

David I. Berl

Partner

David Berl is Co-Chair of the firm's Patent Litigation practice and focuses principally in the biotechnology, pharmaceutical, and energy fields. David has served as lead counsel in Hatch-Waxman trials, in appellate proceedings in the Court of Appeals for the Federal Circuit, and in *inter partes* review proceedings before the PTO. David regularly serves as lead counsel to major corporations in significant patent litigations and has tried numerous patent cases that have resulted in verdicts favorable to his clients.

Benchmark Litigation selected David as a "National Practice Area Star" and "Local Litigation Star" for intellectual property in their 2020 edition. David has also been recognized as a "Life Science Star" by *LMG Life Sciences* from 2013 to 2019. The 2019 edition quotes David's intellectual property peers describing him as "one of the best lawyers working in this space" and he "deserves the accolades he gets." He was also selected as a leading patent litigation attorney in the 2014 to 2020 editions of *IAM Patent 1000*, with the 2020 issue noting David has "amazing intellect and is creative, appropriately aggressive and technically superb." Previous editions of *IAM Patent* describe David as having "a great deal of experience in high-level litigious matters and is fast, thorough and effective" and "can communicate with our scientists and our engineers and is an all-round brilliant advocate." David was also named a "Rising Star" in intellectual property by *Law360* in 2015.

David recently co-authored "Inside Views: The Current And Future Scope Of IPR Estoppel" published by *Intellectual Property Watch*.

Raised in Denver, David received an undergraduate degree in biology from the Massachusetts Institute of Technology in 1997, and his J.D. from Stanford Law School, where he was a member of the Order of the Coif and lead articles editor for the *Stanford Journal of Law, Business and Finance*. David spent a year as a litigation associate at Wilson Sonsini Goodrich & Rosati followed by a year clerking for Judge Alvin A. Schall of the U.S. Court of Appeals for the Federal Circuit. He joined Williams & Connolly in 2002 and is a member of the firm's Budget Committee.

Representative Experience

Though all cases vary and none is predictive, David's experience includes:

- Lead counsel for AstraZeneca in a lawsuit filed by AbbVie in the United States District Court for the Eastern District of Virginia,



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Education

Stanford Law School, J.D., 2000:
Order of the Coif; Frank Baker Belcher Evidence Award; Lead Article Editor, *Stanford Journal of Law, Business and Finance*; Editor and Member, *Stanford Technology Law Review*
Massachusetts Institute of Technology, S.B., 1997

Practice Focus

Patent Litigation

Recognitions

"Intellectual Property (D.C.),"
Chambers USA, 2020

"National Practice Area Star" and
"Local Litigation Star," *Benchmark Litigation*, 2020

"IP Star," *Managing Intellectual Property*, 2019-2020

"Leading Patent Litigation Attorney,"
IAM Patent 1000, 2014-2020

asserting patent invalidity and termination of royalty payments relating to Humira. Successfully argued for dismissal by the district court for lack of subject matter jurisdiction and affirmance of the dismissal by the Court of Appeals for the Federal Circuit.

- Represented Wyeth in connection with district court, *inter partes* review, and appellate proceedings regarding its antibiotic product Tygacil. In one of the first pharmaceutical *inter partes* review cases to proceed to trial and appeal, David argued successfully to the Patent Trial and Appeal Board that the claims of Wyeth's patent were valid. David also argued the case on appeal to the Court of Appeals for the Federal Circuit, which affirmed the Board's finding of validity.
- Represent Genentech in connection with ongoing BPCIA biosimilar litigation in multiple jurisdictions regarding its Avastin product.
- Lead Counsel for Teva's Branded Division in a Hatch-Waxman trial in the United States District Court for the District of Delaware, relating to multiple generic manufacturers' applications to market a generic version of its Bendeka product.
- Lead counsel for Pfizer in Hatch-Waxman litigation pending in the United States District Court for the District of Delaware, concerning Pfizer's IBrance product.
- Represented Petroleum GeoServices in IPR proceedings and at the Federal Circuit against WesternGeco relating to patents directed to seismic surveying technology. Argued successfully before the PTAB that three patents asserted by WesternGeco against Petroleum GeoServices were invalid. The asserted patents previously were the subject of a district court judgment of validity and damages of over \$100,000,000 against Petroleum GeoServices' supplier.
- Lead counsel for Bayer Healthcare in a Hatch-Waxman trial against Watson in the United States District Court for the District of Delaware, relating to Watson's effort to market a generic version of Bayer Healthcare's erectile dysfunction drug vardenafil. The Court ruled from the bench in Bayer Healthcare's favor, upholding the validity of Bayer Healthcare's patents directed to vardenafil.
- Lead counsel for Pfizer in a Hatch-Waxman trial against Actavis in the United States District Court for the District of Delaware. The case involved a challenge by Actavis to Pfizer's patent regarding its platform technology for avoiding the abuse of opioid drugs, embodied by its Embeda product.
- Lead counsel for Bayer in the Federal Circuit and district court in a patent suit filed by Biogen relating to treatments for multiple sclerosis. The district court dismissed the claims against Bayer on the basis of an interpretation of the America Invents Act, and the

"Life Science Star," *LMG Life Sciences*, 2013-2019

"Future Star," *Benchmark Litigation*, 2016-2019

"Under 40 Hot List," *Benchmark Litigation*, 2016

"Rising Star in Intellectual Property," *Law360*, 2015

Admissions

District of Columbia

United States Court of Appeals

Federal Circuit

United States District Court District of Maryland

United States Patent and Trademark Office

Federal Circuit affirmed the dismissal. David argued the case before the district court and the Federal Circuit.

- Co-Lead Counsel for MedImmune in its declaratory judgment action challenging the “Queen patents” assigned to PDL BioPharma, among the most widely licensed patent portfolios in the biotechnology industry. David argued, and the court ruled on summary judgment, that the asserted Queen patent was invalid as anticipated.
- Lead counsel for Bayer Animal Health in patent litigation and associated litigation against FDA regarding a generic version of its Baytril product. David argued successfully that the Agency’s approval of a generic version of Baytril was unlawful, and in a rare order, the district court ordered FDA to withdraw approval of the generic product.

Resources

Publications

- *IAM Quotes David Berl in Trade Secrets Article*, October 2019
- *Inter Partes Review in the Life Sciences Industry*, May 2019
- *Inside Views: The Current And Future Scope Of IPR Estoppel*, April 2017