

James L. Ewing IV

Retired Partner

1100 Peachtree Street NE
Suite 2800, Atlanta, GA USA 30309
t 404.815.6494 | f 404.541.3194
jewing@ktslaw.com

Services

Asset Creation - Prosecution & Counseling

Intellectual Property

Post-Grant Proceedings

Trade Secrets

Industries

Health & Life Sciences

Media & Entertainment

Medical & Surgical Devices

Jim Ewing focuses his legal practice on intellectual property strategy, patent litigation and patent portfolio prosecution and management. Fields of technology in which he has direct and current experience include medical devices, electronic commerce, telecommunications and software technologies, carpet and textile products and equipment, and counseling and representation of technology-based start-up companies. Mr. Ewing is extensively involved in writing patents, prosecuting them, leveraging them, strategy, management and licensing in orthopedic implant structures and processes, surgical navigation systems, wound management products, information technology and wireless fields, including fiber optics, radio-frequency modulation and encoding, encryption, security and privacy-related systems and processes, wireless network systems and network theory.

Mr. Ewing has been recognized repeatedly for Patents in *The International Who's Who of Business Lawyers* and *The International Who's Who of Patent Lawyers* in 2009, 2011 and 2013. He was listed for Intellectual Property Law by *The Best Lawyers in America*® in 2019 and each of the 18 years immediately preceding. He was also named a 2015 "Atlanta Lawyer of the Year" in the area of Patent Litigation and a 2013 "Atlanta Lawyer of the Year" in the area of Trademark Law by *The Best Lawyers in America*®. Mr. Ewing was listed as #1 in the 2012 and 2013 editions of *Chambers USA: America's Leading Lawyers for Business* and was listed again in 2015 and each of the nine years immediately preceding in the area of Intellectual Property. Mr. Ewing was recommended by *Legal 500 US* in the area of Patent Prosecution in 2015 and the four years immediately preceding. He was recognized as a Georgia "Super Lawyer" in 2018 and the seven years immediately preceding and as a Top 2011 Georgia "Super Lawyer" in the area of Intellectual Property by *Super Lawyers* magazine. Mr. Ewing was selected as a "Life Science Star" in the 2012, 2013, 2014 and 2016 editions of *LMG Life Sciences*. In 2018 and the six years immediately preceding, he was named a top patent practitioner by *IAM Patent 1000 – The World's Leading Patent Practitioners.* Mr. Ewing was recognized by Legal Media Group in its *2013 Guide to the World's Leading Patent Practitiioners.* He is AV® rated by Martindale-Hubbell.*

* CV, BV, and AV are registered certification marks of Reed Elsevier Properties Inc., used in accordance with the Martindale-Hubbell certification procedure's standards and policies.

Experience

Represented Smith & Nephew in several patent litigations in which our client asserted trauma orthopedic related patents against Stryker, which asserted reconstruction related orthopedic patent rights against Smith & Nephew. After intensive litigation in two courts, the parties settled with a cross licensing arrangement favorable to our client. *Smith & Nephew Inc. v. Howmedica Inc.,* No. 97-02811 (W.D. Tenn. filed Sept. 9, 1997).

Represented eBay, Inc., a *Fortune* 500 company, in clearing its design around and providing a non-infringement opinion after their Buy It Now feature was found to have infringed MercExchange's patent rights. *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388 (2006).

Advised Cingular Wireless, the largest U.S. distributor of Blackberry PDA's, about alternative designs, and its options in the event that an injunction issued after Blackberry's manufacturer Research In Motion (RIM) was found to have infringed patents owned by NTP Inc., a Virginia-based patent holding company. *NTP v. Research In Motion, Ltd*., No. 3:01 CV 767JRS (E.D. Va. filed Nov. 13, 2001).

Represented 1-800-Flowers.com in matter where NCR asserted a patent infringement claim relating to e-commerce systems and web services. We filed a declaratory judgment action in the District of Delaware against NCR Corp. on behalf of 1-800-Flowers.com. The matter was resolved favorably to the client after initial investigation which generated valuable prior art and non-infringement positions. *1-800-Flowers.com Inc. v. NCR Corp.*, No. 1:03-cv-00297 (D. Del. filed Mar. 17, 2003).

Advised Goldman Sachs regarding cellular telephony litigation developments and predictions.

Provide patent procurement and counseling services to YKK Corporation of America, an industry leader in the development of fastening and architectural products, and energy efficient designs. The company offers technically innovative products such as zippers, hook and loop fastening systems, webbings, metal snaps and buttons, plastic buckles, and energy efficient window systems. The firm takes an active role in shaping the company's overall patent and trademark strategy, including identifying and protecting innovations, as well as evaluating and designing around third-party intellectual property rights.

Represents Equifax Inc., one of the United States' largest credit reporting agencies, in their patent related matters by assisting in obtaining meaningful patent protection for software and web-related solutions that manage credit and other consumer data. The firm counsels Equifax on licensing, design arounds and third-party patent rights in a crowded technology area to understand the scope of those third-party rights.

Successfully represented Delta Air Lines, American Airlines, Continental Airlines and Japan Air Lines in patent infringement case involving location and estimated time of arrival of vehicles. Although many of the defenses raised were common to all four clients, one airline had a unique system which was conducive to additional non-infringement defenses. We were able to successfully represent all four clients and provide them with the significant benefit of sharing costs associated with the defense. *Arrival Star, Inc. v. Delta Air Lines, Inc.,* No. 02-2543 (N.D. Ga. filed Sept. 16, 2002).

The firm served as lead counsel on behalf of Dotcast in a suit in the Northern District of Georgia to recover patent rights in the hands of a licensee who failed to make payments. After proceedings in District Court and in bankruptcy proceedings, a settlement favorable to Dotcast was facilitated, including recovery of the patent rights. *Dotcast, Inc. v. Movie Gallery, Inc., et al.*, No. 07-01181 (N.D. Ga. filed May 23, 2007).

The firm served as lead counsel for Biotec Pharmacon, ASA, a Norwegian pharmaceutical company, in patent infringement litigation initiated by patent owner Biothera, a Minnesota corporation, in the District of Minnesota in Minneapolis. The 14 patents involved in the litigation relate to, among other things, beta glucan compositions for immunotherapy. The District Court granted summary judgment of non-infringement as to 12 of the 14 patents, and the case subsequently settled. *Biopolymer Eng'g, Inc. v. Immunocorp,* No. 05-536 (D. Minn. filed Mar. 14, 2005).

Served as lead counsel and successfully defended a financial services corporation in a multimillion dollar arbitration concerning a dispute over an automated call processing services and whether its activities fell within the scope of a technology license. After implementing an aggressive trial strategy, the plaintiff agreed to enter into a new license for a fraction of what it claimed as damages in the arbitration. We also persuaded former shareholders of the company to pay a substantial part of the new license fee.

Represented Smith & Nephew in a patent infringement suit against Synthes Corp. in the Western District of Tennessee. After a three-week bench trial, the court found Smith & Nephew's patents to be valid and infringed. The court entered a permanent injunction in September 2006 enjoining Synthes from continuing to sell infringing bone repair devices. This is one the first permanent injunctions entered in a patent case after the Supreme Court's *eBay* opinion. After briefing and argument in the Federal Circuit, the parties reached a confidential settlement of the case. *Smith & Nephew Inc. v. Synthes (U.S.A.),* 466 F. Supp.2d 978 (W.D. Tenn. 2006).

Lead counsel on behalf of Cox Communications and EarthLink in a suit filed by Ronald A. Katz Licensing Technology in the U.S. District Court for the Eastern District of Texas. The suit claims patent infringement stemming from our clients' use of automated telephone processing systems. The action was consolidated for pre-trial proceedings with other suits brought by Katz against various other defendants in the Central District of California, with Judge Klausner presiding over discovery and other pre-trial matters. *Ronald A. Katz Tech. Licensing, LLP v. Cox Commc'ns*, No. 07-2299 (E.D. Tex. filed April 6, 2007); *In re Katz Interactive Call Processing Patent Litig.*, No. 07-01816 (E.D. Tex. filed July 7, 2008) and *Ronald A. Katz Tech. Licensing, LLP v. EarthLink, Inc.*, No. 07-2235, No. 07-2299 (E.D. Tex. filed April 9, 2007); *In re Katz Interactive Call Processing Patent Litig.*, No. 07-01816 (E.D. Tex. filed July 7, 2008).

Provides patent procurement and counseling services to Smith & Nephew, an industry leader in the development of advanced medical devices and implants. The company offers technically innovative products in areas such as orthopedic reconstruction and trauma, endoscopy, advanced wound management and biologics. Provide counsel and advice in all aspects of the company's business, including helping shape its overall patent strategy. As part of this, the firm takes an active role in identifying and protecting innovations, as well as evaluating third-party intellectual property rights. Further, the firm provides counseling in connection with the

company’s patent licensing and acquisition activities and has represented the company in several patent infringement matters.

Education

University of Virginia School of Law J.D. (1981)

United States Naval Academy B.S. (1973) Aerospace Engineering, *with distinction*

Admissions

Georgia (1981)

Court Admissions

Supreme Court of Georgia (1981)

U.S. Court of Appeals for the Federal Circuit (2007)

U.S. District Court for the Northern District of Georgia (1981)

U.S. Patent and Trademark Office

Professional & Community Activities

American Bar Association, Member

American Intellectual Property Law Association, Member

Atlanta Bar Association, Member

Federalist Society’s IP Subcommittee on Patents, Chair

Patent Bar of the United States, Member

Practicing Law Institute, Annual Program on Patent Litigation, Co-Chair

State Bar of Georgia, Member

Insights

News Releases

37 Kilpatrick Attorneys Named to the 2023 International Who's Who of Business Lawyers
December 27, 2023

News Releases

Kilpatrick Townsend Attorneys Garner 36 Rankings on the 2022 International Who's Who of Business Lawyers
October 24, 2022

News

Kilpatrick Townsend Attorneys Garner 37 Rankings on the 2021 International Who's Who of Business Lawyers
October 29, 2021

News Releases

Kilpatrick Townsend Attorneys Achieve 41 Individual Rankings on the 2019–2020 International Who's Who of Business Lawyers

November 12, 2020

News Releases

Thirty-nine Kilpatrick Townsend Attorneys Named to 2018-2019 International Who's Who of Business Lawyers

October 22, 2019