Patent Litigation

Fish & Richardson is a global patent, intellectual property (IP) litigation, and commercial litigation law firm with more than 400 attorneys and technology specialists across the U.S. and Europe. Fish has been named the #1 patent litigation firm in the U.S. for 12 consecutive years, handling twice as much patent litigation as its nearest competitor. Fish is also the #1 firm at the PTAB and the #1 firm at the ITC, handling more matters than any other firm. Fish is the leading law firm for the world’s greatest innovators and influential industry leaders. For more information, visit www.fr.com.
The world’s leading companies have one thing in common: innovation in products and services. That’s why they turn to Fish & Richardson—the global leader in intellectual property litigation.

Fish has the premier patent litigation practice in the nation. We’ve earned our elite position by consistently winning the most important, technically sophisticated, bet-the-company patent cases for such clients as 3M, Allergan, Bose, Fresenius, Gilead Sciences, Hewlett-Packard, LG, Microsoft, and Samsung.

**Patent Litigation**

*We can handle everything and are, quite simply, the absolute best at what we do.*

When a company’s livelihood rests on its patents, the ability to litigate effectively can be crucial. Our clients tell us that the depth and breadth of our technical expertise, combined with our proven trial skills and strong industry knowledge, make Fish their first choice for patent litigation. But one of our greatest strengths is providing long-term plans and solutions, not just litigation advice, for clients. Making strategic decisions up front saves clients money and helps ensure a successful outcome.
Fish has won many of the most significant patent cases of the past decade. The sheer volume of complex IP litigation that we handle is beyond compare. Since 2004, Fish has been ranked by Corporate Counsel as the country’s #1 patent litigation firm.

Our large docket of cases and fluency in every technology area imaginable mean we’ve seen and done it all. There are few, if any, litigation strategies we have not faced. We have expertise in virtually every jurisdiction and maintain credibility among judges and opposing counsel.

Fish’s track record in forming customized teams that understand their clients’ industries and technologies as well as our collaborative, one-firm concept mean we are uniquely positioned to handle complex matters on multiple fronts.

Fish has more than 400 attorneys and technology specialists practicing IP strategy and counseling, IP litigation, and commercial litigation. More than 300 attorneys have degrees in science or technology. Add to that the 80 PhDs on our staff and you get a law firm with unmatched expertise. Our deep bench includes more than 70 former law clerks and over 30 former Federal Circuit clerks with in-depth knowledge of these courts, giving us an insider’s edge.

Our litigation teams, which can also include top-notch patent prosecutors, have a deep understanding of clients’ technologies, potential prior art, patent laws and rules, and the fine distinctions between claims. Together, we develop creative and winning litigation strategies that other firms would never think of.

The close integration of our patent and litigation practices also makes Fish especially well-suited to handle inter partes review and post-grant proceedings. Successfully challenging patent validity at the USPTO requires a solid foundation of prosecution and litigation skills, and our internal commitment to knowledge-sharing allows us to capture the lessons we learn in the courtroom and build them into our post-grant approaches.

“Law, like life, offers no sure things. Yet every year it’s a pretty safe bet that Fish & Richardson will handle more patent litigation in the United States than any other firm.”

— The American Lawyer

Deep Knowledge, Big Wins
Precision Vision

We are true visionaries who don’t just see the curve, but also are ahead of it.

Our vast expertise allows us to focus with laser precision on the pivotal case issues that other lawyers might not notice. This is why Fish is often at the forefront of developing new case law.

Handling more patent litigation than any other law firm in the country means we see evolving trends in patent enforcement and litigation. This enables us to look down the road and take steps that reduce risk and increase predictability in our clients’ cases.
Fish is fortunate to occupy the pinnacle of the IP world. We represent the smartest, most innovative, and successful companies and organizations in the world. Their excellence inspires us to meet these same exacting standards every day. So we work harder, dig deeper, and find solutions where others see problems.

With 12 offices across the U.S. and in Munich, Germany, Fish protects clients’ most valuable IP business assets around the globe. Our office in Munich—home to the European and German patent offices and the German Federal Patent Court—serves clients’ needs throughout Europe. U.S. companies seeking to enforce patents globally often begin their European enforcement efforts in Germany, where litigation costs are low, results are prompt, and post-grant revocation and injunctive relief offer powerful remedies alone or as a strategic weapon in U.S. patent litigation.

We also have an extensive network of relationships with counsel around the world—in addition to our vast, in-house, country-specific expertise—and can provide IP litigation support in virtually any jurisdiction around the world.

There is no other firm that can match the quality, breadth, depth, and dominance of our IP litigation practice. This is why Fish wins so many significant cases day in and day out.
Our goal: achieve the client’s objective at a price that is an outstanding value and at Fish quality.

We put the right talented team on a case—no matter which office its members are located in—at no extra cost to clients. We staff cases leanly, which reduces litigation expenses and allows the entire team to have a better understanding of every aspect of the case. Our offices are located in many key U.S. jurisdictions, which saves on local counsel fees.

Fish is also a leader in value-based and other alternative fee arrangements. We know what resources are needed to pursue cost-effective, winning strategies in patent litigation. We closely manage the workflow of our “lean and mean” litigation teams and use highly skilled nonlawyer staff and technology where appropriate to deliver superior work at a lower cost.

“Fish & Richardson is absolutely one of the best. They are unparalleled in the combination of client responsiveness, service, and the quality of work product. They are truly the best in class.”

Legal Project Management

Fish has handled more patent litigation than any other firm in the country for twelve straight years. Even with all of the changes in the legal market, Fish remains on top for intellectual property litigation because Fish actually manages its cases differently than its competitors. Given all of the pressures on companies and in-house counsel today, Fish invested in changing the way it works so its litigators could maintain their absolute top-quality prowess, while providing even more value to a client. We redesigned how we work, staff our matters, and train our professionals. This has included extensive utilization of our own unique approach to Legal Project Management (LPM).

Fish was an early adopter of LPM. Every litigator has been trained on LPM methods and every paralegal is certified in the practice. Individual attorneys have been coached on LPM both through a consultant and internal training. Rather than adding another timekeeper to our cases, we trained our case managing attorneys on project management so they can address each client need they face while also keeping the team on budget.

This adherence to LPM means our lawyers budget each case, plan the work to ensure that all needs will be met while staying within budget, and guide their teams to operate at maximum efficiency. As a result, we work smarter on your behalf.
Fish is at the forefront of creating innovative technical tools, processes, and teams to refine internal operations to provide eFISHency™ in our legal services. Our unique model provides efficiency; predictability of spend; and cost-effective, high-quality litigation services.

For our clients, we tap into our extraordinary storehouse of knowledge. We’re fluent in every technology imaginable. Our people work seamlessly across offices on interoffice case teams. We leverage the local and court-specific knowledge and the talent resident or experienced in key jurisdictions across the United States and abroad.

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<tr>
<th>Fish.BudgetMatters:</th>
<th>Pricing Group:</th>
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<td>Our proprietary tool allows us to quickly create a litigation budget by phase, allocate hours to team members, and monitor actuals compared with the budget to ensure that we run the case to budget.</td>
<td>We have a specialized team dedicated to creating and monitoring case budgets, alternative fee arrangements, and value-based approaches to meet client needs.</td>
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<tr>
<th>Best Practices:</th>
<th>Brief Bank:</th>
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<td>We create customized resources for our litigation teams, including templates, checklists, and guides to complete a variety of patent litigation tasks efficiently and with Fish quality.</td>
<td>Our internal, custom-developed database of thousands of pleadings and extensive research as well as trial transcripts, outlines, and demonstratives has customized searching fields such as claim construction term, jurisdiction, judge, etc.</td>
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<tr>
<th>Client Repositories:</th>
<th>Animations and Graphics:</th>
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<td>We build custom intranet sites for our teams that work with large repeat clients to provide coordination, efficiency, and value across multiple case teams.</td>
<td>We have an extremely talented in-house animation and graphics group for trial support, briefing, technology tutorials, Markman hearings, and court presentations. This group is experienced with technology cases and efficiently helps clarify technical concepts with graphics.</td>
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<th>Litigation, Post-Grant, and Inter Partes Review (IPR) Monitoring:</th>
<th>eDiscovery:</th>
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<td>We monitor new lawsuits and developments that may impact our clients’ businesses and provide strategic counsel and insights as a trusted business advisor.</td>
<td>We deploy the Relativity® software suite and other industry-leading technology tools, along with efficient workflows, to streamline the eDiscovery process. Our eDiscovery technology experts competently manage our clients’ electronically stored information, from data collection through document production.</td>
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High Profile, High Stakes

“Fish & Richardson has a reputation among general counsel for being comfortable with taking on complex, high-end work with tremendous risk exposure.”

– BTI Consulting Group

High-pressure, high-stakes patent litigation is not for the faint of heart, but it’s what we thrive on. We aren’t afraid to take on the toughest cases for the most demanding clients. We understand the sophisticated intricacies of high-level IP litigation better than any firm in the industry, and we know what it takes to win the most challenging cases.

This is why so many companies turn to Fish to take over their cases midstream. We have a reputation for “flipping” patent cases that other firms lost in the trial court. When the chips are down, Fish is the powerhouse firm you want in your corner.
“Fish & Richardson’s deep expertise in intellectual property law means it can handle a client’s patent dispute whether it lands in court or at the U.S. Patent and Trademark Office.”

– The National Law Journal

In recent years, we tried more than 20 percent of all the patent cases that were tried to verdict in the United States. Unlike some firms that build a practice around a single superstar trial lawyer who tries every patent case, dozens of Fish lawyers have first-chaired patent trials in front of judges and juries in courts across the U.S. Our attorneys have expertise in the most complex patent cases at every stage of the litigation, from Markman hearings and motions for summary judgment to trial and appeal.
A Track Record of Winning

We win for our clients, we win for the industry, and we win by making precedential law that strengthens the legal system.

The following is a small sampling of our recent wins for clients.

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**Billion-Dollar Win:**

*Chicago Board Options Exchange Inc. (CBOE) v. Int’l Securities Exchange LLC (ISE)*

After nearly eight years of fierce litigation that included two district court cases, two Federal Circuit appeals, and ISE’s request for over $1 billion in damages, Fish won this important Federal Circuit affirmance of non-infringement. On remand, the district court granted CBOE’s motion for attorneys’ fees, adding another big victory—and vindication—for CBOE and Fish.

**Diligence in the Courtroom:**


Fish won a jury verdict of non-infringement for Adobe Systems Inc. in a patent suit involving their ever-popular Photoshop application. The firm’s diligence paid off. The jury found that Adobe did not infringe two of EveryScape’s patents for color correction of an image, rendering the patents invalid.

**Trying the Troll:**

*CEATS Inc. v. Continental Airlines Inc.*

Fish won a jury verdict of non-infringement for a group of eight airlines and ticket sale companies over patented technology used to select seats online. CEATS, a nonpracticing entity (NPE), had sought nearly $300 million in past and future damages, but was awarded nothing.

**Winning at the Supreme Court:**

*Apotex, Inc. v. Allergan, Inc. (in re Brimonidine)*

Fish won a major victory for Allergan when the U.S. Supreme Court denied Apotex’s petition for a writ of certiorari in litigation over the drug Alphagan® P 0.1%. Fish argued Allergan’s case in the District Court and at the Federal Circuit and crafted the winning Supreme Court strategy. The Federal Circuit affirmed the injunction preserving Allergan’s Alphagan P market—worth over $125 million in annual sales and protected until the last infringed patent expires in 2022.

**Guarding a New Molecule:**

*Allergan, Inc. v. Barr Laboratories Inc.*

Fish won a major Hatch-Waxman litigation for Allergan on its Lumigan® drug, which had $350 million in annual sales. The court ruled that Allergan’s patents on Lumigan® were valid and infringed.
Most Talked-About Case of the Year: 
*Baxter International Inc. v. Fresenius USA Inc.*

The importance of pursuing post-grant proceedings in parallel with patent litigation is evident in light of Fish’s efforts to seek *ex parte* reexamination of a Baxter International Inc. patent asserted against Fish’s client Fresenius USA Inc. The *ex parte* reexamination proceeding led to the USPTO’s cancellation of the patent, which in turn supported a ruling by the Federal Circuit, wiping out a $23.5 million judgment against Fresenius.

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Groundbreaking New Territory for Hatch-Waxman: 
*Allergan, Inc. v. Sandoz Inc. et al.*

Fish won a huge victory for Allergan in one of the first Eastern District of Texas interpretations of the Hatch-Waxman Act. Fish secured injunctive relief against four generic drug companies that prevented them from marketing generic versions of Allergan’s Combigan® product, which has nearly $300 million in annual sales, until the expiration of Allergan’s patents. The judgment was affirmed on appeal.

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Resolving a Massive Global Dispute: 
*Sony Electronics Inc. et al. v. LG Electronics Inc.*

Fish successfully settled this major international dispute between Sony and client LG Electronics that included 12 complex IP cases in the U.S. and several cases in Europe. Fish alone represented LG in all of its U.S. litigation related to this dispute, which spanned a wide range of technology, from mobile phones to digital televisions to the PS3. On the opposing side, Sony required two large law firms to manage the enormous geographic and technical breadth of this dispute.

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Leveraging Procedural Particularities: 
*LG Electronics Inc. et al. v. InterDigital Communications LLC, et al.*

Fish represented LG in a series of complicated cases in the International Trade Commission, Federal Circuit, and Supreme Court after InterDigital sued on eight allegedly standard-essential patents. Fish filed a motion to terminate the investigation, which was granted by the ITC. InterDigital appealed to the Federal Circuit, which reversed the ITC’s determination. Fish filed a petition for certiorari at the Supreme Court, and while certiorari was pending, Fish leveraged the ITC’s procedural particularities, which forced InterDigital to withdraw its complaint. The Supreme Court granted certiorari and vacated the Federal Circuit’s decision.

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“The firm remains in the top tier as one of the most successful IP-focused outfits in the country.”

—*Managing Intellectual Property “IP Stars”*
Winning Track Record at All Levels of the Judicial System

“Besides Fish, no IP specialty shop, big or small, ranked among the law firms landing corporate America’s big-ticket litigation work.”

– Corporate Counsel

Profound Experience Across Practices

Our record speaks for itself. Fish handles more than twice as many patent cases as our nearest competitor, but with the same number of people. Most important, we win the largest cases, worth billions of dollars and with whole businesses often on the line. That is why more innovative companies in the world trust Fish—over any other firm—to handle their mission-critical IP litigation.

Our deep experience across all the courts that hear IP matters makes us uniquely qualified to integrate District Court litigation, appellate work, and ITC cases in multijurisdictional strategies that achieve clients' objectives.

In the appellate area, Fish is the go-to firm for the rising number of complicated IP appeals that involve precedent-setting and industry-changing legal and technical issues. Not only do our clients stick with us when an appeal is necessary, but we are also often hired to handle appeals in cases other firms have lost.

We handle about 15 percent of all active patent cases at the ITC, which are often part of complex disputes that involve concurrent District Court cases between the same parties. Fish’s ITC team includes a former Supervisory Attorney with more than 20 years of experience at the ITC and an attorney who co-teaches, with an ITC Administrative Law Judge, the first law school class in the country dedicated to Section 337 cases before the ITC.

Fish is also a leader in Hatch-Waxman IP litigation for branded pharmaceutical companies and was named “Life Science Group of the Year” by Law360 for our high-profile wins.
ITC Advantages

The International Trade Commission (ITC) addresses high-stakes intellectual property disputes involving imported goods. With its expedited schedule, the ITC can resolve issues quickly and forcefully. It offers speedy and substantive resolution to companies seeking to block imported products that allegedly infringe a U.S. intellectual property right.

To harness the power of an ITC decision on a client’s behalf, Fish offers the strongest, most experienced team practicing before the ITC today. Fish’s skilled professionals bring a multidisciplinary approach to ITC proceedings, drawing on their expertise in patent law, litigation, and licensing of intellectual property rights.

Fish’s representative investigations before the ITC include:

**Certain Wireless Devices, Including Mobile Phones and Tablets II**: Represented respondent Samsung Electronics Co. Ltd in a case relating to wireless devices, including mobile phones and tablets with GPS signals.

**Certain Wireless Consumer Electronics and Devices and Components Thereof**: Represented respondent LG Electronics in microprocessor patent case, which included LGE’s smartphones and mobile devices.

**Certain Electronic Devices, Including Wireless Communication Devices, Tablet Computers, Media Players, and Television, and Components Thereof**: Represented respondent Samsung in a case involving software and hardware for mobile devices.

**Certain Computers and Peripheral Devices and Components Thereof and Products Containing Same**: Represented respondent Kingston against Technology Properties Limited LLC in a suit involving flash memory card readers.

**Certain Electronic Devices Having Placeshifting or Display Replication Functionality**: Represented complainant Sling Media in a case involving electronic devices with placeshifting and/or display replication functions.

**Certain Sintered Rare Earth Magnets, Methods of Making Same, and Products Containing Same**: Represented respondents AKG Acoustics, Harman International, Bose, and Dewalt in a case relating to sintered rare earth magnets.

**Certain Electronic Devices Having a Retractable USB Connector**: Represented respondent Samsung in a case involving electronic devices having a retractable USB connector.

**Certain Consumer Electronics, Including Mobile Devices and Tablets**: Represented respondent Samsung in a case relating to consumer electronics, including mobile phone and tablets.

**Certain Consumer Electronics and Display Devices and Products Containing Same**: Represented respondent Research in Motion Ltd. against complainant Graphics Properties Holdings Inc. in a patent infringement investigation relating to mobile and computing devices, televisions, and monitors.

“Fish has an ability to produce both great and uniform legal counsel. Their high standards transcend their many practice groups and offices.”

— Managing Intellectual Property “IP Stars”
In addition to protecting billion-dollar innovations, Fish has also been instrumental in shaping patent law. Through our work at the Court of Appeals for the Federal Circuit and the Supreme Court of the United States, Fish is driving important changes in patent law and helping create new legal standards that protect intellectual property rights. Furthermore, the sheer breadth of our cases gives us a unique ability to identify the best cases that can lead to these changes, to spot important legal trends earlier, and to best position cases for appeal.

Our recent appellate victories have had broad-ranging impact on the development of law.

**Fish helped change presumptions of “mean plus function treatment” in** *Williamson v. Citrix No. 2013-1130 (Fed. Cir.),* a decision in which the Federal Circuit en banc overruled prior precedent regarding the applicability of “mean plus function” claim construction principles under 35 U.S.C. 112(f) to functional language in patent claims.

**Fish forged the way for IPR appeals in** *St. Jude Medical, Cardiology Division v. Volcano Corp. et al., No. 2014-1183 (Fed. Cir.),* a decision in which the Federal Circuit ruled that it cannot hear an appeal relating to the decision of the Patent Trial and Appeal Board not to institute an *inter partes* review. Only the final written decision regarding the patentability of the challenged claims can be appealed.

**Fish changed the law on willful infringement in** *Bard Peripheral v. W. L. Gore, 682 F.3d 1003 (Fed. Cir.),* a case in which the Federal Circuit en banc announced a fundamental change in the way willful infringement is decided by moving authority away from juries and toward judges.

**Fish helped expand declaratory judgment jurisdiction in** *3M v. Avery Dennison, 673 F.3d 1372 (Fed. Cir.),* the leading decision controlling whether licensing negotiations can trigger declaratory judgment jurisdiction, holding that notifying another party that “licenses are available” creates a sufficient case or controversy to form the basis of a declaratory judgment complaint.

**Fish set a new legal standard for proving patent invalidity with** *In re Cyclobenzaprine (Eurand et al. v. Mylan et al.), 676 F.3d 1063 (Fed. Cir.),* clarifying parties’ respective burdens of proof when a pharmaceutical defendant seeks to invalidate a patent, an issue that arises in almost every Hatch-Waxman pharmaceutical litigation and has now finally been resolved in branded pharma’s favor.

**Fish helped clarify patentability under §101 in** *Mayo Collaborative Servs. v. Prometheus Labs., 132 S. Ct. 1289,* holding that patent claims that embody laws of nature are invalid under §101 of the Patent Act. The decision changed the way patent examiners review patent applications involving laws of nature, and has major implications for the burgeoning field of personalized medicine.

"Fish & Richardson likes to use a dual perspective on appeal. It commonly uses the firm lawyer who ran the trial to present oral arguments – with the help of a fresh take from at least one attorney in the firm’s appellate practice."

— National Law Journal
“A ‘trustworthy ally in high-risk cases, Fish & Richardson is one of the only firms that has numerous talented lawyers manning the litigation department.’ Though it impresses in prosecution and transactions, its formidable contentious practice is the jewel in its crown. It frequently acts in game-changing disputes on the world stage, racking up victories for a string of household names.”
— The World’s Leading Patent Practitioners, IAM Magazine

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<th>Elite Rankings and Accolades</th>
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<td>#1 Patent Litigation Firm of the Year</td>
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<td>The Legal 500, 2015</td>
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<td>Named to the Top of the List of Busiest Patent Defense Firms</td>
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<td>Named to Intellectual Property Hot List</td>
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<td>Recipient of Top Tier 1 IP Rankings in Every National Category</td>
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Litigation Services

Antitrust
Appellate
Chancery and Corporate Governance
Class Actions
Commercial Litigation
Copyright Litigation
Cybersecurity
Directors and Officers Litigation
Employment and Executive Mobility
False Claims Act / Qui Tam
Hatch-Waxman
Insurance Coverage
ITC Litigation
Patent Litigation
Securities Litigation
Shareholder Derivative and Oppression
Trade Secret Litigation
Trademark Litigation
White Collar Defense and Government Investigations

For a full list of Fish & Richardson's top-rated intellectual property, litigation, transactional, and regulatory services, visit fr.com/services.