



D. Clay Holloway

Partner

1100 Peachtree Street NE
Suite 2800, Atlanta, GA USA 30309
t 404.815.6537 | f 404.541.3484
cholloway@ktslaw.com

Services

Intellectual Property
Patent Litigation
Patents
Post-Grant Proceedings
Trade Secrets

Industries

Health & Life Sciences
Retail & Consumer Goods

Clay Holloway is a first chair patent litigation and appellate counselor covering a broad range of technologies. Clay's experience in district court litigation and appeals includes serving as lead in numerous pharmaceutical and medical device cases including two medical device cases resulting in combined jury verdicts of over \$40 million dollars. On the defensive side, Clay has represented a number of *Fortune* 100 companies as lead counsel in bench and jury trials and obtained favorable outcomes at all stage of those cases, including jury verdicts. His cases have also involved corresponding *inter partes* review proceedings before the U.S. Patent and Trademark Office. In addition to his cases covering small molecule pharmaceuticals, orthopaedic devices, and cardiovascular implants and biologics, Clay has handled matters on athletic footwear, technical textiles, carpet, and software systems and processes. He has appeared in over a dozen appeals to the Federal Circuit and argued over ten times before that Court. Clay has prepared several *amicus* briefs to the U.S. Supreme Court and Federal Circuit on Generic Drug Settlements.

Clay also works extensively with the State Department of the United States and the National Center for Missing and Exploited Children on child abduction cases including serving as lead counsel in an appeal to the Eleventh Circuit.

Clay was recognized in 2021 and 2022 for Intellectual Property Litigation and again in 2027 and the four years prior for Intellectual Property Litigation and Patent Litigation by *The Best Lawyers in America*®. He was recognized in 2016 and the five years prior as a Georgia "Rising Star" in the area of Intellectual Property Litigation by *Super Lawyers* magazine.

Experience

Served as lead trial counsel for Dr. Mark Barry, an orthopedic surgeon and the inventor of medical devices designed to help spine corrections, and obtained a verdict of willful infringement and an award of \$20.3 million for past damages after a seven-day jury trial. The court increased the award to \$23.6 million after ruling on post-trial motions. The Federal Circuit affirmed the decision in January 2019. The two related *inter partes* review

invalidity challenges resulted in an exceedingly rare final determination upholding the patentability of all challenged claims. The *National Law Journal* recognized the verdict as one of the “Top 100 Verdicts of 2016.” *Barry v. Medtronic, Inc.*, 2:17-cv-2998 (E.D. Pa.).

Successfully represented Dr. Barry again in a patent infringement case against OrthoPediatrics Corp. and Alphatec, Inc. The suit related to OrthoPediatrics’s and Alphatec’s alleged willful infringement of five of Dr. Barry’s patents. The case with both parties settled quickly, on highly favorable but confidential terms. *Barry v. Orthopediatrics Corp. and Alphatec, Inc.*, No. 1:20-cv-01786 (D. Del., filed on 12/30/20, terminated on 3/30/21).

Represented Low Temp Industries, Inc. (LTI), a family-owned business specializing in food service equipment, against its biggest competitor, Duke Manufacturing that launched a product similar to LTI’s QuickSwitch. We obtained a rare preliminary injunction for our client. *Low Temp Industries, Inc. v. Duke Manufacturing Co.*, No. 4:20-cv-00686 (E.D. Mo., filed on 05/22/20, terminated on 1/24/23).

Represented Mylan in ANDA litigations over the generic version of Toviaz®. Both litigations, brought within days of each other in differing jurisdictions, involve the same five patents. On appeal to the Federal Circuit, the parties settled with favorable launch terms for Mylan. *Pfizer Inc. and UCB Pharma GMBH v. Mylan Pharmaceuticals Inc.*, No. 15-0079 (D. Del. filed Jan. 23, 2015) and *Pfizer Inc. and UCB Pharma GMBH v. Mylan Pharmaceuticals Inc.*, No. 15-0013-IMK (N.D.W.Va. filed Jan. 27, 2015).

Represented Mylan in ANDA litigations over the generic version of Dyloject®. After obtaining a favorable claim construction ruling, Mylan was able to obtain a favorable settlement including launch terms. *Javelin Pharmaceuticals, Inc. and Pfizer Inc. v. Mylan Pharmaceuticals, Inc.*, No.16-cv-224 (D. Del. 2016).

Represented Mölnlycke Health Care in a lawsuit for patent infringement, breach of contract and unfair competition against the principals of a former acquisition by Mölnlycke, who was operating a business offering infringing and competing products in the pressure ulcer prevention space. We filed a motion for preliminary injunction and obtained a favorable settlement for our client. *Mölnlycke Health Care US, LLC v. Purdy, et al.*, No. 7:20-cv-03755 (S.D.N.Y., filed on 5/14/20, terminated on 2/18/21).

Representing Nissan in IPR of U.S. Patent No. 6,549,130. The ‘130 patent relates to remotely controlling a vehicle. *Nissan North America Inc. v. Joao Control & Monitoring Systems LLC.*, Case No. IPR2015-01509.

Trial counsel for Jan Voda, M.D., a cardiologist, in a patent infringement suit related to angioplasty catheters against Cordis, a division of Johnson & Johnson, in the Western District of Oklahoma. After a two-week trial, a jury found Dr. Voda’s patents to be valid and Cordis willfully infringed. In August 2006, the court awarded Dr. Voda damages at a 7.5 percent royalty rate, double compensatory damages and attorneys’ fees. *Voda v. Cordis Corp.*, 536 F.3d 1311 (Fed. Cir. 2008).

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).

Successfully defended Ring Industrial Group in a patent dispute that arose from the purchase of a business by Ring in 2000. The plaintiff claimed that Ring was required to purchase a license to certain patents owned by Houck. After two days, a three-member arbitration panel rejected Houck's claim.

Represented an Argentine father who sought the return of his two minor sons to Argentina pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. The children's mother had wrongfully removed them from Argentina in violation of court orders and had hidden them from their father for over two years. After the children were located in the State of Georgia, Kilpatrick Stockton lawyers filed suit in the Northern District of Georgia seeking their return, and prevailed after a lengthy trial before Judge Story. The children returned to Argentina with their father. The mother's appeal to the Eleventh Circuit Court of Appeals was ultimately dismissed as moot.

Represented a leading manufacturer of synthetic aggregate used in septic drainfield and other drainage applications, in a patent infringement case against a competitor who appeared on the scene with a knockoff product and written materials copied verbatim from the company. The company approached us to help protect their intellectual property and market position by bringing a patent infringement case against the perpetrators. We ultimately had the defendants sanctioned for repeated discovery abuses; the sanction amount turned out to be larger than what the company might have recovered in actual damages. Two weeks before the scheduled claim construction hearing, defendants agreed to a stipulated injunction to no longer make the infringing products. This was a huge victory for the company as the market for these products is very tight, and with the housing market in a slump, the company badly needed to enforce their patent protection.

Served as lead counsel on behalf of Jan Voda, M.D., a cardiologist, in a patent infringement suit related to angioplasty catheters against Medtronic, Inc. and Medtronic Vascular, Inc., in the Western District of Oklahoma. After a two-week trial in January 2012, a jury found Dr. Voda's patents to be valid and Medtronic willfully infringed. The jury awarded Dr. Voda a royalty rate of over 14 percent. *Voda v. Medtronic, Inc. et al.*, No. 09-cv-95 (W.D. Okla filed Jan. 22, 2009).

Represented EZflow and Ring Corp. in defense of breach of contract and breach of fiduciary duty claims brought by one of two siblings from whom EZflow bought patents dealing with drainage technology. After the Ring family sold its interest in EZflow, one of the siblings believed Ring breached the underlying purchase agreement. The plaintiff demanded a full audit of EZflow's finances as it related to the sale of the business as well as for the past 10 years of royalties. Along with the interest required for underpayment according to the agreement, the plaintiff claimed he was owed almost \$1.5 million in underpayments and despite having sold the business, Ring should be paying a royalty on those sales going forward. After a multi-day arbitration in Atlanta, the Panel ruled that our interpretation of the agreement was correct and that payment was only due on those things protected by the patents EZflow bought -- utilizing the patents.

As lead trial counsel to the inventor and patent owner, obtained a verdict of willful infringement and an award of \$20.3 for past damages after a seven day jury trial in the Eastern District of Texas. The Court increased the award to \$23.6 million after ruling on post-trial motions. The two related *inter partes* review hearings resulted in an exceedingly rare final determination upholding the patentability of all challenged claims.

Defending Motorola Mobility LLC in the District of Delaware. Intellectual Ventures filed a patent infringement action against Motorola accusing certain smartphones and tablets of infringing six different patents directed toward (1) back-lit LCD screens, (2) distributing software updates, (3) transporting content to mobile devices, (4) portable computer/docking stations, (5) allocation of wireless bandwidth, and (6) file transfer systems. (Judge Robinson). *Intellectual Ventures I LLC, et al. v. Motorola Mobility, LLC*, Civ. No. 11-908 (D. Del. filed Oct. 6, 2011).

The firm served as lead counsel on behalf of Chrysler Group and Mercedes-Benz USA LLC in connection with a string of successes in the United States District Court, Western District of Wisconsin and the United States District Court, Eastern District of Texas against related entities Orion, Taurus and ST Sales Tech. The plaintiff entities, who had asserted several patents against Chrysler and Mercedes after a settlement agreement was in place, were put on the defensive when we asserted counterclaims for breach of a previous settlement agreement. The United States District Court, Western District of Wisconsin granted summary judgment for Chrysler and MBUSA finding non-infringement, invalidity and dismissing all the patent-related claims. Later a jury returned a verdict on liability in favor of Chrysler and MBUSA on the breach of contract claims. After a finding that the plaintiff had not acted in good faith, the court then awarded contract damages and legal fees. Related suits were later dismissed. The Federal Circuit affirmed the finding of no liability and the award of attorney fees to our client. (Judge Crabb and Judge Davis). *Taurus IP, LLC v. Chrysler, LLC and Mercedes-Benz USA, LLC*, No. 07-0158 (W.D. Wis. filed Mar. 20, 2007); *Orion IP, LLC v. DaimlerChrysler* (E.D. Tex.) and *Orion IP, LLC v. MBUSA* (E.D. Tex.).

Education

Emory University School of Law J.D. (2003)

Clemson University M.S. (2000) Bioengineering

Jacksonville University B.S. (1998) Biology and Organic Chemistry,
magna cum laude

Admissions

Georgia (2003)

District of Columbia

Court Admissions

U.S. Court of Appeals for the Eleventh Circuit

U.S. Court of Appeals for the Federal Circuit

U.S. District Court for the Eastern District of Texas

U.S. District Court for the Middle District of Georgia
U.S. District Court for the Northern District of Georgia
U.S. Patent and Trademark Office

Professional & Community Activities

Federal Circuit Bar Association (FCBA), Member

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