



Adam Kessel

Principal
Boston
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Overview

When the stakes are high or new law needs to be established, industry-leading clients turn to intellectual property litigator Adam Kessel. He has an exceptional record of success at trial and on appeal in federal courts across the nation, in cases before the U.S. International Trade Commission, and in post-grant proceedings before the Patent Trial and Appeal Board.

Adam focuses on IP litigation, particularly cases involving patent, copyright, trade secret, and state-law claims involving software, computer networks, electronics, and medical devices across all areas of IP. He also litigates in related areas such as the Digital Millennium Copyright Act and the Computer Fraud and Abuse Act. He has represented both plaintiffs and defendants, tried dozens of cases to a jury, and appeared in state and federal courts across the country.

He frequently represents clients in the U.S. District Court for the District of Massachusetts. He has argued and won motions and claim construction arguments before most of the judges on the bench and has tried cases to a jury before several judges in the district. Adam has handled cases in at least 11 other districts, including in IP hotspots such as Delaware, Texas, and California. He has argued numerous appeals before the First, Fourth, Eleventh, and Federal Circuit Courts of Appeal. Adam also handled nearly 200 criminal cases as a "lawyer on loan" to the Suffolk County District Attorney's Office (2009-2010), several of which he took to trial as first chair.

Strategic and tactical, Adam thrives on a challenge. He has served as lead lawyer in precedent-setting cases, multidistrict litigation, and disputes involving novel issues of law. His carefully crafted persuasive, logical, and creative arguments have achieved wins at trial and on appeal for iconic brands that include Microsoft, Adobe, and Bose. Adam is equally skilled in resolving matters through negotiated settlements when avoiding protracted litigation makes the most sense for his clients.

Adam also advises on open-source software and patent and software licensing issues in a wide variety of contexts, including negotiated transactions, mergers and acquisitions, investment due diligence, internal best practices and policies, and litigation. As a former software developer, he brings exceptional insight into the technologies and their uses, which proves helpful in guiding his clients and structuring deals.

Adam is involved in several local legal- and IP-related organizations, including serving in the counselor role for the Judge Lourie Intellectual Property Inn of Court and as a chair of the case law committee for the Boston Patent Law Association. Adam maintains an active pro bono practice handling civil liberties cases.

Before joining Fish, Adam was a judicial intern for the Honorable Reginald Lindsay of the U.S. District Court for the District of Massachusetts (2003). He earned a degree in chemistry from Princeton University, developed software for several companies, and conducted research for an academic biochemistry lab involving protein structure and nuclear magnetic resonance spectroscopy.

Experience

Representative patent cases

Represented Taiwanese golf ball manufacturer in patent dispute brought by one of its largest competitors based in the United States; matter resolved favorably for client (2015-2016).

EveryScope, Inc. v. Adobe Systems Incorporated – D. Mass. (2010-2015) Represented defendant Adobe in case involving multiple patents relating to photo editing software. Following two week trial, jury rendered verdict after less than three hours of deliberations, finding all claims asserted against Adobe invalid as both anticipated and obvious.

American Superconductor Corporation v. S&C Electric – D. Mass. (2011-2013) Represented plaintiff AMSC in case involving multiple patents relating to reactive power compensation devices. Case settled following favorable claim construction order adopting AMSC's positions.

ZOLL Medical Corporation v. Philips – D. Mass. (2010-2014) Represented ZOLL as both plaintiff and defendant in several cases in multiple judicial fora involving over two dozen patents relating to cardiac defibrillators. Following a 12-day trial, jury found ZOLL's asserted patents infringed and not invalid.

DataTern v. MicroStrategy et al. – D. Mass. (2011-Present) Represent defendant MicroStrategy in case involving patent related to object-oriented programming and relational database systems in District Court and on appeal. Case pending.

SynQor, Inc. v. Vicor Corporation – E.D. Tex. (2011-Present) Represent defendant Vicor Corporation in case involving multiple patents related to DC-DC power converters. Case pending.

Robocast, Inc. v. Microsoft Corp. – D. Del. (2011-2014) Represented defendant Microsoft in case relating to automated web browsing tools. Case settled.

Represented defendant in case involving multiple patents relating to electronic trading system software in District Court, at the PTAB, and on appeal.

Infineon Technologies AG v. Fairchild Semiconductor Corporation (D. Del., D. Maine. 2008-2009) – Represented semiconductor manufacturer Infineon in infringement case involving eleven patents covering various aspects of power transistors in parallel proceedings in Delaware and Maine. Case settled.

In the Matter of Certain Sucralose, Sweeteners Containing Sucralose, and Related Intermediate Compounds Thereof (I.T.C. 2007-2009) Represented Chinese manufacturer in case involving artificial sweeteners in case before the International Trade Commission. Won decision of non-infringement and patent invalidity after seven day trial on the merits. Decision affirmed by the Commission in precedential opinion presenting a novel jurisdictional issue.

Achates Reference Publishing Inc. v. Microsoft Corp. – (E.D. Tex. 2007-2009) Represented Microsoft in patent infringement lawsuit relating to Microsoft Product Activation. Case settled.

Medtronic v. Abbott, et al. – (N.D. Cal. 2007-2009) Represented Boston Scientific Corporation in patent infringement lawsuit relating to cardiovascular stents. Case settled.

Bose v. Phitek, et al. – (D. Mass. 2007-2009) Represented Bose in patent infringement action involving noise-reducing headphones. Case settled.

Representative appellate cases

DataTern v. MicroStrategy et al. (Fed. Cir. 2014) Represent appellee MicroStrategy in appeal of patent infringement case involving claim construction issues. Case pending.

VRCompliance LLC et al v. HomeAway, Inc. et al. – (4th Cir. 2012) Represented appellee HomeAway in appeal from litigation in E.D.

Va. relating to unauthorized website access. Appeal resulted in complete affirmance for HomeAway in a precedential opinion on federalism issue of first impression in the circuit.

Airframe v. L-3 Communications Corp. et al. – (1st Cir. 2011) Represented appellee L-3 in appeal from copyright infringement lawsuit in D. Mass. Appeal resulted in complete affirmance for L-3.

Omura v. Shafer et al. – (Fed. Cir. 2011) Represented appellee Shafer in appeal from patent interference. Appeal resulted in complete affirmance.

Allvoice Computing PLC. v. Nuance Communications, Inc. – (Fed. Cir. 2007) Represented appellee Nuance on appeal in patent infringement lawsuit in S.D. Tex. involving computer speech recognition software on appeal. Case settled.

Representative software and internet cases

HomeAway, Inc. et al v. Eye Street Solutions et al (Travis County Court, Texas and E.D. Va., 2011-2013) Represent HomeAway in co-pending litigations in state and federal court relating to unauthorized website use and related claims. Case settled favorably for HomeAway following successful appeal argument.

L-3 v. Airframe – (D. Mass. 2007-2011) Represent L-3 as a defendant in multiple copyright infringement actions involving computer source code. Plaintiff asserted damages claim of \$132 million. Argued motion for summary judgment in July 2010, at which the District Court granted final judgment in L-3's favor on all claims. Also argued appeal to First Circuit which affirmed the District Court in all respects in precedential opinion dated September 2011.

Cambridge Research & Instrumentation Inc. v. Ruan et al. – (Mass. Superior Court 2009) Represented Cambridge Research & Instrumentation as plaintiff in case involving trade secret theft and breach of contract claims relating to computer source code. Court entered consent judgment enjoining defendants from using plaintiff's technology.

Advised numerous clients on a wide range of software and Internet matters. Examples include copyright and patent issues implicated by use and distribution of open source software; ownership and licensing issues related to software development; Internet service provider immunity under the Communications Decency Act; computer fraud and identity theft liability under state and federal statutes; and electronic privacy and data protection issues under HIPAA and state laws.

Represented several trademark owners in more than a dozen domain name arbitrations, all of which have resulted in transfer of the domain name to the trademark owner.

Trademark and copyright cases, dispute resolution

Bose Corporation v. Vidabox, LLC – (D. Mass. 2008) Represented Bose in trademark infringement action involving speakers. Case settled.

Bose Corporation v. BTS – (D. Mass. 2008) Represented Bose in trademark infringement action involving stereo systems. Obtained permanent injunction and judgment in Bose's favor.

Represented photographer in copyright and contract litigation against large consumer products manufacturer regarding use of photographs. Case settled.

Defended office product supply company in defamation case. Successfully defeated preliminary injunction.

Represented poet in dispute with publisher regarding copyright issues. Matter settled.

Represented graphics layout artist in dispute with publisher regarding copyright and contractual issues. Matter settled.

Recognitions & awards

Best Lawyers in America

Best Lawyers 2015, 2018-2025

Stand-out Lawyer

Thomson Reuters 2024-2025

IAM Patent 1000

IAM 2018-2025

Super Lawyers

Super Lawyers 2014-2023

Pro Bono Honor Roll

Massachusetts Supreme Judicial Court 2019, 2022

Lawyer of the Year: Copyright Law, Boston

Best Lawyers 2022

Rising Star

National Law Journal (NLJ) 2014

Rising Star

Super Lawyers 2010-2013

Up and Coming Lawyer

Massachusetts Lawyers Weekly 2012

Testimonials

"[Adam is] efficient, effective, [with] a broad base of intellectual property litigation and a practical business approach." — Client testimonial, *Thomson Reuters Stand-Out Lawyers List* (2023)

Professional associations

Counselor for Judge Lourie Intellectual Property Inn of Court

Chair of Caselaw Committee for Boston Patent Law Association

Former Board Member of American Civil Liberties Union of Massachusetts

Advisory Committee and Former Board Member of nonprofit organization Jewish Alliance for Law and Social Action

Former President of Board of two nonprofit organizations developing low-income housing

Active with fundraising and other support for Greater Boston Legal Services and Massachusetts Legal Assistance Corporation

Cooperating Attorney with American Civil Liberties Union and Electronic Frontier Foundation

Pro bono activities

Glovsky v. Roche Bros. Supermarket (Mass. 2014) – Drafted Amicus Curiae brief on behalf of American Civil Liberties Union in case before Massachusetts Supreme Judicial Court involving the constitutional right to collect signatures for ballot access. Opinion substantially followed the position set out in the amicus brief.

Jonathan Hurley v. Town of Sandwich (2014) – Represented teacher terminated by public school for off-work free-speech activities that predated employment. Town agreed to compensate teacher and train administrators and teachers about teachers' rights to speak as citizens outside of school.

In Re Matter of Search Warrant Executed on March 30, 2009 – Successfully represented Riccardo Calixte, a Boston College student, in the District Court and then before the Massachusetts Supreme Judicial Court in a bid to quash a search warrant executed on his premises, on the ground that the warrant was invalid for lack of probable cause. Single justice opinion was highest state court opinion to date to address the issue of potential criminal liability for internet users who violate terms of service.

Massachusetts Bay Transportation Authority v. Anderson, et al. (D. Mass. 2008) – Represented three MIT students charged with violating the Computer Fraud and Abuse Act in connection with a security analysis they designed showing vulnerabilities in the Massachusetts Bay Transportation Authority's fare collection system. Defeated preliminary injunction motion brought against students. Case settled favorably after preliminary injunction was denied.

WHDH v. Doe (Mass. Sup. Ct. 2007) – Represented anonymous poster to craigslist.org in motion to quash subpoena served on internet service provider to discover the poster's identity. Identity of the anonymous poster was successfully protected. Case settled favorably.

Kohn v. Barker (Mass. Sup. Ct. 2006) – Represented noted writer and speaker on educational issues who had been prevented from speaking at a conference by the Massachusetts Department of Education in a First Amendment case. Plaintiff prevailed and was awarded attorney's fees.

Advised graduate student creators of videos critical of creationism on copyright issues including fair use and First Amendment rights.

Assisted student with autism in Brockton Public School in obtaining funding and placement in a school specializing in children with autism.

Advised nonprofit organization that provides free books to children in Africa on trademark issues and obtained trademark registration for organization.

Advised nonprofit public health policy organization on copyright issues including Creative Commons licenses.

Training

- Certified as a Legal Specialist in open source code auditing by *Black Duck*

Insights

Webinar | April 5, 2023

Open Source Software, Patents, and the Question of Compatibility

Webinar | November 3, 2021

Open Source Software and Patents: Reconciling the Conflict

Webinar | December 3, 2020

Licensing 101

Webinar | September 10, 2020

Open Source Software: Practical Ideas for Protecting Your Intellectual Property

Webinar | May 28, 2020

Patent Litigation for the Non-Specialist: How It Works and What to Expect

Blog | June 1, 2018

Legal Alert: New Local Patent Rule in District of Massachusetts

Blog | June 24, 2016

Patent Litigation for the Non-Specialist: How it Works and What to Expect

Webinar | June 15, 2016

Patent Litigation for the Non-Specialist: How It Works and What to Expect

News

News | May 30, 2025

Fish & Richardson Receives Top Rankings in 2025 Edition of *IAM Patent 1000: The World's Leading Patent Professionals*

Media Coverage | March 10, 2025

Principal Adam Kessel Comments on AI, Copyright, and Fair Use in Landmark Case

News | August 15, 2024

101 Fish Attorneys Included in the 2025 Edition of *The Best Lawyers in America*

News | June 11, 2024

Fish & Richardson Receives Top Rankings in 2024 Edition of *IAM Patent 1000: The World's Leading Patent Professionals*

News | August 17, 2023

101 Fish Attorneys Included in the 2024 Edition of *The Best Lawyers in America*

News | June 27, 2023

Fish & Richardson Receives Top Rankings in 2023 Edition of *IAM Patent 1000: The World's Leading Patent Professionals*

News | October 27, 2022

Massachusetts Supreme Judicial Court Names 15 Fish Attorneys to Pro Bono Honor Roll

News | September 8, 2022

Fish & Richardson Receives Top Rankings in 2022 Edition of *IAM Patent 1000: The World's Leading Patent Professionals*

News | August 22, 2022

96 Fish Attorneys Included in the 2023 Edition of *The Best Lawyers in America*

News | October 12, 2021

Fish & Richardson Attorneys Named to 2021 Massachusetts Super Lawyers List

News | August 19, 2021

Fish Attorneys Recognized in 2022 Edition of *The Best Lawyers in America*

News | July 7, 2021

Fish & Richardson Receives Top Rankings in 2021 Edition of *IAM Patent 1000: The World's Leading Patent Professionals*

News | February 22, 2021

Fish & Richardson and ACLU of Massachusetts Win Pro Bono Lawsuit for Asylum-Seekers Challenging "Return to Mexico" Policy

News | January 7, 2021

Fish & Richardson Receives 2020 "Attorney of the Year" Group Award from *Minnesota Lawyer*

News | October 29, 2020

Massachusetts Supreme Judicial Court Names 20 Fish Attorneys to Pro Bono Honor Roll

News | August 12, 2020

Fish & Richardson Receives Top "Gold" Ranking from *IAM Patent 1000* for National Litigation Practice; National Rankings in the Plaintiff Firm and Prosecution...

News | June 11, 2020

Fish & Richardson Pro Bono Attorneys Assist in Successful Appeal of Permit For Enbridge Unit Pipeline Facility

News | May 18, 2020

Fish & Richardson Helps ACLU of Massachusetts Win Pro Bono Lawsuit Challenging Unlawful "Return to Mexico" Policy for Asylum-Seekers

News | June 20, 2019

Fish & Richardson Receives Top "Gold" Ranking from *IAM Patent 1000* for National Patent Litigation Practice

News | August 15, 2018

47 Fish Attorneys Named to The Best Lawyers in America 2019 List

News | June 14, 2018

Fish Receives Top "Gold" Ranking from *IAM Patent 1000* for National Patent Litigation Practice

News | February 26, 2018

Fish Pro Bono Client Meets Initial Milestone to Provide Access to Safe Water in Niger

Media Coverage | September 26, 2017

Mass. Looks To Tackle Abusive Patent Demands

Law360

News | January 28, 2015

Fish & Richardson Wins Jury Verdict for Adobe Patent Suit

News | September 9, 2014

Fish & Richardson Principal Adam Kessel Named a "Boston Rising Star"

News | April 10, 2012

Fish & Richardson Principal Adam Kessel Named 2012 "Up & Coming Lawyer" by *Massachusetts Lawyers Weekly*

News | June 5, 2009

Fish Wins Verdict Upholding Civil Rights in Digital Domain

Events

March 10, 2022

American Bar Association (ABA) Webinar | What Can Legal Analytics Do for Me?

September 27, 2018

FLIGHT East 2018

May 10, 2018

Minnesota Intellectual Property Law Association (MIPLA) Stampede

February 9, 2018

BPLA Case Law Committee - *GoPro, Inc. v. Contour IP Holding LLC*

Additional insights

Publications

- "IP Trends and Hot New Issues in 2007," *Mass High Tech* (December 2006)
- "Why eDiscovery Rules Will Change the Litigation Game," *Managing Intellectual Property* (October 2006)
- "New E-discovery Rules Change Realities of Patent Litigation," *New England In-House* (October 2006)
- "When in Doubt, Save the Data," Q&A in *Legal Times* (October 2006)
- "'Phillips' Leads to a Different Result in 'Nystrom'" with J. Foster, *National Law Journal* (December 2005)
- "Why They're Wrong About Critical Mass," in *Critical Mass: Bicycling's Defiant Celebration*, edited by Chris Carlsson, *San Francisco: AK Press* 105-112 (2002)
- "Peroxidase Activity in Heme Proteins Derived From a Designed Combinatorial Library," *J. Am. Chem. Soc.* 122, 7612-13 (2000)

Speaking engagements

- "Petrella: Supreme Court Takes on Laches," *Paper and Presentation at Joint Patent Practice Continuing Legal Education* (April 2014)
 - "DMCA Anti-Circumvention and Trafficking Provisions," *Webinar Presented* (March 2011)
 - "IP Licensing: Burgeoning Internet Topics," *Presentation at Licensing Executives Society Annual Meeting* (September 2006)
 - "Self-Help, Free Software, Privacy-Enhancing Technologies, and Cryptography," *Berkman Center for Internet & Society at Harvard Law School, Privacy and Cyberspace Online Course* (December 2003)
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Services

Litigation

Patent Litigation
Trademark, Copyright & Media Litigation
Trade Secret Litigation
Domain Names & Internet
Digital Millennium Copyright Act
Transactions & Agreements

Industries

Software & Internet
Hardware
Digital Media & E-Commerce
Telecommunications
Energy & Chemicals
Life Sciences

Admissions

Massachusetts (2004)
U.S. Court of Appeals for the Federal Circuit
U.S. Court of Appeals for the First Circuit
U.S. Court for Federal Claims
U.S. Court of Appeals for the Fourth Circuit
U.S. Court of Appeals for the Eleventh Circuit

Languages

English
French

Education

J.D., Northeastern University School of Law (2004)
B.A., Chemistry, Princeton University (1998)