

Antitrust and Intellectual Property



HIGHLIGHTS

■ Key Expertise at the Intersection of Antitrust and IP

Wilson Sonsini assists clients with IP licensing, patent pooling, standard setting, and resolving antitrust disputes that involve IP issues.

OVERVIEW

With our expansive technology client base, our antitrust and intellectual property practice rates among the strongest in the U.S. We regularly deal with the evolving and complex antitrust rules that exist at the intersection with IP law. While antitrust rules seek to promote free competition, IP protections give patent, trademark, and copyright owners certain exclusive rights in their creations. The issues that arise when IP rights and antitrust rules cross paths require not only a deep understanding of the antitrust laws, but also of our clients' businesses and the role of the IP rights portfolios.

We work with the firm's nationally recognized technology transactions, life sciences, and patent litigation attorneys to ensure that our clients are advised properly on how to manage their intellectual property rights without running afoul of the antitrust laws. When litigation arises, we represent our clients in the defense or prosecution of antitrust claims. Our antitrust and IP practice is a recognized leader based on our experience handling matters involving IP licensing, patent pooling, and standard setting, as well as antitrust litigation that raises IP issues. Our antitrust group also has successfully represented clients in high-stakes litigation involving claims of patent-based antitrust violations.

The following representative list is not intended to be all-inclusive; instead, the list includes examples of our antitrust team's experience representing clients in matters that also involved significant IP issues.

- Represented Google in connection with the DOJ's investigation into the proposed settlement of copyright litigation concerning Google Book Search, as well as in cases alleging monopolization and attempted monopolization of the search advertising market
- Represented a wireless technology developer and licensor against claims that it had violated FRAND commitments and engaged in anticompetitive patent misuse and hold-up. The claim was tried to an ITC Administrative Law Judge, who ruled in the company's favor in finding that the company had not violated FRAND commitments or engaged in impermissible anticompetitive conduct.
- Represented a patent holder in an investigation by the FTC into whether its attempts to license its standard essential patent portfolio constituted a FRAND offer and whether its decision to bundle its patents constituted impermissible tying
- Represented a microprocessor manufacturer in several actions against another microprocessor company alleging unlawful monopolization and attempted monopolization in the misuse of intellectual property by the other firm
- Represented a flash memory company in an action defending against allegations of patent misuse and antitrust violations in the creation of an industry standard incorporating the company's technology.
- Represented a multinational company in responding to the FTC's compulsory study of PAEs (patent assertion entities)
- *Holiday Matinee v. Rambus*: Represented Rambus in a class action lawsuit alleging antitrust violations arising from Rambus's patents and activities relating to a standards-setting body. Based on Wilson Sonsini's assertion the complaint was preempted by the federal patent laws, the trial court sustained Rambus's demurrer and dismissed the complaint. The case was affirmed on appeal.
- *Townshend v. Rockwell International and Conexant Systems*: Represented an individual inventor in a series of cases relating to his key patents on 56K modem technology. Wilson Sonsini obtained dismissals of the defendants' antitrust, unfair competition, patent misuse, and other counterclaims relating to standards-setting activities, and subsequently procured a favorable settlement.

- *FTC v. VISX*: Defended VISX in this precedent-setting case by the FTC alleging that VISX and its competitor unlawfully pooled their patents for purposes of monopolizing the market for laser eye-correction techniques, and that VISX obtained its key patent through inequitable conduct before the Patent and Trademark Office. The patent misuse claim was tried to an FTC administrative law judge, who ruled in VISX's favor and dismissed the FTC staff's claim.