



Frederick L. Whitmer

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Services

Antitrust Litigation; Complex Commercial Litigation; Intellectual Property Litigation; Government & Regulatory; Antitrust & Trade Regulation

Industries

Technology

Fred Whitmer is the Managing Partner of the firm's New York office. He focuses his practice in intellectual property and business litigation. Mr. Whitmer's patent litigation experience has involved a wide array of technologies across many industries, ranging from the simple mechanical to complex computer software and systems patents, to medical devices and chemical products. He has successfully represented both plaintiffs and defendants in patent infringement matters. Mr. Whitmer has tried cases to successful verdict and appeal for nearly three decades in courts around the country in cases before both judges and juries.

Complementing his extensive intellectual property litigation experience, Mr. Whitmer has wide-ranging general litigation experience in several high profile matters, including in antitrust, telecommunications, libel, press rights, privacy issues and trade secrets. He has litigated complex matters on behalf of *Fortune* 100 clients throughout the country and abroad. Mr. Whitmer has also supplemented his trial experience with a substantial appellate practice, successfully representing both appellants and appellees.

Mr. Whitmer's article titled "Claim Construction in Patent Cases: A Question of Law?" published in *Landslide* Vol. 2, No. 6 in July/August 2010 was cited in the dissenting opinion in the recent *Phillips* en banc decision in the U.S. Court of Appeals for the Federal Circuit.

In 2000, the *National Law Journal* named Mr. Whitmer one of the top 10 litigators then practicing with firms whose principal offices were New Jersey-based, saying, "Mr. Whitmer has appeared before the Supreme Court of New Jersey four times and won all four cases, including one that helped create the law interpreting the New Jersey Business Corporation Act and another, while representing two large media entities, that established rules for the press in court." He has also been listed for many years in *Who's Who* in American Law. Mr. Whitmer has been honored as a 2012 Top Rated Lawyer in Commercial Litigation by Martindale-Hubbell in the *Litigation Special Report* issue of *The American Lawyer* and *Corporate Counsel* magazines. Mr. Whitmer was recognized as a New York "Super Lawyer" in 2017 and the six years immediately preceding by *Super Lawyers* magazine. He was named an "IP Star" in 2017 and the four years immediately preceding by *Managing Intellectual Property* magazine. Mr. Whitmer is AV Preeminent[®] rated by Martindale-Hubbell.*

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Experience Highlights

Patent litigation for large, international bank

Represented one of the world's largest banks that was accused of infringing patents involving payment by telephone software systems, which settled after successful transfer and attorney disqualification motions.

Esbin & Alter LLP v. Zappier et al.

Retained to defend independent software developer on a pro bono basis against former law firm employer that alleged copyright infringement, fraud, breach of fiduciary duty and trade secret theft. Negotiated a favorable settlement for the software developer

that resulted in a dismissal of all claims, as well as permitting the software developer to sell the accused software product. *Esbir & Alter, LLP v. Zappier et al.*, No. 1:08-cv-00313 (S.D.N.Y. filed Jan. 14, 2008).

GeoTag Inc. v. Victorinox Swiss Army Inc.

Successfully defended Victorinox Swiss Army, Inc. against claims of infringement of a patent related to a geographic search function in the Eastern District of Texas. Matter settled.

GeoTag Inc. v. Where 2 Get It Inc. et al., No. 11-0175 (E.D. Tex. filed Mar. 15, 2011).

Advanced Video Technologies LLC v. Motorola Mobility Inc.

The firm served as lead counsel in the representation of Motorola Mobility against claims of patent infringement in a suit involving video coding and decompression technology as used on various smart phones. The case was dismissed and attorneys' fees were awarded to Motorola. In June of 2016, a second lawsuit was again dismissed.

Advanced Video Technologies LLC v. Motorola Mobility, Inc., No. 12-cv-00918(S.D.N.Y. filed Feb. 6, 2012) and *Advanced Video Technologies LLC v. Motorola Mobility, Inc.*, No. 15-cv-04632 (S.D.N.Y. filed June 15, 2015).

Auto-Kaps LLC v. Clorox Co., No. 2:15-cv-01737 (E.D.N.Y. 2015).

Represent Clorox in a patent infringement claim alleging that the spray bottle in which Clorox sells almost all its liquid cleaning products infringes Auto-Kaps' patent. At our request at the initial status conference, the judge stayed discovery and entertained an early motion for summary judgment of non-infringement, ultimately granting that motion. The matter is currently on appeal.

Inter partes reviews for Hunter Douglas, Inc. and Andrew J. Toti Testamentary Trust

Kilpatrick Townsend filed an infringement lawsuit on behalf of Hunter Douglas Inc., manufacturer of window coverings and architectural products, and Andrew J. Toti Testamentary Trust against Norman International for infringement of window covering patents. Norman responded by filing eight IPRs on four patents in the lawsuit. Kilpatrick Townsend successfully argued that six of the IPR trials should not be instituted, and was able to limit the IPR trials to just three claims total on the other two petitions.

United States Patent and Trademark Office Patent Trial and Appeal Board, Case Numbers IPR2014-00276, IPR2014-00282, IPR2014-00283, IPR2014-00286, IPR2014-01173, IPR2014-01174, IPR2014-01175, and IPR2014-01176.

Patent litigation for global industrial company

Represented a global industrial company in a patent case involving a plastic carrier for integrated circuit chips. The firm obtained a defense verdict after a three-week bench trial that resulted in the invalidation of the claims of the patent that had been asserted against the client and the Federal Circuit affirmed in this opinion.

EON Corp. IP Holdings, LLC v. Motorola Mobility LLC

On March 5, 2014, Kilpatrick Townsend was successful on behalf of Motorola Mobility in winning summary judgment against EON Corp. IP Holdings, LLC less than three weeks before trial, in a case that had been pending in the District of Delaware for nearly three and one-half years. The court's grant of summary judgment was decided on the relatively uncommon ground of invalidity by indefiniteness, and entirely invalidated EON's patent, ending the case at the district court. On May 6, 2015, the Federal Circuit, in a unanimous opinion, affirmed summary judgment granted by the District of Delaware.

EON Corp. IP Holdings, LLC v. FLO TV Inc., No. 10-812-RGA, 2014 WL 906182 (D. Del. Mar. 4, 2014).

Patent litigation for a German orthodontic equipment manufacturer

Represented a German orthodontic equipment manufacturer that was accused of infringing a patent held by one of the world's largest dental equipment companies. After a full trial on the merits, the jury found no infringement. The Federal Circuit affirmed.

First Amendment case for two large media entities *

Represented two large media entities in a landmark First Amendment case. Successfully kept pretrial proceedings in a notorious criminal case open to both the public and the press, having won at every stage, trial, intermediate appellate, and the New Jersey Supreme Court levels all in a span of 60 days.

*Experience gained by attorney prior to joining Kilpatrick Townsend

Publications, Articles and Speaking Engagements

Three Upcoming Patent Law Decisions Expected from the Supreme Court
American Bar Association's (ABA) IP Litigation Committee, May 27, 2015

Is An Express Contract Always Better?
Law 360, October 03, 2011

Regarding *Stanford v. Roche* and contractual ownership rights to intellectual property.

Is a §145 Action More a 'Trial' in a District Court or an 'Appeal' in a Circuit Court? The Federal Circuit Answers in Favor of Trial
Intellectual Property & Technology Law Journal, February 01, 2011

i4i Dots the i's. Microsoft Doesn't. Result: \$240 Million Verdict
New York Law Journal, October 20, 2010

Claim Construction in Patent Cases: A Question of Law?
Landslide, July 26, 2010

i4i v. Microsoft, Implications of the Landmark Patent Infringement Case, TeleBriefing
Law Seminars International, April 29, 2010

Guns or Butter: Can You Afford Both?
New Jersey Chapter of American Corporate Counsel Association, November 19, 2009

Leverage Economic Constraints to Strategic Advantage
New York Law Journal, October 05, 2009

Information Technology Litigation: Law and Analysis
American Lawyer Media, May 31, 2008

Litigation Is War, Strategy and Tactics for Litigation Battlefield
West Legal Works, October 31, 2007

Professional & Community Activities

American Bar Association, Member

New Jersey State Bar Association, Member

Education

Columbia Law School, J.D.
Harlan Fiske Stone Scholar

Wabash College, B.A.
with honors, Phi Beta Kappa

Bar Admissions

New York

New Jersey

Admissions

U.S. Supreme Court

U.S. Court of Appeals for the Second Circuit

U.S. Court of Appeals for the Third Circuit

U.S. Court of Appeals for the Fourth Circuit

U.S. Court of Appeals for the Seventh Circuit

U.S. Court of Appeals for the Federal Circuit