped earn the firm a spot as one of Law360's 2016 Practice Groups of the Year.

Between October 2015 and October 2016, WilmerHale technology attorneys helped cement Google Inc.'s massive book scanning project as protected fair use that needn't compensate authors and achieved crucial — and unusual — reversals at the Federal Circuit on both sides of patent litigation preserving or winning tens or hundreds of millions of dollars for clients Cisco Systems Inc. and Apple Inc.

Driving that success, WilmerHale co-managing partner Susan W. Murley told Law360, is the huge team of lawyers who bring experience in government regulation, business and technology — some 120 have degrees in science, engineering or related fields. Teaming experienced trial and appellate attorneys with those possessing advanced science degrees readies the heavily tech-focused 1,000-strong firm to represent clients across a diverse array of legal issues, she said.

"Complex legal issues come to us," not matters that may be relegated to a single practice group or a single issue, she said. "It's usually much more of a labyrinth than that. So when we are representing a client on a piece of patent litigation, it's critical to have lawyers who have technical background and can actually understand this stuff."

Murley estimated that some 300 WilmerHale attorneys could be considered technology lawyers. They're spread across WilmerHale's 12 offices worldwide, and in several cases, technology drove the establishment of offices, particularly in HP Inc.'s hometown of Palo Alto, California.

One place that expertise played out was in an October 2015 ruling from the Second Circuit that handed Google a huge win by upholding a district court's ruling that scanning millions of copyrighted books without permission was legal under the doctrine of fair use. Coming more than a decade after the Authors Guild first sued over what would become Google Books, the appeals court's opinion by influential fair-use jurist and U.S. Circuit Judge Pierre Leval held that making the world's books text searchable — while not allowing users to read more than a snippet of text — was a transformative, and thus allowable, use of the author's content.



A year later, WilmerHale won a turnaround at the Federal Circuit when the full court reinstated a \$120 million jury verdict that client Apple achieved against Samsung Electronics Co. Ltd. in the rivals' smartphone patent war, ruling that an appeal panel in February had wrongly found that two of the patents were invalid and one was not infringed.

In a sharply worded 8-3 decision — only the original panel voted the other way — the full court granted en banc rehearing in October and issued a new decision without additional briefing or argument. It held that no more argument was needed to correct serious errors in the panel's decision, which wiped out the \$120 million in damages a jury ordered Samsung to pay for infringing three patents covering slide-to-unlock, autocorrect features and "quick links" technology.

"We made an argument that the manner in which the jury verdict was set aside was inconsistent with the appellate function of the court," lead counsel William "Bill" F. Lee told Law360. Lee pointed in particular to the chastisement the panel received for considering evidence not in the record.

Lee, a WilmerHale partner, also headed up the team that won a December 2015 Federal Circuit victory for Cisco against an infringement suit over a Commil USA LLC wireless networking patent. The panel again wiped out a \$74 million jury verdict against Cisco, citing a lack of evidence of infringement, after the U.S. Supreme Court ordered the circuit to reconsider an earlier decision — the Supreme Court's decision had been a win for Commil, but the high court only sent the case back to the Federal Circuit instead of mandating a new trial, something Lee noted doesn't happen very often.

The cases, Lee said, involve legal issues that are both important and at least somewhat novel.

"We have a reputation for being able to address new legal principles, to fashion arguments to urge new legal principles, and to have some success in having courts articulate new legal principles," he said.

Another important win for WilmerHale was an April 2016 victory against potentially billions of dollars in liability that client Intel Corp. faced in a suit brought by patent infringement entity Memory Integrity LLC. An Oregon federal judge held Intel protected by a covenant not to sue with Sanmina-SCI Corp., from whom Memory Integrity bought the asserted patents related to multiprocessor computer system memory that Intel and Sanmina had worked on.

The key to that win, WilmerHale partner Michael J. Summersgill said, was an aggressive and well-thought-out strategy that kept continuous pressure on the opposition. The case could have gone differently if not handled well, Summersgill told Law360, arguing that the covenant defense was far from obvious.

"We had to do a whole lot of digging," he said.

--Additional reporting by Bill Donahue, Ryan Davis and Matthew Bultman. Editing by Brian Baresch.