

Rodger R. Cole

Firmwide Managing Partner

Partner

Litigation

Mountain View

650-335-7603

rcole@fenwick.com



In his role as managing partner, Rodger harnesses Fenwick's collective strengths to meet client needs and deliver superior client service.

Rodger is responsible for leading the firm's operations across its six offices with more than 400 lawyers. Notable achievements under his leadership include:

- Further bolstering Fenwick's position as a go-to law firm for technology and life sciences companies, prompting *Forbes* to declare Fenwick one of America's Top Trusted Corporate Law Firms and *Law360* to recognize the firm as a California Powerhouse
- Leading Fenwick's strategic growth, including adding the most lateral talent in firm history as well as overseeing the firm's expansion to Santa Monica and its growth in New York
- Instituting law firm-leading benefits, such as Fenwick's expanded parental leave program, which features benefits for all parents, regardless of gender or caregiver status
- Supporting Fenwick's diversity and inclusion initiatives, including the firm's completion of Mansfield Certification Plus from Diversity Lab and its achievement of a perfect score on The Human Rights Campaign Foundation's Corporate Equality Index

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In his legal practice, Rodger is widely hailed as a top litigator for prominent Silicon Valley

companies. For more than 25 years, he has been helping technology and consumer product companies achieve their goals in complex commercial and intellectual property disputes. He has defended technology companies in more than 100 class actions, including many published decisions from both district courts and courts of appeal.

Recognized by BTI Consulting as a Client Service All-Star, Rodger is sought for his ability to quickly understand his clients' key business drivers and work with them to develop an early strategy to win or resolve a dispute within budget so they can get back to the important business of running their companies.

A respected leader, Rodger has been featured in *Law360*'s "Law Firm Leaders" series and Santa Clara Law School's distinguished "*Lawyers Who Lead*" alumni category. He has been consistently recognized as a Northern California Super Lawyer every year since 2005.

Representative Experience

- *Dohrmann et al v. Intuit et al*: Rodger defended Intuit in a Ninth Circuit appeal, profiled by *Law360*, related to a putative class action alleging false advertising claims associated with Intuit's TurboTax free filing option for tax preparation services. The Ninth Circuit reversed the district court's decision, noting TurboTax's terms of service were clearly visible when users signed in on its website, and that the terms included a clause requiring disputes to be resolved through arbitration. The panel instructed the district court to compel arbitration, rejecting its alternative rationale that the users could bring a class action under a provision in the agreement that allows a court to award certain forms of equitable relief.
- *In re Intuit Data Litigation*: Rodger defended Intuit in a series of consumer class actions consolidated in the Northern District of California before Judge Davila. Plaintiffs alleged that Intuit failed to implement adequate security measures to prevent fraudsters from filing fraudulent tax returns and asserted legal claims for negligence and unfair competition. After winning a motion to dismiss and motion to compel arbitration, the case settled.

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- *In re Lenovo Adware Litigation*: Rodger defended Superfish in a series of 27 federal lawsuits consolidated in the Northern District of California before Judge Whyte. Plaintiffs alleged that

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Superfish's visual search technology violated their privacy rights and asserted legal claims for violation of the Wiretap Act, California Penal Code and unfair competition. The case settled.

- *In re Carrier IQ Consumer Privacy Litigation*: Rodger was appointed by Northern District Court of California Judge Chen as lead liaison defense counsel in a multidistrict privacy class action that coordinated more than 70 lawsuits filed around the country in the Northern District of California. He represented lead defendant Carrier IQ. Other defendants included HTC, Huawei, LG Electronics, Pantech Wireless, Samsung and Motorola Mobility. Plaintiffs claimed that Carrier IQ's diagnostic software, which is embedded on a wide range of smartphones manufactured by Carrier IQ's co-defendants, allowed the tracking and interception of consumers' data and communications. The main legal claims asserted were violations of the Wiretap Act, Stored Communications Act and Computer Fraud and Abuse Act. The case settled. The closely watched litigation was covered by the *Daily Journal*, *The Recorder* and *Law360*.
- *Boorstein v. CBS Interactive*: Rodger secured a victory for client CBS Interactive in a widely watched privacy class action that ultimately led to the first court of appeal decision interpreting California's Shine the Light Act. A fantasy football player sued CBS alleging the company violated a state law requiring it to disclose information about third-party vendors. The complaint alleged that CBS failed to comply with the Shine the Light statute by not including those disclosures in a privacy rights page on their websites. Rodger's team convinced the trial court to grant its demurrer without leave to amend, arguing that the plaintiff did not have standing to bring a claim against CBS and the suit should be dismissed. The California Court of Appeal agreed and affirmed our trial court victory. The Ninth Circuit subsequently affirmed the dismissal of four similar suits based on the California Court of Appeal's decision in *Boorstein*.
- *Inter-Mark v. Intuit*: Rodger defended Intuit in the consumer class action styled *Inter-Mark v. Intuit* and made new law governing online contracts. Inter-Mark alleged that Intuit's enterprise software had bugs that breached implied warranties covering the product. Rodger filed a successful Rule 12(b)(6) motion to dismiss, arguing that Intuit's click-wrap

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end-user license agreement expressly disclaimed such warranties, was enforceable and barred Inter-Mark's claims. The court granted Intuit's motion to dismiss with prejudice, and dismissed Inter-mark's breach of implied warranty claims. This order is the first reported decision enforcing a disclaimer of warranties in a click-wrap EULA on a motion to dismiss.

“Being able to help guide clients through new issues about how old laws would apply to new technologies is super interesting. Lawyers are often all about precedents and what has happened before. And there are no cases or precedents when you're talking about digital health, autonomous vehicles, blockchain, AI or AR/VR.”

—**Rodger Cole**

Law360 Law Firm Leaders Q&A, 2019

Professional Achievements

- Rodger has defended technology companies in more than 100 class actions, including many published decisions from both district courts and courts of appeal
- He serves on the board of directors of the Law Foundation of Silicon Valley, the largest provider of pro bono legal services in the Silicon Valley
- Rodger was named a Client Service All-Star by BTI Consulting in 2014—one of only 21 IP lawyers selected by in-house corporate counsel for the award

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“Our clients are changing the world, and we’re honored to be trusted to serve the most innovative and interesting tech and life sciences companies in the world. We’re not going to stray from that focus.”

—Rodger Cole

Law360 Law Firm Leaders Q&A, 2019

Representative Clients

- CBS Interactive
- Intuit
- Hewlett Packard Enterprise
- SEGA of America

Practices

- Litigation
- Privacy & Cybersecurity
- Commercial Litigation
- Consumer Class Action Litigation

Industries

- Communications
- Consumer Technologies and Retail
- Games
- Hardware
- Software

Education & Admissions

J.D., *magna cum laude*
Santa Clara University School of Law
Executive Editor of the *Santa Clara Computer and Technology Law Journal*

B.A., University of the Redlands

Admitted to practice in California

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Admitted to all of the U.S. District Courts for the State of California and the U.S. Court of Appeals for the Ninth Circuit

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