

## Ben Herbert

### Partner



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#### Education

J.D., *summa cum laude*, Sandra Day O'Connor College of Law at Arizona State University

B.A., University of Colorado

#### Clerkship

Honorable Kathleen M. O'Malley, U.S. District Court, Northern District of Ohio and U.S. Court of Appeals for the Federal Circuit

#### Admissions

California

### Biography

Ben is an accomplished trial lawyer who focuses his practice on patent infringement and trade secret misappropriation litigation. He is co-leader of the firm's Intellectual Property practice. Ben is adept at helping his clients solve issues related to intellectual property through counseling and litigation. He is recognized among the 2024 *Best Lawyers in America: Ones to Watch®* in the areas of Patent Law and Litigation – Patent.

Ben has a record of success representing plaintiffs in intellectual property trials, having been a key member of three trial teams that secured more than \$1.5 billion in jury verdicts in the span of two years. He has litigated complex patent and trade secret cases involving diverse technologies, including digital radios, medical devices, computer software and hardware, graphics processors, bitcoin mining, portable power generation, and satellite technology. He also has significant experience representing clients in Patent Office proceedings, including *inter partes* review, as well as before the U.S. Court of Appeals for the Federal Circuit.

Ben is a frequent author and speaker on topics related to trade secret misappropriation, patent infringement, and litigation finance, having been published in the *Daily Journal* and *Managing Intellectual Property*, and speaking at the Sedona Conference, the Intellectual Property Owners Association's Annual Conference, LAIPLA's Spring Seminar, IAM's Trade Secret Strategy Conference, and IAM's Patent Transactions Conference.

Ben received his J.D. from the Sandra Day O'Connor College of Law at Arizona State University and earned a B.A. in Molecular Cellular Developmental Biology from the University of Colorado.

Prior to joining Miller Barondess, Ben was a partner with Kirkland & Ellis in Los Angeles. He then ran operations in Los Angeles for Law Finance Group. After graduating from law school, he served as a law clerk to the Honorable Kathleen O'Malley (ret.) at both the U.S. District Court for the Northern District of Ohio and the U.S. Court of Appeals for the Federal Circuit.

## **Notable Representations**

### **Patent Infringement Litigation**

- \$30 million jury verdict representing a company that provides predictive online customer service technology in an action for patent infringement and trade secret misappropriation, among other torts.
- Represented a medical device manufacturer in multiple patent infringement actions involving spinal technology (implants and biologics) and insulin pump devices.
- Represented a not-for-profit hospital in a patent infringement and royalty dispute involving orthopedic implant technology.
- Represented a medical device manufacturer in a Federal Circuit appeal from the Patent Office rejection of claims related to pedicle screws.
- Represented a microprocessor manufacturer in a patent infringement action involving numerous microprocessor technologies.
- Represented a microprocessor manufacturer in a patent infringement action involving graphics processing technologies.
- Represented a company that provides immersion cooling technology in an action for patent infringement.

### **Trade Secret, Copyright, and Tort Litigation**

- \$750 million jury verdict representing a company that manufactures digital mobile radios in an action for trade secret misappropriation, among other torts, and copyright infringement.
- \$850 million jury verdict representing a company that provides software for managing health insurance plans in an action for trade secret misappropriation, among other torts, and copyright infringement.
- Represented a company that provides low-carbon energy solutions in an action for trade secret misappropriation, among other torts.

## **Honors and Awards**

- Best Lawyers in America: ONES TO WATCH®  
Recognized in Patent Law and Litigation – Patent (2024)