

Intellectual Property Litigation

An Emerging Leader in Intellectual Property Litigation

Andrew Kurth's team of nearly 30 intellectual property litigators and trial lawyers applies its advanced degrees, experience in various technical disciplines, and trial, litigation and appellate experience to complex patent, copyright, trademark and trade secret litigation. These qualifications, combined with our broad experience before state courts, government agencies, key federal jurisdictions and international forums, make us well suited to handle intellectual property litigation regardless of complexity or jurisdiction.

Our Litigation Philosophy

The overriding goal of every Andrews Kurth litigation team is to achieve a result that best serves the client's litigation, business and technical strategies. Implementation of this goal begins at the outset and drives the selection of the trial team and the selection of the forum to provide the best environment for the client, including but not limited to: court docket speed, the design of carefully tailored discovery, obtaining of a favorable Markman ruling and the strategic use of pre-trial motions.

It is not enough, however, to assemble a first-class trial team. The trial team must involve the client as a full partner, must pay careful attention to detail, must use state-of-the-art litigation support tools and must be comprised of aggressive advocates. Even then, pursuing litigation to verdict and through appeal may not be in the best interest of the client. Therefore, every Andrews Kurth litigation team is ready, willing and able to negotiate or use other means of dispute resolution to best further the client's interests. Winning the battle is not a desirable win without also winning the war.

Experience

Our IP lawyers have legal, technical and commercial experience as IP litigators, trial lawyers and appellate advocates; in-house IP counsel; business executives; patent examiners; engineers; and scientists. In addition, our lawyers lecture, teach and write regularly on intellectual property matters. Our technology and industry experience ranges across many technical disciplines, including software, electrical engineering, chemical, pharmaceutical, biotechnology and the Internet.

Our lawyers have enforced and defended our clients in patent, trademark, copyright and trade secret cases in federal and state courts throughout the United States and in the International Trade Commission. We also have extensive litigation experience with cases involving unfair competition, false advertising, non-competition covenants, related antitrust matters, e-commerce, Internet and domain-name-related issues, computer-related contracts, franchising agreements, licensing agreements, outsourcing agreements, non-disclosure agreements, distributorship arrangements, and other technology-related arrangements.

Andrews Kurth's intellectual property lawyers' abilities to speak our clients' business and technical languages provides a distinct advantage in securing the maximum competitive advantage possible from the exploitation and protection of intellectual assets. Andrews Kurth represents clients in virtually all industries in litigation matters involving intellectual property rights. Many of our litigators are also registered patent lawyers who routinely obtain patents, copyrights and trademarks, and bring that experience to bear in the enforcement of our clients' intellectual property rights and in defending against IP-based claims.

Recent Federal Circuit Court of Appeals Experience

John B. Adrain v. Superchips, Inc., et al., 218 Fed.Appx. 982 (Fed. Cir. 2007). Represented all of the appellees-defendants in a patent infringement appeal involving a device used for altering engine performance by reprogramming an automobile's onboard computer.

Board of Regents, The University of Texas System v. Nippon Telephone and Telegraph Corporation, 414 F.3d 1358 (Fed. Cir. 2005). Represented the appellee-defendant, Nippon Telegraph and Telephone Corporation, in an appeal involving trade secret claims based on alleged misappropriation and tortious interference with patent rights.

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Sean Moore v. Moen, Inc., et al., No. 06-1474 (Fed. Cir. 2007). Currently representing the appellee-defendant, Moen Inc., in an appeal involving patented design infringement on shower curtain rods.

Shanghai Meihao Electric, Inc. v. Leviton Manufacturing Company, Inc., 212 Fed.Appx. 977 (Fed. Cir. 2007). Represented the plaintiff-appellee Shanghai Meihao Electric, Inc., in a patent infringement appeal that involved ground fault circuit interrupters.

Relevant Court and Agency Experience

Our lawyers have represented clients with intellectual property cases throughout the United States in many of the leading fora of choice for intellectual property litigation, including: the United States Court of Appeals for the Federal Circuit, the United States District Court for the District of Delaware, the Eastern District of Virginia and the Eastern District of Texas. Our representations are aided by our firm's offices in Texas, California, New York and Washington, DC (with its proximity to the Federal Circuit, the Patent and Trademark Office, the United States International Trade Commission and the District Courts for the District of Columbia and the Eastern District of Virginia).

A list of representative cases is provided below:

Adrain, Inc. v. Superchips, Inc. No. 04-4117 (S.D.Tex. filed Oct. 22, 2004). Secured summary judgment of non-infringement for firm client and protected ruling on appeal to CAFC.

Alexsam v. Wildcard, et al., No. 03-337 (E.D.Tex. filed Sept. 26, 2003). Represented Wildcard in patent infringement litigation.

Alexsam v. FSV et al., No. 03-337 (E.D.Tex. filed Sept. 26, 2003). Represented FSV in patent infringement litigation.

Amirav v. CMS Research Corp., No. 06-659 (S.D.N.Y. filed Jan. 27, 2006). Secured voluntary dismissal of patent infringement claims against client.

Automation Controls v. Quicksilver Resources Inc., No. 03-865 (W.D. Mich. filed Dec. 12, 2003).

B-50.com, LLC v. Xformity, Inc., No. 04-542 (N.D.Tex. filed March 15, 2004). Acted as counsel for Xformity, the alleged infringer, in a patent infringement case involving a point-of-sale reporting system using the Internet.

Board of Regents of the University of Texas et al. v. Nippon Telegraph & Telephone Corp., No. 01-478 (W.D.Tex. filed July 23, 2001). Represent Nippon Telegraph and Telephone Corporation.

Bayer AG v. Carlsbad Technology Inc., No. 01-867 (S.D.Cal. filed May 18, 2001). Represented Carlsbad Technology Inc. against Bayer for patent infringement, which involved Bayer's blockbuster drug Ciprofloxacin.

Chemsil, Inc. v. Chemsil Silicone, Inc., No. 01-813 (N.D.Tex. filed Oct. 5, 2001). Represented the defendant/counterclaimant in trademark and unfair competition case. Settled when client established prior use. Plaintiff released all claims to marks.

Datatresury Corporation v. Wells Fargo & Co., et al., No. 06-72 (E.D.Tex. filed Feb. 24, 2006). Representation of a defendant in this patent infringement litigation.

Eli Lilly Pharmaceutical Co. v. Carlsbad Technology Inc., No. 01-191 (S.D.Ill. filed Feb. 12, 2001). Represented Carlsbad Technology Inc. against Eli Lilly for patent infringement, which involved Eli Lilly's blockbuster drug Prozac.

Epicrealm Licensing LLC v. Autoflex Leasing, et al., No. 05-163 (E.D.Tex. filed May 2, 2005). Co-counsel for Internet Service Provider defendant in suit alleging infringement of patents relating to generation of dynamic web pages.

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Frank's Casing v. Tesco Corp., No. 07-15 (E.D.Tex. filed Jan. 10, 2007). Representation of accused infringer in this recently filed infringement suit.

Gateway Plastics, Inc. f/k/a Glendale Plastics, Inc. v. Weatherchem Corporation, No. 05-986 (E.D.Wis. filed Sept. 13, 2005). Acted as IP counsel for the alleged infringer/counterclaim-plaintiff in a case involving a patented closure device.

Grantley Patent Holdings Ltd. v. Clear Channel Communications, Inc., No. 06-259 (E.D.Tex. filed Nov. 17, 2006). Represented defendant and its subsidiaries in a software patent infringement litigation involving yield management, inventory and billing software.

Hunter Douglas, Inc. v. Comfortex Corporation, No. 96-5046 (D.N.J. filed Oct. 25, 2006). Represented Hunter Douglas in a patent infringement action involving blinds and window treatments.

The Image Bank, Inc. v. The Amend Group, Inc., et al., No. 99-507 (N.D.Tex. filed Mar. 9, 1999). Represented the defendant in a copyright infringement action.

Imodco Inc. v. Sofec, Inc. et al., No. 96-2654 (S.D.Tex. filed Aug. 19, 1996).

Optivus Technology, et al. v. Ion Beam, No. 03-2052 (C.D.Cal. filed Mar. 24, 2003). Represented Ion Beam Applications in an action involving irradiation system for food, medical devices and mail.

ITC Section 337 Investigation: *Certain Personal Watercraft*. Represented respondent, *Bombardier*, in patent infringement litigation. Settled after trial. (2002)

ITC Section 337 Investigation: Certain Agricultural Vehicles and Tractors Thereof. Represented Jiangling Motor Inc. and Dongfeng Tractor Group of China against John Deere Co. (2003)

ITC Section 337 Investigation: Certain CD and DVD Players and Components Thereof. Represented BenQ Corp. and BenQ America Corp. of Taiwan against Thomson Electric Co. (2005)

ITC Section 337 Investigation: Certain Color TVs and Computer Monitors and Components Thereof. Represented BenQ Corp., BenQ America Corp. and AU Optronics of Taiwan against Thomson Licensing SA and Thomson Licensing Inc. (2005)

ITC Section 337 Investigation: Certain Ground Fault Circuit Interrupters and Components Thereof. Represented Wenzhou Van-Sheen Electric Appliance Co. and Yueqing Hwameli Electric Inc. of China against Leviton Manufacturing Co. (2002-2003)

ITC Section 337 Investigation: Certain Zero Mercury Alkaline Battery and Components Thereof. Represented Chung Pak Battery Group of Hong Kong against Everready Holding Co. (2003-2004)

Konami Corp. v. Roxor Games, Inc. et al., No. 05-00173 (E.D.Tex. filed May 9, 2005). Representation of a defendant in this patent infringement litigation.

Illinois High School et al. v. Netfire, Inc. et al., No. 00-398 (N.D.Tex. filed Feb. 22, 2000). Represented (both at trial and the Fifth Circuit) the NCAA and the Illinois High School Association in a trademark and domain name dispute regarding "March Madness" and the NCAA basketball tournament. *Fields v. Million Dollar Producer, Inc. et al.*, No. 97-317 (N.D.Tex. filed Apr. 17, 1997). Represented the defendant in a copyright infringement action. An agreed judgment with injunction and damage award was entered in favor of our client.

McCormick & Co., Inc., v. Weatherchem Corp., No. 07-1100 (D.Md. filed Apr. 30, 2007). Representation of the defendant in a trademark and unfair competition case relating to grinder bottles for pepper and other similar items.

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Meridian Diagnostic Inc. et al. v. Apollo Biotechnology Co., et al., No. 00-540 (S.D. Ohio filed July 5, 2000). Represented Apollo Biotechnology against Meridian Diagnostic Inc. for trade secret misappropriation and violation of non-competition agreement.

Sean Moore v. Moen, Inc., et al., No. 05-1267 (S.D. Tex. filed Apr. 14, 2005). Secured summary judgment of non-infringement of design and utility patents covering curved shower rods.

Plantex USA v. Carlsbad Technology Inc., No. 05-33 (S.D. Cal. filed Jan. 10, 2005). Represented Carlsbad Technology Inc. against Plantex USA for violation of a memorandum of understanding agreement.

Personalized Mass v. The Weather Channel, No. 95-242 (E.D. Va. filed Mar. 9, 1995) ("The Rocket Docket"). Represented The Weather Channel in asserting patent infringement claims involving cable television software.

Pressure Positive Co. v. Discovery Channel Stores et al., No. 01-738 (E.D. Pa. filed Feb. 13, 2001). Represented Discovery Channel Stores in a patent and patent design infringement case.

QPSX Developments 5 Pty Ltd v. Juniper Networks, et al., No. 05-268 (E.D. Tex. filed June 21, 2005). Representation of a defendant in this patent infringement litigation as co-counsel.

Richter Gideon Pharmaceutical Co. v. Carlsbad Tech. Inc. et al., No. 01-4531 (E.D. N.Y. filed July 6, 2001). Represented Carlsbad Technology Inc. and Andrx Pharmaceutical Co. against Richter Gideon Pharmaceutical Co. for patent infringement, which involved famotidine.

SecureInfo Corporation v. Telos Corporation et al., No. 05-505 (E.D. Va. filed May 6, 2005). Represented the trade secret holder in a software case involving trade secret misappropriation and copyright and patent infringement.

Shanghai Meihao Electric Inc. v. Leviton Manufacturing Co., No. 03-2137 (D. Md. filed July 23, 2003). Represented Shanghai Meihao Electric Inc. against Leviton Manufacturing Co. for patent infringement, which involved ground fault circuit interrupters.

Staktek Group LP v. Infineon AG, No. 03-219 (W.D. Tex. filed Apr. 8, 2003). Represented Staktek in an action involving patent infringement, trade secret misappropriation and other claims in stacking technologies.

Summit Tools v. Danaher, et al., No. 03-462 (E.D. Tex. filed Dec. 2, 2003). Represented Danaher in trademark litigation.

International Business Machines Corp. v. The SCO Group, Inc., No. 03-294 (D. Utah filed Mar. 25, 2003). Defended SCO against patent infringement claims. IBM withdrew all four patent claims.

Technical Witts, Inc. v. Skynet Electronic Co., Ltd., Skynet Electronic Corp., No. 04-2025 (D. Ariz. filed Sept. 27, 2004). Representation of the defendant in this patent infringement action relating to power converters.

Tempur-Pedic, Inc. v. Angelbeds.com, No. 05-1115 (E.D. Wis. filed Oct. 19, 2005). Trademark case against firm client transferred from E.D. Wis. to W.D. Tex.

Tesco Corp. v. FDS, Inc., No. 07-435 (N.D. Tex. filed Mar. 9, 2007). We represent the patentee in this recently filed infringement suit.

Umbra Inc. v. Discovery Channel Stores et al., No. 02-149 (E.D. Mo. filed Jan. 28, 2002). Represented Discovery Channel Stores in a patent case involving water misters.

Universal Communications Inc. v. American Express, No. 01-4882 (S.D. N.Y. filed June 4, 2002) and USPTO. Represented American Express in trademark opposition proceedings that settled favorably for our client.

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Varco IP, Inc. v. Tesco Corp., No. 05-634 (W.D.La. filed Apr. 11, 2005). Transferred patent infringement case against firm client to more favorable venue.

Varco IP, Inc. v. Tesco Corp., No. 05-2118 (S.D.Tex. filed June 17, 2005) and USPTO. Infringement suit against a firm client has been stayed pending resolution of *Inter Partes* Reexamination request we filed of patent in suit, in which all claims at issue have been held invalid.