

# Antitrust and Unfair Competition

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Irell & Manella LLP has an active antitrust, unfair competition and trade regulation practice, with extensive experience handling matters related to price-fixing disputes, disputes over dealer terminations, and government investigations of proposed mergers, to name but a few. In addition, the practice group is particularly adept at addressing issues involving the intersection of intellectual property and antitrust laws. Our lawyers have counseled clients on the antitrust aspects of intellectual property licensing agreements, litigated tying cases involving high-technology products, litigated cases involving the misuse of standard setting organizations and litigated antitrust suits stemming from attempts to enforce intellectual property rights.

## Experience

- *Continental Automotive Systems Inc. v. Avanci LLC et al.* Representing PanOptis, persuaded a judge to dismiss with prejudice an antitrust and unfair competition suit filed by Continental Automotive Systems involving licensing practices for patents covering cellular technology. After the dismissal, the firm obtained an affirmance in the U.S. Court of Appeals for the Fifth Circuit.
- *Intel Corp. et al. v. Fortress Investment Group LLC et al.* Secured a complete defense victory for Fortress Investment Group, Fortress Credit Company and VLSI in antitrust litigation against Intel, persuading the court to dismiss with prejudice the complaint, which alleged Fortress and its co-defendants engaged in an anti-competitive patent aggregation scheme. Irell obtained a string of earlier wins in the litigation, which was originally filed by both Intel and Apple. The firm convinced the court to dismiss the plaintiffs' initial complaint in July 2020, and then succeeded in persuading the judge to dismiss Intel and Apple's amended complaint, in part with prejudice, in January 2021. Intel and Apple filed a second amended complaint (Apple dropped its claims in June 2021, leaving Intel as the only plaintiff), and Matt Ashley argued Fortress and its co-defendants' motion to dismiss the second amended complaint in September 2021. The judge's latest decision handed Irell's clients a complete win in the litigation. The U.S. Court of Appeals for the Ninth Circuit affirmed. The *Daily Journal* recognized the victory as one of California's top defense verdicts of 2021, and the publication also honored the team with a 2022 California Lawyer Attorneys of the Year (CLAY) award for the win.
- *AIDS Healthcare Foundation, Inc. v. Gilead Sciences, Inc.* Secured dismissal of a suit challenging Gilead's HIV and hepatitis B medication tenofovir alafenamide (TAF). AIDS Healthcare Foundation brought the suit alleging that five patents owned or licensed by Gilead are invalid and that Gilead violated antitrust and unfair competition laws by first releasing TAF as part of multidrug products. Judge William Alsup of the U.S. District Court for the Northern District of California granted Gilead's motion to dismiss. The U.S. Court of Appeals for the Federal Circuit affirmed the dismissal.
- *Tessera v. Micron and Infineon.* Successfully represented Tessera, Inc., a global leader in the development and licensing of semiconductor packaging technology. Tessera alleged patent infringement by Micron and Infineon, two of the world's largest manufacturers of DRAM, which is used as main memory in computer systems. Tessera further alleged that the defendants colluded through a purported standard setting organization to forestall widespread adoption of Tessera's patented technology, as part of their efforts to monopolize and then fix prices in the DRAM market. We defeated summary judgment motions based on our client's alleged lack of standing. Shortly before jury selection, both Micron and Infineon agreed to resolve the case in a confidential settlement.

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- *AIDS Healthcare Foundation v. GlaxoSmithKline, plc.* Represented pharmaceutical company GlaxoSmithKline (GSK) in defending an antitrust suit claiming it monopolized the market for anti-retroviral drugs used to treat persons with HIV or AIDS. The case settled on very favorable terms for our client before trial.
- *SmithKline Beecham Corp. v. Abbott Laboratories.* Served as lead trial counsel for GSK in this antitrust, breach of contract and unfair trade practices suit against Abbott Labs. The claims arose from Abbott imposing a 400 percent price hike on one of its HIV medications. GSK alleged, among other things, that Abbott's price hike violated section 2 of the Sherman Act. The U.S. Court of Appeals for the Ninth Circuit ruled in favor of GSK that the constitution prohibits jury strikes based on sexual orientation, extending a protection once reserved for race and gender to sexual orientation. The court granted a new trial for GSK because a gay potential juror was improperly excluded based on his sexual orientation. In reaching that conclusion, the court held that discrimination based on sexual orientation was subject to a heightened level of scrutiny under the equal protection clause.
- *Northrop Grumman Space & Mission Systems Corp. v. Space Exploration Technologies Corp.* Represented Space Exploration (SpaceX) in connection with antitrust and breach of fiduciary duty claims against Northrop Grumman. After Northrop Grumman sued SpaceX in California Superior Court for trade secret misappropriation relating to SpaceX's rocket propulsion systems, SpaceX brought *Walker Process* claims against Northrop Grumman in U.S. District Court for the Central District of California. SpaceX alleged that Northrop Grumman's complaint impermissibly attempted to claim trade secret protection as to information Northrop Grumman actually disclosed in patent applications and elsewhere, or that should have been disclosed in patent applications. This matter was resolved after Northrop Grumman lost its motion to dismiss.
- *GLOBETrotter Software, Inc. v. Elan Computer Group, Inc.* Represented the plaintiff in this case in which the U.S. Court of Appeals for the Federal Circuit issued a published opinion affirming an award of summary judgment in favor of the plaintiff on claims asserted against it for tortious interference and unfair competition.
- *Clayworth et al v. Pfizer, Inc. et al.* Working with East Coast counsel, represented GSK in a suit alleging that it and other pharmaceutical companies had conspired to fix the price of prescription drugs in violation of California's Cartwright Act. The trial court entered judgment for the defendants on the grounds that the plaintiff could prove no damages as it had been able to pass on 100 percent of any alleged illegal price increase it had paid. Irell has also participated both as lead counsel and as co-counsel with East Coast firms in a number of other successful antitrust and trade regulation matters. For example, the firm engineered the successful reversal of a \$425 million treble-damage judgment against one of its major clients. The client had suffered the loss at trial in an action in the U.S. District Court for the Tenth Circuit. The firm also successfully represented a number of clients in proceedings initiated by the Federal Trade Commission or state and local officials concerning alleged false advertising or other unfair trade practices. Although such cases and investigations often settle, we also successfully convinced federal and state regulators to abstain from prosecutorial action against our clients.