




Michael J. Kane

Principal

 Minneapolis, MN

 612-337-2502

 kane@fr.com

Overview

About Michael

Michael Kane is a principal in the Twin Cities office of Fish & Richardson P.C. Mike uses his technical, business, and litigation skills to obtain the best results for his clients involved in adversarial proceedings. He specializes in complex patent litigation with a particular emphasis in pharmaceuticals (Hatch-Waxman cases and others), biotechnology, and medical devices for clients including Allergan and Coherus, among many other high-profile clients. In addition, Mike has extensive post-grant experience successfully representing both petitioners and patent owners at the PTAB in the Life Sciences and Medical Device areas, including Allergan, Illumina, and Coherus.

One of Mike's strengths is successfully managing complex litigation involving matters in U.S. district and appellate courts, as well as foreign actions for his clients. For example, Mike was the architect of the strategy in a competitor dispute involving courtroom litigation in the U.S., Germany, U.K., New Zealand, and Australia. The dispute also involved patent office challenges around the world, including 39 PTAB petitions in the United States. After years of litigation, the client, working with Mike, was able to resolve the dispute and achieve its business goals.

His work has been widely recognized by his peers. Mike was named an "Attorney of the Year" by *Minnesota Lawyer* (2016) for his role in successfully representing *Halo Electronics, Inc. v. Pulse Electronics, Inc.* at the U.S. Supreme Court. Similarly, his team's work in *Coherus BioSciences, v. AbbVie Biotechnology* was designated "Impact Case of the Year by *LMG Life Sciences* in 2017. And Mike was named to "The Best Lawyers in America" list by *The Best Lawyers in America*® (2021).

Mike's experience in the medical device and life sciences fields includes:

In the Matter of CERTAIN SLEEP DISORDERED AND BREATHING SYSTEMS AND

COMPONENTS THEREOF (U.S.I.T.C.)—obtained judgment of infringement in case related to CPAP technology.

Obtained \$240 million jury verdict (affirmed by the Federal Circuit Court of Appeals) for a major international pharmaceutical company in case related to Coreg®, a drug used to treat congestive heart failure.

Obtained reversal of jury verdict against major medical device client that led to settlement on favorable terms.

Medtronic adv. C.R. Bard (D. De.)—obtained jury verdict of non-infringement in case related to arterial blood filters.

Medtronic adv. Haemonetics (D. Mass.)—obtained summary judgment of non-infringement (affirmed by the Federal Circuit Court of Appeals) in case related to autologous blood centrifuges.

Medtronic adv. Charms (W.D. Tex.)—obtained summary judgment of invalidity in case related to circuitry implantable cardioverter defibrillators (ICDs) was invalid.

Represented a major pharmaceutical company in the District of Delaware in suits over a method of treatment of congestive heart failure. Market had genericized a decade previously. Successfully obtained a damages award of \$235 million after a seven-day jury trial. An LMG Life Sciences Top 10 IP case for 2017.

Represented a major pharmaceutical and academic research institution in the District of Massachusetts in suit related to an infringing manufacturing process for an antibody therapy for treating cancer. Case favorably settled the morning of trial for \$65 million.

Represented Allergan in Central District of California involving JUVEDERM®. After successfully prevent institution of two petitions for IPR, the case favorably settled.

Represented Allergan in the Eastern District of Texas in suits over ACULAR LS®, an ocular pain treatment. After the market went generic because the compound patent expired, Allergan obtained a patent of the formulation. Successfully settled case in resulting generics exiting market.

Focus Areas

Services

- Litigation
- Post-Grant

- Appellate
- Hatch-Waxman
- ITC Litigation
- Patent Litigation

Industries

- Chemicals
- Life Sciences
- Manufacturing
- Medical Devices

Education

J.D. *magna cum laude*, University of Minnesota Law School (1994)

B.S. *with honors*, Mechanical Engineering, Iowa State University of Science and Technology

Experience

Pharmaceutical and Biotechnology

Asserting leading pharmaceutical company's patents relating to glaucoma treatment in Abbreviated New Drug Application (ANDA) litigation venued in the United States District Court for the District of Delaware. The case settled on very favorable terms on the eve of trial.

MIT and Repligen adv. ImClone – Asserting MIT's patents relating to the use of mammalian cellular enhancers to increase protein expression in cell transformants against ImClone in a case pending in the United States District Court for the District of Massachusetts.

Alzheimer's Institute of America v. Mayo Clinic, et al – Defending Mayo and Myriad in a licensing and patent dispute relating to AIA's patent concerning cell lines incorporating the "Swedish Mutation," a genetic mutation related to early onset Alzheimer's Disease. The case is currently pending in the Central District of Florida. After securing arbitration over breach of contract claim, tried and obtained decision for defendants.

3M adv. Velandar – Successfully defended 3M in an inventorship dispute with Dr. Velandar a

professor at Virginia Polytechnic Institute and State University. The technology at issue related to isolation and purification of proteins in fluids.

Medical Devices

Kyphon adv. Medtronic – Defending Kyphon in a patent case brought by Medtronic asserting that Kyphon’s inflatable bone tamps infringe four balloon catheter patents. The case is pending in the Northern District of California.

Medtronic adv. C.R. Bard – Successfully defended Medtronic in a patent case brought by C.R. Bard in the United States District Court for the District of Delaware. The asserted patent related to arterial blood filters. Obtained a jury verdict of non-infringement for Medtronic.

Medtronic adv. Haemonetics – Successfully defended Medtronic in a patent case brought by Haemonetics in the United States District Court for the District of Massachusetts. The asserted patents related to autologous blood centrifuges. Successfully defeated Haemonetics motion for preliminary injunction and obtained summary judgment of non-infringement that was affirmed by the Federal Circuit Court of Appeals.

Medtronic adv. Charms – Obtained summary judgment that a patent asserted by Charms against the wave generating circuitry used in Medtronic’s implantable cardioverter defibrillators (ICDs) was invalid. Charms sued Medtronic for patent infringement in the United States District Court for the Western District of Texas. The judgment was affirmed by the Federal Circuit Court of Appeals.

Medtronic v. Moore – Defended Medtronic against Moore in a licensing and patent dispute brought by Moore in the United States District Court for the District of Minnesota. The technology at issue related to the circuitry used in Medtronic’s ICDs to detect accelerated heart rates. The case settled after the district court adopted Medtronic’s proposed patent claim construction following a Markman hearing.

Electrical and Computers

HyperPhrase adv. Google – Defending Google in a suit brought by HyperPhrase for infringement of multiple patents relating to database searches. The suit is pending in the Western District of Wisconsin.

LeCroy adv. Tektronix – Defended LeCroy in a suit brought by Tektronix for infringement of multiple patents relating to the circuitry and software used in digital oscilloscopes. Tektronix filed the suit in the United States District Court for the District of Oregon. After the court granted LeCroy summary judgment of non-infringement on a Tektronix patent, the case settled.

Vivid Image Technology v. Bakery Crafts – Successfully defended Vivid Image and DecoPac in a patent infringement suit brought by Bakery Crafts relating to the use of a computer and ink jet printer to decorate bakery goods. The case was venued in the United States Bankruptcy Court for the

Southern District of California. The bankruptcy court entered summary judgment of non-infringement for Vivid and DecoPac. The judgment was affirmed on appeal by the Federal Circuit Court of Appeals.

Micron adv. Motorola – Defended Micron in a 34 patent case brought by Motorola and Freescale Semiconductor in the United States District Court for the Western District of Texas. The patents at issue related to the circuitry and software used in cell phone communications. The case settled.

Trigem Computer adv. Compaq – Assumed defense of the defendants in a thirteen patent case relating to numerous aspects of circuitry and software used in personal computers. The case was venued in the United States District Court for the Southern District of Texas. After mediation, the case settled on the eve of trial.

Sentinel Imaging adv. LaserMaster – Defended Sentinel Imaging in a patent and trade secret suit brought by LaserMaster in the United States District Court for the District of Minnesota. After a jury trial, judgment was entered for Sentinel Imaging on the patent issues and for LaserMaster on the trade secret issues. The case settled during the appeal process.

Chemical

Bio-Cide adv. Alcide – Lead counsel defending Bio-Cide against in a patent infringement case brought by Alcide in the United States District Court for the Western District of Washington. The patent related to an oxy-chloro disinfectant used in the food processing industry. After mediation, the case settled.

3M and Dyneon adv. Ausimont – Asserted 3M's patent against Ausimont in a suit filed in the United States District Court for the District of Minnesota. The patent related to omega-hydrofluoroalkyl ethers. Case settled.

Dyneon adv. Dupont Dow Elastomers and Asahi Glass – Asserted 3M's patent against DDE and its supplier Asahi Glass in litigation in the United States District Court for the District of Minnesota and a counter-suit filed in the United States District Court for the District of Delaware. The patent related to fluorinated ethers. Case settled.

3M adv. Scanlan – Obtained a preliminary injunction against former employee for breach of employment agreement and misappropriation of trade secrets. The technology at issue related to the characterization and formulation of pressure sensitive adhesives. Case settled.

Trademark

Buffets adv. Sargam – Lead counsel in suit asserting Buffets federally registered “Old Country Buffet” service mark against Sargam brought in the United States District Court for the District of Maryland. After filing a preliminary injunction motion, the court ordered Sargam to remove the infringing material. Case resolved through a Consent Judgment and Permanent Injunction.

St. Croix adv. American Premiere – Lead counsel for St. Croix in suit asserting the federally registered “Premiere” mark against American Premiere. The suit was brought in the United States District Court for the District of California. After mediation, American Premiere agreed to change its packaging and the case settled.

Trade Secret/Employee Non-Compete Agreements

KLM Royal Dutch Airlines adv. American Airlines – Obtained summary judgment for KLM dismissing American’s trade secret misappropriation claims relating to computer algorithms used to forecast demand and set pricing.

3M adv. Hogan – Obtained summary judgment for 3M dismissing Dr. Hogan’s trade secret misappropriation claims relating to electronic dental anesthesia. The judgment was affirmed on appeal.

Other Complex Litigation

Northern States Power adv. Commissioner of Revenue – Obtained judgment for NSP that standby generating systems at nuclear power plants were tax-exempt resulting in multi-million dollar annual tax reduction.

Klein Bancorp adv. Commissioner of Revenue – Obtained \$300 million tax refund of unconstitutionally collected taxes for group of banks. The judgment was affirmed on appeal.

Recognition

- Named to “The Best Lawyers in America” list by *The Best Lawyers in America*© (2022)