

Frederick L. Whitmer

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Services

Antitrust & Trade Regulation

Antitrust Litigation

Complex Commercial Litigation

Government & Regulatory

Fred Whitmer focuses his practice in intellectual property and business litigation. Mr. Whitmer's patent litigation experience has involved a wide array of technologies across many industries, ranging from the simple mechanical to complex computer software and systems patents, to medical devices and chemical products. He has successfully represented both plaintiffs and defendants in patent infringement matters. Mr. Whitmer has tried cases to successful verdict and appeal for nearly three decades in courts around the country in cases before both judges and juries.

Complementing his extensive intellectual property litigation experience, Mr. Whitmer has wide-ranging general litigation experience in several high profile matters, including in antitrust, telecommunications, libel, press rights, privacy issues and trade secrets. He has litigated complex matters on behalf of *Fortune* 100 clients throughout the country and abroad. Mr. Whitmer has also supplemented his trial experience with a substantial appellate practice, successfully representing both appellants and appellees.

Mr. Whitmer’s article titled “Claim Construction in Patent Cases: A Question of Law?” published in *Landslide* Vol. 2, No. 6 in July/August 2010 was cited in the dissenting opinion in the recent *Phillips* en banc decision in the U.S. Court of Appeals for the Federal Circuit.

In 2000, the *National Law Journal* named Mr. Whitmer one of the top 10 litigators then practicing with firms whose principal offices were New Jersey-based, saying, "Mr. Whitmer has appeared before the Supreme Court of New Jersey four times and won all four cases, including one that helped create the law interpreting the New Jersey Business Corporation Act and another, while representing two large media entities, that established rules for the press in court." He has also been listed for many years in *Who's Who* in American Law. Mr. Whitmer has been honored as a 2012 Top Rated Lawyer in Commercial Litigation by Martindale-Hubbell in the *Litigation Special Report* issue of *The American Lawyer* and *Corporate Counsel* magazines. Mr. Whitmer was recognized as a New York "Super Lawyer" in 2023 and the 12 years immediately preceding by *Super Lawyers* magazine. He was named an "IP Star" in 2023 and the ten years immediately preceding by *Managing Intellectual Property* magazine. Mr. Whitmer is *AV Preeminent*® rated by Martindale-Hubbell.*

Experience

Successfully defended Victorinox Swiss Army, Inc. against claims of infringement of a patent related to a geographic search function in the Eastern District of Texas. Matter settled. *GeoTag Inc. v. Where 2 Get It Inc. et al*., No. 11-0175 (E.D. Tex. filed Mar. 15, 2011).

Represented a global industrial company in a patent case involving a plastic carrier for integrated circuit chips. The firm obtained a defense verdict after a three-week bench trial that resulted in the invalidation of the claims of the patent that had been asserted against the client and the Federal Circuit affirmed in this opinion.

Represented two large media entities in a landmark First Amendment case. Successfully kept pretrial proceedings in a notorious criminal case open to both the public and the press, having won at every stage, trial, intermediate appellate, and the New Jersey Supreme Court levels all in a span of 60 days.

Represented one of the world's largest banks that was accused of infringing patents involving payment by telephone software systems, which settled after successful transfer and attorney disqualification motions.

Represented a German orthodontic equipment manufacturer that was accused of infringing a patent held by one of the world's largest dental equipment companies. After a full trial on the merits, the jury found no infringement. The Federal Circuit affirmed.

Represented a global telecommunications company and earned defense jury verdict at trial in the Eastern District of Pennsylvania in an antitrust and Federal Communications Act matter where plaintiff's potential damage recovery exceeded half a billion dollars but where the jury returned a no cause verdict, and awarded damages of less than one million dollars on the client's counterclaim.

On March 5, 2014, Kilpatrick Townsend was successful on behalf of Motorola Mobility in winning summary judgment against EON Corp. IP Holdings, LLC less than three weeks before trial, in a case that had been pending in the District of Delaware for nearly three and one-half years. The court's grant of summary judgment was decided on the relatively uncommon ground of invalidity by indefiniteness, and entirely invalidated EON's patent, ending the case at the district court. On May 6, 2015, the Federal Circuit, in a unanimous opinion, affirmed summary judgment granted by the District of Delaware. *EON Corp. IP Holdings, LLC v. FLO TV Inc.*, No. 10-812-RGA, 2014 WL 906182 (D. Del. Mar. 4, 2014).

The firm served as lead counsel in the representation of Motorola Mobility against claims of patent infringement in a suit involving video coding and decompression technology as used on various smart phones. The case was dismissed and attorneys' fees were awarded to Motorola. In June of 2016, a second lawsuit was again dismissed *Advanced Video Technologies LLC v. Motorola Mobility, Inc.*, No. 12-cv-00918(S.D.N.Y. filed Feb. 6, 2012) and *Advanced Video Technologies LLC v. Motorola Mobility, Inc.*, No. 15-cv-04632 (S.D.N.Y. filed June 15, 2015).

Kilpatrick Townsend filed an infringement lawsuit on behalf of Hunter Douglas Inc., manufacturer of window coverings and architectural products, and Andrew J. Toti Testamentary Trust against Norman International for infringement of window covering patents. Norman responded by filing eight IPRs on four patents in the lawsuit. Kilpatrick Townsend successfully argued that six of the IPR trials should not be instituted, and was able to limit

the IPR trials to just three claims total on the other two petitions. United States Patent and Trademark Office Patent Trial and Appeal Board, Case Numbers IPR2014-00276, IPR2014-00282, IPR2014-00283, IPR2014-00286, IPR2014-01173, IPR2014-01174, IPR2014-01175, and IPR2014-01176.

Represent Clorox in a patent infringement claim alleging that the spray bottle in which Clorox sells almost all its liquid cleaning products infringes Auto-Kaps' patent. At our request at the initial status conference, the judge stayed discovery and entertained an early motion for summary judgment of non-infringement, ultimately granting that motion. The matter is currently on appeal.

Education

Columbia Law School J.D. *Harlan Fiske Stone Scholar*

Wabash College B.A. *with honors, Phi Beta Kappa*

Admissions

New York

New Jersey

Court Admissions

U.S. Court of Appeals for the Federal Circuit

U.S. Court of Appeals for the Fourth Circuit

U.S. Court of Appeals for the Second Circuit

U.S. Court of Appeals for the Seventh Circuit

U.S. Court of Appeals for the Third Circuit

U.S. Supreme Court

Professional & Community Activities

American Bar Association, Member

New Jersey State Bar Association, Member

Insights

Perspectives

Kilpatrick Client Success | Scoring a Long-Awaited Win for adidas

March 4, 2025

News Releases

Kilpatrick Continues Tradition of Impressive Number of Attorneys Named Managing Intellectual Property's IP Stars

June 10, 2024

News Releases

Kilpatrick Townsend Continues Tradition of Impressive Number of Attorneys Named Managing Intellectual Property's IP Stars

May 19, 2023

News Releases

Kilpatrick Townsend Attorneys Named 2022 Managing Intellectual Property IP Stars

June 3, 2022

News Releases

Eighteen Kilpatrick Townsend Attorneys Recognized as 2020 New York Super Lawyers and Rising Stars

October 1, 2020