

## Benjamin S. Richards

Of Counsel

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Ben is a seasoned intellectual property litigator with deep first-hand experience across every stage of Section 337 investigations before the U.S. International Trade Commission (ITC), as well as extensive appellate experience before the U.S. Court of Appeals for the Federal Circuit. He brings a rare, insider's perspective to ITC litigation, informed by nearly a decade in senior legal roles at the Commission.

Ben's deep ITC experience is the product of his participation in more than 75 Section 337 investigations. Most recently, Ben served as an Attorney-Advisor in the ITC's Office of the General Counsel, where he supervised Section 337 litigation in federal courts, including while acting as Assistant General Counsel. He briefed and argued appeals defending the Commission's determinations before the Federal Circuit, led successful oppositions to petitions for en banc rehearing and certiorari, advised the Commission on the final disposition of Section 337 investigations, enforced the Commission's administrative subpoenas in district court, and represented the Office of the General Counsel on the committee responsible for drafting revisions to the ITC's rules of practice and procedure.

Earlier, Ben served as an Attorney-Advisor in the ITC's Office of the Administrative Law Judges where he advised three Administrative Law Judges (including the Chief ALJ) as they presided over Section 337 investigations. In that role, he worked closely with the judges on all facets of more than 25 investigations through trial and post-trial proceedings.

Ben is known for appellate advocacy in ITC matters, briefing and arguing appeals before the Federal Circuit on foundational Section 337 and intellectual property issues. Of particular note, Ben successfully defended the Commission's determination that the America Invents Act did not alter the scope of the on-sale bar to patentability in *Celanese International Corp. v. ITC*, Fed. Cir. No. 22-1827. He successfully opposed a petition for en banc rehearing in *Sonos, Inc. v. ITC*, Fed. Cir. No. 22-1421, that sought to constrict the ITC's authority to address induced infringement in Section 337 investigations. And he successfully defended the ITC's interpretation of Section 337's domestic industry requirement in *Zircon Corp. v. ITC*, Fed. Cir. No. 22-1649. He has also defended ITC determinations before the U.S. Supreme Court through successful oppositions to certiorari.

Before joining the ITC, Ben was a Trial Attorney in the U.S. Department of Justice's Civil Division, Intellectual Property Section, representing the United States in patent, copyright, and trademark matters before the Court of Federal Claims and the Federal Circuit. He joined DOJ through the Attorney General's Honors Program and handled all phases of IP litigation in that role.

## Key Matters

*Some of the experience represented below may have been handled at a previous firm.*

## U.S. SUPREME COURT

- *Roku, Inc. v. ITC*, S. Ct. No. 24-180, briefed successful opposition to a petition for certiorari concerning the extent to which investments in a subset of components of a protected article count towards satisfaction of the statutory domestic industry requirement in Section 337 investigations.
- *Celanese v. ITC*, S. Ct. No. 24-635, briefed successful opposition to a petition for certiorari concerning whether the America Invents Act altered the scope of the on-sale bar as applied to method claims.

## U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT

- *Bio-Rad Laboratories, Inc. v. ITC*, Fed. Cir. No. 20-1785, briefed and argued appeal resulting in precedential opinion affirming the ITC's exclusion of microfluidic chips in a patent-based Section 337 investigation.
- *Celanese International Corp. v. ITC*, Fed. Cir. No. 22-1827, briefed and argued appeal resulting in precedential opinion affirming the ITC's interpretation of the post-America Invents Act on-sale bar.
- *Ethicon LLC v. ITC*, Fed. Cir. No. 22-1111, briefed and argued appeal resulting in affirmance of the ITC's final determination in a patent-based Section 337 investigation concerning minimally invasive surgical staplers.
- *Koki Holdings America Ltd. v. ITC*, Fed. Cir. No. 22-2006, argued and obtained dismissal of appeal concerning the ITC's authority to terminate an investigation without rendering a final determination.
- *Linick v. United States*, Fed. Cir. No. 12-5097, briefed appeal resulting in affirmance of decision absolving the United States of liability for damages arising from a patent secrecy order issued by the U.S. Patent and Trademark Office.
- *Sonos, Inc. v. ITC*, Fed. Cir. No. 22-1421, briefed successful opposition to a petition for en banc rehearing concerning the continued viability of the Federal Circuit's interpretation of Section 337 to reach acts of induced infringement following the Supreme Court's retirement of *Chevron* deference in *Loper Bright Enters. v. Raimondo*.
- *Zircon Corp. v. ITC*, Fed. Cir. No. 22-1649, briefed and argued appeal resulting in precedential opinion affirming the ITC's final determination in a patent-based Section 337 investigation concerning capacitive stud finders.

## U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

- *ITC v. Richman*, D.D.C. No. 23-mc-85-CKK-RMM, spearheaded the ITC's successful enforcement of its administrative subpoena to a third-party witness and established that the ITC's administrative subpoenas may be served by mail in lieu of personal service.

## U.S. COURT OF FEDERAL CLAIMS

- *Advanced Aerospace Technologies, Inc. v. United States*, Fed. Cl. No. 1:2012-cv-85, led attorneys and support staff in defense of patent infringement allegations in connection with the military's use of unmanned aerial vehicles.
- *Aviation Software, Inc. v. United States*, Fed. Cl. No. 1:2010-cv-393, briefed and argued successful motion to dismiss copyright infringement claims on preclusion grounds in case involving software for tracking aircraft maintenance.
- *Cheetah Omni, LLC v. United States*, Fed. Cl. No. 1:2011-cv-255, successfully defended against patent infringement claims involving the Army's use of infrared countermeasure systems.
- *Unitrac, LLC v. United States*, Fed. Cl. No. 1:11-cv-581, successfully defended against allegations of patent infringement involving the Department of Defense's use of unique identifiers to track equipment.

# Recognitions

- Special Commendation for Representation of the United States in a Trademark Infringement Matter
  - Outstanding Mentor Award, U.S. Department of Justice
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# Activities

- Member, Federal Circuit Bar Association
  - Member, ITC Trial Lawyers Association
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# Credentials

## EDUCATION

Ben earned his J.D. from George Washington University in 2010. He received his B.S. in Mathematics from the University of Utah in 2007.

# Capabilities

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Appellate & Critical Motions

Copyright-Infringement Litigation

Intellectual Property

ITC – Section 337

Patent Litigation

Trademark Litigation, Prosecution & Brand Protection