

## Technology Group Of The Year: WilmerHale

By **Nicole Narea**

*Law360 (February 2, 2018, 3:35 PM EST)* -- WilmerHale's attorneys delivered high-value wins for technology giants including Intel Corp. and Comcast Cable Communications LLC last year, earning it a place among Law360's Practice Groups of the Year.

The firm's intellectual property litigators helped Intel dodge nearly \$2 billion in infringement claims from AVM Technologies LLC by successfully excluding its expert testimony and including evidence at trial that undermined AVM's image. Additionally, the firm helped Comcast win summary judgment of noninfringement with respect to OpenTV Inc.'s entire patent portfolio, taking advantage of one court's innovative litigation structure.

"In this exceedingly competitive market, technology companies demand the counsel of lawyers with a deep-rooted understanding of the business and regulatory issues driving the industry," a spokesperson for the firm told Law360. "WilmerHale provides just this."

WilmerHale does not have a formal technology group, but for some 300 lawyers across the firm, technology is a focus of their practice as part of their work on intellectual property litigation, securities, licensing, corporate law and taxation, Mark Selwyn, co-chair of the firm's intellectual property litigation group, said.

WilmerHale notably shielded Intel from nearly \$2 billion in infringement claims in March following a six-day trial. The jury found no infringement by Intel on any of the eight asserted claims of AVM's microprocessor circuit patent.

AVM brought the suit in January 2015, the second time it had sought to assert its microprocessor circuit patent against Intel in Delaware federal court. AVM accused Intel of stepping on its system of implementing logic functions using high-speed and low-power dynamic logic circuits, which enable smaller sizes, reduced reliability problems, reduced power consumption and higher-speed operations, according to the complaint.

The firm achieved a significant advantage one week before trial, when the court granted Intel's motion to exclude all AVM expert damages testimony.



WilmerHale attorneys also convinced the court to include evidence learned during discovery cross-examination that the inventor had a deep-pocketed backer aiming to profit from the case. They were therefore able to undercut AVM's efforts to cast itself as a single inventor challenging a large corporation, said Joe Mueller, a partner in the firm's intellectual property group.

"Patent litigation finance is a relatively new development, and if that trend continues, admissibility of litigation finance facts will become a more prominent feature of patent cases," he said. "In our case, the plaintiff had sought to present a 'David versus Goliath' theme. In fact, the plaintiff was backed by a hedge fund. The judge properly admitted that fact, which squarely rebutted the theme the plaintiff tried to present to the jury."

The firm also delivered a significant win for Comcast in August, when a California federal court granted the company summary judgment of noninfringement of 10 OpenTV and NagraVision patents. Comcast had sought declaratory judgment of noninfringement of those patents in late 2016, after which U.S. District Judge William Alsup implemented what he called a "shootout," such that the parties would participate in accelerated proceedings on exemplary claims. Each party was required to present its best claim of one patent.

"The case received a lot of attention in patent circles because of the novel procedure that the judge used," Selwyn said. "I think it might be used in other courts that are now taking steps to reduce the number of asserted patents and asserted claims. The reality is that a trial can't effectively or meaningfully present to a jury the huge number of claims asserted at the beginning of a case."

After Comcast selected its claim, OpenTV dropped the patent from the case in an early win, and the parties then proceeded to litigate OpenTV's strongest claim. The court later granted Comcast's motion for summary judgment of noninfringement, and OpenTV vowed not to sue on any of the 10 patents-in-suit.

The Comcast case exemplified how the firm brings together the best attorneys and resources from its various offices to meet the needs of an individual case. Attorneys from Denver, Boston and Palo Alto, California, all worked on the case, Selwyn said.

Looking to the future, Selwyn noted the increasing globalization of intellectual property litigation, particularly as it relates to technology clients. He said that the firm has bulked up its international offices, particularly in London, to meet increasing need.

"It's a reflection of our view that there is going to be more and more litigation that involves a U.S. component and European component," he said.

--Additional reporting by Kat Greene. Editing by Catherine Sum.