



Brian E. Ferguson

Partner

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Brian is recognized among the leading patent lawyers in the United States. He has nearly 35 years of experience representing Fortune 100 innovator companies before all of the major patent law venues—the International Trade Commission, district courts, the Federal Circuit, and the Patent Trial and Appeal Board—in high-stakes IP disputes involving an array of technologies. A leading publication described him as a “master technician” who “calls the right play at every stage of a case, whatever the forum.”

Brian represents clients in all phases of patent infringement and validity disputes before U.S. district courts, Section 337 investigations before the International Trade Commission (ITC), and adversarial matters before the U.S. Patent and Trademark Appeal Board (PTAB), which includes successfully representing clients in nearly 150 *inter partes* review proceedings. He also has substantial experience litigating patent-related appellate proceedings, including dozens of appeals before the Federal Circuit, where he has argued over 20 times. Additionally, Brian has a broad range of first-chair trial and pre-trial experience in both U.S. district courts and at the ITC. In addition to his patent work, Brian has experience handling other intellectual property disputes, including trade secret, trademark, and copyright litigations. Among his pro bono activities, he has assisted inventors with preparing and filing patent and trademark applications. In 2024, Brian was named Chair of The Sedona Conference’s Working Group 10 on “Best Practices in Patent Litigation.”

Brian has a degree in electrical engineering and is regularly called upon to litigate cases involving sophisticated technologies, including analog and digital integrated circuit designs, computer source code and software design, wearable fitness technology, semiconductor processes, medical technology such as heart valve and annuloplasty devices, injection devices, magnetic image resonance technology, airplane engine design, Internet technology, the Internet of Things, telecommunications hardware and software, digital printing technology, digital cameras, predictive text, and speech recognition technology. He also has handled numerous matters in the chemical space, including batteries and herbicides.

Brian is regularly recognized by international business and industry publications as a leader in patent law. In 2008, he was named one of the “Top 50 Under 45” IP practitioners in the U.S. by *IP Law & Business*. Since 2013, he has been recognized as both a “Patent Star” in Washington, D.C. by *Managing Intellectual Property’s IP Stars*, and as a recommended lawyer nationwide by *The Legal 500 US*, including in the areas of patent litigation and ITC proceedings. Since 2012, he has been named among the World’s Leading Patent Practitioners by the *IAM Patent 1000*, which recently stated that Brian’s “niche lies in cases involving sophisticated technologies, as he leverages his engineering background to offer tailored insight.” *IAM* has also called him a “veteran enforcer and protector for some of the world’s major technology companies,” and noted that he is a “master tactician” who “calls the right play at every stage of a case, whatever the forum.” In 2012, he was recognized as a “BTI Client Service All-Star” by BTI Consulting Group. He also has been repeatedly recognized by *The Best Lawyers in America®* and *Super Lawyers*.

Prior to joining Winston, Brian was co-head of a nationwide patent litigation practice at an international law firm.

Key Matters

Some of the below experience may have been at a prior firm.

- Serving as lead counsel to Advanced Micro Devices in a trial in the International Trade Commission, where the administrative law judge invalidated all patents asserted against AMD.
- Serving as co-lead counsel to a leading medical device company in a trial in the International Trade Commission, with the matter settling on the last day of trial.
- Serving as lead counsel in numerous inter partes and post-grant review proceedings for a leading oil and gas exploration company. One successful result included arguing to the PTAB in a PGR proceeding that a competitor’s patent was invalid for failing to claim patentable subject matter.
- Serving as lead counsel to one of the world’s top technology companies in connection with important patent disputes in courts around the United States, including:
 - District court litigation, *inter partes* review proceedings before the PTAB, and a Federal Circuit appeal in a dispute relating to remote display technology. The PTAB invalidated the challenged claims after oral argument, and the Federal Circuit later affirmed the Board’s invalidity finding.
 - An ITC Section 337 investigation, district court litigation, and a Federal Circuit appeal in a series of disputes relating to certain Internet of Things (IoT) devices.
 - An ITC Section 337 investigation and district court litigation involving radio frequency chipsets.
 - District court litigation in a dispute relating to error-protection coding used in cellular service protocols.
 - District court litigation involving five patents relating to battery monitoring technology.
 - District court litigation involving a patent directed to radio frequency transceivers.
 - A series of cases in district court, the Federal Circuit, and the ITC involving claims of infringement of more than 40 patents and including cutting-edge issues such as FRAND licensing rates, the appropriateness of injunctive relief, and the role of experts in calculating damages.
 - Multiple district court and ITC actions regarding digital camera technology.

- Defending a leading international insurance company in a trademark infringement lawsuit asserting damages worth in excess of US\$1 billion.
- Representing a leading manufacturing company in district court litigation involving patents directed to adjustable suspension systems for vehicles.
- Representing a leading chemical company in a declaratory judgment district court proceeding brought by a competitor involving herbicide technology.
- Representing an innovator medical device company in PTAB *inter partes* review proceedings and Federal Circuit appeal against a competitor relating to surgical stapling technology.
- Representing a leading marine technology provider in district court and *inter partes* review proceedings against a competitor involving navigation systems for recreational boating.
- Serving as lead counsel to an international technology conglomerate and a number of its principal divisions in significant patent disputes, including:
 - Dozens of *inter partes* review proceedings before the PTAB involving turbine engines used in airliners, as well as numerous appeals before the Federal Circuit
 - District court litigation and *inter partes* review proceedings against a competitor involving patents relating to wind turbine technology.
 - District court litigation against a competitor seeking a preliminary injunction concerning hand-hygiene monitoring systems for hospitals. The Court denied the preliminary injunction request.
- Representing a leading provider of software systems for healthcare providers in multi-front district court litigation and *inter partes* review proceedings adverse to a competitor, related to speech recognition, computer-assisted physician documentation and transcription technology.
- Representing a leading innovator sports equipment company in district court litigation and PTAB proceedings brought by a competitor involving accusations of infringement of 13 patents related to wearable technology and mobile fitness applications.
- Representing a leading provider of nicotine delivery products in district court and IPR proceedings against a competitor involving e-vapor and smokeless tobacco-derived products.

Some of Brian's other notable experience includes:

- Successfully argued before an en banc panel of the Court of Appeals for the Federal Circuit, in which the Federal Circuit changed the standard for proving willful infringement and clarified the scope of attorney-client privilege waiver in patent cases.
- Successfully argued an appeal before the Federal Circuit in a case of first impression concerning the statutory construction of 35 U.S.C. § 119.
- Served as lead counsel for a pioneering semiconductor company in an ITC Section 337 investigation involving semiconductor processing technology.
- Served as lead counsel for a leading international insurance company and 17 subsidiaries in a patent case involving interactive voice processing technology.
- Served as lead counsel for a speech recognition technology company in an ITC Section 337 investigation involving soft keyboard input technology. The investigation was terminated after the respondent agreed to redesign the keyboards accused of infringement.

Recent Experience

ITC ALJ Issues Win for AMD

Recognitions

- Recognized by Patexia as a “Top 250 Leading Attorney for PTAB Proceedings” (2024)
 - Recognized by *The Legal 500 US* as a “Key Lawyer” for Patents Litigation (2022–2023) and for Dispute Resolution: Appellate: Courts of Appeals/Appellate: Supreme Courts (States and Federal) (2022–2024) and as a “Recommended Lawyer” for Patent Litigation: International Trade Commission and for Patent Litigation: Full Coverage
 - Recognized by *The Best Lawyers in America*® for Litigation – Intellectual Property and for Litigation – Patent (2011–2025)
 - Recognized in *The Lawdragon 500* “Leading Litigators in America” for IP Litigation, Including Patent (2022–2025)
 - Honored by *IAM Patent 1000* with a silver ranking for Patent Litigation in the DC metro area (2012–2024)
 - Named by *Managing Intellectual Property* “IP Stars” as a “Patent Star” in Washington, DC (2016–2022)
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Activities

- Member, Federal Circuit Bar Association
 - Member, PTAB Bar Association
 - Member, International Trade Commission Trial Lawyers Association
 - Chair of Working Group 10 for Best Practices in Patent Litigation, The Sedona Conference
 - Former member of the Board of Directors of Give an Hour, a non-profit organization devoted to providing mental health services to U.S. veterans and their families
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“ [Brian’s] strategic approach and technical capability serve him well in disputes in district courts, the PTAB and the ITC. ”

IAM Patent 1000

Credentials

EDUCATION

Brian received his BSEE from Union College and his J.D. from Albany Law School.

ADMISSIONS

- District of Columbia
- U.S. Patent & Trademark Office
- New York

Related Insights & News

Brian is a respected thought-leader in the technology sector and in academia. For several years, he taught a course on patent litigation as an adjunct professor at the George Washington University School of Law. He also regularly authors articles on patent litigation and technology topics, including the “Discovery and Privilege” chapter in the book *Patent Litigation* (PLI Press).

- Panel Moderator and Co-Chair, The Sedona Conference Global IP Meeting, March 2025
- Panel Moderator, The Naples Conference on Patent Law, Feb. 2025
- Speaker, “Streamlining Lower-Value Patent Cases,” Annual Judicial Conference of The United States Court of Federal Claims, Oct. 2024
- Speaker and Co-Chair, The Sedona Conference’s Working Group 9 and 10 Annual Meeting, Sept. 2024
- Panel Moderator, The Sedona Conference Meeting on Artificial Intelligence in IP Law, June 2024
- Panel Moderator, featured eight judges from the U.S., ITC, Unified Patent Court, and England, The Sedona Conference Global IP Meeting, Jan. 2024
- Panel Moderator and Co-Chair, The Sedona Conference’s Working Group 9 and 10 Annual Meeting, July 2023
- “Streamlining Lower-Value Patent Cases,” The Sedona Conference Joint Annual Meeting, Nov. 2020, Nov. 2021, and May 2022

CLIENT ALERT

USPTO Director Review Insights and PTAB Policy Shifts: Early 2025

APRIL 4, 2025

SPEAKING ENGAGEMENT

Brian Ferguson and Kathi Vidal Participate in the Sedona Conference on Global Intellectual Property Litigation in The Hague

MARCH 23, 2025

ARTICLE

Is AI Distillation By DeepSeek IP Theft?

MARCH 12, 2025

CLIENT ALERT

USPTO Plunges PTAB’s *Fintiv* Discretion Analysis Into Uncertainty

MARCH 12, 2025

CLIENT ALERT

ITC Adopts First Significant Rule Changes Since 2018

JANUARY 16, 2025

CLIENT ALERT

Federal Circuit: Published Patent Application Filed Before Challenged Patent’s Priority Date Deemed Prior Art in IPRs under 35 U.S.C. § 102(e).

SPEAKING ENGAGEMENT

Brian Ferguson Speaks at the 2024 Annual Judicial Conference of The United States Court of Federal Claims
OCTOBER 23, 2024

RECOGNITIONS

Winston Attorneys Featured on the 2025 *Lawdragon* 500 Leading Litigators in America List
SEPTEMBER 6, 2024

RECOGNITIONS

Winston Attorneys Recognized in *The Best Lawyers in America*® 2025
AUGUST 15, 2024

SPEAKING ENGAGEMENT

Brian Ferguson Moderates Sedona Conference Panel on AI and The Law
JUNE 20, 2024

RECOGNITIONS

Winston & Strawn Recognized in *The Legal 500 U.S.* 2024
JUNE 12, 2024

RECOGNITIONS

Winston Recognized in 2024 *IAM Patent 1000* Rankings
JUNE 5, 2024

Capabilities

Intellectual Property

Patent Litigation

ITC – Section 337

Trade Secrets, Non Competes & Restrictive Covenants

Copyright-Infringement Litigation

Trademark Litigation, Prosecution & Brand Protection

Appellate & Critical Motions

Technology, Media & Telecommunications

Retail & Luxury

Medical Devices

Life Sciences