

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 Patent Litigation.

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

- Lead counsel for Hyper Ice, Inc. in litigation across the country concerning percussive massage devices.
- \$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 Secrets, Copyright, and Tort Litigation

- Counsel for a Houston-based compounding pharmacy in an action for trade secret misappropriation, among other torts, against former employees.
- \$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.

Speaking Engagements

- Tangibly LinkedIn Live Panel: “What Actually Happens in Trade Secret Litigation” (December 2024)
- Attorney Lounge Podcast with Brian Roberts (October 2024)
- LITFINCON Los Angeles (Litigation Finance Conference): “Insurance: An Evolving Game Changer” (September 2024)
- IPWatchdog Patent Portfolio Management Masters: “Monetization of Underutilized Patent Portfolios” (June 2024)
- UnitedLex Webinar: “Employee Departures: Digital Forensics, Noncompete Bans, & IP Protection” (May 2024)
- IPWatchdog Patent Litigation Masters: “Patent Owner Strategies for Enforcing Patents” (May 2024)
- Trade Secret IP Protection & Litigation West Coast Summit: “Unlocking Trade Secrets: A Strategic Business Approach” (April 2024)
- AIPLA (American Intellectual Property Law Association): “Funding of Trade Secret Litigation” (March 2024)
- LITFINCON (Litigation Finance Conference): “IP: A Yearly Examination” (March 2024)
- CenterForce IP Strategy Summit, Seattle: “Trade Secrets: Trends & Strategy in 2024 and Beyond” (January 2024)

Publications

- “Weighing the Options for Protecting AI Innovations” *Tangibly* (Guest Author Series) (June 2024)
- “The rise of trade secrets as primary protection for technological innovation” *Daily Journal* (October 2021)
- “At five: DTSA has shown its staying power” *Managing Intellectual Property* (October 2021)
- ‘Checking in on Alice: Where do things stand?’ *Daily Journal* (April 2015)
- Comment, “When Nature’s Anticipation Inherently Prevents Your Discovery: A New Look at an Overlooked Requirement of Patentability and Its Impact on Inherent Anticipation”, *50 Jurimetrics J.*, p. 111–146 (2009)

Professional Activities

- Member, American Intellectual Property Law Association (AIPLA)
- Member, Los Angeles Intellectual Property Law Association (LAIPLA)

- Member, Sedona Conference Working Group 12 – Trade Secrets
- Planning Committee, USC Gould School of Law Intellectual Property Institute (March 2024)

Honors and Awards

- World Intellectual Property Review, USA Trade Secrets Rankings: Notable Individual (2024)
- Best Lawyers in America: ONES TO WATCH®
Recognized in Patent Law and Litigation – Patent (2024)