

# California Litigation

The success of our Menlo Park litigators continues to attract sophisticated domestic and international clients who turn to our team to defend their most challenging matters nationwide. We are proud to feature some of the trial wins and other victories we have secured for our clients over the last 18 months.

**“They’re very responsive; they’re on top of everything we ask for and come up with proactive thoughts and strategy. We’re very happy with the way they work and step up to find the best avenue of success.”**

– *Chambers USA 2015*

**“As a whole, top to bottom, Davis Polk & Wardwell has the smartest lawyers of any firm I know.”**

– *Benchmark Litigation 2015*

**“They’re really proactive, with great attention to detail. They think of smart ways of approaching the matter.”**

– *Chambers USA 2014*

**“It’s a pretty powerful team.”**

– *Chambers USA 2014*

## Complete Victory for T-Mobile

We represented T-Mobile in connection with a 5-year-long, multidistrict litigation alleging that four wireless carriers (T-Mobile, AT&T, Sprint and Verizon), along with the industry trade association, fixed prices on per-use text messages. The plaintiffs represented a class of over 100 million U.S. consumers and sought several billion dollars in damages.

- **May 2014:** The U.S. District Court for the Northern District of Illinois granted summary judgment, concluding that “no reasonable jury could find in favor of plaintiffs on the basis of the evidence” that they had presented.
- **April 2015:** A unanimous three-judge panel for the U.S. Court of Appeals for the Seventh Circuit affirmed the dismissal.
- **May 2015:** The Seventh Circuit denied the plaintiffs’ Petition for Rehearing.
- **November 2015:** The U.S. Supreme Court denied the plaintiffs’ Petition for Writ of Certiorari.

## Back-to-Back Wins for Comcast

We represented Comcast Corporation in four patent infringement lawsuits against Sprint Communications Co. LP pending in federal courts across the country relating to telephony, video and Internet services.

- **October 2014:** After a week-long trial, a jury in the U.S. District Court for the District of Delaware returned an infringement verdict in favor of Comcast and awarded \$7.5 million in damages. The verdict was a complete victory on liability.
- **August 2015:** The district court denied Sprint’s motions for judgment as a matter of law and a new trial. The court also granted Comcast an additional \$1.69 million in pre-judgment interest as well as post-judgment interest and an ongoing royalty to be determined at a later date.
- **August 2015:** The district court granted Comcast’s motion for judgment as a matter of law and overturned a jury verdict that Sprint had obtained in a second trial between the two companies. The order gave Comcast a complete victory, finding non-infringement as to all accused networks on all asserted claims.

### **Pennies on the Dollar Resolution for Dialog Semiconductor**

We represented Dialog Semiconductor in litigation related to earnout provisions in its acquisition of iWatt.

- **January 2015:** The Delaware Court of Chancery granted in its entirety a motion to dismiss that we filed on Dialog's behalf regarding iWatt's claims for breach of contract, fraud, breach of the implied covenant of good faith and fair dealing, and negligent misrepresentation.
- **April 2015:** Dialog reached a very favorable (pennies on the dollar) settlement with the plaintiff over the sole remaining claim.

### **Defeated Price-Fixing Claims Against SD-3C**

We represented SD-3C, a joint venture of Panasonic, SanDisk and Toshiba that licenses IP rights necessary to manufacture SD flash memory cards, against an antitrust claim brought by a class of indirect purchasers. The class action alleged that a "fair market price" royalty provision in the license agreement between SD-3C and manufacturers of SD cards constituted naked price-fixing.

- **September 2015:** The U.S. District Court for the Northern District of California dismissed the complaint, holding that the price-fixing claim failed as a matter of law.

### **Dismissal for Comcast in Antitrust Class Action**

We served as lead trial court counsel for Comcast in an antitrust class action in the U.S. District Court for the Eastern District of Pennsylvania. The plaintiffs challenged, among other things, Comcast's acquisition of cable systems in the Boston, Chicago and Philadelphia metropolitan areas.

- **October 2014:** We defeated the motion of the alleged Boston-area class to amend their complaint and transfer the case back to Boston. The court then dismissed all of the Boston-area claims with prejudice.
- **October 2014:** The Chicago-area claims were abandoned and the Philadelphia-area claims were favorably settled for \$50 million in services and cash.

### **Dismissal for Orexigen Therapeutics Directors**

We represented several current and former directors of Orexigen Therapeutics in connection with derivative litigation relating to the award of equity compensation.

- **October 2014:** California Superior Court accepted our arguments that the plaintiff lacked standing to bring claims, and had failed to plead facts indicating that the board was not independent or had acted in bad faith.
- **January 2015:** The Court dismissed with prejudice all claims filed by the derivative plaintiff.
- **March 2015:** The U.S. District Court for the Southern District of California granted our motion to dismiss a second derivative action.

### **Numerous Resolutions for Innolux in One of the Largest Antitrust Matters in the World**

We represent Innolux Corporation in connection with a number of matters across the country involving claims of price-fixing of liquid crystal display (LCD) panels. The cases included dozens of class actions coordinated in an MDL proceeding, actions by numerous state attorneys general, and separate cases brought by large individual purchasers, including manufacturers like Dell and Motorola. We helped convince a federal district court to grant summary judgment to the defendants on the vast majority of Motorola's claims.

We have also negotiated favorable settlements of class actions brought by both direct purchasers and indirect purchasers and resolved the claims of various state attorneys general and companies such as Costco Wholesale Corp., Target and Best Buy.

### **Won Judgment on the Pleadings for Aetna**

We represented Aetna Inc. and its subsidiaries ActiveHealth Management, Inc. and Medicity, Inc. in a patent infringement suit brought by HealthTrio, LLC alleging infringement of 10 closely related patents and accusing a broad array of Aetna's products. The asserted patents generally relate to health care informatics.

- **September 2015:** The U.S. District Court for the District of Colorado granted Aetna's motion for Judgment on the Pleadings, and found 497 patent claims contained in the 10 asserted patents invalid, bringing to an end a nearly three-year litigation that targeted a significant portion of Aetna's health care informatics business.

### **Won Summary Judgment of Non-Infringement on Behalf of Transcend Medical**

We represented Transcend Medical, Inc., an innovator in the field of Micro-Invasive Glaucoma Surgery, in a patent suit against Glaukos Corporation. Transcend recently completed a landmark clinical trial of its CyPass Technology and, after learning that Glaukos had claimed that Transcend would infringe its patents upon the commercialization of CyPass, Transcend filed an action seeking declaratory judgment of patent non-infringement, invalidity and unenforceability. Glaukos counterclaimed for patent infringement.

- **September 2015:** The U.S. District Court for the District of Delaware, granted Transcend's motion for summary judgment of non-infringement on all asserted claims and summary judgment on a motion of invalidity. It also denied Glaukos' motion of no inequitable conduct.
- **October 2015:** On the eve of trial, the parties settled, with Transcend receiving a covenant not to sue in the future and incurring a nominal royalty.

Companies we have worked with include:


























### Series of Victories for T-Mobile

We serve as lead trial counsel in a consolidated litigation alleging a conspiracy with other national wireless carriers to require machine-generated text messages to be sent in bulk using common short codes (CSCs) at inflated rates, in violation of the antitrust laws. The U.S. District Court for the Southern District of New York granted the defendants' motion to compel individual arbitration as to T-Mobile and most other defendants and stayed the action pending arbitration.

- **March 2015:** The arbitration panel agreed with T-Mobile and the other respondents that class arbitration was not permitted under the relevant agreements, and that each customer would have to pursue its own claims on an individual basis.
- **July 2015:** The arbitration panel issued an order granting T-Mobile's motion to dismiss all claims that accrued prior to April 2011, substantially reducing the scope of claimants' damages claims.

### Successful Resolution of Securities Litigation for Credit Suisse

We represented Credit Suisse Securities in connection with securities litigation filed in the U.S. District Court for the Northern District of California relating to the \$344 million acquisition of Celera Corporation by Quest Diagnostics. Credit Suisse served as financial adviser to Celera in connection with the transaction.

- **December 2013:** Credit Suisse's motion to dismiss the complaint was granted in its entirety. The plaintiffs thereafter repleaded, asserting claims under Section 12 of the Securities Exchange Act.
- **October 2014:** After extensive discovery, the case was settled.

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