MCKOOL SMITH
A PROFESSIONAL CORPORATION • ATTORNEYS

McKool Smith
One Bryant Park
47th Floor
New York, NY 10036
Tel: 212.402.9402
Fax: 212.402.9444

EDUCATION

- J.D., St. John's University School of Law, 1989
- B.S., Electrical Engineering, Syracuse University, 1986

COURT ADMISSIONS

- State of New York
- The U.S. Court of Appeals for the Federal Circuit
- The U.S. District Courts for the Eastern and Southern Districts of New York, the Eastern, Southern and Western Districts of Texas, and the Northern District of Illinois
- The U.S. Patent and Trademark Office

BAR ADMISSIONS

- American Bar Association, Litigation and Intellectual Property Sections
- New York Intellectual Property Law Association
- New York State Bar Association

ROBERT A. COTE

PRINCIPAL

Mr. Cote is the Managing Principal of McKool Smith's New York office. Mr. Cote is also a nationally recognized patent litigator and trial lawyer. His practice focuses on litigation and trials involving intellectual property, including patents, trade secrets and IP-related unfair competition and antitrust matters. His practice includes all phases of discovery, prior art research, *Markman* hearings, jury and bench trials, post-trial motions and appellate practice before the Federal Circuit. His clients span the spectrum from Fortune 500 companies to emerging companies and individuals, both domestic and foreign.

Mr. Cote has practiced in federal courts throughout the United States, including in the Eastern District of Texas, Southern District of Texas, Western District of Texas, District of Delaware, Eastern District of Virginia, Central and Northern Districts of California, Northern District of Illinois, Northern District of Georgia, Southern District of Ohio, Northern District of Ohio, Eastern District of New York, and Southern District of New York.

REPRESENTATIVE MATTERS

Wi-LAN, Inc. Lead counsel for Wi-LAN, Inc., a Canadian company, in patent infringement litigation in the Eastern District of Texas and Northern District of California against leaders in the laptop, router, semiconductor and handset industries, involving use of Wi-LAN's patented wideband OFDM air interface that makes possible the Wi-Fi and Wi-MAX wireless capability in such devices: *Wi-LAN, Inc. v. Acer, Inc., et al.*, Eastern District of Texas; *Wi-LAN, Inc. v. Research in Motion Corporation, et al.*, Eastern District of Texas; *Wi-LAN, Inc. v. Westell Technologies, Inc., et al.*, Eastern District of Texas; *Acer America Corp., et al. v. Wi-LAN, Inc.*, Northern District of California; *Broadcom Corporation, et al. v. Wi-LAN, Inc.*, Northern District of California; *Intel Corporation v. Wi-LAN, Inc.*, Northern District of California; *Marvell Semiconductor, Inc., et al. v. WI-LAN, Inc.*, Northern District of California; *Sony Computer Entertainment America, Inc., et al. v. Wi-LAN, Inc.*, Northern District of California.

Finmeccanica. Lead counsel for Finmeccanica and Ansaldo Ricerche, Italian companies, in trade secret litigations pending against General Motors in the Eastern District of Virginia and Central District of California involving axial flux permanent magnet motor technology for in-wheel use in powering the next generation in hybrid and electric vehicles: *Finmeccanica S.p.A and Ansaldo Ricerche, S.p.A. v. General Motors Corporation*, Eastern District of Virginia; *General Motors Corporation v. University of Rome "La Sapienza," et al.*, Central District of California*; Finmecannica, S.p.A. v. General Motors Corporation*, Central District of California.

Realtime. Lead counsel for Realtime Data (dba IXO) in patent infringement litigations involving data compression technology used in the realtime delivery of market data: *Realtime Data v. CME et al., Realtime Data v. Morgan Stanley et al., Realtime Data v. Thomson Reuters et al.,* Eastern District of Texas; *CME v. Realtime Data,* Northern District of Illinois, *Thomson Reuters v. Realtime Data,* Southern District of New York.

Charles Schwab. Lead counsel in *William Reid and net P&L v. General Motors, Charles Schwab et al.* pending in the Eastern District of Texas, a patent infringement suit involving enterprise network identity management systems. Obtained dismissal of case.

Protus. Lead counsel for Protus IP Solutions, a Canadian company, in *Catch Curve, Inc. v. Protus,* pending in the Central District of California alleging that Protus' virtual fax and other internet messaging services infringe five patents.

TCL & Alcatel Mobile Phones. Lead counsel for TCL/Alcatel, a French company, in *The University of Texas v. Alcatel et al.,* a multi-defendant patent infringement suit pending in the Western District of Texas. The suit alleged that TCL/Alcatel's mobile phones infringed a patent that the University of Texas alleged covers predictive text software tools in mobile phones, PDAs, and other handheld devices. The suit was favorably dismissed.

Universal. Lead counsel for defendant Universal Instruments in *Aguayo and Tran v. Universal Instruments,* a patent suit filed in the Southern District of Texas. This patent suit involved a patent directed to robotic assembly machines and software for the manufacture of printed circuit boards used in cell phones, computers, networking equipment, and other electronic devices. Following a three-week jury trial, all 17 asserted claims of the patent were found invalid and not infringed – a complete defense victory.

Applera. Lead counsel for plaintiff Applera in *Applera v. MJ Research et al.,* a multi-defendant patent infringement, unfair competition, and antitrust suit filed in the District of Connecticut involving the enforcement of six patents directed to a Nobel Prize-winning gene amplification process known as the polymerase chain reaction (PCR) and thermal cycling instruments, electronics, and software used to automate the PCR process. After a three-week jury trial, a Connecticut jury found MJ Research et al. liable for infringement of all six patents and willful infringement of four patents. A permanent injunction and damages were awarded. The defendants' unfair competition and IP-related antitrust counterclaims, including for patent tying, "total sales" royalty arrangements, and price fixing, were successfully dismissed on summary judgment.

Optical Recording Corporation. In *Optical Recording Corporation v. Time Warner*, Mr. Cote was counsel for plaintiff Optical Recording Corporation (ORC), a Canadian Company, in a District of Delaware patent infringement suit involving multiple patents directed to the recording, playback, and manufacture of optical storage products, including compact discs (CDs) and CD-ROMs. After a five-week jury trial, the jury returned a verdict in ORC's favor and finding that Time Warner willfully infringed the asserted patents. Mr. Cote was also counsel for plaintiff ORC in the District of Delaware in four additional patent infringement suits: (i) *Optical Recording Corp. v. Denon Digital, Denon America and Nippon Columbia*; (ii) *Optical Recording Corp. v. Disc Manufacturing Inc.;* (iii) *Optical Recording Corp. v. Laser Magnetic Systems, Inc.*; and (iv) *Optical Recording Corp. v. Nimbus Records*. These additional cases were favorably settled for ORC after extensive fact and expert discovery involving extensive foreign language discovery. More than twenty disc and player manufacturers worldwide were licensed.

Compal Electronics. Lead counsel for defendant Compal Electronics, in a multi-defendant patent infringement suit filed in the District of Delaware against the computer industry involving notebook and desktop computers, video adapters, Windows operating systems, and CRT and LCD displays. Mr. Cote obtained summary judgment.

Unisys. Mr. Cote was counsel for defendant Unisys in *Valutron v. Unisys and IBM*, a multi-defendant suit filed in the District of Connecticut involving technology for automatic teller machines (ATMs), point of sale (POS) terminals, and bank teller equipment for the financial industry. The Court granted summary judgment in his client's favor.

York International. Mr. Cote was counsel for defendant York International in *Wanlass v. York International et al.*, a multi-defendant patent infringement suit filed in the District of Utah involving air conditioning, heating, and refrigeration equipment and motor technology. Nuisance value settlement following summary judgment motion based on laches and estoppel.

NCR. Mr. Cote was counsel for defendant NCR in *Monarch v. NCR*, a patent and trademark infringement suit filed in the Southern District of Ohio involving three patents directed to bar code printing equipment. The case was favorably settled for NCR following a mini-trial. In *Hemstreet v. NCR*, Lundy and Banctec, Mr. Cote counsel for defendant NCR in a multi-defendant patent infringement suit directed at bank check processing equipment for the financial industry and postal mail sorting equipment involving magnetic ink (MICR) and optical character recognition (OCR) technologies. The case was favorably settled for NCR following extensive fact and expert discovery. Mr. Cote was also counsel for NCR in *NCR v. Microbilt*, a patent infringement suit involving signature capture devices. The case was favorably settled for NCR before the close of fact discovery.

Maytag. In *Tridelta Industries and Pitco Frialator v. Frymaster*, Mr. Cote was trial counsel representing plaintiffs Tridelta Industries and Pitco Frialator (a Maytag business) in a patent infringement suit filed in the Northern District of Ohio involving five patents directed to the computers, electronics, and software used in commercial cooking equipment. Following extensive fact and expert discovery and numerous summary judgment motions, the case was favorably settled two days before a scheduled four-week jury trial. The case settled after a favorable Markman decision which caused the defendant to concede it could not prevail.

Hospital Specialty Co. In *James River v. Hospital Specialty Co.*, Mr. Cote was trial counsel for defendant HSC in a trade secret litigation filed in California involving equipment for manufacturing paper products. The case was favorably settled for HSC following the close of fact discovery.

AWARDS & RECOGNITION

Recipient, Super Lawyer Award, The New York Times, every year since 2006; and he is listed in the Lawdragon 500 Leading Lawyers in America.

ARTICLES

"Strategies for Defending Against The Patent Litigation Gold Rush in the United States," Intellectual Property Institute of Canada, 78th Annual Meeting, Banff Springs, Alberta, Canada. October 14, 2004.

"Patent Trolls Be Warned," *New York Law Journal*, April 15, 2005.

"Asia Licensing Fever," *Managing Intellectual Property*, March 2006.

"Survival Strategies for the New IP Economy," *Managing Intellectual Property*, June 2006.