



**Matthew J. Cavanagh**

**Member**

**Cleveland**

**P: 216.348.5730**

**Practice Focus**

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- Intellectual property
- Media and First Amendment
- Trade secret, non-compete and unfair competition
- Patents
- Appeals
- Data privacy litigation
- Data privacy and cybersecurity

Matt has a unique legal practice, as both an intellectual property litigator and a First Amendment attorney. As an IP litigator, Matt has represented businesses and individuals in patent, trademark, copyright, false advertising, and trade secret cases. As a First Amendment attorney, he has represented newspapers, magazines, television and radio stations, journalists, and television and radio personalities in defamation, trespass, and invasion of privacy cases. He has counseled and represented media clients in other legal matters, including opposing gag orders, moving to unseal court records, opposing subpoenas, protecting journalistic work product, providing prepublication review, and obtaining public records.

Matt has litigated in federal and state court; he has argued cases before various federal and state appeal courts and administrative boards; and he has presented oral argument to various courts, including arguing to the United States Court of Appeals for the Federal Circuit in a significant patent case involving breakthrough cell phone technology.

In addition to litigation, Matt is a licensed patent attorney who assists clients in obtaining U.S. and foreign patents, trademarks, and copyrights. Matt also works with clients in the negotiating, drafting, and reviewing of contracts, including license and purchase agreements. Matt regularly gives strategic advice and analysis regarding the formation, management, and enforcement of intellectual property assets. With an expertise in First Amendment law, Matt counsels clients about advertising law, social media issues, and right of publicity matters.

Prior to attending law school, Matt worked for several years as a mechanical engineer at a large integrated steel mill. He also has industrial experience at a General Electric turbine plant and at NASA. Matt's real world engineering and manufacturing experiences enable him to better understand his clients' businesses and to further protect and advance their interests.

Matt earned a J.D., magna cum laude, Order of the Coif from Case Western Reserve University School of Law

in 2005. He received a B.S. in mechanical engineering from Boston University in 1998.

### Representative Cases/Matters

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#### *Patent*

- Obtained jury verdict of nearly \$1 million in patent infringement case involving chemical patent for maintaining product shelf life. The Federal District Court further awarded enhanced damages and attorneys' fees, which raised the entire judgment to nearly \$4 million.
- Invalidated four patents and obtained defense judgments of no liability on various patent infringement, trade secret, and copyright infringement claims after lengthy arbitration proceeding in case involving towing and trailer-related technology. Also, obtained financial award for client based on adverse party suing in federal court in violation of an arbitration clause between the parties.
- Obtained summary judgment of no infringement in case involving automated trailer jack device.
- Obtained summary judgment for defendant in an infringement case involving adjustable hitch pin lock based on collateral estoppel defense.
- Obtained summary judgment of no infringement involving a patent for a trailer coupler lock.
- Represented petitioners and patent owners in reexamination proceedings before the USPTO, and twice obtained the rare outcome of a complete denial of a petition for inter partes review.
- Defended market-leading manufacturer of high-performance specialty blending products against patent infringement allegations through trial.
- Represented a variety of patent owners and accused infringers in patent infringement lawsuits involving various technologies, including mechanical devices, chemical solutions, wireless video technology, and electronic controllers.
- Provided opinions and counsel to various companies and individuals regarding patent invalidity, patent infringement and patentability.

#### *Defamation*

- Obtained summary judgment for television station that was sued by distracted driver who alleged that reference to her as a "texting driver" was defamatory because she was not literally sending a text message at the time of her crash.
- Represented newspaper against defamation lawsuit by two school board candidates; obtained dismissal because publication was protected opinion under the Ohio Constitution.
- Represented newspaper in defamation case arising from report that DNA evidence confirmed guilt of accused rapist; obtained dismissal on statute of limitations grounds.
- Defended newspaper and reporters against county prosecutor's defamation claims aimed at newspaper's report about testimony concerning the prosecutor's alleged drug use; court granted summary judgment for the newspaper and reporters.
- Defended newspaper sued by convict who claimed article defamed him by falsely reporting he was convicted of "attempted murder" when, in reality, he was convicted of "felonious assault"; obtained dismissal on theory that allegedly false statement was no more defamatory than truth.

#### *Trademark/Unfair Competition*

- Obtained denial of preliminary injunction in trademark case brought by Ancestry.com over trademark rights to the word "Ancestry" for DNA Ancestry Tests.

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- Obtained dismissal of cyberpiracy claim in federal court based on plaintiff's failure to identify any attempt by client to make money off of domain names that it had registered.
- Successfully defended beverage maker in trademark lawsuit arising from company's use of supplier's trademarks on beverage packaging based on fair use defense and first-sale doctrine.
- Represented large and well known food company in trademark dispute over frozen food brand names, and argued case before a Trademark Trial and Appeal Board panel at the 2014 Fordham IP Institute in New York City.
- Represented tequila business in significant trademark opposition proceeding before the Trademark Trial and Appeal Board brought by large wine company.
- Represented various parties in trademark, trade dress and unfair competition lawsuits, including at trial.
- Represented clients in administrative proceedings before the Trademark Trial and Appeal Board.
- Counseled and represented businesses in making and responding to cease-and-desist demands with regard to trademark rights.
- Counseled and represented clients about online trademark issues, including search engine optimization, use of metadata, domain name disputes, and Google AdWords.

### *Copyright*

- Represented television station against copyright lawsuit by anchorwoman who alleged that the station's employees unlawfully copied a video of her in a Key West bar; cert petition in case was selected by U.S. Supreme Court for "discuss list," which is a short list of cases that justices consider for granting review at their private conference.
- Defended business against lawsuit by jewelry designer who claimed to have copyright to blinged-out microphone used by hip-hop star.
- Defended book publisher against copyright lawsuit by The Joint Commission on Accreditation of Healthcare Organizations; asserted that publisher's discussion and commentary about the Joint Commission's healthcare standards were protected by fair use.
- Represented company in copyright case by photographer who claimed company had used his photograph of Niagara Falls in airport advertisement without permission.
- Successfully defended client against copyright ownership claims over computer code that client had developed to operate patented devices for non-destructive materials testing.
- Represented gear manufacturer in copyright lawsuit against competitor which had made and used unauthorized copies of blueprints.

### *Trade Secret*

- Represented plaintiffs and defendants in numerous trade secret misappropriation cases in computer software, consumer product and manufacturing industries.

### *Miscellaneous*

- Defended government official in lawsuit by 9/11 detainees that led to landmark U.S. Supreme Court decision, *Ashcroft v. Iqbal*, which applied plausibility pleading standard to all civil actions.
- Represented non-profit organization in mandamus action before Ohio Supreme Court to obtain public records from public schools in Cincinnati, Ohio, area. Supreme Court ruled unanimously in client's favor

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and awarded attorneys' fees, which resulted in award of over \$100,000.

- Member of legal team assigned to recover fictitious profits derived from the Bernie Madoff Ponzi scheme.
- Defended popular morning radio show against criminal allegations that show's cast had induced panic on a public street.
- Represented Cuyahoga County, Ohio, Recorder in mandamus action before Ohio Supreme Court.
- Defended television station against allegations that unpaid television appearances by comedian violated his publicity rights; asserted First Amendment and Copyright preemption defenses on behalf of station.
- Represented well known race car driver in lawsuit against business that had misused her image for commercial purposes without driver's permission.
- Represented large outdoor advertiser in complex lease dispute over iconic building through trial; and obtained judgment in client's favor, which was upheld on appeal.

### Admissions - Court

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- U.S. Court of Appeals for the 6th Circuit
- U.S. Court of Appeals for the 8th 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 District of Illinois
- U.S. District Court for the Northern District of Ohio
- U.S. District Court for the Southern District of Ohio
- U.S. District Court for the Western District of Arkansas
- U.S. District Court for the Western District of New York

### Admissions - State

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- Ohio

### Education

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- Case Western Reserve University School of Law
- Boston University

### Honors and Awards

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- Selected for inclusion in *Ohio Rising Stars* (2015)
- Order of the Coif

### Professional Membership

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- Cleveland Intellectual Property Law Association
- Mensa International

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- Cleveland Metropolitan Bar Association
- American Intellectual Property Law Association

### Public Service and Volunteerism

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- Fairview Park, Charter Review Commission, Member (2018-2019)
- Fairview Park, Planning & Design Commission, Member (2020- )
- St. Malachi Church, Pro Bono Volunteer

### Accreditation

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- U.S. Patent and Trademark Office, Registration No. 65,109

### Alerts

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- How to successfully challenge or defend a patent before the USPTO Patent Trial and Appeal Board

### Blog Posts

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- A cautionary tale on avoiding enhanced damages during patent infringement litigation
- Congressman sues tweeting cow – receives lesson on Streisand Effect
- Tickets, Please! SCOTUS requires plaintiffs to show their copyright registrations at the courthouse door
- Patent Owners Will Need to Fatten Up Their Complaints This Winter
- Virtual worlds may include real-world trademarks for authenticity

### News

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- "Urine Maker Owes \$900K In Atty Fees After Loss In IP Suit"
- 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
- "Race organizer drops trademark lawsuit against Cleveland's St. Malachi Parish"
- "Lawsuit seeks to prevent St. Malachi Parish from using own name for annual race"
- Federal Court upholds DNA Diagnostics Center's Use of "Ancestry" for DNA Testing

### External Publications

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- *Slamming the Lid on Pandora's Box: How the Ohio Legislature Compensated the Insurance Industry for Scott-Pontzer at the Expense of Ohio's Drivers*, 55 Case W. Res. L. Rev. 997 (2005)

### Events

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- IP Innovation Webinar Series, Session 4 | Thursday, April 22, 2021

