




# Kenneth W. Darby

## Principal

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## Overview

### About Ken

Kenneth Darby is a principal in the Austin office of Fish & Richardson P.C. Mr. Darby's practice is largely focused on post-grant proceedings at the Patent Trial and Appeal Board (PTAB), where he has successfully represented both patent owners and petitioners. In addition to petition and brief drafting in these proceedings, Kenneth has presented oral arguments before the PTAB, and he specializes in developing high-level case strategies and legal theories for his clients. Mr. Darby also has experience pursuing and defending appeals of PTAB decisions at the U.S. Court of Appeals for the Federal Circuit.

Beyond the substantial post-grant aspect, Mr. Darby's practice includes intellectual property (IP) portfolio assessment and strategy, IP due diligence, patent drafting, patent prosecution and appeals from the PTAB, patentability and freedom to operate searches, and civil litigation. Mr. Darby is also a content contributor for events, press releases, and publications produced by the firm.

Mr. Darby is an active participant in Fish's pro bono program. In 2016, he played an instrumental role in a Texas voting rights case, *Das and OCA Greater Houston v. State of Texas*, as a member of the team that collaborated with the Asian American Legal Defense and Education Fund to strike down a Texas election law that violated the federal Voting Rights Act. In addition to spearheading motions briefing on the merits, Kenneth delivered an opening statement at the U.S. District Court for the Western District of Texas in Austin that, according to Judge Robert Pitman, "was on par with some of the strongest oral advocates that come before the Court." Kenneth also participated in the appellate briefing and appeared before the U.S. Court of Appeals for the Fifth Circuit, which largely affirmed the decision.

In 2015, Mr. Darby graduated with honors from the University of Texas at Austin where he received the dean's achievement award in civil procedure and mass tort litigation. Mr. Darby received his Bachelor of Science degree in mechanical engineering from the University of Texas at Austin where he received the John W. Hargis Endowed Presidential Scholarship in Engineering and the ExxonMobil Diversity Scholarship. As a student, he was accepted into the University of Texas Emerging Scholars Program and served as a peer tutor with the Equal Opportunity in Engineering organization. Mr. Darby also worked consecutive terms as an engineering intern for Austin Energy, with a focus in power production. His duties included the preparation of technical feasibility reports and the virtual construction of thermodynamic models representing power generating components.

## Focus Areas

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### Services

- Patent
- Post-Grant
- Trademark
- Appellate
- Patent Litigation

### Industries

- Aerospace and Defense
- Consumer Products
- Digital Media and E-Commerce
- Electrical and Computer Technology
- Energy and Petrochemical

- Internet
- Manufacturing
- Medical Devices
- Telecommunications
- Transportation

## Education

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J.D., University of Texas at Austin (2015)

B.S., Mechanical Engineering, University of Texas at Austin (2008)

## Experience

*Floodbarrier Inc. v. ILC Dover LP*, IPR Case No. IPR2019-01543.

*Snap Inc. v. BlackBerry Ltd.*, IPR Case No. IPR2019-00715.

*Mylan Pharmaceuticals Inc. v. Sanofi-Aventis Deutschland GMBH*, IPR Case No. IPR2019-01657.

*Mylan Pharmaceuticals Inc. v. Sanofi-Aventis Deutschland GMBH*, IPR Case No. IPR2019-01658.

*Cigna Health and Life Insurance Co.*, IPR Case No. IPR2020-00924.

*General Electric Co. v. Raytheon Technologies Corp.*, IPR Case No. IPR2020-00346.

*Assa Abloy AB v. Unikey Technologies Inc.*, IPR Case No. IPR2016-00679.

*Unikey Technologies Inc. v. Assa Abloy AB*, IPR Case No. IPR2016-00686.

*FMC Technologies Inc v. OneSubsea IP UK Ltd.*, IPR Case No IPR2016-00495.

*FMC Technologies Inc v. OneSubsea IP UK Ltd.*, IPR Case No IPR2016-00467.

*The Heil Co. v. Advanced Custom Engineered Systems & Equipment Co.*, IPR Case No. IPR2018-00139.

*FMC Technologies Inc. v. OneSubsea IP UK Ltd.*, IPR Case No. IPR2016-00378.

*FMC Technologies Inc. v. OneSubsea IP UK Ltd.*, IPR Case No. IPR2016-00328.

*Google LLC v. Uniloc USA Inc.*, IPR Case No. IPR2017-02082.

*Google LLC v. Uniloc USA Inc.*, IPR Case No. IPR2017-02085.

*Google LLC v. Uniloc USA Inc.*, IPR Case No. IPR2017-02083.

*Google LLC v. Uniloc USA Inc.*, IPR Case No. IPR2017-02084.

*Spectrum Brands Inc. v. Assa Abloy AB*, IPR Case No. IPR2015-01562.

*Leapfrog Product Development LLC v. Lifefactory Inc.*, IPR Case No. IPR2015-00614.

*Samsung Electronics Co. Ltd. v. Immersion Corp.*, IPR Case No. IPR2018-01467.

*Samsung Electronics Co. Ltd. v. Immersion Corp.*, IPR Case No. IPR2018-01468.

*Samsung Electronics Co. Ltd., et al. v. Personalized Media Communications LLC*, IPR Case No. IPR2017-00292.

*General Electric Co. v. United Technologies Corp.*, IPR Case No. IPR2017-00522.

*General Electric Co. v. United Technologies Corp.*, IPR Case No. IPR2017-01096.

*General Electric Co. v. United Technologies Corp.*, IPR Case No. IPR2017-01097.

*General Electric Co. v. United Technologies Corp.*, IPR Case No. IPR2018-01171.

*General Electric Co. v. United Technologies Corp.*, IPR Case No. IPR2018-01172.

*General Electric Co. v. United Technologies Corp.*, IPR Case No. IPR2018-01442.

*Plaid Technologies Inc. v. Yodlee Inc.*, CBM Case No. CBM2016-00082.

*Plaid Technologies Inc. v. Yodlee Inc.*, CBM Case No. CBM2016-00089.

*Plaid Technologies Inc. v. Yodlee Inc.*, CBM Case No. CBM2016-00088.

*Plaid Technologies Inc. v. Yodlee Inc.*, CBM Case No. CBM2016-00070.

*Plaid Technologies Inc. v. Yodlee Inc.*, CBM Case No. CBM2016-00056.

*Apple Inc. v. Qualcomm Inc.*, IPR Case No. IPR2018-01277.

*Apple Inc. v. Qualcomm Inc.*, IPR Case No. IPR2018-01278.

*Facebook Inc., et al. v. BlackBerry Ltd.*, IPR Case No. IPR2019-00787.

*Intuitive Surgical Inc. v. Ethicon LLC*, IPR Case No. IPR2019-00880.

*Mylan Pharmaceuticals Inc. v. Sanofi-Aventis Deutschland GMBH*, IPR Case No. IPR2018-01679.

*Mylan Pharmaceuticals Inc. v. Sanofi-Aventis Deutschland GMBH*, IPR Case No. IPR2018-01680.

*Mylan Pharmaceuticals Inc. v. Sanofi-Aventis Deutschland GMBH*, IPR Case No. IPR2018-01682.

*Metaswitch Networks Ltd. v. Ribbon Communications Operating Co. Inc.*, IPR Case No. IPR2019-00796.

*Metaswitch Networks Ltd. v. Ribbon Communications Operating Co. Inc.*, IPR Case No. IPR2019-00795.

*General Electric Co. v. United Technologies Corp.*, IPR Case No. IPR2019-00212.

*General Electric Co. v. United Technologies Corp.*, IPR Case No. IPR2019-00213.

## Insights

### Speaking Engagements

Speaker, UT Law 24th Annual Advanced Patent Law Institute, November 7, 2019.

Speaker, Updates to the AIA Trial Practice Guide, *Fish Post-Grant for Practitioners Webinar*, August 11, 2019.

Speaker, NHK, Valve, and Discretionary Denials, *Fish Post-Grant for Practitioners Webinar*, June 12, 2019.

### Publications

PTAB Publishes Update to AIA Trial Practice Guide, author, *Fish Post-Grant News*, July 19, 2019.

“Navigating Uncertainty — Addressing Purely Functional Claim Limitations in A PostWilliamson World

with Ongoing PTAB Climate Change,” *PTAB Bar Association Journal* (June 4, 2019).

Class Action Suit Argues that IPR is an Unconstitutional Taking, author, *Fish Post-Grant News*, September 24, 2018.

Implications of *Oil States Energy Services, LLC v. Greene’s Energy Group, LLC* and *SAS Institute, Inc. v. Iancu*, author, *Fish Post-Grant News*, May 9, 2018.

## Recognition

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Named to the “Best Lawyers: Ones to Watch” list by *The Best Lawyers in America*© (2021).