

PATENT LITIGATION PRACTICE

LIFE SCIENCES AND RELATED TECHNOLOGIES

2010

PATENT LITIGATION PRACTICE

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PATENT LITIGATION AT COVINGTON

BENCH STRENGTH. Our patent litigation practice consists of more than 100 patent litigators strongly concentrated on both the East and West Coasts, with more than 50 lawyers in Washington, D.C., 40 in San Francisco/Silicon Valley, and 10 in San Diego. Collectively, Covington lawyers have litigated in excess of 500 patent cases over a wide range of technologies.

TRIAL DEPTH. In the past seven years, our attorneys have tried fifteen cases to verdict. Of these we have prevailed in twelve, and in one case the jury hung on validity (after finding infringement in favor of our client). Two of our senior patent litigators are members of the American College of Trial Lawyers.

GEOGRAPHIC REACH. We have litigated cases in every significant patent jurisdiction in the country, including the Eastern District of Texas, Delaware, California, New York, New Jersey, the Federal Circuit, and the International Trade Commission. The co-chair of our patent litigation practice is a former United States District Court Judge for the District of Delaware who presided over more than 200 patent infringement cases while on the Bench.

TECHNICAL EXPERTISE. We have married effective advocacy with substantive expertise. More than 50 of our litigators have clerked for federal trial and appellate judges, and more than 60 of our patent litigators have technical degrees in areas such as biochemistry, chemistry, immunology, microbiology, molecular and cell biology, pharmacology, chemical engineering, physics, computer engineering, computer science, mathematics, mechanical engineering and electrical engineering.

BROAD RESOURCES. We draw on Covington's traditional strengths as one of the world's leading law firms, including its litigation, antitrust, FDA, communications, and technology practices. Our depth of experience allows us to handle matters in a cost-effective manner, with lean staffing and cross-office collaboration leading to efficient and complete coverage.

ACCOLADES

- From 2007 - 2010 *Chambers USA* and *Chambers Global* have recognized Covington patent litigation attorneys as leaders in IP.
- From 2006 - 2010, *Best Lawyers in America* has recognized Covington patent litigation attorneys as leaders in Intellectual Property Law, Bet-the-Company Litigation, and Commercial Litigation.
- In 2010, *Managing Intellectual Property* recognized Covington as the ITC Litigation Firm of the Year.
- In 2009, *IP Law & Business* recognized our attorneys among the most active patent litigation practices and the most active ITC Section 337 practices in the country.
- In 2008, Covington was recognized by *The American Lawyer* magazine as having one of the nation's top five litigation departments.
- In 2008, 2009 and 2010, the *Daily Journal* has recognized two of our partners among the top IP Litigators in California.
- In 2007, *Legal Times* recognized one of our partners as the Top Business Litigator in DC.

LIFE SCIENCES & RELATED PATENT LITIGATION

Covington's patent litigation lawyers have been lead counsel in patent infringement cases throughout the country involving disputes over a wide range of technologies, including pharmaceuticals, medical devices, biotech and chemical. Covington lawyers have extensive experience with all facets of pharmaceutical legal practice, including cases arising under the Hatch-Waxman Act. From the complexities of patent litigation and prosecution, to compliance with FDA regulations and Orange Book listing requirements, the breadth of our legal practice enables us to best serve companies in the life sciences industry.

Pharmaceutical Litigation: Hatch-Waxman

- Representation of **Allergan** and **Syntex (U.S.A.)** in the Northern District of California in a patent infringement case against Apotex involving an ophthalmic drug formulation. *Syntex (U.S.A.) LLC, et al. v. Apotex, Inc., et al.*
- Representation of Johnson & Johnson subsidiaries **ALZA Corporation** and **Janssen Pharmaceutica** in the successful defense of the FDA's decision granting ALZA a period of pediatric exclusivity under the food and drug statutes following expiration of ALZA's patent for its transdermal fentanyl system (the Duragesic patch).
- Representation of **AstraZeneca** in the District of Delaware in patent litigation against Barr and Mylan concerning Entocort® EC, used for the treatment of Crohn's disease.
- Representation of **GlaxoSmithKline** in patent litigation brought by Classen Immunotherapies in the District of Maryland involving immunization methods and schedules. After we successfully moved to dismiss, the Federal Circuit affirmed and denied Classen's petition for rehearing and rehearing en banc.
- Representation of Johnson & Johnson subsidiary **Janssen-Ortho** in Ontario, Canada Federal Court monitoring patent litigation brought by Novopharm relating to levofloxacin. After a full trial on the merits, the trial court awarded Janssen-Ortho with damages and injunctive relief. The decision was subsequently affirmed by the Federal Court of Appeal.
- Representation of Johnson & Johnson subsidiaries **Janssen Pharmaceutica** and **Synaptech** in patent infringement litigation in the District of Delaware against seven ANDA filers concerning Janssen's Alzheimer's treatment Razadyne®. In addition, Covington is representing those companies in separate patent litigation in the District of New Jersey against three generics concerning Razadyne ® ER, a once-daily version of the drug product.
- Representation of **Key Pharmaceuticals** in patent infringement actions related to a potassium chloride supplement.
- Representation of **King Pharmaceuticals** in patent litigation against Teva concerning the EpiPen® Auto Injector, used for self-administration of epinephrine in anaphylaxis.
- Representation of **Merck** and **Schering-Plough** in securing a ruling by the Federal Circuit that the companies were entitled to extend the life of existing pharmaceutical patents by combining the benefits of both the patent life extension provisions of the Hatch Waxman Act and the 20 year patent life established through the Uruguay Round of GATT.
- Representation of **Merial** in Hatch-Waxman patent infringement litigation in the Western District of Missouri arising from Abbreviated New Animal Drug Applications by Phoenix Scientific for ivermectin products.

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- Representation of **Ortho-McNeil** in:
 - the District of New Jersey in an ANDA case brought against Barr relating to a patent covering Ortho Tri-Cyclen®, an oral contraceptive.
 - the District of New Jersey in an ANDA case brought against Barr relating to a patent covering Ortho Tri-Cyclen® Lo, an oral contraceptive. Trial was adjourned when settlement discussions began the first day of trial. When settlement did not materialize, we moved for a preliminary injunction and a recall of the infringing product, which had already been sent to distributors and pharmacies, and it was granted. We subsequently obtained a highly favorable settlement for our client.
 - the District of New Jersey in an ANDA case brought by Barr relating to a patent covering Ortho-Novum 7/7/7®, an oral contraceptive.
 - the Northern District of West Virginia and the Court of Appeals for the Federal Circuit in an ANDA case brought by Mylan Laboratories relating to a patent covering Levaquin®, an antibiotic. Ortho-McNeil prevailed in the district court, and the decision was affirmed per curium by the Federal Circuit.
 - patent infringement actions in the District of New Jersey against four generic drug companies relating to a patent covering Ortho's Levaquin® antibacterial product.
 - the District of New Jersey in an ANDA case brought against Lupin Limited and Lupin Pharmaceutical concerning Ortho's Levaquin® antibacterial product. We cross-moved for summary judgment, arguing that the decision of the Patent Office granting the extension could only be overturned by clear and convincing evidence and that Lupin had not, and could not, satisfy its burden of proof.
- Representation of **Ortho-McNeil-Janssen Pharmaceuticals** and **Johnson & Johnson Pharmaceutical Research & Development** in the District of New Jersey in patent infringement litigation against Watson, Sandoz, and Lupin concerning Ortho Tri-Cyclen® Lo, an oral contraceptive.
- Representation of **Pfizer** in a successful defense of FDA's decision granting Pfizer a period of pediatric exclusivity under the food and drug statutes following expiration of Pfizer's patent for fluconazole (Diflucan).
- Representation of **Procter & Gamble Pharmaceuticals** in defending an FDA decision permitting marketing of an authorized generic version of P&G's nitrofurantoin monohydrate/macrocrystals (NMM) (Macrobid) during another generic producer's 180-day period of exclusivity under the Hatch Waxman Act.
- Representation of **sanofi-aventis** in the District of Delaware in patent litigation against Hospira and Apotex concerning sanofi's Taxotere® cancer treatment.
- Representation of **Schering-Plough** in patent litigation concerning potassium chloride supplements.
- Representation of **Shire Laboratories** in:
 - ANDA litigation in the Southern District of New York against Barr, Natco, and Mylan concerning the marketing of generic versions of Fosrenol®, a chewable tablet for reduction of serum phosphate in patients with end stage renal disease.

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- the District of New Jersey and the Southern District of Florida in an ANDA case brought against Andrx and Watson concerning Shire's Adderall® XR product for the treatment of ADHD.
- Representation of **Validus Pharmaceuticals** in the District of Delaware in patent infringement litigation against Actavis concerning Equetro®, used for the treatment of bipolar disorder.
- Representation of **Warner Chilcott** and **UCB** in the District of New Jersey in patent infringement litigation against Roxane Laboratories concerning Roxane's filing of an ANDA for approval to market a generic version of Asacol®, a leading treatment for ulcerative colitis.
- Representation of **Wyeth** in the District of Delaware in patent infringement litigation against Watson and Sandoz concerning Lybrel®, an oral contraceptive.

Medical Device and Other Related Patent Litigation

- Representation of **Advanced Medical Optics** in:
 - a suit brought by Alcon relating to five patents on cataract surgery technology; settled on terms very favorable to AMO. *Alcon, Inc. v. Advanced Medical Optics, Inc.* (N.D. Tex.)
 - enforcing patents on important safety improvements for cataract surgery. Obtained jury verdict for approximately \$94 million, which was tripled after post-trial briefing on account of Alcon's willful infringement. *Advanced Medical Optics, Inc. v. Alcon Inc.* (D. Del.)
- Representation of **ALZA** in litigation involving claims that its patent on a transdermal fentanyl patch was unenforceable and invalid and that it had committed antitrust violations in enforcing that patent. *Cygnus Therapeutics Systems v. ALZA Corporation* (Fed. Cir.)
- Representation of **Caliper** in:
 - two related patent infringement actions concerning microfluidic devices. Both cases settled after a \$52M verdict was obtained for our client Caliper in the companion trade secrets case, also handled by Covington. *Caliper v. ACLARA Biosciences/ ACLARA Biosciences v. Caliper Technologies, Inc.* (N.D. Cal.)
 - asserting patent claims related to kinase enzyme assay methods and kits. The case settled favorably for our client after we secured a claim construction order in which the disputed terms were construed in our client's favor. *Caliper Technologies, Inc. v. Molecular Devices Corp.* (N. D. Cal.)
- Representation of **Depomed** in patent infringement litigation against IVAX involving oral drug delivery systems. *Depomed, Inc. v. IVAX Corporation, et al.* (N.D. Cal.).
- Representation of Johnson & Johnson subsidiary **Ethicon** in:
 - defense from allegations of infringement of four U.S. patents covering electrosurgical devices used for arthroscopic and gynecological applications. After construing the claims, the Court denied Arthrocare's motion for a preliminary injunction, finding that Ethicon had raised a substantial question as to the validity of the patents-in-suit. After the judge announced several favorable tentative rulings on Ethicon's motions for summary judgment, the case was resolved on very favorable terms for Ethicon just prior to trial. *Arthrocare v. Ethicon, Inc.* (N.D. Cal.)
 - defense from a claim of patent infringement brought by Cryogen relating to a cryosurgical device used in gynecological applications. Ethicon successfully obtained a summary

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- judgment ruling of non-infringement under 35 U.S.C. § 271(e)(1), but continued to seek a declaration that Cryogen's patents were invalid, unenforceable and not infringed. Shortly thereafter, the case was resolved on favorable terms to Ethicon. *FemRx, Inc., et al. v. Cryogen, Inc.* (N.D. Cal.)
- a patent infringement action relating to suture anchors used to reattach soft tissue to bone following an injury. Following an evidentiary claim construction hearing and extensive briefing, we successfully obtained summary judgment of non-infringement. The Federal Circuit reversed the judgment and the case was settled shortly thereafter. *Smith & Nephew, Inc. et al. v. Ethicon, Inc.* (D. Or.)
 - a patent infringement action where the patent owner filed suit alleging that Ethicon's manufacture and sale of DERMABOND, a liquid adhesive used to seal cuts, wounds and incisions, infringed a patent relating to the application and maintenance of medication on body tissue through the use of liquid adhesives. The patent owner sought an injunction, treble damages and attorneys' fees. The Covington team obtained the dismissal of the lawsuit prior to the commencement of depositions. *Stephen J. Smith Trust et al. v. Ethicon, Inc.*, Civ. Action No. 06-cv-02371 (D. Colo.)
 - a patent infringement action for bariatric surgical devices and methods; successfully settled on very favorable terms for Ethicon. *Ethicon Endo-Surgery v. Inamed Health, Inc.* (C.D. Cal.)
 - Representation of **Ethicon** and **DePuy Mitek** in an arbitration involving two patents related to RF electrosurgical devices used for arthroscopic procedures. ArthroCare asserted invalidity counterclaims and both sides had significant breach of contract claims. After a seven day hearing, the arbitration panel issued a unanimous opinion that ruled in our clients' favor on every issue, rejected ArthroCare's counterclaim against DePuy Mitek, and required ArthroCare to pay our clients' fees and costs. *In re Gyrus Group PLC, Ethicon Inc., DePuy Mitek Inc., and ArthroCare Corporation Arbitration*
 - Representation of **GlaxoSmithKline** in patent litigation brought by Grussmark involving GSK's Floss-N-Cap® products. We prevailed on summary judgment in the district court and the case was affirmed per curiam by the Federal Circuit. *Grussmark v. GlaxoSmithKline Consumer Healthcare* (N.D. Ill.)
 - Representation of **GM Reis** in a patent infringement action involving titanium bone plates for surgical fixation of fractured long bones. *Synthes (USA) v. G.M. dos Reis Jr. Ind. Com. Equip. Medico a/k/a GMREIS* (S.D. Cal.)
 - Representation of Johnson & Johnson subsidiary **Iolab** in defense of claims that its intraocular lenses infringed Powell's patent. After months of discovery and multiple hearings involving expert testimony, we moved successfully for a ruling of summary judgment of noninfringement. Powell filed an appeal to the Federal Circuit, which was dismissed with prejudice. *Powell v. Iolab Corp.* (C.D. Cal.)
 - Representation of **Inamed** in a patent infringement case involving tissue expanders used in connection with breast reconstruction surgery. *Manders v. McGhan Medical Corp., et al.* (W.D. Pa.)
 - Representation of **Origin Medsystems** (now a part of Guidant) in a patent infringement and trade secret action involving a patent on a laparoscopic medical instrument, a retracting tip trocar. *U.S. Surgical v. Origin Medsystems, Inc.*, (N.D. Cal.)

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- Representation of **SmithKlineBeecham** in defense of patent infringement litigation concerning a urine collection device and automated sampling machines. The case settled at a relatively early stage in discovery on very favorable terms. *Franklin Diagnostics v. SmithKlineBeecham Labs.* (D. N.J.)
- Representation of **Thoratec** in a patent infringement action involving an artificial heart device. *Comora v. Thoratec Laboratories Corporation* (N.D. Cal.)
- Representation of **Unilever** in:
 - defense from patent infringement claims brought by Kao related to Pond's cosmetic pore strips. *Kao Corp. v. Unilever U.S., Inc* (D. Del.)
 - enforcing Unilever's patents against Pfizer's EPT pregnancy test kits and Princeton Biomeditech Corp.'s pregnancy test kits in US District Courts in New Jersey and Delaware and at the Federal Circuit. While on appeal from a ruling of non-infringement, and after filing briefs in the Federal Circuit, the Unilever subsidiary that owned the technology and patents was sold and the new owner, Inverness, substituted in its longtime patent counsel. On appeal the Federal Circuit agreed with the positions we advanced in our briefs and reversed the district court's erroneous claim construction. *Inverness Medical Switzerland GmbH & Unipath Diagnostics, Inc., v. Princeton Biomeditech Corp.*, (Fed. Cir.) and *Inverness Medical Switzerland GmbH & Unipath Diagnostics, Inc., v. Warner Lambert Co.* (now known as Pfizer Inc) (Fed. Cir.)
- Representation of the **University of Pittsburgh** in the Federal Circuit appeal of a patent case involving apparatus for use in radiation therapy of lung cancer patients. *University of Pittsburgh v. Varian Medical Systems, Inc* (Fed. Cir.)

Biotech and Related Patent Litigation

- Representation of **Abbott Laboratories** in a patent infringement action alleging infringement by ImClone Systems based on ImClone's manufacture and sale of the cancer treatment Erbitux. *Abbott Laboratories v. ImClone Systems, Incorporated* (D. Mass.)
- Representation of **Biotek Solutions** in a patent infringement action relating to the field of immunohistology or immunohistochemistry, and particularly to a claimed method of antigen retrieval in formalin fixed tissues. *Biogenex Labs v. Biotek Solutions, et al.* (N.D. Cal.)
- Representation of **BioWhittaker** in a patent infringement action against Pharmacia relating to fluorometric enzyme immunoassay testing methods for allergen specific IgE. *BioWhittaker, Inc. v. Pharmacia* (E.D. Va.)
- Representation of **GPC Biotech** in ICDR arbitration resulting in complete defense victory for client in licensing dispute where licensor sought termination of license agreement and tens of millions of dollars in damages.
- Representation of **Maxygen** in a case involving "gene shuffling." An arbitrator issued an injunction against opponent Enchira Biotechnology through 2017. Maxygen was declared to be the exclusive owner of the technology as against Enchira, and was awarded attorneys fees and costs.
- Representation of **Monsanto** in:
 - a patent infringement, breach of contract, and antitrust suit involving herbicide-resistant genetically modified crops. *Monsanto Co. et al., v. E.I. DuPont DeNemours & Co. et al.* (E.D. Mo.)

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- a patent infringement action brought by Mycogen Plant Sciences related to genetically modified crops. *Mycogen Plant Sciences, Inc. v. Monsanto* (D. Del.)
- a patent license dispute brought by Pioneer Hi-Bred International related to genetically modified crops. *Pioneer Hi-Bred International, Inc. v. Monsanto Company* (E.D. Mo.)
- a patent infringement action against Novartis Seeds related to genetically modified crops. *Novartis Seeds, Inc. v. Monsanto Company* (D. Del.)
- Representation of **MorphoSys AG** and **MorphoSys USA** in a patent infringement case brought by Applied Molecular Evolution involving libraries of DNA and peptides. *Applied Molecular Evolution, Inc. v. MorphoSys AG, et al.* (D. Mass.)
- Representation of **Multilyte** in a patent infringement case against Affymetrix involving DNA microarray technology. *Affymetrix, Inc. v. Multilyte Ltd.* (N.D. Cal.)
- Representation of **Talecris** in a patent infringement suit pertaining to methods for screening large pools of plasma samples. *National Genetics Institute v. Talecris Biotherapeutics, Inc.* (E.D. N.C.)

Patent Antitrust Defense

- Representation of **GlaxoSmithKline** in:
 - a successful defense against patent-antitrust actions alleging the fraudulent procurement and enforcement of patents relating to its Augmentin® antibiotic drug product brought by generic companies and classes of direct purchasers and end-payers.
 - a successful defense against patent-antitrust actions alleging the fraudulent procurement and enforcement of patents relating to its RelafenX® arthritis drug product brought by generic companies and classes of direct purchasers and end-payers.
- Representation of **Intermune** in antitrust litigation based on the enforcement of patents related to the interferon-gamma drug, Actimmune®.
- Representation of **Procter & Gamble** in defense of a claim that they had engaged in “sham litigation” and Walker Process fraud in suing to enforce a patent against a principal competitor.
- Representation of **Purdue Pharma** defending against multiple patent-antitrust actions alleging fraudulent procurement and enforcement of patents relating to its Oxycontin® drug product brought by generic companies and classes of direct purchasers and end-payers. The litigation involved extensive procedural maneuvering including the removal of roughly 20 cases to federal court and the consolidation and eventual stay of all cases.

Strategic Prosecution Support

- Representation of **Alkermes** in connection with reexamination proceedings for patents covering RISPEDAL® CONSTA®, the first injectable, long-acting atypical antipsychotic.
- Representation of **Merck** in United States and international patent applications directed to products useful for treating and preventing fungal infections, HIV protease inhibitors, and angiotensin receptor antagonists.

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- Representation of **Procter & Gamble** in:
 - patent due diligence on a transaction with Inverness Medical Innovations to form the joint venture company, SPD Swiss Precision Diagnostics GmbH, a leading provider of home diagnostic and monitoring products.
 - a number of patent applications, including those directed to antimicrobial quinolones and corticotropin releasing factor receptor agonists, as well as a number of proprietary compounds.
- Representation of **Schering-Plough** in Orange Book listing and prosecution matters for antihistamine products.
- Representation of **Wyeth** in a patent term extension in connection with one of its drug products.

PATENT REEXAMINATION

The Covington patent prosecution, counseling and advisory practice is multifaceted, looking beyond patentability to obtaining patents with meaningful enforceability when tested in litigation or in business contexts. Our patent lawyers have substantial experience in patent litigation and transactional matters, and our patent prosecution work is often a key component of a larger litigation or business strategy. One focus of this practice area is reexamination proceedings in the U.S. Patent and Trademark Office (PTO). Covington patent attorneys have handled both *ex parte* and *inter partes* reexamination proceedings, both as requester and as patentee. We work closely with our litigation colleagues to develop offensive and defensive strategies that involve reexamination proceedings, and then execute the strategy in the PTO, and in the courts. A key to our success has been the close interaction and coordination between the reexamination and litigation teams at Covington.

Representative Matters

- Representing patent owner **Alkermes, Inc.** in the PTO in seven *ex parte* reexamination proceedings requested by a third party for patents covering RISPERSDAL®/CONSTA®, the first injectable, long-acting atypical antipsychotic indicated for the treatment of schizophrenia. Five reexamination certificates have successfully issued, and one proceeding is ongoing.
- Representing **Samsung** in the PTO as a third party requester in *inter partes* reexamination proceedings on a patent concerning color display technology. Covington's strategy in the PTO proceedings was key to Covington obtaining a stay in the corresponding district court litigation. All ten claims of the patent-at-issue were finally rejected in an Action Closing Prosecution. The patentee has cancelled seven of the claims, and attempted to amend the independent claim. We are awaiting Examiner action on the responses to the Action Closing Prosecution.
- Representing **Verizon Long Distance LLC** in the PTO as a third party requester in *inter partes* reexamination proceedings on patents concerning VoIP technology. Of the original 37 claims in the patent-in-suit, all but two were rejected by the Examiner in the first office action in the reexamination proceeding. Subsequently, a second request for *inter partes* reexamination was filed by a co-defendant in the corresponding district court litigation. In granting the second request for reexamination, the Examiner rejected those two claims, among others. The two proceedings have now been merged, and the patentee is required to amend the

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claims so that they are the same in both proceedings in order for the Examiner to address the prior art rejections.

- Advising a digital camera manufacturer regarding reexamination proceedings in the context of a district court litigation and an International Trade Commission investigation.
- Advising a large television manufacturer regarding *inter partes* reexamination proceedings in the context of a multi-defendant district court litigation.
- Advising a large software company regarding reexamination proceedings in the context of a district court litigation.

JURISDICTION EXPERIENCE HIGHLIGHTS

Eastern District of Texas

Covington attorneys have litigated, and are currently litigating, a number of patent infringement cases in the Eastern District of Texas.

- Representation of **A-DATA Technology** in:
 - a patent infringement suit brought by Ennova Direct involving flash memory drives with retractable USB connectors. *Ennova Direct Inc. v. LG Electronics USA Inc. et al.*
 - a patent infringement suit brought by Ring Technology Enterprises involving methods and systems for improving access to memory devices. *Ring Technology Enterprises of Texas LLC v. A-DATA Technology (USA) Co. Ltd. et al.*
- Representation of **Apple** in a patent infringement case concerning microprocessor functions and encryption in single-cell wireless controllers. *Saxon Innovations v. Apple Inc.*
- Representation of **ArrayComm** in a patent infringement suit involving three telecommunications patents relating to spatial multiplexing of signals to/from an antenna array. The suit settled. *ArrayComm LLC v. Atheros Communications Inc.*
- Representation of **Ariba** in securing a jury verdict, including a finding that two patents involving online auction technology were valid and infringed. *Ariba v. Emptoris.*
- Representation of **AutoTrader.com** in a patent infringement suit relating to the automated creation and publishing of web pages in an HTML environment. This case was in litigation for over two years and, on the eve of trial, settled favorably for our client. *GraphOn Corp v. Autotrader.com, LLC, et al.*
- Representation of **Hewlett-Packard** in:
 - a patent infringement action brought by Acqis involving eight patents concerning blade computer systems. *Acqis LLC v. Appro International, Inc. et al.*
 - a patent infringement action brought by Lochner Technologies concerning modular computer systems. *Lochner Technologies, LLC v. Dell Inc., et al.*
- Representation of **Huawei Technologies** in a copyright, patent and trade secret case relating to router software. Defeated preliminary injunction seeking worldwide ban on distributing product. *Cisco Systems Inc. v. Huawei Technologies, Co., Ltd.*
- Representation of **JPMorgan Chase** in:
 - a patent infringement suit involving a data retrieval system. The case was pending before Judge Ward, until it recently was made part of a pending MDL proceeding in the District of Arizona. *Phoenix Licensing LLC et al. v. Chase Manhattan Mortgage Co. et al.*
 - patent litigation brought by LML Patent Corp. on patent claims relating to electronic transactions on credit and debit accounts. *LML Patent Corp. v. JP Morgan Chase & Co.*
- Representation of multiple parties in defense of suit brought by LSI/Agere for the infringement of a tungsten metallization patent. *LSI Corporation et al v. United Microelectronics Corporation et al. and Certain Semiconductor Integrated Circuits Using Tungsten Metallization And Products Containing Same (USITC)*

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- Representation of **Microsoft** in:
 - a patent infringement action brought by Charles Hill involving method patents directed to differentiated methods for the storage and communication of digital information in computer systems in which Microsoft intervened after a number of its customers had been sued. *Charles E. Hill & Associates, Inc. v. Abercrombie & Fitch Co. et al.*
 - a patent infringement action brought by Peter Sklar, relating to cluster user interfaces in Windows XP software. *Sklar v. Microsoft Corporation*
 - a patent infringement action brought by MedioStream involving patents relating to video conversion technology asserted against Microsoft's Movie Maker product. *MedioStream, Inc. v. Microsoft*
- Representation of **Palm** in:
 - a case asserting that the use of GPS technology in cellphones in order to locate a user after dialing 911 in an emergency infringed four patents. We successfully moved the Court to transfer the action to the Northern District of California. *Zoltar Satellite Systems, Inc., v. LG Electronics Mobile Communications Company et al.*
 - a patent infringement action relating to keyboardless handheld data capture computers. *Typhoon Touch Technologies v. Dell, Inc. et al.*
 - a patent infringement action involving systems for using handheld devices as part of a larger system for tracking traffic. *Traffic Information LLC v. HTC USA, Inc. et al.*
 - a patent infringement suit brought by WiAV Networks involving patents alleged to relate to 802.11 wireless networking. *WiAV Networks v 3Com et al.*
- Representation of **Samsung** in:
 - a patent infringement suit brought by Cheetah Omni involving signal processing technology. *Cheetah Omni LLC v. Samsung Electronics America, Inc. and Mitsubishi Digital Electronics America, Inc.*
 - a patent infringement case brought by Saxon involving microprocessors and wireless communications in cell phones, televisions and a variety of other consumer electronics. *Saxon Innovations Corp. v. Nokia, et al.*
 - a patent infringement action brought by BTG involving multi-level cell flash memory. *BTG International, Inc. v. Samsung Electronics Co., Ltd.*
- Representation of a group of defendants, including **SAP, CA, Kodak, Altera, Novell and Sonic Solutions**, in patent litigation regarding hyperlink technology. *Disc Link v. Oracle et al.*
- Representation of **Sonic Solutions**, a DVD authoring software manufacturer, in defending lawsuit involving patents on recording video onto disk, as well as trade secret and other claims. *MedioStream, Inc. v. Acer America, et al.*
- Representation of **Symantec** and **PowerQuest** in a patent infringement case involving technology for computer and network administration. *Symantec Corporation and PowerQuest Corporation v. Altiris, Inc.*
- Representation of **Yahoo!, Match.com, Classified Ventures** and **eHarmony.com** in a case involving patents related to automated on-line information services and directories and pay-for-service web sites. *GraphOn Corp. v. Classified Ventures, LLC et al.*

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We note that Covington partner George Pappas, who is a Fellow of the of the American College of Trial Lawyers, has presented 32 educational programs on patent law to federal and magistrate judges at the request of the Federal Judicial Center since 1996, including two recent programs where he appeared on panels with Judge Ward. Other judges from the Eastern District of Texas, including Judge Davis, have attended these patent law programs given by George. At the most recent program, the “Patent Case Management” seminar presented at the Berkeley Center for Law & Technology for a group of 25 federal judges from across the country, one of the topics discussed was the unique aspects of practice in patent cases in the Eastern District of Texas. George also recently worked together with Judge Ward to compile the well-received primer for judges on patent litigation entitled “Anatomy of a Patent Case.”

District of Delaware

Covington’s patent litigators have litigated and are currently litigating numerous patent infringement cases in the District of Delaware. As a result of the cases we have handled in Delaware, Covington is very current on the practices and procedures of this Court, including its special patent rules.

In addition, Roderick McKelvie, a partner at the firm and co-leader of the Patent Litigation Practice, was a United States District Judge for the District of Delaware from 1992 to 2002. During his tenure on the bench, he presided over 200 patent infringement cases, including over 30 patent infringement trials. Rod retains strong relations with each of the judges on the court.

Listed below are several representations highlighting the depth of our experience in the District of Delaware.

- Representation of **ActivCard** in a patent infringement case involving authentication and encryption technology. *ActivCard S.A. v. VASCO Data Security International, Inc.*
- Representation of **Agere Systems** in a patent infringement suit alleging that various Local Area Network (“LAN”) products imported and sold by Proxim infringed three of Agere’s patents. *Agere Systems Guardian Corp. v. Proxim, Inc.*
- Representation of **Advanced Medical Optics** in enforcing patents on important safety improvements for cataract surgery. Obtained jury verdict for approximately \$94 million, which amount was tripled after post-trial briefing on account of Alcon’s willful infringement. *Advanced Medical Optics, Inc. v. Alcon Inc.*
- Representation of **AstraZeneca** in patent litigation against Barr and Mylan concerning Entocort® EC, used for the treatment of Crohn’s disease. *AstraZeneca LP v. Barr Laboratories, AstraZeneca LP v. Mylan Pharmaceuticals*
- Representation of **Bell & Howell** in a patent infringement action brought by Pitney-Bowes relating to mail processing machines. *Pitney Bowes Inc. v. Bell & Howell Co., et al.*
- Representation of **Coremetrics** in a patent infringement action brought by NetRatings relating to web analytics. *NetRatings v. Coremetrics*
- Representation of **First Data** in patent infringement litigation relating to patents asserted against the issuance of digital certificates and secure payment systems enabling e-commerce transactions. *Stambler v. First Data Corporation*
- Representation of **InnoLux Display** in a patent infringement action brought by Guardian Industries relating to LCD technology. *Guardian Industries Corp. v. InnoLux Display Corp.*

PATENT LITIGATION PRACTICE

- Representation of Johnson & Johnson subsidiaries **Janssen Pharmaceutica** and **Synaptech** in patent infringement litigation against seven ANDA filers concerning Janssen's Alzheimer's treatment Razadyne®. *In Re '318 Patent Infringement Litigation*
- Representation of a **Liberty Brokerage** subsidiary in a patent infringement action brought by Cantor Fitzgerald relating to a complex business method patent covering bond trading. *Liberty Brokerage, Inc. v. Cantor Fitzgerald, Inc.*
- Representation of **Monsanto** in:
 - a patent infringement action brought by Mycogen Plant Sciences related to genetically modified crops. *Mycogen Plant Sciences, Inc. v. Monsanto*
 - a patent infringement action against Novartis Seeds related to genetically modified crops. *Novartis Seeds, Inc. v. Monsanto Company*
- Representation of **Palm** in:
 - a patent infringement action in which Intermec has asserted patents relating to handheld data systems and devices and Palm has asserted patents relating to power management for handheld devices. *Intermec Technologies Corp. v. Palm Inc.*
 - a patent infringement action relating to user interfaces for digital cameras, including as incorporated into cellphones and smartphones. *Flashpoint Technology, inc. v. AT&T Mobility et al.*
- We have advised **Pechiney Rhenalu** and its successor companies in freedom to operate analyses for its aerospace business and defended the company in a two week patent infringement trial. *Pechiney Rhenalu v. Alcoa Inc.*
- Representation of **PHT** in a patent infringement case against CRF and invivodata, and a separate but related case brought by invivodata against PHT, relating to electronic patient diaries and a health monitoring system that tracks the state of a patient's health based on data input by the patient into a portable data logger. *Invivodata Inc. v. PHT Corporation*
- Representation of **Plextronics** in patent infringement case regarding organic photovoltaics. *Konarka Technologies, Inc. et al. v. Plectronics, Inc. (D. Del.)*
- Representation of **sanofi-aventis** in patent litigation against Hospira and Apotex concerning Sanofi's Taxotere® cancer treatment. *sanofi-aventis U.S. v. Hospira and Apotex*
- Representation of **Superconductor Technologies** in patent litigation involving the application of superconductor technology to the transmission and filtering of wireless telephone transmissions. Obtained a defense verdict for the client after a 3 week jury trial. *ISCO International, Inc. v. Conductus, Inc. and Superconductor Technologies, Inc.*
- Representation of **Unilever** in:
 - defense of patent infringement claims brought by Kao related to Pond's cosmetic pore strips. *Kao Corp. v. Unilever U.S., Inc.*
 - enforcing Unilever's patents against Pfizer's EPT pregnancy test kits and Princeton Biomedtech Corp.'s pregnancy test kits in US District Courts in New Jersey and Delaware and at the Federal Circuit. While on appeal from a ruling of non-infringement, and after filing briefs in the Federal Circuit, the Unilever subsidiary that owned the technology and patents was sold and the new owner, Inverness, substituted in its longtime patent counsel. On appeal the Federal Circuit agreed with the positions we advanced in our briefs and reversed the district court's erroneous claim construction. *Inverness Medical*

PATENT LITIGATION PRACTICE

Switzerland GmbH & Unipath Diagnostics, Inc., v. Princeton Biomeditech Corp., (Fed. Cir.)
and *Inverness Medical Switzerland GmbH & Unipath Diagnostics, Inc., v. Warner Lambert Co.* (now known as Pfizer Inc) (Fed. Cir.)

- Representation of **Validus Pharmaceuticals** in patent infringement litigation against Actavis concerning Equetro®, used for the treatment of bipolar disorder. *Validus Pharmaceuticals, Inc. v. Actavis South Atlantic LLC*
- Representation of **Wyeth** in patent infringement litigation against Watson and Sandoz concerning Lybrel®, an oral contraceptive. *Wyeth v. Watson Pharmaceuticals Inc., Wyeth v. Sandoz*

Northern District of California

Covington's patent litigators have litigated and are currently litigating numerous patent infringement cases in the Northern District of California. In addition, one of our partners is a member and former chair of the Northern District of California patent rules committee. As a result, Covington is very current on the practices and procedures of this Court, including its special patent rules.

Listed below are several representations highlighting the depth of our experience in the Northern District of California.

- Representation of **Allergan** and **Syntex (U.S.A.)** in a patent infringement case against Apotex involving an ophthalmic drug formulation. *Syntex (U.S.A.) LLC and Allergan, Inc. v. Apotex, Inc., et al.*
- Representation of **Altera** in patent infringement litigation regarding three patents covering various aspects of field programmable logic device technology. *Altera Corporation v. Xilinx, Inc.*
- Representation of **Atmel**, a chip designer and manufacturer specializing in non-volatile memories, particularly EPROMS, EEPROMs, and flash memories, and programmable logic devices (PLD's) in:
 - cases involving a PLD circuit patent and an EEPROM cell patent. *Advanced Micro Devices v. Atmel Corporation*, and *Seeq Technology v. Atmel*
 - a patent infringement case involving digital signal processing chips. *Atmel Corporation v. Agere Systems, Inc.*
 - a patent infringement action relating to circuits and memory cell designs for flash memory and EEPROMs. Jury trial resulted in judgment of more than \$36 million in Atmel's favor. *Atmel Corporation v. Silicon Storage Technology, Inc.*
 - a patent infringement action relating to circuits and fabrication processes for flash memory and EEPROMs. *Atmel Corporation v. Macronix America*
 - a patent infringement and trade secret misappropriation action involving the use of semiconductors in voice recording devices. *Atmel Corporation v. ISD*
- Representation of **Biotek Solutions** in a patent infringement action relating to the field of immunohistology or immunohistochemistry, and particularly to a claimed method of antigen retrieval in formalin fixed tissues. *Biogenex Labs v. Biotek Solutions, et al.*

PATENT LITIGATION PRACTICE

- Representation of **Caliper** in:
 - two related patent infringement actions concerning microfluidic devices. Both cases settled after a \$52M verdict was obtained for our client Caliper in the companion trade secrets case, also handled by Covington. *Caliper v. ACLARA Biosciences/ ACLARA Biosciences v. Caliper Technologies, Inc.*
 - asserting patent claims related to kinase enzyme assay methods and kits. The case settled favorably for our client after we secured a claim construction order in which the disputed terms were construed in our client's favor. *Caliper Technologies, Inc. v. Molecular Devices Corp.*
- Representation of **Depomed** in patent infringement litigation against IVAX involving oral drug delivery systems. *Depomed, Inc. v. IVAX Corporation, et al.*
- Representation of Johnson & Johnson subsidiary **Ethicon** in:
 - defense from allegations of infringement of four U.S. Patents covering electrosurgical devices used for arthroscopic and gynecological applications. After construing the claims, the Court denied Arthrocare's motion for a preliminary injunction, finding that Ethicon had raised a substantial question as to the validity of the patents-in-suit. After the judge announced several favorable tentative rulings on Ethicon's motions for summary judgment, the case was resolved on very favorable terms for Ethicon just prior to trial. *Arthrocare v. Ethicon, Inc.*
 - defense from a claim of patent infringement brought by Cryogen relating to a cryosurgical device used in gynecological applications. Ethicon successfully obtained a summary judgment ruling of non-infringement under 35 U.S.C. § 271(e)(1), but continued to seek a declaration that Cryogen's patents were invalid, unenforceable and not infringed. Shortly thereafter, the case was resolved on favorable terms to Ethicon. *FemRx, Inc., et al. v. Cryogen, Inc.*
- Representation of **Maxim Integrated Products** in:
 - a patent infringement suit against Freescale Semiconductor involving 13 patents. *Maxim Integrated Products, Inc. v. Freescale Semiconductor Inc.*
 - a lawsuit alleging infringement of Maxim's voltage regulator patents by Semtech. *Maxim Integrated Products v. Semtech Corp.*
 - a patent infringement litigation related to voltage regulators. *Linear Technology Corp. v. Maxim Integrated Products.*
- Representation of **Multilyte** in a patent infringement case involving DNA microarray technology. *Affymetrix, Inc. v. Multilyte Ltd.*
- Representation of Yahoo! subsidiary **Overture Services** in a lawsuit alleging infringement of Overture's pioneering paid search patent by Google's top revenue-producing Internet advertising services. In a highly-publicized settlement, Google took a license to this patent and several related patents in exchange for shares of Google stock with a value of approximately \$450 million. *Overture Services, Inc. v. Google Inc.*
- Representation of **Origin Medsystems** (now a part of Guidant) in a patent infringement and trade secret action involving a patent on a laparoscopic medical instrument, a retracting tip trocar. *U.S. Surgical v. Origin Medsystems, Inc.*

PATENT LITIGATION PRACTICE

- Representation of **picoTurbo** in patent infringement litigation brought by ARM alleging infringement of seven patents related to RISC microprocessor core architecture. The case resulted in a highly favorable settlement for our client. *ARM Limited v. Picoturbo Inc.*
- Representation of **Raychem** in:
 - a patent infringement action regarding three patents related to a line of Raychem's telecommunications products. *Raychem v. Thomas & Betts.*
 - two other cases involving competitors marketing similar products. *Raychem v. Communications Technology Corporation* and *Raychem v. PSI Telecommunications, Inc.*
 - in a patent infringement action relating to technology for insulating layers for wire used in aircraft. *Raychem v. Judd Wire*
- Representation of **RSA** in:
 - a case involving public key encryption technology. *RSA Data Security, Inc. v. Network Associates, Inc. and Pretty Good Privacy, Inc.*
 - litigation involving patent infringement and related claims involving public key and related encryption software technology that has become central to electronic commerce over the Internet. *RSA Data Security, Inc. v. Cylink Corporation*
- Representation of **Samsung** in patent litigation adverse AMD involving various technologies including memory devices, process technology and microprocessors. *Advanced Micro Devices, Inc., et al. v. Samsung Electronics Co., Ltd., et al.*
- Representation of **Silicon Storage Technology** in a declaratory judgment action involving EEPROM devices. *Silicon Storage Technology, Inc. v. Intersil Corporation, et al.* (N.D. Cal.)
- Representation of **SnapTrack** and **QUALCOMM** in a patent infringement action involving patents asserted against services that permit calls to the "911" emergency number to be tracked using Global Positioning System (GPS) technology. Won a favorable verdict following a three-week jury trial. *Zoltar Satellite Systems, Inc. v. Snaptrack, Inc. and QUALCOMM CORP.*
- Representation of **Source Photonics** in a patent infringement suit involving fiber optic components used in telecommunication systems and data communication networks. *Finisar Corporation v. Source Photonics, Inc. et al.* (N.D. Cal.)
- Representation of **Tencor Instruments** in a patent infringement suit against Eastman Technology, a subsidiary of Eastman-Kodak. The subject matter of the patent in suit is a wafer inspection system, which scans processed semiconductor wafers for surface imperfections. *Tencor Instruments v. Eastman Technology, Inc., et al.*
- Representation of **Texas Instruments** and **Chips and Technologies** in this patent infringement action brought by Intel. The patents related to the memory management system in the Intel 386 microprocessor and a breakpoint apparatus for system debugging. *Intel Corp. v. Chips and Technologies, Inc., Texas Instruments*
- Representation of **Thoratec** in a patent infringement action involving an artificial heart device. *Comora v. Thoratec Laboratories Corporation*
- Representation of **Trend Micro** in patent litigation concerning anti-virus technology. *Fortinet, Inc. v. Trend Micro, Inc.*

PATENT LITIGATION PRACTICE

- Representation of **United Microelectronics** in a suit where the patents relate to methods employed to fabricate semiconductor integrated chips. *Agere Systems Inc. & LSI Corporation v. United Microelectronics Corporation & UMC Group (USA)*
- Representation of **Unitrode**, an affiliate of Texas Instruments, in this patent infringement case involving “sleep mode” and current reversal protection aspects of voltage regulators. *Linear Technology Corporation v. Unitrode Corporation*
- Representation of **Visa International** and **Visa USA** in a lawsuit over a patent alleged to cover the Verified by Visa service for authenticating the identity of a payment cardholder in an on-line transaction. Defendants won summary judgment of non-infringement, which was affirmed on appeal. *Safeclick LLC v. Visa International Service Association and Visa U.S.A., Inc.*

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