

Michael A. Bertelson

Partner

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Michael Bertelson focuses his practice on patent law, including helping clients build strong and effective patent portfolios and avoiding or designing around the patent rights of others. Mr. Bertelson also has assisted with numerous patent litigations, and counsels clients about the acquisition and transfer of patents and patent portfolios. Additionally, Mr. Bertelson has substantial experience protecting and enforcing design patent rights.

Mr. Bertelson works with clients in a variety of industries, including consumer products, medical devices, universities, and industrial products. Mr. Bertelson is familiar with a variety of technologies, including mechanical, electro-mechanical and optical technologies.

Mr. Bertelson was recognized in 2012, 2014, 2015, 2016 and 2017 as a Georgia "Rising Star" in the area of Intellectual Property by *Super Lawyers Magazine*. He has been recognized as one of *Georgia Trend's* 2012 "Legal Elite" for Intellectual Property Law.

Experience

The firm represented YKK Corporation, one of the world's largest zipper manufacturers, and dozens of its global affiliates in a litigation involving claims of patent infringement, breach of contract, unfair trade practice, and false advertising relating to water resistant zipper technology. After over eight years of contentious litigation,



the case settled in July 2023. *Au New Haven, LLC et al v. YKK Corporation*, No. 1:15-cv-03411 (S.D.N.Y. filed May 1, 2015).

Represented a leading manufacturer and distributor of flashlights and lanterns in the U.S. with enforcement services of design patents against an infringing competitor.

The firm served as lead counsel on behalf of a provider of automatic order fulfillment systems in a patent infringement suit brought by a pharmacy automation company in the Northern District of Georgia. Plaintiff accused our client of infringing a patent related to automated prescription filling systems. Summary judgment was granted in favor of our client and affirmed by the Court of Appeals for the Federal Circuit.

Represented Oklahoma Medical Research Foundation (OMRF) in a suit against Eli Lilly in the Western District of Oklahoma. OMRF alleged patent infringement and breach of a license agreement in connection with Eli Lilly's sales of Xigris, the first FDA-approved drug to treat severe sepsis. The suit settled on the eve of trial after more than 60 depositions, production of more than one million pages of documents by Eli Lilly, and a *Markman* hearing resulting in a claim construction favorable to our client. *Oklahoma Med. Research Found. v. Eli Lilly & Co.*, No. 01-0456 (W.D. Okla. filed Mar. 15, 2001).

The firm served as lead counsel on behalf of Zodiac North America, a worldwide manufacturer of pool and recreational products, in an enforcement of their patent rights related to improved hulls for boats. *Zodiac North America, Inc. v. Ontario Limited*, No. 08-0157 (W.D. Wash. filed Jan. 31, 2008).

Represented one of the largest retailers of building supply and home improvements products in the country with intellectual property services, identifying and evaluating third-party patent rights, and counseling on freedom to operate in particular product fields. Some of the products we evaluate for the client require identification and review of thousands of potentially relevant patents and we have developed innovative strategies for reviewing these large portfolios of potentially relevant patent rights in a manner that is both reliable and cost effective for the client.

Successfully represented Lee Valley Tools Ltd. in obtaining a U.S. patent and patent re-issuance for a power tool accessory, and successfully represented Lee Valley Tools Ltd. in a patent infringement suit against a large, multinational industrial equipment manufacturer and its customer, a large retailer, involving this same power tool accessory. *Lee Valley Tools Ltd., et al. v. Sears, Roebuck & Co., et al.*, No. 06-380 (N.D. Ga. filed Feb. 21, 2006).

Represented Pepsi-Cola Co. and PepsiCo in a patent infringement suit brought by Coca-Cola in the Northern District of Georgia involving bag-in-box technology used to store and dispense syrup used to create soft drinks in soda fountains. The court granted Pepsi's Motion for Summary Judgment, finding that the technology was



substantially different from what was described in the Coke patent. PepsiCo's use of this technology did not infringe Coke's technology described in the asserted patent, and therefore, did not infringe the patent. *The Coca Cola Co. v. PepsiCo Inc., et al.*, 500 F. Supp.2d 1364 (N.D. Ga. 2007).

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 of 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).

Represented Smith & Nephew Endoscopy-America in a patent infringement litigation brought by KarlStorz Endoscopy-America Inc. that included several patents directed to systems for controlling operating room equipment. Case settled. *Karl Storz Endoscopy-Am., Inc. v. Stryker, Inc.*, No. 07-02702 (W.D. Tenn. filed Nov. 2, 2007).

The firm served as lead counsel on behalf of Zodiac Pool Care Inc., a worldwide manufacturer of pool and recreational products, in a patent infringement litigation against a major competitor, Pentair Water Pool and Spa, Inc. We filed suit asserting that four of Zodiac's patents related to automatic swimming pool cleaners covered several Pentair products. We obtained a favorable confidential settlement for the client early in the case.

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 Georgia School of Law J.D. (2002) *magna cum laude*, *Order of the Coif*

University of Georgia B.S. (1998) Genetics, *cum laude*

Admissions

Georgia (2002)



Court Admissions

Supreme Court of Georgia (2002)

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

U.S. District Court for the Northern District of Georgia (2002)

U.S. Patent and Trademark Office (2002)

Insights

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When Someone Else Patents Your Company's Invention: What To Do And How To Prevent It From Happening Again

September 11, 2019

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May 1, 2019

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