



Sean C. Cunningham

Partner

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Sean Cunningham is a patent trial lawyer who focuses on patent disputes in a wide array of technology fields. He has nearly two decades of experience handling patent cases through trial in district courts and in the International Trade Commission (ITC).

Sean's patent trial experience includes more than a dozen trials in the ITC, Delaware, New York, California, Texas, Virginia and Arizona. His most recent jury trial resulted in complete victory for his client, with the jury finding the two patents asserted against his client both not infringed and invalid. Sean's experience also includes the jury trial of the *Cornell v. Hewlett-Packard* case before Federal Circuit Court of Appeals Chief Judge Randall Rader sitting by designation, which resulted in a landmark post-trial ruling on patent damages in favor of his client.

Sean has been recognized for his patent litigation practice by *Legal 500*, which quotes clients stating that he "brings logic, practical advice, and in-depth analysis. He cares about getting the best result for clients and clearly knows how to make a good argument in front of any audience." He is especially noted for his exacting attention to efficiency in litigation, both in controlling costs and in being selective about avenues to pursue in litigation.

- Patent Litigation
- Intellectual Property and Technology
- Litigation, Arbitration and Investigations

Recent Matters

- *Fortinet v. Sophos and Sophos v. Fortinet* – United States District Court, Northern District of California; District of Delaware. Currently lead counsel for Sophos Ltd. and Sophos Inc. in a wide-ranging patent dispute between competitors in the anti-malware industry, which has spawned two district court patent suits and one arbitration. The parties are litigating a total of 23 patents, most of which are directed to various aspects of malware detection technology.
- *Finjan v. Sophos Inc. and Finjan v. FireEye* – United States District Court, District of Delaware; Northern District of California. Currently defending Sophos Inc. and FireEye, Inc. in three separate patent disputes in two district courts. The first *Finjan v. Sophos*

case resulted in a jury verdict of noninfringement and invalidity for Sean's client Sophos after a two-week jury trial in District of Delaware before Chief Judge Gregory Sleet. That case is on appeal. The other two cases involve a total of 13 patents asserted against Sophos and FireEye related to anti-malware technology.

- *Overland Storage v. IBM, Dell, BDT, et al.* – United States International Trade Commission; Southern District of California. Currently lead counsel for Overland Storage, Inc. in a patent offensive against IBM, Dell, BDT and others in the ITC and district court in San Diego on two patents related to digital storage technology. Sean first-chaired an ITC trial in 2011, resulting in a settlement by IBM and Dell before the Initial Determination issued. The district court litigation against the remaining defendants is stayed pending the resolution of an inter partes review of one of the patents.
- *Cornell v. Hewlett-Packard* – United States District Court, Northern District of New York. Represented HP in a litigation filed by Cornell University involving a patent related to instruction issuance in superscalar processors. The case was tried to a jury in May 2008, resulting in a finding of infringement and validity, but no willful infringement. On post-trial motions, Federal Circuit Chief Judge Randall Rader (sitting by designation as the trial judge) issued a landmark ruling in HP's favor (609 F.Supp.2d 279), reducing the verdict by two-thirds and clarifying the law on patent damages and the Entire Market Value Rule.
- *Hewlett-Packard v. Acer Computer* – United States International Trade Commission; Western District of Wisconsin; Eastern District of Texas. Represented HP in a multi-jurisdictional patent enforcement effort involving five US lawsuits in three venues and a total of 26 patents (15 asserted by HP; 11 by Acer). Sean tried the first of two lawsuits in the ITC, and the litigation settled while the ITC's decision was pending. By the time of the settlement, HP had successfully disposed of four of the 11 asserted Acer patents.
- *Motorola Mobility v. Research in Motion* – United States District Court, Northern District of Texas; International Trade Commission; United Kingdom. Obtained a settlement on behalf of Motorola in a patent offensive against Research in Motion (RIM). The offensive involved a 27-patent case in the Northern District of Texas (Dallas) (17 Motorola patents and 10 RIM patents), three separate lawsuits in the UK involving a total of five UK patents, and an ITC investigation. One UK case went to trial in the first quarter of 2010, and the second was scheduled to begin trial in June 2010. On the eve of the second UK trial, the parties reached a global settlement. The patents asserted by Motorola involved system-level technologies implemented by wireless handheld devices and various features of the handheld devices themselves.
- *Hewlett-Packard Company v. Gateway & eMachines* – United States International Trade Commission; Southern District of California; Eastern District of Texas; Southern District of Texas. Managed multi-jurisdictional patent offensive against Gateway involving 34 patents (23 HP patents and 11 Gateway patents) in four different lawsuits. The first ITC trial resulted in a finding of infringement against Gateway on two HP patents, while the second ITC trial resulted in a finding of invalidity and inequitable conduct on a single Gateway patent. Following those trials, the litigation settled.
- *Broadcom v. Qualcomm* – United States District Court, Central District of California; International Trade Commission. Managed the defense of multiple patent suits involving cellular technology, primarily in the ITC and the Central District of California. A month-long jury trial of three Broadcom patents in the Central District resulted in a finding of infringement on some but not all asserted claims.
- *Agilent Technologies v. Micromuse* – United States District Court, Southern District of New York. Managed multi-patent offensive on behalf of Agilent Technologies against Micromuse in two lawsuits in the Southern District of New York involving service assurance software products. The suits were settled during discovery.
- *Plasma Physics v. Agilent Technologies, et al.* – United States District Court, Eastern District of New York. Represented Agilent in a multi-party patent suit involving semiconductor manufacturing processes in the Eastern District of New York. The case settled during a jury trial in Central Islip, New York.

CREDENTIALS

Admissions

- California

Recognitions

- *Chambers USA*
 - Band 5, Nationwide International Trade: Intellectual Property (Section 337) (2022)

- *The Legal 500 United States*
 - Recommended, Patent Litigation: Full Coverage (2019-2022)
 - Recommended, Patents: Litigation (International Trade Commission) (2017-2022)

Education

- J.D., University of Kansas School of Law 1994
Order of the Coif
Editor, *Kansas Law Review*
- B.A., English, University of Kansas 1991
Phi Beta Kappa

Courts

- All California state courts
- United States Court of Appeals for the Federal Circuit
- United States Court of Appeals for the Ninth Circuit
- United States District Court for the Central District of California
- United States District Court for the Northern District of California
- United States District Court for the Southern District of California

Memberships

- Federal Circuit Bar Association
- American Intellectual Property Law Association
- Intellectual Property Section, California Bar Association

INSIGHTS

Publications

- Author, "Perfect Model? How the US Federal Circuit Advisory Council's New Model Order Might Help to Reduce the Spiraling Costs of Patent Litigation," *Intellectual Property Magazine* (October 2013)
- Author, "A New Breed of Damages Trial," *DLA Piper Intellectual Property and Technology News* (March 2012)
- Author, "Filing and Defending Patents in Different Jurisdictions," *Intellectual Property Management Handbook of Best Practices* (Centre for the Management of Intellectual Property in Health and Research Development, March 2007)

Events

- Panel Moderator, "Where the Law Stands on Proving Domestic Industry," American Conference Institute 6th Expert Forum on ITC Litigation & Enforcement (February 2014)
- Participant, Federal Circuit Advisory Council Committee on Focusing Patent Litigation, which created "A Model Order Limiting Excess Patent Claims and Prior Art," (July 2013)
- Panel Moderator, "Corporate Approaches to ITC Litigation – In-House Counsel Views on the Costs and Benefits of Pursuing a Section 337 Investigation," American Conference Institute 4th Expert Forum on ITC Litigation & Enforcement (February 2012)
- Presenter, "Focus on Asia – Confronting the Unique Challenges Posed by ITC Litigation with Foreign Parties," American Conference Institute 3rd Expert Forum on ITC Litigation & Enforcement (February 2011)
- Presenter, "Master Class on Enforcement of ITC Exclusion Orders," American Conference Institute 2nd Expert Forum on ITC Litigation & Enforcement (February 2010)

- Presenter, "Advanced Use of Graphics at Jury Trials—and Well Beforehand," Chicago Bar Association Seminar on Patent Litigation (January 2005)

NEWS

MEDIA MENTIONS

- "Tech Giants Urge Justices To End IP Damages 'Loophole'," *Law360* (February 13, 2020)
- "34 DLA Piper lawyers in nine countries ranked among The World's Leading Patent Professionals," *DLA Piper* (October 30, 2019)