



Michael E. Florey

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Overview

Michael Florey focuses his practice on complex intellectual property litigation, particularly matters related to patent damages. He has substantial trial experience, including jury and bench trials, *Markman* and preliminary injunction hearings with live witnesses, and trials before the American Arbitration Association.

Michael is a leading national authority in the area of patent damages. He has extensive experience in IP and product liability cases involving products regulated by the Food and Drug Administration. He is highly skilled at cases that rest in large part on expert analyses, testing, and testimony.

Michael was named a 2016 “IP Client Service All-Star” in BTI Consulting Group’s survey of general counsel from the world’s largest corporations. He was one of only 30 IP attorneys selected nationwide for the list, which highlights lawyers who deliver superior dedication to client service. He was selected for inclusion in 2015 and 2016 editions of *Chambers USA: America’s Leading Lawyers of Business* as a leader in his practice area and has been named to the 2010-2016 and 2019-2021 lists of *Best Lawyers in America*. He was selected as a *Minnesota Lawyer* “Attorney of the Year” in 2013 and “Lawyer of the Year” in 2021 by *Best Lawyers in America* for patent litigation.

Michael is active in efforts to promote diversity in the legal profession. He is a member of the firm’s diversity committee and is the firm’s member representative for Twin Cities Diversity In Practice. He represented Fish & Richardson at the inaugural Women In Law Hackathon competition sponsored by Diversity Lab, Stanford Law School, and Bloomberg Law. He was a member of “Team 4,” whose proposal was awarded second place in this national competition designed to bring forward innovative solutions to increase retention and promotion of women in large law firms.

In his free time, Michael enjoys cooking, as well as visiting great restaurants around town and around the world.

Experience

U.S. District Court Trials

Gilead Sciences, Inc. v. Merck & Co., Inc. – Trial counsel for Gilead Sciences in a patent case involving a revolutionary antiviral cure for Hepatitis C. Lead counsel for the damages phase of trial, securing a jury verdict awarding only 10% (\$200 million) of the damages sought by Merck (\$2 billion). Subsequently the Court conducted a bench trial on equitable issues, and declared the asserted patents unenforceable, resulting in no liability to Gilead.

Baxter Healthcare Corp. v. Fresenius Medical Care Holdings Inc. – Trial counsel for Fresenius in a patent case involving automated peritoneal dialysis cyclers. Only two of eight patents originally asserted by Baxter survived for trial. At trial, jury verdict of no

infringement by Fresenius. Summarily affirmed on appeal pursuant to Rule 36.

Fresenius USA, Inc. v. Baxter International, Inc. – Trial counsel for Fresenius in a patent case involving hemodialysis machines. Jury returned a verdict of invalidity for all four asserted patents. Following adverse JMOL, three patents knocked out on first appeal. Remaining claims from fourth patent invalidated in *ex parte* reexamination while damages remand from appeal was pending. Obtained important precedential ruling from Federal Circuit on second appeal ending case based on USPTO's cancellation of the remaining claims in reexamination. *Fresenius USA, Inc. v. Baxter International, Inc.*, 721 F.3d 1330 (Fed. Cir. 2013).

Braun Medical, Inc. v. Terumo Medical Corp. – Trial counsel for Terumo in a patent case involving safety guards for needles. Presented the developer of the accused product – who spoke no English – at trial through an interpreter. Jury verdict declared 15 of 16 claims not infringed or invalid. Verdict paved the way for a design-around to avoid the sole remaining claim.

Mars, Inc. v. Coin Acceptors, Inc. – Trial counsel for Mars in a patent case involving vending machine coin sensors. Presented Mars' case at a bifurcated damages bench trial following affirmance of liability judgment on appeal, resulting in a damages and prejudgment interest award of \$27 million. Verdict affirmed: *Mars, Inc. v. Coin Acceptors, Inc.*, 527 F.3d 1359 (Fed. Cir. 2008).

Mayo Clinic v. Dr. Peter Elkin – Trial counsel for Mayo Clinic in trade secret case regarding natural language processing software. Conducted trial cross-examination of defendant Dr. Elkin, leading to a jury verdict of willful trade secret misappropriation in favor of Mayo, and an award of attorneys' fees to Mayo by the Court. Verdict affirmed at 2013 WL 4516191 (8th Cir. 2013).

Cargill, Inc. v. Canbra Foods Ltd and Dow Agrosciences LLC – Trial counsel for Cargill in a patent case relating to high stability canola oil. Jury verdict in favor of Cargill finding infringement, patent validity and damages.

St. Jude Pacesetter v. Cardiac Pacemakers, Inc. – Trial Counsel for St. Jude Pacesetter in a patent case involving pacemakers and defibrillators. Jury verdict in favor of St. Jude Pacesetter pursuant to the doctrine of equivalents, including a multi-million dollar damages award.

Federal Circuit Appeals

Group One Ltd v. Hallmark Cards, Inc., 407 F.3d 1297 (Fed. Cir. 2005) – Argued on behalf of Hallmark Cards. Established precedential standard for correction of errors in patent claims during litigation, resulting in invalidation of Group One patent.

Bruno Indep. Living Aids, Inc. v. Acorn Mobility Servs. Ltd., 394 F.3d 1348, 1354 (Fed. Cir. 2005) – Argued on behalf of Acorn Mobility. Established that in evaluating a claim of inequitable conduct, intent to deceive may be inferred from the lack of a credible explanation for non-disclosure of material prior art. As a result, the Court affirmed the judgment – including an award of substantial attorney fees – in favor of Acorn.

Arbitration Trials

Mayo Clinic Jacksonville v. Alzheimer's Institute of America – Trial counsel for Mayo Clinic in AAA arbitration relating to a license agreement to transgenic mice. Arbitrator found no breach of license by Mayo Clinic.

Immtech International, Inc. v. Neurochem, Inc. – Trial counsel for Immtech in AAA arbitration relating to a pharmaceutical license agreement. Panel (3 arbitrators) found breach of agreement by Neurochem and awarded attorneys' fees.

Rochester Medical Corp. v. Mentor Corp. – Trial counsel for Rochester Medical in AAA arbitration over technology license agreement. Panel (3 arbitrators) decision in favor of RMC.

Patent Cases Resolved Without Trial

Gilead Sciences, Inc. v. AbbVie, Inc. – Litigation counsel for Gilead Sciences in a five patent case relating to a revolutionary antiviral cure for Hepatitis C. Resolved by settlement.

Baxter International, Inc. v. Fresenius Medical Care Holdings, Inc. – Litigation counsel for Fresenius in a patent case concerning

automated peritoneal dialysis cyclers. Resolved by settlement.

Mayo Clinic Jacksonville v. Alzheimer's Institute of America – Litigation counsel for Mayo Clinic in a patent case relating to the “Swedish Mutation,” an important genetic mutation linked to familial Alzheimer’s disease. Resolved when AIA’s patent held invalid in another proceeding.

Robinson Labs v. Walls Industries – Litigation counsel for Walls Industries in a patent case specialized fabric for hunting apparel; represented defendant and obtained summary judgment of patent invalidity based on both obviousness and derivation of invention.

Minnesota Mining & Manufacturing Co. v. North American Science Associates – Litigation counsel for 3M in a patent case involving rapid readout hospital sterilization indicators. Resolved by settlement following summary judgment of infringement entered against NAMSA.

Spectral Diagnostics, Inc. v. Biosite – Litigation counsel for Spectral Diagnostics in a patent case relating to rapid cardiac marker test panels. Resolved by settlement.

Minnesota Mining & Manufacturing Co. v. American Diagnostic Corp. – Litigation counsel for 3M in a patent case regarding stethoscope eartips. Resolved by settlement, including an agreed injunction against ADC.

Marshfield Clinic v. Cargill, Inc. – Litigation counsel for Cargill in a patent case relating to micro-satellite repeat assays. Resolved by settlement.

Trade Secret Cases Resolved Without Trial

Pioneer Hybrid Int'l v. Cargill, Inc. – Litigation counsel for Cargill in a trade secret case involving allegations of worldwide misappropriation of corn germplasm, and patent infringement. Leader of team that conducted investigation and remediation in two dozen U.S. locations and in over twenty countries outside the U.S. Resolved by settlement with Pioneer clearing substantial portion of Cargill’s germplasm, allowing client to complete sale of business unit.

Litigation counsel for a medical device company and a prospective employee in non-compete suit brought by a competitor. Resolved by settlement/corporate acquisition.

Trademark/Trade Dress Cases

Amazon Bookstore v. Amazon.com – Litigation counsel for Amazon Bookstore in trademark case relating to use of the mark “Amazon” with book sales. Resolved by settlement.

eYield Solutions, Inc. v. Crows Hybrid – Litigation counsel for eYield Solutions to clear use of “Rooster.com” website and marks. Resolved by settlement with client obtaining clearance.

RAVE Sports v. Overtons – Litigation counsel for RAVE Sports in a Lanham Act unfair competition action relating to water trampolines. Resolved by settlement.

Copyright Cases

Bird Brain, Inc. v. Menard, Inc. – Litigation counsel for Menard in copyright case regarding decorative copper garden sprinklers. Resolved by settlement.

Technology Agreements

CSM/Purac v. Cargill, Inc. v. Dow Chemical Co. – Counsel for Cargill in complex dissolution of two joint ventures relating to lactic acid technology and production.

Counsel for a wood components manufacturer in a dispute over ERP software contract. Resolved by settlement.

Recognitions & awards

Best Lawyers in America

Best Lawyers 2010-2016, 2019-2026

IAM Patent 1000

IAM 2022-2026

Ranked Lawyer

Chambers USA: Minnesota 2015-2025

Lawyer of the Year for Patent Litigation

Best Lawyers 2021

News

News | June 3, 2026

Fish & Richardson Receives Top Rankings in 2026 Edition of *IAM Patent 1000: The World's Leading Patent Professionals*

News | August 20, 2025

95 Fish Attorneys Included in the 2026 Edition of *The Best Lawyers in America*

News | June 6, 2025

Fish & Richardson Earns "Band 1" Nationwide Rankings for Intellectual Property and ITC Practices in *Chambers USA 2025*

News | May 30, 2025

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

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 | June 10, 2024

Fish & Richardson Earns "Band 1" Nationwide Rankings for Intellectual Property and ITC Practices in *Chambers USA 2024*

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 | June 1, 2023

Fish & Richardson Earns "Band 1" Nationwide Rankings for Intellectual Property and ITC Practices in *Chambers USA 2023*

News | January 24, 2023

Fish & Richardson Secures Summary Judgments and Recovers Attorneys' Fees in Copyright and Corporate Governance Dispute

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 | June 3, 2022

Fish & Richardson Earns "Band 1" Nationwide Rankings for Intellectual Property and ITC Practices in *Chambers USA 2022*

News | August 19, 2021

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

News | May 26, 2021

Fish & Richardson Ranks in Top "Band 1" Nationwide Rankings for Intellectual Property and ITC Practices in *Chambers USA 2021*

News | June 2, 2020

Fish & Richardson Receives Top "Band 1" National Rankings for Intellectual Property and ITC Practices in *Chambers USA 2020*

News | May 6, 2020

Fish & Richardson Named to *The National Law Journals 2020 Pro Bono Hot List*

News | April 30, 2020

Fish & Richardson Helps ACLU of Minnesota Win Important Pro Bono Voting Rights Case

News | May 21, 2019

Fish & Richardson Receives Top "Band 1" National Rankings for Intellectual Property and ITC Practices in *Chambers USA 2019*

News | August 15, 2018

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

News | May 22, 2018

Fish & Richardson Receives Top "Band 1" National Rankings for Intellectual Property and ITC Practices in *Chambers USA 2018*

News | July 25, 2017

Fish & Richardson Receives Top "Band 1" National Rankings for Intellectual Property and ITC Practices in *Chambers USA 2017*

News | June 13, 2017

Fish Partners with Diversity Lab to Launch Innovative Pilot to Boost Diversity in Law Firm Leadership

News | July 8, 2016

Fish's Michael Florey Wins Second Place at Women in Law Hackathon

News | June 8, 2016

Fish Receives Top "Band 1" National Rankings for Intellectual Property and ITC Practices in *Chambers USA 2016*

News | February 22, 2016

Fish & Richardson Principal Michael Florey Named 2016 Intellectual Property Client Service All-Star

News | February 3, 2014

Fish Principal Michael E. Florey Named "2013 Attorney of Year" by *Minnesota Lawyer*

News | July 2, 2013

Fish Leverages Ex Parte Reexamination to Win Federal Circuit case for Fresenius

News | September 5, 2012

Thirty Fish & Richardson Attorneys Selected for the 2013 Best Lawyers in America®

Media Coverage | April 27, 2011

Mayo Wins Trade Secrets Verdict Against Ex-Employee

Law360

Media Coverage | May 20, 2010

Panelists advise that Rader is "new sheriff in town" when it comes to patent damages

The National Law Journal

Services

Litigation

Patent Litigation

Appellate

Industries

Medical Devices

Life Sciences

Admissions

Minnesota (1990)

Supreme Court of the United States

U.S. Court of Appeals for the Federal Circuit

U.S. District Court for the District of Minnesota
U.S. District Court for the Western District of Wisconsin

Clerkships

U.S. District Court for the District of Minnesota, The Honorable Robert G. Renner (1988-1990)

Education

J.D. *magna cum laude*, University of Illinois College of Law (1988)

B.A. *cum laude*, Economics, Carleton College (1985)