A Blueprint for Success

NOTABLE IP LITIGATION VICTORIES FOR OUR CLIENTS
About the Mayer Brown IP Practice

Mayer Brown was ranked by *U.S. News and World Report*’s Best Law Firms 2015 as a Tier 1 firm across the board, for IP Litigation, Patent Litigation, Copyright, Patent and Trademark Law. In addition, leading ranking publications such as *Chambers* and *Partners*, *Legal 500* and IAM Patent 1000 continually recognize our Intellectual Property group’s excellence in the marketplace. *Chambers USA 2012* noted that clients describe our lawyers favorably, mentioning that they “treat us like partners; communication is fantastic and they make sure that we always understand what is going on.”
The IP practice at Mayer Brown has been fortunate to help our clients on some of their most significant intellectual property-related disputes throughout the Americas, Asia and Europe. Over the past few years, we have achieved numerous litigation victories in intellectual property matters, including some landmark victories for some of the most prominent companies around the globe. During this time, our litigating successes on behalf of our clients have received the attention of all the major rankings organization — including such respected organizations as Chambers, Legal 500, IAM and The Law Society of Hong Kong — which have recognized our IP practice and many of our individual lawyers as leaders in the field.

In this booklet, we highlight just a few of the successes we achieved for our clients. We are grateful to our clients for entrusting us with their most important matters and we look forward to collaborating with you to achieve additional successful outcomes in the future.

Alan Grimaldi   Gabriela Kennedy   Joseph Mahoney   John Mancini
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Google and YouTube
Significant Ruling for Google and YouTube Under Digital Millennium Copyright Act

Mayer Brown achieved significant rulings for Google and YouTube, when the US District Court granted summary judgment in companion lawsuits brought by Viacom and a putative class of copyright holders. Plaintiffs claimed copyright infringement and sought more than $1 billion in damages resulting from users posting allegedly unauthorized material on YouTube. However, the court held that YouTube is protected by the safe harbor provision of the Digital Millennium Copyright Act (DMCA) for all claims.

These decisions significantly clarified the legal landscape for the Internet.

The court noted that the DMCA’s notice-and-takedown procedure—which puts the burden of policing copyrights on the content owner—was not only supported by the statute but that it also “makes sense.” The court took particular note of YouTube’s history of responding quickly and effectively to takedown notices—taking special note of when Viacom sent a single notice identifying 100,000 alleged infringements, YouTube took virtually all of them down by the next business day.

GOOGLE AND YOUTUBE WERE REPRESENTED BY JOHN MANCINI AND MATTHEW INGBER
The summary judgment decision, which generally remained intact after two circuit court appeals, followed a number of other notable achievements for Google and YouTube earlier in the case. For example, the court earlier rejected plaintiffs’ attempts to assert punitive damages for the copyright infringement. This earlier decision was not only notable for Google and YouTube, but also served as one of the most important pronouncements about the availability of punitive damages under the Copyright Act of 1976.

Taken together, these decisions significantly clarified the legal landscape for the Internet, generally, and for user-generated content sites such as YouTube.
LG Finds Global Peace After Successfully Defending Against Repeated Infringement Suits

After a four-year defense against multiple patent infringement actions brought by Industrial Technology Research Institute (ITRI)—a non-practicing entity established by the Taiwanese government to assist domestic companies against their non-Taiwanese competitors—Mayer Brown achieved a significant victory on behalf of LG Electronics, Inc., and LG Display Co., Ltd. In June 2014, the US Court of Appeals for the Federal Circuit affirmed the US International Trade Commission’s decision that: (i) LG Electronics products do not infringe the claims of ITRI’s asserted patent; (ii) the asserted claims of the patent-in-suit were invalid; and (iii) ITRI did not have the necessary domestic industry required to bring an action before the International Trade Commission.

The Federal Circuit’s decision sent a strong message that ITRI’s patents do not apply to the products of LG Electronics and LG Display, that the patents are invalid and that, therefore, such claims are unwarranted and inappropriate. In litigation covering more than two dozen ITRI patents, not one asserted claim has been found valid and infringed upon by LG Electronics or LG Display. Indeed ITRI has brought 10 patent actions against LG Electronics and/or LG Display in the United States and China asserting 30 patents against an array of LG Electronics’ and LG Display’s products, including televisions, monitors, mobile devices and optical disk drives. After repeated and consistent victories by LG Electronics and LG Display, the parties resolved their global dispute on favorable terms.

LG WAS REPRESENTED BY JAMIE BEABER, KFIR LEVY, MICHAEL MAAS AND HYUNHO PARK
Endo Pharmaceuticals
Mayer Brown’s sweeping network and prodigious talent pool allow it to effortlessly dispatch mandates for blue-chip clients such as Google, AbbVie and American Airlines.

Endo’s Opana Patent Survives AIA Challenge By Amneal

Mayer Brown lawyers successfully represented Endo Pharmaceuticals Inc. in three inter partes review (IPR) proceedings before the Patent Trial and Appeal Board relating to two patents covering OPANA® ER, a controlled-release oxymorphone product prescribed for pain. After successfully getting one IPR denied at the institution phase, we secured a decision upholding the patentability of all of the claims challenged by generic manufacturer Amneal Pharmaceuticals in the other two IPRs.

Based on the “abundant scientific evidence” presented by Endo’s expert, including inconsistent testimony from Amneal’s experts obtained during cross-examination, the Board held that Amneal had failed to prove that the claimed pharmacokinetic and dissolution profiles would have been obvious in view of the prior art. In particular, the Board held that Amneal had failed to show that the claimed features were necessarily present in the prior art compositions. The Board’s decision illustrates the challenges associated with inherency-based arguments in the context of obviousness and the importance of presenting sufficient evidence to demonstrate that an inherent disclosure is necessarily present or not in the prior art.

ENDO PHARMACEUTICALS WAS REPRESENTED BY JOSEPH MAHONEY, ERICK PALMER, VERA NACKOVIC AND MELISSA ANYETEI
Substantial IP capability in DC, principally renowned for patent litigation involving electronics, communications and high technology...

~ Chambers USA (2014)
Google and Motorola
Key Admissions Help Invalidate Patents Asserted Against Google and Motorola

Mayer Brown IP attorneys utilized the new Patent Office AIA (America Invents Act) proceedings to invalidate patents asserted by BE Technologies against our clients Google and Motorola in litigation pending in the Western District of Tennessee. The asserted patents related to online targeted advertising and remote storage of files in a user library. Google and Motorola were two of 20 high-tech companies sued by this patent troll, with potentially thousands of products accused of patent infringement. Our team led the joint defense group and was instrumental in developing the winning strategy of filing petitions for Inter Partes Review (“IPRs”) of the BE Tech patents with the Patent Office’s Patent Trial and Appeal Board (“PTAB”). After the PTAB instituted those IPRs, the district court stayed the litigation.

Mayer Brown took a lead role at the trial before the PTAB, presenting the arguments related to one of the key pieces of prior art. Subsequently, the Patent Office issued Final Written Decisions that adopted the arguments advanced by Google and Motorola, invalidating every asserted claim of the two patents. Specifically, the PTAB agreed that we had shown that each of the asserted claims were either anticipated or obvious in view of the prior art raised in our petitions. In reaching that conclusion, the PTAB relied heavily on several key admissions we obtained from the plaintiff’s expert during deposition, highlighting the importance of using a litigation team to handle IPRs. The PTAB also agreed with us that BE Tech had not made the necessary showing required to amend its claims.

Google and Motorola were represented by John Mancini, Brian Rosenthal, Ann Marie Duffy, Brian Rosenthal and Clint Brannon
FTC and Private Challenges to Hatch-Waxman Settlements Fail to Evade 11th Circuit Precedent

The Federal Trade Commission and private antitrust plaintiffs challenged settlements to patent infringement actions that our client, Solvay Pharmaceuticals, had brought against generic versions of Solvay’s patented AndroGel testosterone supplement. The settlements allowed the generics to enter the market more than five years before patent expiration and eliminated Hatch-Waxman exclusivity blocking other generic entry while protecting Solvay’s investment in innovation.

Litigations transferred to the Northern District of Georgia where powerful Eleventh Circuit precedent has upheld other Hatch-Waxman settlements.

The settlement challenges were filed in California, New Jersey, Pennsylvania and Minnesota in order to avoid the patent litigation forum: the Northern District of Georgia, where powerful Eleventh Circuit precedent has upheld other Hatch-Waxman settlements against antitrust challenge. Mayer Brown brought and won motions to transfer the California and New Jersey suits to the Northern District of Georgia outright, and we persuaded the Judicial Panel on Multidistrict Litigation to consolidate the remaining suits there, as well.

The strategy was a success. The court in the Northern District of Georgia granted our motion to dismiss the FTC case in its entirety. The private claims attacking the settlements were also dismissed. ♦

SOLVAY WAS REPRESENTED BY MARK RYAN, CHRISTOPHER KELLY, JOSEPH MAHONEY AND VERA NACKOVIC
Niutang Chemical and GFII/L&P
“Sweet Victory” inSucralose Case at the International Trade Commission

A high-stakes Section 337 case at the International Trade Commission ended with a victory for our clients, Chinese manufacturing companies Niutang Chemical and Guangdong Food Industry Institute Institute, along with its manufacturing affiliate, L&P. The case involved sucralose, the leading artificial sweetener in the United States (sold in the United States as Splenda®).

The case was brought by Tate & Lyle, a British conglomerate, which asserted infringement of four process patents for manufacturing sucralose against our clients. At stake was Tate & Lyle’s virtual monopoly for manufacturing sucralose and its ability to command premium prices and high profit margins for the product.

A successful defense of infringement allegations in a high-stakes showdown at the ITC led to increased orders for our Chinese clients in a case with worldwide implications in the sale of sucralose.

After extensive discovery, including plant inspections in China, and a hard-fought two-week trial at the ITC, the Administrative Law Judge ruled in favor of our clients. The ALJ found no infringement of any of the asserted

Niutang and GDFII/L&P Were Represented by Gary Hnath
patents, and even ruled that one of the patents was invalid and was not being used by Tate & Lyle.

The ALJ’s decision was upheld by the full Commission in April 2009, after a thorough review of the decision. The case was closely followed around the world by companies that were reluctant to purchase sucralose from sources other than Tate & Lyle until the infringement issues were resolved.

The result was a devastating blow to Tate & Lyle, which chose not to appeal the ITC’s decision and abandoned its parallel district court case for damages. At the same time, the result was a major victory for Niutang and GDFII/L&P, as customers increased their orders of sucralose based on the ITC’s decision.
We were looking for a team that was aggressive but also centered, supportive and effective. They are that, and they’re great.

~ Chambers USA (2014)
Bristol-Myers Squibb Obtains Favorable Finding of Genentech Patent

Our client Bristol-Myers Squibb (BMS) had been paying royalties to Genentech under a decade-old license related to Genentech’s “Cabilly” patents. Genentech later alleged patent infringement related to BMS’s blockbuster drug, Yervoy, the first FDA-approved antibody to treat melanoma. BMS sought a declaratory judgment in the Central District of California related to the infringement. The parties settled shortly after briefing was completed on BMS’s motions for summary judgment of invalidity of the Cabilly patents. With the leverage of litigation and risk of patent invalidity facing Genentech, BMS was able to obtain a favorable outcome that ensured continued sales of Yervoy’s lifesaving cancer treatment.

Mayer Brown attorneys achieve significant win on claim construction for client Bristol-Meyers Squibb.

This suit for BMS is part of the Mayer Brown IP group’s growing biotech practice and successful marketing of its knowledge of the Cabilly portfolio. Previous and ongoing litigations against this portfolio include ones brought on behalf of GlaxoSmithKline relating to its successful therapy Arzerra® for chronic lymphocytic leukemia; Human Genome Sciences relating to its drug Benlysta®, the first new treatment for Lupus in 50 years; and Sanofi and Regeneron’s therapeutic antibody Praluent® for the treatment of high cholesterol. ♦
Zest Anchors Protects Valuable Intellectual Property Over Dental Implants

Mayer Brown has achieved an enviable record of victories on behalf of Zest IP Holdings, LLC, and Zest Anchors, LLC, throughout this five-year litigation: from the Markman hearing through summary judgment, including a key decision awarding spoliation sanctions.

Zest filed suit against Implant Direct Mfg. LLC, et al., in Southern California alleging infringement of several patents and trademarks relating to medical devices, as well as false advertising and unfair competition. The patents and trademarks relate to Zest’s proprietary Locator® dental attachment system, which has achieved worldwide acceptance as the premier system for securing overdentures. In 2014, we obtained orders precluding the defendants from asserting patent exhaustion and implied license as defenses, amending their invalidity contentions and designating an expert on patent validity. Our firm also won a motion for spoliation and litigation misconduct in which the court awarded Zest monetary sanctions and an adverse inference jury instruction. This victory resulted in the court ordering defendants to pay Zest $122,000 in sanctions. Additionally, we won a motion to strike defendants’ rebuttal expert on trademark infringement and obtained summary judgment knocking out a number of defenses.

This case involves cutting-edge technology in one of the fastest growing medical device areas and implicates key issues of the interplay between the confusion of customers through the improper use of trademark-protected products and the inducement of infringement in the wake of the Federal Circuit’s decision in Commil USA, LLC v.

ZEST IP HOLDINGS, LLC, AND ZEST ANCHORS, LLC WERE REPRESENTED BY LISA FERRI AND BRIAN NOLAN
Cisco Sys., Inc. The case also involves key trademark issues, including the use of evidence of actual confusion to prove “likelihood of confusion.”

The sanctions decision is significant because the court found that duty to preserve documents arose almost two years before Zest filed suit. The summary judgment decision is also significant because the court addressed an issue of first impression: whether a successor-in-interest that is added to a case mid-litigation has a due process right to be treated separately (through an amended complaint or separate suit) from its predecessor. The court found that it did not, stressing that the successor-in-interest takes the case as it found it and is bound by the court’s prior orders and the predecessor’s litigation decisions.
Entertainment One
Entertainment Company Wins Major Victory In High-Profile Trademark Litigation

A decisive victory was obtained for Entertainment One GP Limited, a worldwide distributor of films and DVDs, in a trademark litigation brought by E! Entertainment Television, Inc.

The dispute centered around E! Entertainment’s claim that Entertainment One’s use of the trademark “E1” in connection with an array of entertainment-related services was likely to cause confusion with E! Entertainment’s use of the trademark “E!” in connection with a cable television channel. Seizing on the outward similarity between the marks “E1” and “E!” and the fact that both parties are in the entertainment field, the plaintiff brought a complaint and a motion for a preliminary injunction against Entertainment One, asking the court to enjoin the defendant from making any use of “E1”—the company’s core trademark.

The Central District of California denied E! Entertainment’s motion and found overwhelmingly in favor of Entertainment One on all of the issues before it. In its opinion, the court embraced our argument that the significant number of third parties using some variation of an “E” mark in connection with entertainment-related services meant that consumers could easily distinguish among these various marks. The court also agreed with our position that, even had there been a likelihood of confusion, there was no showing of irreparable harm. Recently the verdict was affirmed on appeal to the 9th Circuit.

Entertainment One was represented by John Mancini, Neil Soltman and Donald Falk
American Airlines, Delta Air Lines, Frontier Airlines, United Airlines and US Airways
Airlines Achieve Ruling That Currency Conversion Patents Are Invalid

Mayer Brown represented five of the nine airlines sued in the Eastern District of Texas for patent infringement by Loyalty Conversion Corporation, and we took the lead in filing the Motion for Judgment on the Pleadings in accordance with FRCP 12(c). After arguing the motion in June 2014 before Judge Bryson, who was sitting by designation from the Federal Circuit to hear the case, Mayer Brown won the complete dismissal of the patent case on *Bilski* grounds on behalf of clients American Airlines, Delta Air Lines, Frontier Airlines, United Airlines and US Airways. The court found the asserted patents invalid on the ground that they were directed to unpatentable subject matter under Section 101 of the Patent Act. The plaintiff’s patents sought protection over a method of converting one form of currency (non-negotiable credits) into another form of currency (entity independent funds).

Our clients also filed Covered Business Method patent review petitions addressing the invalidity of the patents. On September 29, 2014, the PTAB instituted trial on both of the petitions holding that it is more likely than not that the patents are invalid under Section 101.

This was one of the first Section 101 decisions after the US Supreme Court’s *Alice* decision in June 2014. If valid, the patents would have prevented entities from converting loyalty award credits such as hotel points into loyalty award credits of another such as airline miles. This was a big win for the firm and the airlines because the case was dismissed before any significant fact or expert discovery. ◆
ViiV Healthcare Protects Key HIV Drug Patent from Generic Competition

Mayer Brown served as lead counsel in the first Hatch-Waxman litigation that proceeded concurrently with an IPR proceeding involving the same Orange-book listed patent. The litigation and IPR related to the successful HIV drug Lexiva®, a widely used protease inhibitor that can inhibit the replication of HIV, which was invented and marketed by ViiV Healthcare (GSK subsidiary) and Vertex Pharmaceuticals, and has annual sales of $180 million. The IPR proceeding was initiated by Ranbaxy Laboratories at the US Patent and Trademark Office. In November 2013, this proceeding was settled on positive terms for our clients that successfully enforced the patent. While handling the IPR, Mayer Brown led the litigation that was filed by ViiV Healthcare and Vertex Pharmaceuticals against Mylan, Inc., and proceeded to trial in the US District Court for Delaware in front of Judge Andrews. The case settled on the first day of trial with positive terms for our clients that successfully enforced the patent—and kept generic products from entering the market prior to patent expiry.

This is one of the first IPRs filed in a pharmaceutical patent case seeking to clear a path for early market entry of a generic product. The case was a huge success for our clients, as it forestalled generic competition. Interested parties from branded companies and generics were watching this case to understand how IPR decisions will impact a concurrent Hatch-Waxman litigation, including the exclusivity provisions. From a general patent

ViiV HEALTHCARE WAS REPRESENTED BY LISA FERRI, JONATHAN KIM, RICHARD MCCORMICK AND BRIAN NOLAN
perspective, the case provides insight into the purported obviousness of patents that claim a pro-drug form of an active ingredient, as this case presented the first IPR to address the “lead compound analysis” developed by the Federal Circuit in *In re Dillon*, 919 F.2d 688 (Fed. Cir. 1990). As most of the patents that cover the current pro-drugs that may be challenged under the Hatch-Waxman statutory framework issued before the Supreme Court clarified the law of obviousness under 35 USC § 103 in the KSR decision, this case presented an opportunity to understand the effects the KSR decision has on the validity of pro-drug patents.
They focus on achieving finality in the litigation in an efficient and optimal manner for the client.

~ Chambers and Partners USA (2015)
Airbus Helicopters
Airbus Permanently Grounds a Competitor’s Landing Gear Technology

Following a bench trial in October 2014, a Mayer Brown team prevailed on a patent infringement claim in a protracted dispute between two helicopter manufacturing rivals. A federal district court in Washington DC held that Bell Helicopter copied the patented landing gear of our client, Airbus Helicopters, and that Bell also falsely claimed credit for inventing the landing gear itself. A rarely awarded permanent injunction was issued against Bell for the remaining life of the patent.

Even though Bell voluntarily created and began using a modified landing gear following a related patent infringement suit against it brought by Airbus’s Canadian subsidiary, the Court found that our client was nevertheless entitled to an injunction because the Court was not persuaded that “Bell’s switch to Modified Gear demonstrates a commitment to respect Airbus’s intellectual property rights.”

This case was significant because it has become increasingly difficult for patentees to secure injunctive relief in the wake of the Supreme Court’s 2007 eBay v. MercExchange decision. However, as this case demonstrates, if the factual record establishing entitlement to injunctive relief is properly laid, such injunctions are still possible in cases between competitors.
In First Ever Ruling, ITC Bars Patent Trolls on Jurisdictional Grounds

Mayer Brown IP and ITC litigators achieved a significant victory in a case of first impression before the US International Trade Commission (ITC) in a patent infringement suit brought by a patent troll, Lamina Packaging Innovations LLC, against our client, Pernod Ricard USA (and numerous other spirits producers) alleging that their liquor products' packaging infringed Lamina's patents.

The ITC set this case as its test case for its new “pilot program” to discourage the filing of cases by non-practicing entities or patent trolls before the ITC. As a result, this case received considerable attention as the ITC attempted to come to grips with the issue of how to deal with the increasing number of cases brought by NPE’s or patent trolls after the Supreme Court’s decision in eBay v. Mercantile Exchange (which made it considerably more difficult for patent trolls to obtain an injunction in a patent case).

The ITC asked an administrative law judge (ALJ) to determine whether the complainant’s licensing business qualified as a domestic industry. The ALJ issued an initial determination that Lamina Packaging, which was an NPE, failed to satisfy the domestic industry requirement. This decision was affirmed by the full commission, which terminated the action in its entirety.

The outcome of this case was not only a significant victory for Mayer Brown’s client, Pernod Ricard, but it set a significant, and even historic, precedent for ITC cases, as it was the first-ever ITC case to employ an early-determination process to dismiss claims for lack of standing—prior to the full determination of the merits.

Pernod Ricard USA was represented by John Mancini and Gary Hnath
Record Damages Verdict Achieved for Faiveley Transport in a Trade Secret Case

Mayer Brown IP litigators achieved a significant trial victory for Faiveley Transport in a trade secret case against a key competitor, Wabtec Corporation. Faiveley claimed that Wabtec had improperly used Faiveley manufacturing drawings containing trade secret information required to make certain train brake parts. After extensive procedural motions and motion practice, the Court granted Faiveley’s motion for summary judgment in its favor and in a decision, dated, May 12, 2011, the Court found that: (i) Faiveley had protectable trade secrets in its manufacturing drawings; (ii) Wabtec misappropriated those trade secrets by continuing to use certain duplicate drawings and “reverse engineered” drawings; (iii) a prior arbitration between the parties did not preclude this litigation; and (iv) Faiveley could proceed to a damages trial to assess proper damages to be

FAIVELEY TRANSPORT WAS REPRESENTED BY JOHN MANCINI AND VANESSA BIONDO
awarded for Wabtec’s liability. The case was then set down for a jury trial on damages and, after a week-long jury trial, the Mayer Brown team secured a damages verdict in the amount $19.7 million (inclusive of interest) for both past and future damages. The jury very was affirmed on appeal, with a deduction only an amounts already paid by Wabtec in a prior related arbitration. This jury damages award ranks as one of the highest recorded damages awards in New York Courts for trade secret misappropriation.◆
A Series of Trademark Victories for Nvidia

On behalf of Nvidia Corporation, we secured favorable judgments in five trademark infringement, domain name hijacking and unfair competition cases before the Beijing Higher People’s Court, and successfully defended the judgments on appeal. The Mayer Brown team of litigators devised an enforcement strategy for the cases, developed highly technical arguments and steered the client through complex civil procedural issues such as the transfer of the cases from provincial courts to the Beijing court and their eventual consolidation. The team obtained asset preservation orders from both the provincial courts and the Beijing court to prohibit the defendants from transferring the domain names involved and rebutted the defendants’ sophisticated arguments in relation to fair use of trademarks and duplicity of damages for the same or similar infringing acts in different actions.

“Mayer Brown JSM has carved a niche as a “fierce player in infringement cases…. The set’s lawyers are now omnipresent in the courts.” ~ IAM Patent 1000 (2015)

NVIDIA WAS REPRESENTED BY GABRIELA KENNEDY AND XIAOYAN ZHANG
About Mayer Brown

Mayer Brown is a global legal services provider advising clients across the Americas, Asia and Europe. Our geographic strength means we can offer local market knowledge combined with global reach.

We are noted for our commitment to client service and our ability to assist clients with their most complex and demanding legal and business challenges worldwide. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng index companies and more than half of the world's largest banks. We provide legal services in areas such as banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; US Supreme Court and appellate matters; employment and benefits; environmental; financial services regulatory and enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

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