Benjamin Hershkowitz

Partner

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New York



Benjamin Hershkowitz is a partner in the New York office of Gibson Dunn where he is a member of both Gibson Dunn's Intellectual Property Practice and Technology Transactions Practice. Ben serves on the firm's Technology Committee and chairs the firm's Finance Committee.

Ben focuses his practice on intellectual property matters, both litigation and corporate, with a particular emphasis on complex patent litigation. In addition, Ben has extensive experience successfully representing clients in trademark, copyright, trade secret, computer fraud and breach of contract matters. Ben has represented companies in diverse industries including network, consumer and business electronics, software, telecommunications, consumer/retail, medical products and industrial manufacturing. Companies have ranged from the world's leading technology companies to innovative start-ups.

Ben has regularly served as lead trial counsel in district courts around the country as well as before the United States International Trade Commission and in arbitrations. His work has garnered him recognition by *Chambers USA: America's Leading Lawyers for Business* in both New York and nationwide in the areas of Intellectual Property and Intellectual Property: Patent, noting that he is "the full package," being both "incredibly savvy with tech and an incredibly savvy trial lawyer," and having "every skill set you could want and need for running a patent litigation." He has also been recognized by *IAM Patent 1000*, which describes him as "adept at weaving stories around complex technical issues," and "very smart, hardworking, technically astute, thorough and good on his feet; he is the complete package and someone you can trust." *Managing IP* named him a national IP Patent Star. He was also listed as one of the top five Best Performing attorneys in the country in Patexia's inaugural *Top Patent Litigation Attorneys*. *BTI Consulting* named Ben to its Client Service All-Stars list which recognizes those "delivering the absolute best client service." Ben has been repeatedly featured as one of *Lawdragon*'s "500 Leading Litigators in America."

Ben's litigation experience has covered a wide range of technologies including computer networking equipment, optical transmitters, cellular telephony, voicemail, semiconductors, computer hardware and software, e-mail, e-commerce, video-on-demand, compact discs, liquid crystal displays, VoIP, business methods, digital rights management, electromechanical industrial equipment, chemical processes, medical equipment and Internet and information technologies and protocols.

Ben also regularly counsels clients in technology transactions, including both the licensing in and licensing out of intellectual property, technology and know-how. In addition, he works with clients to acquire and divest patent and other intellectual property assets. Ben also handles intellectual property matters arising in corporate transactions, including mergers and acquisitions, private equity investments and strategic alliances. He further provides guidance to clients in establishing internal procedures and policies for addressing

Capabilities

Intellectual Property
Artificial Intelligence
International Arbitration
Litigation
Media, Entertainment, and Technology
Privacy, Cybersecurity, and Data Innovation
Robotics
Tech and Innovation
Technology Litigation
Technology Transactions
Trade Secrets
Trials

Credentials

Education

New York University - 1993 Juris Doctor
Rutgers University - 1990 Bachelor of Science

Admissions

New York Bar
New Jersey Bar

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intellectual property issues and handling copyright software audits.

Ben is a frequent author and speaker and served for five years as the Editor-in-Chief of *Patent Strategy & Management*, an Incisive Media newsletter. His articles and presentations have covered topics including patent damages, selecting and working with expert witnesses, the intersection of patents, antitrust and standards-setting organizations, as well as trade secrets, the licensing of intellectual property, collaborative research agreements, computer software and business method patents, patent standardization and patent pooling arrangements, and prior art searching. He has presented in front of organizations including the ABA, NYIPLA, LSI, ACCA, Computer Law Association, PLI and IPIC. Ben is a former Chair of the Committee on Internet Law for the NYIPLA and participated in the Hon. William C. Conner Inn of Court.

Ben interned in the chambers of both a Federal District Judge in the District of New Jersey and a Federal Magistrate Judge in the Eastern District of New York. Ben graduated from Rutgers University, College of Engineering (with highest honors) and New York University, School of Law, where he helped launch the *Environmental Law Journal* and served as its first Science Editor. He is also registered to practice before the United States Patent & Trademark Office.

Representative Litigations

- Multiple Service Operators: Represented several of the largest multiple service operators, including in defending patent suits involving all aspects of their commercial offerings such as video-on-demand, pay-per-view, set-top boxes, head-end equipment, cable modems, SONET, networking equipment, VoIP, visual voicemail, and automated attendants as well as copyright suits concerning its ability to deploy a remote server DVR.
- E-commerce Companies: Represented e-commerce companies in defending against suits directed to searching and database management.
- Entertainment Companies: Represented entertainment company in copyright and contract disputes as well as defending patent litigations directed toward video encoding and content delivery.
- Retailers: Represented market leading retailers in defending multiple patent suits directed toward a range of technologies including Internet searching, e-commerce, shipment tracking, geolocation, point of sale devices, Wi-Fi and internet and information technologies.
- Internet Service Provider: Represented ISP in copyright and patent disputes.
- Networking Companies: Represented networking companies in defending against patents directed toward network interfaces, memory devices, semiconductor chips and storage area networks.
- Financial Services: Represented software and security companies in defending suits involving patents directed toward security systems, anti-money laundering and fraud detection software.
- Optical Networking Equipment Company: Represented optical networking equipment company in defending against patents directed toward optical transmitters.
- Consumer Electronics: Represented Japanese multinational corporations in defending against patent suits directed toward Blu-ray DVD players, cameras, Wi-Fi and encryption/security.
- Telecommunications: Represented software provider in defending against a suit brought by a competitor involving patents directed toward call roaming in wireless mobile networks.
- Security Company: Represented security company in defending against patents directed to multi-factor authentication and contract disputes.
- Consumer Electronics and Business Solutions: Represented leading consumer

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electronics company in defending multiple patent lawsuits involving LED lighting, LED panels, Blu-ray DVD players, semiconductors, encryption/security, televisions and monitors, and video projectors.

- Internet: Represented top-app providers s in defending multiple patent suits directed toward music identification system and internet audio.
- U.S. mobile phone carriers: Represented many of the largest U.S. mobile phone carriers in their most significant patent lawsuits directed toward the wireless networking, network equipment, geolocation, e-commerce, Wi-Fi, messaging and security systems as well as arbitrations concerning contract disputes.

Other Recent Representative Matters

- Software Audits: Represented telecommunications companies, financial institutions and medical products companies in connection with software audit by the Software & Information Industry Association, Business Software Alliance and various software companies.
- Licensing-in and Licensing-out of Technology and Patents: Represented consumer electronics companies, telecommunications companies, retail and software companies as well as financial institutions in connection with licensing-in and licensing-out of technology and patents.
- Developing Intellectual Property Strategies and Procedures: Represented telecommunications, energy, entertainment and software companies in developing strategic intellectual property plans.
- Intellectual Property Form Agreements: Represented Internet companies and e-commerce retailers in connection with establishing intellectual property forms and agreements.
- Due Diligence: Represented technology, software, telecommunications, semiconductor companies and financial institutions in intellectual-property due diligence in connection with mergers, acquisitions and investments.
- Standards-Setting Organizations: Represented technology companies in evaluating IPR obligations and making declarations and disclosures to standards-setting organizations.
- Trademark and Copyright: Represented companies in trademark and copyright disputes in court and before Trademark Office; represented companies in copyright registration and prosecuting trademark applications; represented companies in acquisition and disposition of domain names.

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