

Litigators of the Week: Harold McElhinny, Michael Jacobs, and Rachel Krevans of Morrison & Foerster and William Lee of Wilmer Cutler Pickering Hale and Dorr

By Jan Wolfe



It's been a week since Apple Inc. scored its \$1.05 billion trial verdict against Samsung Electronics Co., winning the most decisive and high-profile victory yet in the still-raging smartphone wars. The trial will continue to be dissected from plenty of angles, from the impact on consumers to what it means for the future of innovation. But any way you look at it, there's no ignoring the performance of Apple's quartet of lead lawyers, Harold McElhinny, Michael Jacobs, and Rachel Krevans of Morrison & Foerster and William Lee of Wilmer Cutler Pickering Hale and Dorr.

Given the stakes for Apple, Samsung, and the rest of the mobile device industry, it's no surprise that the San Jose trial became a showcase for some of the country's top IP litigators, including Samsung counsel Charles Verhoeven and John Quinn of Quinn Emanuel Urquhart & Sullivan. For Apple, McElhinny handled opening and closing arguments and Apple witnesses. Jacobs focused on establishing that Samsung infringed Apple's utility patents. Krevans made the company's case on design patents and damages, and Lee (the only lead Apple lawyer from outside the Bay Area) defended against Samsung's counterclaims and cross-examined a key Samsung witness.

Jacobs decided early on to call as witnesses a half-dozen Apple employees, including two senior vice-presidents. The notoriously secretive company may have second-guessed that decision at times during discovery, since more witnesses meant more depositions and document requests. But Jacobs's approach seems to have paid off at trial. Because Samsung only made senior Korean execs available for depositions, rather than for trial, Apple was able to portray itself as the victim of a concerted Samsung effort to copy the iPhone and iPad, with nothing to hide.

"From the very beginning, Samsung has disrespected this process," McElhinny told jurors during his closing. "Apple brought you two of its most senior executives . . . No Samsung execs were willing to come here from Korea and answer questions under oath. Instead of witnesses, they sent you lawyers."

All those Apple witnesses also helped MoFo and Wilmer hammer home their theme that Apple spent five years developing the iPhone, and Samsung spent three months copying it. Designer Christopher Stringer explained to jurors

that even seemingly simple design decisions, like where to place the screen on the iPhone, can take months to implement. By calling Stringer first, the Apple lawyers launched a preemptive strike against Samsung's argument that Apple's patents, particularly the ones covering design elements like a black, flat face, aren't all that innovative and should never have been granted. And with his long hair and unusual all-white suit, Stringer fit the stereotype of creative mastermind perfectly.

Along with stage management, Apple's team had to worry plenty about time management during the trial. U.S. District Judge Lucy Koh gave each company just 25 hours to call its witnesses and cross-examine the other side's. Apple put on its case-in-chief in 13 hours and 37 minutes, reserving almost half of the allotted time for cross-examining Samsung's witnesses and rebutting its counterclaims. Samsung, meanwhile, took 13 hours and 50 minutes just to cross-examine Apple's witnesses. On the last day of testimony, Apple had three hours and 53 minutes left on the clock, compared to Samsung's 46 minutes. That gave Apple's lawyers broad leeway to examine their witness, with little left for Samsung on cross. Koh refused to entertain any motions from Samsung seeking more time, writing that the company had to live with its strategic choices.

While Apple had pegged damages as high as \$2.75 billion—and the survival of the verdict is in no way assured—Friday's result is still remarkable by any measure. By clearing the billion-dollar threshold and sending Samsung home empty-handed, Apple's trial team sent a clear message to competitors, generated massive publicity for the company, and sparked a nationwide conversation about patents, competition, and technology. For McElhinny, Jacobs, Krevans, and Lee, the most satisfying commentary so far may have come from an interview one of the jurors gave *The Wall Street Journal*: "The Apple lawyers were better at presenting their case," he said simply.