



HIGHLIGHTS

■ A Comprehensive Commercial Disputes Practice

Wilson Sonsini represents plaintiffs and defendants in cases alleging breach of contract, fraud, unfair competition, breach of fiduciary duty, breach of warranty, and interference with economic relationships, and also defends companies in product liability cases.

■ Accomplished Commercial Litigation Attorneys

Wilson Sonsini's commercial litigation attorneys have been recognized based on their successful representation of clients in high-profile matters in publications including *Chambers USA*, *The National Law Journal*, *Law360*, and the *San Francisco Daily Journal*.

■ Wilson Sonsini Earns Honorable Mention in AmLaw's Litigation Department of the Year Awards

In December 2021, Wilson Sonsini was profiled among the select firms that earned honorable mentions as part of *The American Lawyer's* national "Litigation Department of the Year" awards. Earlier in the year, *The American Lawyer* also selected the firm as a 2021 regional Litigation Department of the Year finalist for California.

OVERVIEW

Wilson Sonsini's commercial litigation attorneys represent companies in a broad spectrum of business matters, including disputes with competitors, vendors, customers, or business partners. While we recognize that some disputes can only be resolved by a jury, our attorneys also regularly help clients avoid the burden and expense of litigation through creative business solutions and the use of alternative dispute resolution mechanisms such as mediation.

We have represented plaintiffs and defendants in cases alleging breach of contract, fraud, unfair competition, breach of fiduciary duty, breach of warranty, and interference with economic relationships, and we defend companies in product liability cases.

Among the companies Wilson Sonsini's commercial litigators have represented are industry leaders such as Acxiom, Amkor, Autodesk, Group Canal+, Linear Technology, and Vitesse.

REPRESENTATIVE MATTERS

Wilson Sonsini Post-Grant Proceedings Team Secures Victory in Covered Business Method Review Proceeding

On March 26, 2014, the Patent Trial and Appeal Board of the United States Patent and Trademark Office invalidated all claims of the patent at issue in the *Markets-Alert Pty Ltd. v. Bloomberg Inc. et al.* post-grant proceeding under the Transitional Program for Covered Business Method Patents. Attorneys for Wilson Sonsini Goodrich & Rosati secured the victory on behalf of clients Bloomberg, TD Ameritrade, E*TRADE, and The Charles Schwab Corp. The decision further demonstrates the viability of post-grant review procedures under the America Invents Act for efficiently resolving patent infringement disputes.

Mylan Prevails on Summary Judgment in Celebrex Litigation

The U.S. District Court for the Eastern District of Virginia granted summary judgment on March 12, 2014, in favor of Wilson Sonsini client Mylan Pharmaceuticals, a leading provider of generic drugs. The plaintiffs, G.D. Searle and Pfizer Asia Pacific (collectively, "Pfizer"), had accused Mylan and several other defendants of infringing a patent directed to Pfizer's painkiller drug, Celebrex. Mylan

moved for summary judgment on the grounds that the '048 patent was invalid due to obviousness-type double patenting, and an invalid reissue patent. The co-defendants in the case also moved for summary judgment, although on slightly different grounds. The court granted both Mylan's and the co-defendants' motions with respect to obviousness-type double patenting, and granted the co-defendants' motion with respect to the invalid reissue patent.

Harmonic Secures a Patent Victory in Delaware

On February 4, 2014, after a two-week trial, a jury in the U.S. District Court for the District of Delaware returned a unanimous defense verdict in favor of Wilson Sonsini Goodrich & Rosati client Harmonic, a major provider of digital video infrastructure solutions. The plaintiff, Avid Technology, had accused Harmonic of infringing two patents directed to digital media storage. In addition, Avid sought claims of willful infringement, treble damages, and attorneys' fees from Harmonic. The jury, however, rejected the infringement allegations in their entirety, returning a verdict of no infringement on both Avid patents.

Court of Chancery Grants Summary Judgment in Favor of Buyer of Answers.com

The Delaware Court of Chancery on February 3, 2014, granted summary judgment in favor of the defendants in a class action lawsuit arising out of the acquisition of Answers Corporation, which operates the Q&A website Answers.com, by AFCV Holdings, a portfolio company of Summit Partners. Wilson Sonsini Goodrich & Rosati represented AFCV and Summit in the litigation. The seeds for the case were sown in February 2011, when AFCV announced that it intended to acquire the outstanding shares of Answers for \$10.50 per share. While the price represented a significant premium to Answers' recent trading price, lawsuits quickly followed. The defendants defeated a motion by the plaintiffs to enjoin the acquisition of Answers in April 2011, and the transaction closed. The plaintiffs did not give up on the lawsuit, however, and survived a motion to dismiss by the defendants a year later under the pleading standards of the Delaware Supreme Court's decision in *Central Mortgage*. Discovery ensued, but the plaintiffs could find no support in the record for their allegations that the Answers directors acted in bad faith when they approved the deal with AFCV and Summit. In addition, there was no support for the contention that negotiations between Answers and AFCV and Summit were anything other than vigorous and at arms' length. Accordingly, the Court of Chancery granted summary judgment in favor of all defendants, dismissing the breach of fiduciary duty claims asserted against the Answers directors and dismissing the aiding and abetting claim against AFCV and Summit.

AU Optronics Invalidates Patent in Eastern District of Texas

The U.S. District Court for the Eastern District of Texas entered an order on January 22, 2014, invalidating U.S. Patent Number 5,879,958 on grounds of indefiniteness, thereby ending several years of protracted litigation by non-practicing entity Eidos Display against AU Optronics (AUO) and other manufacturers of liquid-crystal display (LCD) modules used in popular LCD televisions and computer displays. Wilson Sonsini Goodrich & Rosati represented AU Optronics and its domestic subsidiary, AU Optronics Corp. America, in the lawsuit. Throughout the litigation, Eidos claimed that its patent covered an important process for manufacturing LCDs and sought significant damages based on AUO's sales of LCDs in the United States. AUO maintained that the patent was invalid, and also not infringed by its LCD manufacturing process. The Wilson Sonsini team led the effort that resulted in the court's decision to invalidate the patent, handing AUO a complete victory in the case. Before bringing the lawsuit, Eidos acquired the asserted patent from AUO's competitor, LG Display. LG Display previously had brought a patent infringement lawsuit against AUO on similar LCD-related patents in Delaware. AUO (and the Wilson Sonsini team) similarly defeated those infringement claims in Delaware federal court. Thus, this is Wilson Sonsini's second successful defense of AUO against LG Display's LCD-related patents.

Ninth Circuit Affirms Go Daddy Victory in Cybersquatting Dispute

On December 4, 2013, the firm secured a significant court victory for client Go Daddy, the world's largest registrar of Internet domain names. The Ninth Circuit Court of Appeals affirmed a grant of summary judgment to Go Daddy, dismissing a federal court lawsuit brought by Petronas, the state-owned oil and gas company of Malaysia. Petronas had sought to hold Go Daddy liable for the activities of a Go Daddy customer, who allegedly had registered two infringing domain names and used them for improper purposes. In an important development in Internet law, the Ninth Circuit—the first federal appellate court to address this issue—held that there is no cause of action for "contributory cybersquatting"; each of the federal district courts that previously had considered this issue had ruled otherwise. The appeals court also articulated a number of important public-policy rationales for limiting liability for registrars and Internet service providers generally.

Chevron Confirms Right of Corporations to Designate Forum for Corporate Governance Lawsuits

On June 25, 2013, the Delaware Court of Chancery issued a highly anticipated decision upholding the validity of forum-selection bylaws adopted by the directors of Wilson Sonsini client Chevron Corporation and FedEx Corporation. The Chancery's decision addressed, as a matter of first impression, the gating question: whether board-adopted bylaws that select Delaware courts as the exclusive forum for internal corporate governance disputes are statutorily and contractually valid under Delaware law. With the court answering a resounding "yes," the decision substantiates a potentially powerful tool in responding to the problem of multi-forum litigation and protecting stockholders' interests against duplicative litigation.

InterDigital Wins Patent Victory in the Smartphone Wars

Wilson Sonsini client InterDigital develops fundamental wireless technologies that are at the core of mobile devices, networks, and services worldwide. The company has licenses and strategic relationships with many of the world's leading wireless companies, including Pegatron. InterDigital and Pegatron had a disagreement over the royalties attendant to a 2008 licensing agreement and took that dispute to arbitration. The arbitration was a private proceeding, but InterDigital described the matter in its SEC filings: "On April 18, 2013, [we] filed an action in the U.S. District Court for the Northern District of California to confirm an arbitration award against Pegatron. The arbitration award issued on April 17, 2013, from a three-member panel constituted by the American Arbitration Association's International Centre for Dispute Resolution in a proceeding we initiated to resolve a dispute surrounding our 2008 Patent Licensing Agreement with Pegatron. Under the award, Pegatron is required to pay us a total of approximately \$29.9 million, including

\$23.5 million for past royalties due through June 30, 2012, \$6.2 million of interest, and additional amounts for certain arbitration costs and expenses."

Google & YouTube Prevail in Landmark Copyright Infringement Lawsuit Pitting New Media vs. Old

In a case hailed by *Time* as "one of the most important Internet intellectual property disputes of the last decade," Judge Louis L. Stanton of the U.S. District Court for the Southern District of New York entered summary judgment on April 18, 2013, on behalf of defendant YouTube and parent company Google in a long-running lawsuit brought by television giant Viacom. The district court's order marks a significant milestone in—and perhaps even the end of—a six-year battle between new media and old media companies over the contours of the "safe harbor" provisions of the Digital Millennium Copyright Act (DMCA) that limit the liability of online service providers for copyright infringement. The central question before the court was whether YouTube could avail itself of the DMCA's safe harbor provision that insulates service providers from liability for copyright infringement for material outside users post on its platform. The core dispute between the parties was whether or not the burden was on YouTube to disprove that it knew that there were infringing clips on its site. The court ruled that the plain language of the statute placed the obligation on plaintiffs to notify YouTube of infringing clips. It also addressed the question of whether YouTube had the right and ability to control infringing material so as to lose the benefit of the DMCA safe harbor. After scrutinizing the record, the court held that YouTube did not induce or otherwise interact with its users to facilitate the posting of infringing material, so it was protected by the safe harbor. The firm represented Google and YouTube in the matter.

SEC Acknowledges Social Media Posts as Reg FD Compliant

On July 3, 2012, during market hours, Netflix CEO Reed Hastings posted a message on his Facebook page announcing that the company's monthly viewing had exceeded 1 billion hours for the first time ever that June. The post prompted the SEC to initiate an investigation into whether the message violated Regulation Fair Disclosure (Reg FD), a 2000 SEC rule requiring companies to disclose material non-public information to investors through specified means and media to prevent selective disclosure to market insiders. On December 5, 2012, the Enforcement Staff of the SEC issued Wells Notices to Netflix and Mr. Hastings, indicating its intent to bring an action for violations of the securities laws. After Netflix and Mr. Hastings had an opportunity to respond, however, the SEC announced on April 2, 2013, that it would not pursue an enforcement case and instead issued a Report of Investigation. The report specified that companies could treat social media as Reg FD-compliant disclosures, provided that they first made clear which social media outlets and locations they would be using for their disclosures. Wilson Sonsini represented both Netflix and Mr. Hastings in the matter.

Google's Search Services Given Green Light by FTC

The Federal Trade Commission voted unanimously on January 3, 2013, to close its nearly two-year investigation into Google's search business. The FTC's investigation had been fueled by accusations from competitors such as Yelp, TripAdvisor, and Expedia, who complained that Google's search results directed users to Google's own travel or review services ahead of competitors' sites. Microsoft, a veteran of a decade-long, losing antitrust battle with the government, also complained to the FTC about Google's search practices and the impact on its search product, Bing. Ultimately, though, the FTC found that "Google's primary reason for changing the look and feel of its search results to highlight its own products was to improve the user experience," and terminated its investigation. Wilson Sonsini represented Google in the matter.

"Solar Spy Story" Demonstrates Scope of Uniform Trade Secrets Act

In what *Forbes* dubbed a "Silicon Valley solar spy story," SunPower, a solar panel manufacturer, sued business rival and Wilson Sonsini client SolarCity and five former SunPower employees. The complaint, filed in February 2012, alleged that before joining SolarCity, the employees stole tens of thousands of computer files containing SunPower confidential information and non-confidential proprietary information, including forecast analyses, sales quotes, deals, and customer contracts. In response, SolarCity filed a motion to dismiss a significant portion of the complaint, which centered on perhaps the most important issue in trade secret law today: whether the Uniform Trade Secrets Act, which has been enacted in 47 states including California, blocks attempts to create a second tier of intellectual property under state tort law for information deemed to be "confidential" but not "secret." On December 11, 2012, U.S. District Judge Lucy Koh sided with SolarCity in the matter, confirming that California law does not recognize efforts to plead around the California Uniform Trade Secrets Act and its requirement that the information at issue is truly a trade secret.

A Silicon Valley Stalwart Takes a Stand against Merger Strike Suits

In 2010, Intel purchased McAfee, Inc., a security software company, for \$7.7 billion in one of the largest software merger acquisitions in history. As often happens in such circumstances, a number of class action suits—widely known as "merger strike suits"—were filed upon the announcement of the deal. The plaintiffs, in a consolidated action, tried to enjoin the transaction prior to closing, even though it offered more than a 60 percent premium to McAfee stockholders; with Wilson Sonsini representing the company and its board of directors, the attempt failed. The litigation then continued for nearly two years after the deal closed, with the plaintiffs alleging that the transaction was unfair, was contaminated by conflicts, and resulted in a price that undervalued the company. Extensive discovery was taken, and the former McAfee directors and officers (again represented by the firm) and Intel filed motions for summary judgment before California Superior Court Judge James Kleinfeld. On November 6, 2012, Judge Kleinfeld ruled that McAfee's directors had satisfied their fiduciary duties in addressing Intel's sales offer and held that "deal protection" devices such as a "no-shop" provision and a break-up fee were structured in a manner permissible under law. The court also determined that McAfee's CEO did not have a conflict of interest due to his contemporaneous negotiation of an Intel employment agreement because he had kept McAfee's board apprised of all material price and employment negotiations and worked in the best interest of the company to maximize the purchase price.

Say-on-Pay Case Dismissed—and a Species of Securities Litigation Dies

The 2010 Dodd-Frank Wall Street Reform and Protection Act contains a section requiring all public companies to hold a non-binding advisory vote on executive compensation at least once every three years—the so-called "say-on-pay" requirement. In the proxy season

after Dodd-Frank's passage, several dozen companies' shareholders voted "no" on executive compensation. Enterprising plaintiffs' lawyers pounced, filing breach-of-fiduciary-duty lawsuits against many of the companies with failed say-on-pay votes, including firm client Janus Capital Group, one of the largest mutual fund companies in the United States, and its board of directors. The main allegation was that Janus' board breached its fiduciary duties by agreeing to pay its executive team \$40 million in compensation at a time when the company's stock price, net profit, and funds under management were declining. The U. S. District Court of Colorado, however, took a different view and dismissed the case on September 26, 2012, ruling that a failed say-on-pay vote did not constitute a breach of fiduciary duty based on: (1) established Delaware law granting directors discretion to set compensation; (2) the advisory nature of the vote; (3) principles of loss causation; and (4) the Dodd-Frank language specifically stating that the vote did not overrule boards or create new duties. By the time the district court in *Janus* ruled on the defendants' motions to dismiss, a handful of other say-on-pay cases had been resolved in a variety of state and federal courts. The value of the *Janus* decision is that it was the first thoroughly reasoned federal court decision applying Delaware law to say-on-pay claims, helping to bring an end to a brief era of shareholder litigation that was an unintended consequence of the Dodd-Frank legislation.

Google Obtains Court Approval of FTC Settlement Challenged by Consumer Advocacy Group

On August 12, 2012, Judge Susan Illston of the U.S. District Court for the Northern District of California approved a settlement between the Federal Trade Commission and Google that ended a 20-month investigation into claims that the company improperly planted cookies (digital files that track users' web-browsing activities) on Apple's Safari Internet browser. The settlement resulted in a \$22.5 million fine and entailed that Google enter into a 20-year agreement barring it from misrepresenting how it handles user information and requiring it to follow policies that protect consumer data in new products. Google, however, denied all wrongdoing as part of the settlement and was viewed as having gotten off too easily by opponents of the settlement, including advocacy group Consumer Watchdog. After reviewing the settlement and considering Consumer Watchdog's arguments, the district court declared that the settlement was fair, adequate, and reasonable. Specifically, the court held that the injunction was adequate, based on the company's arguments that the information was dated and that it had "anonymized" the IP addresses from which data was gathered, and thus could not identify individual users. The court also ruled that the denial of liability was consistent with the nature of the injunction issued and supported by legal history and precedent. Wilson Sonsini represented Google in the matter.

Clear Channel Rock Concert Monopoly Claims Dismissed

Burt Bacharach a rock artist? Federal Judge Stephen V. Wilson didn't think so either and, for a variety of reasons, granted summary judgment in a high-profile class action filed against Live Nation and its one-time parent company, Clear Channel, in May 2012. The decision ended a decade-long antitrust battle over whether, as the plaintiffs alleged, the two companies "built a monopolistic, multimedia empire that has substantially harmed competition, resulting in high concert ticket prices and fewer offerings." Among other failings, the court faulted the plaintiffs' expert for conflating pop and rock music. Because the expert failed to identify the exact nature of Live Nation's concert empire that constituted the relevant market, the court held that the plaintiffs were unable to meet their burden to prove an antitrust claim under the Sherman Act. As a result, the defendants won summary judgment. The order was the death knell for the class action at issue and more than a dozen other related cases sharing the same facts. The firm represented Live Nation and Clear Channel in the case.

Leviton Highlights ITC's Efficacy as Forum for High-Stakes Patent Litigation

On April 27, 2012, the International Trade Commission (ITC) issued a general exclusion order and cease-and-desist orders after finding a violation of Section 337 of the Tariff Act of 1930 by all 29 respondents as to Wilson Sonsini client and complainant Leviton Manufacturing, which manufactures ground fault circuit interrupters, among other products. Leviton had filed a complaint alleging that 29 companies were importing ground fault circuit interrupters that infringed the company's patents. Many respondents defaulted or settled, but seven alleged infringers went to trial in the ITC. The administrative law judge found that the respondents had indeed infringed the patents, but held that there was no "domestic industry" for the circuit interrupters to support a violation of Section 337. Leviton and the ITC staff disagreed, and filed a petition seeking full-commission review of the judge's findings. The ITC unanimously reversed the judge's domestic industry finding and issued a general exclusion order banning the import of the infringing circuit interrupters. The breadth of the order was noteworthy, and went well beyond the scope of relief available in any other forum: The ITC banned imports by all 29 respondents, even those that settled or failed to appear in the action.

Netflix Antitrust "Illegal Market Allocation" Class Action Dismissed

In 2009, after Wal-Mart decided to exit the DVD rental market, class action plaintiffs filed lawsuits alleging that Netflix and Wal-Mart had engaged in collusive activity prohibited under the Sherman Act in 2005, when the two companies agreed to undertake cross-promotional efforts with respect to each other's DVD rental businesses. In 2010, Wal-Mart agreed to settle the case and paid the class approximately \$27 million. Represented by Wilson Sonsini, Netflix, however, filed a motion for summary judgment. In November 2011, the U.S. District Court for the Northern District of California sided with Netflix, ruling that the plaintiffs had not sustained their burden to demonstrate that the 2005 agreement was a per se restraint on competition in the form of an express quid pro quo agreement to corner the market on DVD rentals and sales. The district court also held that the plaintiffs could not prove a causal connection between an antitrust violation and an alleged injury, with Judge Phyllis Hamilton noting that the "plaintiffs have not demonstrated that they personally paid higher prices for subscriptions as a result of the agreement, nor have they demonstrated that they would have paid lower prices absent the agreement." The ruling was buttressed, the court said, by the plaintiffs' own expert's concession, obtained in a deposition, that Wal-Mart was so insignificant in the DVD market that Netflix never responded to its existence by lowering prices or taking any other measures. The summary judgment order disposed of the entire case, validating Netflix's decisions on how it competed in the market—and in pursuing litigation.