



David B. Cupar

Member; Chair, Intellectual Property Department; Board of Directors

Cleveland

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“ I love innovation. Innovators hire me to develop creative IP strategies that align with their business objectives while minimizing risks and maximizing value. ”

Practice Focus

- Intellectual property
- Trade secret, non-compete and unfair competition

Dave serves on the firm's Board of Directors and is Chair of the firm's IP Department, where he oversees a diverse and experienced team of more than 20 attorneys, paralegals, and staff. The Department counsels market-leading companies and institutions on cutting-edge IP issues around the world.

He focuses his practice in two key areas:

Strategic IP Solutions for Innovation Leaders: Companies and institutions who desire to be innovation leaders regularly hire Dave to identify and develop solutions that optimally align the company's IP strategy with its overall business objectives.

Businesses have benefited through these strategy-based solutions in many ways, including:

- Developing IP assets that create real value to businesses
- Monetizing IP to increase valuation
- Reducing IP portfolio management costs
- Mitigating risks of competitive IP
- Ceasing infringing sales and payment of damages from competitors

IP Enforcement and Dispute Resolution Strategies: Market leaders who have been wronged by domestic and foreign competitors partner with Dave to identify a sound strategy to resolve such disputes in a cost-effective, results-oriented manner.

Dave was named "Lawyer of the Year" for Patent Law in Cleveland by The Best Lawyers in America®, 2018, and has been named a leader in intellectual property by Chambers USA since 2016.

Representative Cases/Matters

IP strategy solutions for innovation leaders

- Work closely with clients on developing effective IP portfolio alternative fee arrangements.
- Developed improved forms and workflows for client IP portfolios to save clients significant time & money.

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- Identified new ways for clients to identify innovations and protocols on how to identify the best forms of protection.
- Formed client-specific training for key technical, commercial, and legal personnel on important IP issues based on the needs of that business.
- Devised trade secret policies to ensure the maintenance of key confidential information both internally and externally.
- Created plan on consolidating worldwide counsel to save significant foreign costs.
- Worked with clients on developing more sound approaches in protecting new IP innovations based on joint development with third parties.

IP Enforcement and Dispute Resolution Strategies

District Court Experience

- Litigated dozens of patent, trade secret, trademark, copyright, and unfair competition cases all over the country.
- Led trial team in obtaining jury verdict of willful patent infringement in a chemical patent case.
- Awarded favorable willful patent infringement ruling at a bench trial involving four different consumer product patents.
- Prevailed at preliminary injunction hearing on behalf of accused trademark infringer involving multi-million dollar claim.
- Presented at more than 10 patent claim construction hearings that involved dozens of claim terms in a wide variety of electrical, chemical, and mechanical technologies.
- Obtained numerous favorable summary judgment rulings in all areas of IP including infringement, non-infringement, no invalidity, no inequitable conduct, affirmative defenses.

Appeals Court Experience

- Argued patent infringement and invalidity issues before the Federal Circuit that originated from federal district courts as well as from PTAB.
- Argued trademark and unfair competition issues before the Sixth Circuit.
- Briefed numerous cases commencing in district court and at the USPTO.

USPTO Patent Trial and Appeal Board (PTAB) Experience

- Argued before PTAB in numerous *inter partes* reviews (IPR), *inter partes* reexaminations, *ex parte* applications.
- Successfully represented patent owners and petitioners challenging competitive patents and obtained results at a rate much higher than the overall PTAB grant/denial rate.
- Successfully represented petitioners challenging competitive patents in obtaining grants of IPR petitions.

Arbitration and Other Litigation Experience

- Arbitrated a wide variety of IP matters before the American Arbitration Association
- Obtained favorable false advertising findings before the National Advertising Division (NAD) of the Better Business Bureau

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- Uniform Domain Name Dispute Resolution Policy (UDRP) actions
- Litigated dozens of USPTO trademark oppositions and cancellations

Admissions - Court

- U.S. Court of Appeals for the 6th Circuit
- U.S. Court of Appeals for the Federal Circuit
- U.S. District Court for the District of Colorado
- U.S. District Court for the Eastern District of Arkansas
- U.S. District Court for the Eastern District of Michigan
- U.S. District Court for the Northern and Southern Districts of Ohio
- U.S. District Court for the Northern District of Illinois
- U.S. District Court for the Western District of Arkansas
- U.S. District Court for the Western District of New York
- U.S. Patent and Trademark Office

Admissions - State

- Ohio

Education

- Case Western Reserve University School of Law
- Case Western Reserve University

Honors and Awards

- Selected for inclusion in *Ohio Super Lawyers* (2019)
- Named leader in Ohio Intellectual Property - *Chambers USA* (2016-2018)
- Named one of the *Best Lawyers in America* (2016-2021)
- Designated "Lawyer of the Year" in Cleveland for Patent Law by *Best Lawyers in America* (2018)
- Selected for inclusion in *Ohio Rising Stars* (2011, 2013, 2014, 2018)

Professional Membership

- American Intellectual Property Law Association-Member, Biotech Committee-Liaison to Amicus Committee
- Cleveland Intellectual Property Law Association-Chair, Chemical Committee
- International Trademark Association
- Cleveland Metropolitan Bar Association
- American Chemical Society

Public Service and Volunteerism

- Case Western Reserve Law Alumni Association, Board Member
- Teach for America, Northeast Ohio Advisory Board Member

- Produce Perks Midwest, Board Member

Accreditation

- U.S. Patent and Trademark Office

Alerts

- USPTO announces priority examination for COVID-19 related patents held by small and micro entities
- Facilitating Innovation to Fight Coronavirus Act: Would it help or hurt patent owners?
- Supreme Court decision will have big impact on location of patent infringement suits
- New Trademark Trial and Appeal Board rules coming January 2017
- Court identifies commercial activities allowed under on-sale bar doctrine
- Supreme Court decision loosens standard for awarding enhanced damages
- 3 notable features of the newly passed Defend Trade Secrets Act
- How to successfully challenge or defend a patent before the USPTO Patent Trial and Appeal Board
- Proposed federal trade secrets legislation before Congress
- Intellectual Property: 6 updates from the USPTO on patent eligibility

Blog Posts

- Patent office deadlines amid COVID-19
- Will the coronavirus pandemic affect your intellectual property litigation?
- A cautionary tale on avoiding enhanced damages during patent infringement litigation
- Apple closed two of its stores in eastern Texas. The reasoning may surprise you
- How to avoid trademark infringement
- Big changes to patent inter partes review in the horizon
- Federal Circuit decision could give patent owners more leverage

News

- Lawyer of the Year honorees Riley and Welin among 42 McDonald Hopkins attorneys recognized as 2021 Best Lawyers
- "Urine Maker Owes \$900K In Atty Fees After Loss In IP Suit"
- 41 attorneys from McDonald Hopkins recognized as 2020 Best Lawyers®
- McDonald Hopkins IP litigators obtain significant win by invalidating four patents and receiving judgments of no infringement and no misappropriation
- McDonald Hopkins IP litigators score \$3M judgment against patent infringer
- Seventeen attorneys at McDonald Hopkins named 2019 Ohio Super Lawyers and Rising Stars
- McDonald Hopkins Recognized by Chambers USA 2018
- MH Business Exchange Episode 7 helps businesses manage their IP portfolio
- 22 attorneys at McDonald Hopkins named 2018 Ohio Super Lawyers and Rising Stars
- 35 attorneys at McDonald Hopkins selected for inclusion in Best Lawyers® 2018
- McDonald Hopkins Recognized by Chambers USA 2017

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- 39 attorneys at McDonald Hopkins selected for inclusion in Best Lawyers 2017
- Federal Court upholds DNA Diagnostics Center's Use of "Ancestry" for DNA Testing
- 41 attorneys at McDonald Hopkins selected for inclusion in Best Lawyers® 2016

Podcasts

- Episode 07: Managing your intellectual property portfolio in 2018

External Publications

- "How the America Invents Act impacts your business," Smart Business Magazine, November 2011.
- "How to keep your intellectual property safe while not infringing on others' IP," Smart Business Magazine, November 2010.
- "Rethinking patents," Smart Business Magazine, May 2008.
- "Despite Laches Defense, Patent Owners Have Little Worries," 8 Ohio Lawyers Weekly 31, May 31, 2004.

Events

- IP Innovation Webinar Series, Session 1 | Thursday, January 28, 2021
- Nimble Forum: Legal Industry Pressures and Pricing Strategies | Wednesday, September 26, 2018

Speaking Engagements

- "Approaches to Legal Innovation," Nimble Forum: Legal Innovation, April 2019
- "Trade Secret Considerations for Businesses" Presentation, University of Akron IP Symposium, March 2018.
- "Supreme Court Update on Patent Cases" Presentation, Cleveland Intellectual Property Law Association, September, 2017.
- "How to Protect Your IP Assets in China" Presentation, Cleveland Intellectual Property Law Association, February 2015.
- "Intellectual Property Strategies to Protect Your Valuable Assets," Executive College on Laboratory and Pathology Management, New Orleans, May 2011.
- "Practical Advice and Legal Strategies to Protect Intellectual Property of the Laboratory and Molecular Technologies," Executive College on Laboratory and Pathology Management, New Orleans, May 2009.
- "Best Practices for Avoiding Inequitable Conduct Issues," Cleveland Intellectual Property Law Association, October 2008.
- "Intellectual Property Strategies: Two Case Studies," Executive College on Laboratory and Pathology Management, Miami, May 2008.
- "Post-KSR Strategies in the Chemical and Biotech Fields," Cleveland Intellectual Property Law Association, November 2007.