



Ian Simmons

Partner

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The Co-Chair of the Firm's Antitrust and Competition Practice, Ian Simmons has been lead counsel in more than 35 multi-district litigation (MDL) antitrust proceedings and has achieved precedent-setting results. With 31 years of experience in antitrust litigation, Ian is one of a few lawyers listed in the Commercial Litigation Global Leader and Competition Thought Leader *Who's Who Legal* directories.

In addition to his extensive experience with cartel cases, Ian litigates matters involving intellectual property issues, including the competitive implications of standard essential patents and FRAND obligations. He has argued before the US Court of Appeals for the Second, Third, Fourth (twice), Sixth, Seventh, Ninth (twice) and Tenth Circuits, and the highest courts in New York and South Dakota. Ian has tried seven cases to verdict and has taken more than 30 expert economist depositions. He is currently co-lead counsel to Google in *In re Google Play Store Antitrust Litigation* (N.D. Cal.) and *State of Utah et al. v. Google LLC et al.* (N.D. Cal.), landmark antitrust cases.

An expert in the doctrine at the intersection of intellectual property and antitrust law, including FRAND and the law of Standard Setting Organizations, Ian represented Samsung as an amicus in *Federal Trade Commission ("FTC") v. Qualcomm*, a filing whose content made its way into the District Court opinion denying Qualcomm's motion to dismiss. In 2020, Ian represented 46 of the Nation's top antitrust scholars in a Ninth Circuit amicus brief in support of the FTC in its Qualcomm appeal. Ian currently represents the Fair Standards Alliance in matters involving standard essential patents and he moderated a panel on the

Admissions

Bar Admissions

District of Columbia

Pennsylvania

Court Admissions

US Supreme Court

US Court of Appeals for the Second, Third, Fourth, Sixth, Seventh, Ninth, Tenth, and District of Columbia Circuits

Education

University of Pennsylvania, J.D., 1991

Yale University, M.A., 1988

McGill University, B.A., 1986

antitrust analysis of standard essential patents at the 2021 American Bar Association Spring Meeting in Washington D.C.

An alumnus of the US Department of Justice Antitrust Division, Ian's career evinces several "firsts:" he was trial counsel in the first jury trial price fixing case to attack a wholly foreign conspiracy; he argued and won in the US Court of Appeals for the Ninth Circuit in what it called "a case of first impression" on the preemption of state antitrust laws; he is counsel to Bitcoin.com and Roger Ver in the first antitrust case involving crypto currency; and he is counsel to Samsung Bioepis in the first "pay for delay" case involving biosimilars. In 2019, the *National Law Journal*, in recognizing the DC office as litigation department of the year, singled out the \$3 billion summary judgment victory for Samsung Electronics. Ian's results have been recognized by *Law360*, which named Ian an MVP of the Year in Competition.

Who's Who Legal highlights Ian's "superb attention to detail, excellence in written and oral advocacy and subtle judgement on strategy," noting that peers and clients consider him "a super smart litigator with great instincts." "Ian is an excellent lawyer: creative, smart and strategic." "He has a strong grasp of the economics of the case at hand." *Chambers USA* regularly ranks Ian for his work in antitrust litigation, and notes his "fine reputation for his multijurisdictional cartel defense work" and reports that clients describe him as "outstanding and incredibly skilled," commend his "detail-oriented work," and praise his "encyclopedic knowledge." Ian is consistently recognized for his work in antitrust by *The Legal 500*, which labels him a "star of the antitrust bar" along with O'Melveny's team as "top-drawer," and by *Global Competition Review* who lauded him for his Samsung victory against Qualcomm in 2017 and shortlisted him for "Litigator of the Year" at the 2015 *Global Competition Review* awards. Ian was also named a 2017 Antitrust Trailblazer by the *National Law Journal*, a leading lawyer by *Who's Who Legal: Litigation* in 2017, and a competition expert by *Who's Who Legal: Competition* in 2018.

Ian defeated class certification on a multi-billion-dollar price fixing claim involving Optical Disk Drives in the Northern District of California against Samsung and other major technology companies and obtained a highly significant victory for Asiana Airlines Inc. in long-running antitrust litigation, which extinguished hundreds of millions of dollars of potential exposure. Ian also represented Marriott International in an antitrust MDL involving online travel company booking; the complaint was dismissed with prejudice.

An eight time moderator or panelist at the American Bar Association Antitrust Spring meeting, and author of over 20 peer review articles, Ian is a Member of the Editorial Board of the American Bar Association *Antitrust Magazine*.

Ian is a Senior Lecturing Fellow at Duke University Law School.

Experience

- **Google.** Ian is defending Google in four antitrust cases pitting the company against a game developer, putative classes of consumers and app developers, and 36 state attorneys general. Plaintiffs accuse Google of engaging in unlawful monopolization by restricting the distribution of third-party app stores, deterring Android users from "side-loading" apps downloaded from the Internet, and "tying" app distribution to developers' use of Google Pay Billing. The complaints claim that Google makes it difficult to buy apps outside the Google Play Store, and blocks competing app stores from its marketplace while preventing them from advertising on Google properties. Trial is scheduled in September 2022. *In re: Google Play Store Antitrust Litigation*, No. 3:21-md-02981-JD (N.D. Cal.); *Epic Games, Inc. v. Google LLC*, No. 3:20-cv-05671-JD (N.D. Cal.); *In re Google Play Consumer Antitrust Litigation*, No. 3:20-cv-05761-JD (N.D. Cal.); *In re Google Play Developer Antitrust Litigation*, No. 3:20-cv-05792-JD (N.D. Cal.); *State of Utah et. al. v. Google LLC et. al.*, No. 3:21-cv-05227-JD (N.D. Cal.).
- **Novartis.** Ian is counsel to Novartis Pharma AG, Novartis Technology LLC, and Novartis Pharmaceuticals Corporation, in *Regeneron Pharmaceuticals, Inc. v. Novartis Pharma AG, et al.*, 1:20-cv-05502-AJN (S.D.N.Y.), a Walker Process monopolization action relating to a patent covering a method for treatment of ophthalmic conditions.
- **Samsung Electronics and Samsung Semiconductor.** Ian is lead counsel for Samsung Electronics and Samsung Semiconductor in a case alleging price fixing on the part of DRAM manufacturers. In 2019, the dismissal was affirmed by the Ninth Circuit *In re Dynamic Random Access Memory (DRAM) Indirect Purchaser Antitrust Litigation*, 28 F.4th 42 (9th Cir. 2022).
- **Bitcoin.com.** Ian is counsel to Bitcoin.com in *United American Corp. v. Bitmain, Inc. et al.* (S.D. Fla. 2018), the first antitrust case involving crypto currency. In January 2020, the Complaint was dismissed without prejudice; a renewed motion to dismiss has been filed and the court granted it with prejudice, dismissing the case. *United Am. Corp. v. Bitmain, Inc.*, 530 F. Supp. 3d 1241, 1249 (S.D. Fla. 2021).
- **American Airlines.** *US Airways Inc v. Sabre* (S.D.N.Y. April-May 2022): Six week jury trial in which trial team secured a successful jury verdict against Sabre finding that Sabre illegally maintained its monopoly power in the Sabre distribution market; this landmark case is the first two sided market case to be tried to a jury.
- **Samsung Electronics.** *In re Optical Disk Drive Antitrust Litig.*, 303 F.R.D. 311 (N.D. Cal. 2014). Ian argued on behalf of all defendants in opposition to class certification by the direct purchasers; the motion for class certification was denied, only the second time that has happened in a civil case where a guilty plea was entered. The indirect purchaser motion for class certification also was denied. In December 2017, the Northern District of California granted O'Melveny's motions for summary judgment, capping off over eight years of work in this matter, including a Department of Justice investigation that ended without any charges against Samsung or any of its former employees. The plaintiffs were seeking \$3 billion in trebled damages.
- **Samsung Bioepis.** Ian is counsel to Samsung Bioepis in the first "pay for delay" case involving biosimilars, *In re Humira Antitrust Litigation*. In late June 2020, in a 73 page opinion, the Court dismissed the complaint; an appeal has been taken. *In re Humira Antitrust*, 465 F. Supp.3d 811, (N.D. Ill. 2020).

- **American Airlines/US Airways.** Ian represents US Airways in *US Airways v. SABRE Inc.* (S.D.N.Y.), a cutting edge case involving two-sided markets and challenging SABRE's MFN provisions.
- **Giffords Law Center to Prevent Gun Violence.** *Gun Owners of America, Inc. v. Garland*, 19 F. 4th 890 (6th Cir. 2021). (An equally divided en banc count affirmed the upholding of ATF's ban on bump stocks).
- **Giffords Law Center to Prevent Gun Violence.** *Guedes v. Bureau of Alcohol, Tobacco, Firearms*, 920 F. 3d 1 (D.C. Cir. 2019) (upholding ATF's ban on bump stocks).
- **Federal Trade Commission v. Qualcomm, Inc.** In the US Court of Appeals for the Ninth Circuit, Ian represented 40 of the nation's top antitrust scholars in support of the Federal Trade Commission and affirmance in this landmark monopolization case involving the antitrust analysis of standard essential patents. *Federal Trade Commission v. Qualcomm, Inc.*, 969 F. 3d 974 (9th Cir. 2020).
- **Asiana Airlines.** In what it called "a matter of first impression," the US Court of Appeals for the Ninth Circuit in April 2011 held that the Airline Deregulation Act preempts state antitrust claims against foreign air passenger carriers. See *In re Korean Airlines, Co. Ltd. Antitrust Litigation*, 642 F.3d 685 (9th Cir. 2011). This appeal, argued by Ian, affirmed the district court. 567 F. Supp. 2d 1213 (C.D. Cal. 2008). In October 2012, the US Court of Appeals for the Second Circuit issued an opinion reaching the same conclusion in connection with foreign air cargo carriers; Ian argued the appeal on behalf of 30 airlines. See *In re Air Cargo Shipping Services Antitrust Litigation*, 697 F.3d 154 (2d Cir. 2012).
- **Marriott International.** Ian represented Marriott International in a series of putative class actions alleging resale price maintenance. The consolidated MDL complaint was dismissed with prejudice for failure to state a claim. See *In re Online Travel Company Hotel Booking Antitrust Litig.*, 997 F. Supp.2d 526 (N.D. Tex. 2014).
- **Apollo Global Management.** Ian represented Apollo Global Management in a putative class action alleging a market allocation in the alleged LBO market. Apollo's motion for summary judgment was granted.
- **Federal Trade Commission v. Sysco Corp.**, 113 F. Supp. 3d 1 (D.D.C. 2015) (Defended Sysco in merger challenge by the Federal Trade Commission).
- **SK Hynix Inc.** Ian was counsel to SK hynix in *In re Dynamic Random Access Memory Litigation*, 546 F.3d 981 (9th Cir. 2008) (FTAIA bars foreign claims).
- **Honeywell International Inc.** Ian was counsel to Honeywell International Inc. in an antitrust class action involving a putative class of indirect purchasers of Honeywell thermostats.
- **Chemtura Corporation** (formerly Crompton Corporation). Ian was lead counsel for Chemtura in over 70 federal and state actions alleging price fixing and in federal MDL actions alleging conspiracies involving five different products and five separate time periods.
 - *Sperry v. Crompton Corp.*, 863 N.E. 2d 1012, 8 N.Y. 3d 204 (2007). Ian prevailed in New York's Highest Court, in what Global Competition Review termed "a landmark ruling," holding that treble damages class actions are not cognizable under New York's antitrust statute, the Donnelly Act.
 - *In re Rubber Chemicals Antitrust Litigation*, 504 F. Supp. 2d 777 (N.D. Cal. 2007). The District Court for the Northern District of California dismissed for lack of subject matter jurisdiction foreign claims that did not satisfy the FTAIA's "domestic injury" exception.
 - *In re NBR Antitrust Litigation*, 2006 WL 3147328 (3d Cir. 2006). Ian secured a reversal in the US Court of Appeals for the Third Circuit in an antitrust/arbitration case.

- *Frankenfeld v. Crompton*, 697 N.W.2d 378 (S.D. 2005). South Dakota Supreme Court reversing denial of motion to dismiss for lack of personal jurisdiction and rejecting argument that the mere allegation of a nationwide price fixing conspiracy was sufficient to confer jurisdiction.
- **CIGNA**. *Gibbs Properties, et al. v. CIGNA Corp.*, 196 F.R.D. 430 (M.D. Fla. 1999). Ian defended CIGNA in a major RICO case in which class certification was denied.
- **Nippon Paper Indus.** *United States v. Nippon Paper Indus, Co., Ltd.*, 62 F. Supp. 2d 173 (D. Mass. 1999). Ian defended NPI in a six-week criminal price fixing jury trial. This case was the first time that a federal grand jury indicted a company for its alleged involvement in a wholly foreign conspiracy. After the jury deadlocked, in a landmark ruling, the district court granted NPI's motion for judgment of acquittal.
- *Paper Systems Inc. v. Nippon Paper Indus. Co., Ltd.*, 281 F.3d 629 (7th Cir. 2002).

Professional Activities

Clerkships

- Honorable Gustave Diamond, Chief Judge, US District Court, Western District of Pennsylvania

Author

- “The Future of the Past: Taking Stock of SEP Policy at the outset of the Biden Administration” (co-authors Scott Schaeffer, Brian P. Quinn and Eric Rodriguez), *American Bar Association Antitrust Magazine* (Summer 2021)
- “FTC v. Qualcomm and the Potential Implications for Section 2” (co-authors Scott Schaeffer and Brian Quinn), American Bar Association’s *Monopoly Matters* (November 2020)
- “Necessity as the Mother of Invention? Streamlining the Evaluation of Competitor Collaborations” (co-authors George Bashour, Arnd H. Klein and Celeste Saravia), *American Bar Association Antitrust Magazine* (Summer 2020)
- “The EC Communication on SEPs: Convergence, Divergence, or Silence?,” (co-authors Benjamin Hendricks and Philippe Nogues) *American Bar Association Antitrust Magazine* (Summer 2018)
- “Price Discrimination Markets in Merger Cases: Practical Guidance from *FTC v. Sysco*,” (co-authors Sergei Zaslavsky and Lindsey Freeman), *American Bar Association Antitrust Magazine* (Fall 2016)
- “*FTC v. Sysco*: ‘Price Discrimination’ Markets and The Rule of Law,” (co-author Ted Hassi), *American Bar Association Antitrust Magazine* (Fall/Winter 2015)
- “Where to Draw the Line: Should the FTAIA’s Domestic Effects Test Apply in Criminal Prosecutions?” (co-authors Benjamin G. Bradshaw and Stephen McIntyre), *American Bar Association Antitrust Magazine* (Summer 2015)
- “The Continuing Relevance of Patent Validity in Reverse- Payment Litigation,” (co-authors Kenneth R. O’Rourke and Stephen McIntyre), *Concurrences* (Spring 2014)
- “Viewing *FTC v. Actavis* Through the Lens of Clayton Act Section 4” (co-authors Kenneth R. O’Rourke and Scott Schaeffer), *American Bar Association Antitrust Magazine* (Fall 2013)
- “Reflections on Cartel Enforcement,” (co-author Kenneth R. O’Rourke), *American Bar Association Antitrust Magazine - 25th Anniversary Edition* (December 2012)

- “Everyone Is Entitled to His Own Opinion...Reflections on the Cross-Examination of Expert Witnesses,” *25 Antitrust* 3 (Summer 2011)
- “Towards Convergence: The Volume of ‘Affected’ Commerce Under the US Sentencing Guidelines and ‘Impact’ Analysis Under the Clayton Act,” (co-authors Julia Schiller and Angela Thaler Wilks), *George Mason Law Review* (Summer 2011)
- “Survival of the Fittest - Aspen Skiing,” (co-authors Dylan Brown and Bo Pearl), *Law360* (April 2011)
- “Proof of Common Impact in Antitrust Litigation: The Value of Regression Analysis,” (co-authors Pierre Cremieux and Edward A. Snyder), *George Mason Law Review* (Summer 2010)
- “Joint Ventures and the Sherman Act: The Problem Revealed by American Needle and How Best to Address It,” (co-authors Thomas Brown, Katherine Robison), *The CPI Antitrust Journal*, (March 2010 (2))
- “One Hundred Years of (Attempted) Solitude: Navigating the Foreign Trade Antitrust Improvements Act,” *24 Antitrust* 2 (Spring 2010)
- “The Third Circuit Joins the Majority with *In Re Hydrogen Peroxide*,” (co-author Alexander Okuliar), *Class Action Watch* (April 2009)
- “Rigorous Analysis in Antitrust Class Certification Rulings: Recent Advances on the Front Line,” (co-author Alexander P. Okuliar), *23 Antitrust* 1 (Fall 2008)
- “Private Enforcement of the U.S. Antitrust Laws Through Class Actions,” (co-author Alexander P. Okuliar), *The International Comparative Legal Guide to: Competition Litigation 2009*
- “Without Presumptions: Rigorous Analysis in Class Certification Proceedings,” (co-authors Alexander P. Okuliar and Nilam A. Sanghvi), *21 Antitrust* 3 (Summer 2007)
- “Downstream Discovery In Antitrust Class Actions,” (co-authors Laila Haider and John Johnson), *The Antitrust Practitioner*, Vol. 4 (July 2006)
- “Muddy Waters? Navigating the Antitrust Criminal Penalty Enhancement and Reform Act,” (co-authors Frank Goldman and Scott M. Hammack), *Antitrust Report, Issue 2* (2006)
- “The Class Action Fairness Act of 2005 and State Law Antitrust Actions,” (co-author Charles E. Borden), *20 Antitrust* 1 (Fall 2005)
- “The New Meets the Old: The Class Action Fairness Act of 2005 and State Law Indirect Purchaser Antitrust Actions,” (co-author Charles E. Borden), *The Antitrust Practitioner*, Vol. 2 (May 2005)
- “Safer than a Known Way? A Critique of the FTC’s Report on Competition and Patent Law and Policy,” (co-authors Professor Janusz A. Ordover and David A. Applebaum), *18 Antitrust* 39 (Spring 2004)
- “I Know It When I See It: Defining and Demonstrating Blocking Patents,” (co-authors Patrick Lynch and Theodore H. Frank), *16 Antitrust* 48 (Summer 2002)
- “A Dialogue Between The Antitrust Division and Defense Counsel: The Nippon Paper Trial – Judicial Rejection of Foreign Price Fixing: What Does it Mean for the Future?,” *Antitrust Law Criminal Practice and Procedure Committee*, No. 30 (February 2001)
- “The Advent of Per Se ‘Plus’: United States v. Nippon Paper and the Limitations of Sherman Act Criminal Enforcement Against Foreign Conspiracies,” *14 Antitrust* 26 (Fall 1999)

Speaker and Moderator

- “Antitrust and SEPs: What’s Next?,” American Bar Association Section of Antitrust Law 70th Annual Spring Meeting (April 2022)
- “High Technology Deals: Are New Standards Warranted,” American Bar Association Section of Antitrust Law 69th Annual Spring Meeting (March 2021) (moderator)
- “Honest Broker or Advocate: Effective Expert Testimony,” American Bar Association Section of Antitrust Law 68th Annual Spring Meeting (March 2020)
- “Antitrust ‘Markman’ Hearings: Cartel Class Certification Battles,” American Bar Association Section of Antitrust Law 67th Annual Spring Meeting (March 2019)
- “Update on Antitrust in Asia,” American Bar Association Section of Antitrust Law 66th Annual Spring Meeting (April 2018)
- “Herding Cartel Cases - Reconciling and Resolving Multiple Proceedings,” American Bar Association Section of Antitrust Law 65th Annual Spring Meeting (March 2017)
- “Presenting Economic Evidence in Merger Trials,” American Bar Association Section of Antitrust Law 64th Annual Spring Meeting (April 2016)
- “Winning or Losing Class Certification post-Comcast,” American Bar Association Section of Antitrust Law 62nd Annual Spring Meeting (March 2014) (moderator)
- “Forging Expert Testimony to Prevail,” American Bar Association Section of Antitrust Law 60th Annual Spring Meeting (March 2012)
- “George Mason Law Review 13th Annual Symposium on Antitrust Law: Two Watersheds: The New Case Law of Bundles, Rebates and Class Certification,” Washington, DC (February 2010)
- “EU Antitrust Litigation and Class Actions: Where is Europe Going and What Can We Learn From The US Experience?” London, UK (April 2008)

Speaker

- Panelist, “Unilateral conduct vis-à-vis investigation on different jurisdiction,” Penn Law Antitrust Association (PLAA) Conference (October 2021)
- Panelist, “Expert Witness Depositions,” Practising Law Institute’s Fundamentals of Taking and Defending Depositions (March 2020)
- Panelist, “Expert Witness Depositions,” Practising Law Institute’s Fundamentals of Taking and Defending Depositions (March 2019)
- Panelist, “Significant Legislative and Regulatory Developments,” 30th Anniversary Institute for Corporate Counsel (December 2011)
- Panelist, “Antitrust Nuts & Bolts – How to Avoid Antitrust Litigation,” WMACCA Litigation Forum (October 2011)
- Panelist, “U.S. Antitrust Law and Global Claims: Navigating The Foreign Trade Antitrust Improvement Act,” American Bar Association Section of Antitrust Law 57th Annual Spring Meeting (2009)
- Faculty Member, “The Antitrust Litigation Course,” American Bar Association, Philadelphia, PA, (2007)
- Panelist, “Class Certification: Is There A Trend Towards More Rigorous Analysis,” American Bar Association Section of Antitrust Law 55th Annual Spring Meeting (2007)

- “Class Action Fairness Act: One Year Later Emerging Issues and Strategies,” New York, NY (2006)
- “Alternative Dispute Resolution and Competition: The Interface Between ADR and Competition Law,” IBC UK Conferences, London, UK (2005)

Associate Editor

- *Antitrust Magazine* (2010-Present)

Honors & Awards

- Recommended by *The Legal 500 US* for Cartel (2022)
- *Benchmark Litigation*, Benchmark Litigation Star (2022)
- Recognized by *LMG Life Sciences* for Antitrust Practitioner of the Year (2021)
- Recognized by *Who's Who Legal* in "Thought Leaders - Competition 2022" and "Competition 2021"
- Recognized by *Who's Who Legal* in "Commercial Litigation 2020 and 2021"
- Recognized by *Best Lawyers®* 2022 for Litigation - Antitrust in Washington, DC; Ian has been listed in *Best Lawyers®* since 2010.
- *Benchmark Litigation*, National Practice Area Star - Antitrust & Competition, Local Litigation Star (2019-2022)
- Recognized by *Chambers USA* for Antitrust (2014-2022)
- Recognized by *The Legal 500 US* for Antitrust Law (2008, 2012-2014, 2017-2021) and Mergers & Acquisitions (2020-2021)
- “Super Lawyer” for Antitrust, Washington DC *Super Lawyers* magazine (2013-2020)
- *National Law Journal*, Antitrust Trailblazer (2017)
- Shortlisted for “Litigator of the Year” at the 2015 Global Competition Review awards
- *Global Competition Review* for Antitrust (2017)
- *Global Competition Review: Cartel Defense of the year, UK Air Cargo* (2018)
- “2011 MVP of the Year - Competition Practice,” *Law360*
- *Practical Law Company's (PLC) Which lawyer?* Global 50 Firms (2011)