

Litigators of the Week: Shutting Down a \$2 Billion Case Against Intel, Again

By **Ben Hancock**

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You might say William Lee and Joseph Mueller were in a good position heading into trial in Delaware on behalf of Intel Corp. The day it began, the judge compared their opponent's case to someone "floating off into the inky blackness of space with no hope of survival or rescue."

Lee and Mueller, veteran intellectual property attorneys at Wilmer Cutler Hale Pickering and Dorr, had succeeded through Daubert motions the week prior in excluding almost all expert damages testimony in the years-long patent fight brought by AVM Technologies LLC.

Winning that battle left AVM--and its star-studded trial team from Boies Schiller Flexner and Irell & Manella with the not-so-desirable option of using one of Intel's own experts to testify on damages. And poof, like that, a suit that the plaintiff had once claimed was worth up to \$2 billion was now being put forward as maybe worth \$3.5 million.

But that's not the only reason Lee, Mueller, and the rest of their team were able to shut down the case in its entirety, prevailing before a federal jury on Wednesday. That took focused lawyering and a bit of digging to tell a story about why Intel didn't infringe the patent at issue, and why the fight wasn't exactly David vs. Goliath.



courtesy photo

Left to right: **Bill Lee and Joseph Mueller, WilmerHale.**

AVM originally sued Intel over microprocessor circuit technology in 2010, seeking damages of around \$350 million. That case was dismissed in 2013, but the company came back in 2015 with a fresh suit containing similar claims--and seeking a whole lot more money.

Behind both cases is Joseph Tran, the inventor of the patent at issue and founder of AVM, which he bills as dedicated to continuing his research and development but that Intel has characterized essentially as a non-practicing entity. A company Tran previously worked for had done research and licensed technology to Intel, but it folded in 2006, according to his complaint.

With a complicated set of facts, Lee and Mueller decided to jettison most of their defenses as the

six-day trial drew nearer in front of U.S. District Judge Richard Andrews of the District of Delaware. They went from eight down to just three--one focused on non-infringement, and the other two on patent invalidity--in favor of getting deep into the history of how Intel developed its own technology to make processors run faster, and how it differed from Tran's.

"The broader historical perspective was important to show that real people [at Intel] had created these circuits," said Mueller, who was brought onto the case shortly ahead of trial, in an interview. "In a way, by streamlining the defenses, it gave us more time to teach and provide context for the remaining ones."

The lead lawyers arguing on AVM's behalf at trial were Jason Sheasby of Irell & Manella's Los Angeles office and Michael Underhill of Boies Schiller in Washington. Sheasby couldn't be reached on Thursday and Underhill said he couldn't comment without client approval.

The upshot of Intel's non-infringement case was that the company's technology actually tried to achieve the opposite of what AVM's patent claimed to do: increase power and speed via simultaneous activation of multiple circuits. Lee and Mueller argued that approach actually was a drag on speed and power that Intel avoided. (Though Intel won the non-infringement argument, the jury did not agree that AVM's patent was invalid.)

In the course of the case, Lee, who has handled the litigation from the beginning, uncovered through discovery that Tran was not acting alone in the case, and had reached an arrangement with an

undisclosed outside investor to help finance the litigation.

The judge ruled at the outset of trial that the funding agreement was not relevant for the jury, but that Intel's counsel could address it if the other side got into finances or portrayed Tran as a struggling inventor on a shoestring budget.

"One of the hard parts if you're a big institution going against an individual, you by definition have a David-and-Goliath issue. And laypeople are suspicious of David-and-Goliath situations," Lee said.

Ultimately, Lee successfully argued to the judge that AVM opened the door to airing the issue in front of the jury, after Tran testified that he had to take out a mortgage on his house in pursuing the case. In a cross-examination, Lee pressed Tran hard to say that his business had actually partnered with a "hedge fund" that invests in lawsuits.

"If they hadn't tried to portray the issue sort of incompletely, [we] wouldn't have brought it in," Lee said in an interview. "But when you try to portray a lone individual fighting a giant, it's only fair to complete the picture."

Lee and Mueller also credited the rest of their team for their efforts in the case. The team included partners Lauren Fletcher, Jordan Hirsch, David Marcus, Bill McElwain, Jim Quarles and Todd Zubler; counsels Brittany Amadi, Kevin Goldman and Matthew Leary; senior associates Michaela Sewall and Sarah Frazier; and associate Steven Horn.

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