

Patent Litigation

Fish & Richardson is the #1 intellectual property (IP) litigation firm in the United States because innovators trust us with their most important matters. We handle more cases in district court, at the International Trade Commission, and at the Court of Appeals for the Federal Circuit than any other firm.

We've earned our elite position by consistently winning the most important, technically sophisticated, bet-the-company patent cases. No firm in the world can match Fish's winning track record in intellectual property trials.

IP Litigation Leader: 2018

- Won 14 patent cases in district courts and 23 patent cases at the Federal Circuit; successfully resolved over 300 other patent cases.
- Filed appearances in 197 new district court patent cases, 66 more than our nearest competitor.
- Filed appearances in 109 new patent cases, 47 more than the closest rival firm, making us the most active firm at the Federal Circuit.
- Appeared in 202 matters at the Patent Trial and Appeal Board (PTAB), 140 for petitioner and 62 for patent owner, 36 more than our closest competitor.

Why Clients Choose Fish

When an organization's livelihood rests on its IP, 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. Our clients come to us not just for litigation advice, but also for long-term plans and solutions. Making strategic decisions up front saves our clients money and helps ensure a successful outcome.

Deep knowledge, big wins

Fish has won many of the most significant patent trials of the past decade. Our trial lawyers are in court nearly every day. We know how to present the facts and the law in ways that are clear and compelling to judges and to juries, which is why we outperform other firms in high-stakes patent infringement actions.

With a large docket of cases and fluency in every technology area imaginable, 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 our clients' industries and technologies, along with our collaborative, one-firm concept, means we are uniquely positioned to handle complex matters across multiple fronts.

Our litigation teams, which 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 meet our clients' objectives.

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 United States Patent and Trademark Office (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.

Precise vision

Our vast expertise lets us 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 new case law development.

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.

**Our
Legal
Team**

371
Attorneys

26
Former Federal
Circuit Clerks

64
Technology
Specialists

94
PhDs

Global reputation

Fish is fortunate to occupy a position at the pinnacle of the IP world. We represent the smartest, most innovative, and most successful companies and organizations on the planet. Their excellence inspires us to meet these same exacting standards every day.

With 13 offices across the United States, China, and 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 the continent. 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 United States patent litigation.

With the addition of our Shenzhen office, Fish can further help China's leading companies obtain, enforce, and defend their IP rights in the United States and Europe. Fish attorneys help Chinese companies in the telecommunications, electronics, financial technology, life sciences, and medical device industries obtain patent and trademark protection in the United States and Europe, and represent Chinese companies in federal district and appeals courts, at the International Trade Commission (ITC), and before the PTAB.

We also have an extensive network of relationships with counsel around the world and can provide IP litigation support in virtually any jurisdiction worldwide.

Profound experience across practices

Our record speaks for itself. We win many of the largest IP cases, worth billions of dollars and often with whole businesses on the line. That is why the world's most innovative companies 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 increasing 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 often hired to handle appeals in cases other firms have lost.

Since 2017, Fish has been lead counsel in over 20 percent of all new ITC patent investigations; we have been involved in more than 130 ITC investigations since 2000. Fish's ITC team includes a former supervisory attorney with more than 25 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 also leads in Hatch-Waxman litigation for branded pharmaceutical companies. We have been involved in over 110 Hatch-Waxman cases in the past ten years. This practice is a deeply collaborative effort among our teams, who share an interdisciplinary knowledge of the relationship between IP law and the FDA regulatory landscape.

Maximum value to clients

Our goal is to achieve the client's objective at a price that is an outstanding value and at the Fish level of quality. We put the best team on a case—no matter which office the team members come from—at no extra cost to clients. Our clients save on local counsel fees because our offices are located in key jurisdictions. We staff cases leanly, which reduces litigation expenses and allows the entire team to have a better understanding of every aspect of the case.

Pricing and fee arrangements

We work with thousands of the world's largest and most innovative companies, which rely on Fish to provide strategic counseling and litigation services in order to protect and maximize the value of their IP.

Fish is a pioneer in the area of alternative fee arrangements (AFAs). Fish started its AFA program in early 2009, before AFAs and fixed fees became industry standards, to partner with clients to create fee arrangements that are tailored to their business needs and objectives. Our specialized Pricing Group assists attorneys and clients with the thoughtful development of value-based budget options, including AFAs. Pricing proposals are crafted specifically to meet an individual client's needs and considerations based on business goals, client expectations for each matter, and the case strategy necessary to exceed client goals.

Our experience handling more IP matters than any other firm gives our highly experienced pricing professionals unique insights and finely-honed skills for managing increasingly complex budgets.

Impactful innovation

Fish has made significant investments in technology and resources, including the development of our own tools. These efforts have resulted in the firm's eFISHency™ suite, designed to increase efficiency and improve our ability to deliver cost-effective, high-quality legal services to our clients. Our investments include:

- Project Management Office
- BudgetMatters
- eDiscovery Services
- Brief Bank and Best Practices Resources
- Client Extranets/Portals
- Litigation, Post-Grant, and *Inter Partes* Review Monitoring
- Animation and Graphics Artists
- Additional eFISHent™ Litigation and Creative Solutions

Recognizing Diversity

Gold Standard Certification

Women in Law Empowerment Forum 2018

Mansfield 1.0 Certified Plus

Diversity Lab 2018

Best Places to Work for LGBT

Human Rights Campaign Corporate Equality Index 2018

Named to "Top 10 Family Friendly Firms" List

Yale Law Women 2018

Named one of the "Best Law Firms for Minority Attorneys"

Law360 2018

By the Numbers

100+

Attorneys with Trial Experience

#1

Patent Litigation Firm in the U.S.*

Over

20%

Lead Counsel on New ITC Patent Investigations**

197

Appearances in New District Court Patent Cases

**Managing Intellectual Property **Since 2017*

A winning track record

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

ViaTech Technologies Inc. v. Microsoft Corp.

In this particularly big win for Microsoft, Fish convinced the Federal Circuit to uphold the district court's summary judgment ruling that Windows and Office did not infringe ViaTech's patent. The appeals court revised the trial judge's construction of two terms in the patent, but found these modifications didn't change the outcome.

In re Power Integrations Inc.

In this administrative law appeal, Fish obtained a very rare remedy of a precedential order, reversing the USPTO decision and finding the challenged claims to be valid in view of all prior art of record. The PTAB typically has discretion to perform additional review even when the Federal Circuit vacates its decision, but Fish was able to persuade the court to issue a complete reversal, finding that Power Integrations' patent claims should be confirmed patentable.

Asghari-Kamrani v. USAA

Fish & Richardson won a Federal Circuit case for United Services Automobile Association (USAA), affirming that a patent asserted against the company is invalid. In its September 11, 2018, order, the Federal Circuit upheld the Eastern District of Virginia's July 2016 dismissal of the patent infringement case *Asghari-Kamrani v. USAA* after the district court found U.S. Patent No. 8,266,432 invalid as directed to no more than an abstract idea and thus ineligible for patent protection under 35 U.S.C. § 101. The case dates back to October 2015, when brothers Nader and Kamran Asghari-Kamrani accused USAA of infringing their '432 patent because of the manner in which USAA members can log on to USAA's website. The Asghari brothers, principals of Delphinus Technology in Centreville, Virginia, demanded massive damages.

Initiative for Medicines, Access & Knowledge Inc. (I-MAK), et al. v. Gilead Sciences Inc., et al.

Gilead hired Fish to thwart an attack by Initiative for Medicines, Access & Knowledge Inc. (I-MAK), the billionaire-backed nonprofit that sought to invalidate at the PTAB Gilead's patents covering its hepatitis C drugs Sovaldi, Harvoni, and related sofosbuvir-based drugs. I-MAK filed ten *inter partes* review petitions at the PTAB against seven Gilead Orange Book patents, and the Fish team (along with co-counsel at another firm) got all ten petitions denied. This outcome was nothing short of remarkable, considering that the PTAB has instituted 66 percent of all IPRs related to Orange Book patent challenges since the IPR process began. I-MAK filed the IPR petitions against Gilead's patents beginning in October 2017. Fish took the lead on seven of the ten petition responses, while another firm handled three (both firms were listed as co-counsel on all ten IPRs). Gilead tasked Fish with oversight of the entire IPR response (the same pivotal role the firm has played in Gilead's five years of litigation targeting some of these same patents) as well as leading the strategy and drafting of the arguments.

Gilead Sciences Inc. v. Merck & Co. Inc., et al.

Fish won again for client Gilead Sciences in *Gilead Sciences Inc. v. Merck & Co. Inc.* (Fed. Cir. Apr. 25, 2018). With an all-women team leading the oral argument, the Federal Circuit unanimously affirmed the district court's judgment vacating a \$200 million jury verdict. The Federal Circuit agreed that the unclean hands doctrine blocked Merck from asserting its hepatitis C drug patents against Gilead because of Merck's litigation and business misconduct. The case involved Gilead's blockbuster drugs Sovaldi and Harvoni, which cure hepatitis C. In July 2018, the Federal Circuit also summarily affirmed the district court's order requiring Merck to pay Gilead over \$14 million in attorneys' fees.

A winning track record

Scripps Research Institute v. Illumina Inc.

Fish successfully defended biotechnology giant Illumina in this matter involving alleged patent infringement of a Scripps Research Institute patent by Illumina for making and selling its BeadChip and other microarray products used in the genetic analysis, cancer characterization, and diagnosis of many diseases. Scripps alleged that its patent broadly covered the idea of using any “bifunctional molecule” with one part that is biologically active connected to a second part that identifies its structure using a “linker molecule.”

Fish successfully convinced the court that the patent was not nearly so broad and that the claim language limited it to specific structures not included in any of Illumina’s accused microarray products. The parties’ dispute centered on the meaning of four terms within the patent, and in April 2018, Illumina prevailed on every one of those issues, providing four separate, independent reasons it did not infringe the claims. After receiving the court’s claim construction order, Scripps stipulated that Illumina does not infringe and has not infringed the patent, given the court’s constructions. The court subsequently awarded costs against Scripps.

Inventor Holdings LLC v. Bed Bath & Beyond Inc.

This precedential decision completed Fish’s successful patent litigation for Bed Bath & Beyond. Fish previously won on the merits (including on appeal) and was defending an award of almost \$1 million in attorneys’ fees. The decision established the important rule that patent owners are required to reevaluate the strength of their cases after the Supreme Court decision in *Alice*, as the assertion of exceptionally weak claims can suffice to make a case exceptional.

BSG Tech LLC v. BuySeasons Inc., et al.

In March 2017, Fish convinced the Eastern District of Texas to invalidate, under 35 USC § 101, three BSG Tech patents that had been asserted against many companies that provided websites supporting customer reviews. In a precedential opinion, the Federal Circuit affirmed Fish’s win for BuySeasons because BSG Tech’s patents covered nothing more than an abstract idea rather than a true real-world innovation. The case is important because it shows that even after the Federal Circuit’s *Berkheimer* ruling, which held that disputed fact issues can hold up judgment under § 101, a plaintiff’s failure to ground its arguments in the patents themselves, coupled with solid arguments from the defendants, can still prevent a case from going to an expensive trial.

Arctic Cat Inc. v. Bombardier Recreational Products Inc., et al.

In the first case, *Arctic Cat Inc. v. Bombardier*, 876 F.3d 1350 (Fed. Cir. 2017), Fish defended jury findings that the personal watercraft patents of Arctic Cat were infringed willfully, with a total award of \$49 million. That verdict was listed as the country’s 32nd-largest verdict of any type, and was the seventh-largest patent infringement judgment on the list. Fish convinced the Federal Circuit to reject all of Bombardier’s arguments regarding its liability for infringement, the jury’s finding that the infringement was willful, and the court’s trebling of the damage amount because of that willful infringement. The court remanded part of the underlying damages issue, and the battle continues on that matter. The team subsequently fought off Bombardier’s *en banc* petition at the Federal Circuit, and the Supreme Court then rejected a petition for certiorari. As a result, Arctic Cat has established its final right to millions of dollars for its IP and may recover even more as the issue of the damages adjustment carries on in litigation.

Recognition

IP Practice Group of the Year

Law360 2018

Appellate Hot List

National Law Journal 2018

General Patent Litigation Firm of the Year and IP Firm of the Year

LMG Life Sciences 2018

#1 Patent Litigation Defense Firm in the U.S.

Lex Machina 2015 – 2018

Top Rankings for Patent Litigation

IAM Patent 1000 2014 – 2018

Litigation services

Appellate

Chancery and Corporate Governance

Copyright Litigation

Hatch-Waxman

ITC Litigation

Patent Litigation

Product Liability and Mass Torts

Trade Secret Litigation

Trademark Litigation

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

fr.com

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Fish & Richardson, a premier global intellectual property law firm, is sought-after and trusted by the world's most innovative brands and influential technology leaders. Fish offers patent prosecution, counseling and litigation; trademark and copyright prosecution, counseling and litigation; and commercial litigation services. Our deep bench of attorneys with first-chair trial experience in every technology makes us the go-to firm for the most technically complex cases. We have an established reputation as a top-tier firm for patent portfolio planning, strategy and prosecution, as well as post-grant proceedings at the PTAB. Fish was established in 1878, and now has more than 400 attorneys and technology specialists in the U.S., Europe and China. Our success is rooted in our creative and inclusive culture, which values the diversity of people, experiences and perspectives. For more information, visit fr.com or follow us at [@FishRichardson](https://twitter.com/FishRichardson).

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