

Supreme Court and Appellate



HIGHLIGHTS

■ A Dedicated Appellate Practice

Wilson Sonsini has established a dedicated appellate practice, most recently bolstered by the additions of Fred A. Rowley, Jr., Mark Yohalem, Steffen Johnson, and Professor Michael McConnell. McConnell served for seven years as a judge in the Tenth Circuit Court of Appeals.

■ Involved in High-Profile Appellate Matters and Landmark Decisions

The firm's appellate attorneys have prevailed in high-profile cases spanning nearly every area of law. They have particular depth in antitrust, consumer fraud, patent, copyright, securities, the First Amendment, and constitutional law. Our appellate attorneys have also litigated landmark internet and privacy law cases.

■ Appellate Experience in Federal and State Venues Across the U.S.

Wilson Sonsini's appellate litigators have racked up wins for the firm's clients in the Supreme Court, the 12 regional federal circuits, the Federal Circuit, and the Patent Trial and Appeal Board—as well as many state appellate courts, including in California, New York, and Delaware.

■ Nationally Recognized Practitioners

Based on their representation of clients in appellate matters, Wilson Sonsini's litigation attorneys have earned recognition from *Benchmark Litigation*, *Chambers USA*, *Managing IP*, *The National Law Journal*, *Law360*, *Legal 500*, and other publications.

OVERVIEW

Wilson Sonsini's Supreme Court and Appellate practice is an elite team of advocates with vast experience leading appeals and other high-profile litigation.

To date, the firm's lawyers have argued more than 20 cases in the U.S. Supreme Court, and hundreds more in the 13 federal circuits and state courts. Their ranks include numerous lawyers who clerked for the Supreme Court or other prestigious courts of appeals, former federal and state appellate judges, former members of the Justice Department's Office of Solicitor General and Office of Legal Counsel, and scholars who have taught at top law schools including Stanford, Harvard, Michigan, NYU, and Chicago. Wilson Sonsini's appellate lawyers are seasoned thought leaders who understand the big picture, bring substantive depth to each case, follow academic commentary on the law's development, and strive to master every detail in the record.

Wilson Sonsini's appellate lawyers don't expect appeals to be handed to them on a platter. They're friendly, approachable, and happy to roll up their sleeves at any phase of litigation—from advising on a complaint or drafting key briefs in high-stakes trial court matters to counseling on media strategy and devising long-term strategies for crafting test cases designed to shape the law.

As a result, their advocacy has had far-reaching impacts, shaping the law in areas ranging from patent and copyright to antitrust, securities, class actions, arbitration, preemption, and administrative and constitutional law. Some of the Supreme Court matters in which members of the group* have played a leading role include:

- *Carney v. Adams* (2020), rejecting on standing grounds a First Amendment challenge to Delaware's system of appointing state court judges.
- *Helsinn Healthcare S.A. v. Teva Pharms. USA, Inc.* (2019), holding that the Patent Act's "on-sale" bar provision, as amended by the America Invents Act, is triggered by all offers for sale and sales, including those that do not publicly disclose the claimed invention.
- *Animal Science Prods., Inc. v. Hebei Welcome Pharm. Co. Ltd.* (2018), holding that federal courts determining foreign law under Federal Rule of Civil Procedure 44.1 are not bound to accord conclusive effect to foreign governments' submissions, but should accord such submissions respectful consideration.
- *Cyan, Inc. v. Beaver County Employees Retirement Fund* (2018), holding that the Securities Litigation Uniform Standards Act did not strip state courts of their longstanding jurisdiction to adjudicate class actions brought under the 1933 Securities Act.
- *Horne v. Department of Agriculture* (2015), holding that a program that compelled raisin producers to turn over a portion of their crop to a government agency without payment violates the Takings Clause of the Fifth Amendment.
- *Hillman v. Maretta* (2013), holding that the law governing a \$824 billion federal life insurance program preempts state laws that conflict with employees' "unfettered freedom of choice" in choosing beneficiaries.
- *CompuCredit Corp. v. Greenwood* (2012), holding that claims against a credit repair organization for alleged misrepresentations are subject to arbitration.
- *Caraco Pharm. Labs. Ltd. v. Novo Nordisk A/S* (2012), holding that the drug competition provisions of the Hatch-Waxman Act permit generic drug makers to obtain injunctions requiring their competitors to correct information filed with the FDA that misstates the scope of related patents.
- *U.S. ex rel. Eisenstein v. City of New York* (2009), holding that the 30-day time limit to file a notice of appeal set forth in Federal Rule of Appellate Procedure 4(a)(1)(A), rather than the 60-day time limit set forth in Rule 4(a)(1)(B), applies when the United States declines to intervene in qui tam suits brought under the False Claims Act.

Lawyers in the group* have likewise racked up an impressive list of wins in leading cases for business in other federal and state appellate courts. For example:

- *Universal Secure Registry LLC v. Apple Inc., Visa Inc., Visa U.S.A Inc.* (Fed. Cir. 2021), holding invalid, under Section 101 of the Patent Act, numerous patent claims directed to conventional means of verifying the parties to electronic transactions.
- *Valeant Pharm. N.A. v. Mylan Pharm. Inc.* (Fed. Cir. 2020), holding that, in Hatch-Waxman Act cases, patent infringement occurs for venue purposes only in districts where the defendant submits its Abbreviated New Drug Application, not in all districts where the defendant expects to sell its product. *Law360* described this decision as among "The 10 Biggest Patent Rulings of 2020."
- *District No. 1, Pacific Coast District, Marine Engineers Beneficial Association, AFL-CIO v. Liberty Maritime Corp.* (D.C. Cir. 2019), reversing a Rule 12(c) judgment for the Union based on material factual disputes as to whether the Liberty vessel at issue was subject to the parties' collective bargaining agreement.
- *Cox Communications, Inc. v. BMG Rights Mgmt.* (4th Cir. 2018), reversing a \$33 million verdict and holding that internet service providers may not be held liable for secondary copyright infringement absent a showing of actual knowledge of specific direct infringement by the ISPs' subscribers.
- *Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.* (Cal. App. Ct. 2018), holding that the state Labor Board was required to tally the workers' ballots in a five-year-old union decertification election.
- *Bard Peripheral Vascular, Inc. v. W.L. Gore & Assocs.* (Fed. Cir. 2015), holding that Bard was entitled to \$371 million in enhanced damages for willful patent infringement in a case resolving decades of litigation and raising issues of standing, law of the case, and issue preclusion as well as substantive patent law.
- *S.E.C. v. Securities Investor Protective Corp.* (D.C. Cir. 2014), holding that SIPC was not required to cover losses from a \$7 billion fraud committed by a non-member.
- *Mutual Pharm. Co. v. Tyco Healthcare* (Fed. Cir. 2014), reversing summary judgment for the counterclaim defendant and holding that a generic drug maker could challenge the filing of a patent lawsuit under the "sham litigation" exception to *Noerr-Pennington* antitrust immunity.

In sum, the lawyers in Wilson Sonsini's Supreme Court and Appellate practice argue masterfully, write beautifully, are a pleasure to work with, and can handle any appeal in any court, whatever the stakes.

* The list of representative cases above includes some matters that were handled by members of Wilson Sonsini's Supreme Court and Appellate practice prior to joining the firm.