Thomas G. Hungar

Partner

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Thomas G. Hungar is a retired partner in the Washington, D.C., office of Gibson Dunn. His practice focuses on appellate litigation, and he assists clients with congressional investigations and complex trial court litigation matters as well. He has presented oral argument before the Supreme Court of the United States in 28 cases, including some of the Court's most important patent, antitrust, securities, and environmental law decisions, and he has also appeared before numerous lower federal and state courts.

Thomas served as General Counsel to the U.S. House of Representatives from July 2016 until January 2019. As General Counsel, he provided legal advice and litigation representation on a non-partisan basis to the House and its leadership, members, officers, and staff, and he worked closely with numerous House committees in connection with their oversight and investigative activities. Previously, he served as a Deputy Solicitor General of the United States. In that position, he supervised business-related appellate litigation for the federal government, with particular emphasis on patent, antitrust, securities, and environmental appellate cases, and he also oversaw appellate litigation in banking, bankruptcy, tax, government contracts, communications, copyright, labor, trademark, and international trade matters. In private practice, Thomas's appellate experience has encompassed those areas as well as class actions, constitutional law, employment law, product liability, administrative procedure, insurance coverage and bad faith, and general commercial litigation. He has handled scores of business-related appeals in the Supreme Court and lower appellate courts, and has briefed and argued many high-profile matters.

Representative cases in which he has presented oral argument include:

- *Slack Technologies, LLC v. Pirani* (statutory standing to sue under Section 11 of the Securities Act of 1933).
- *Microsoft Corp. v. i4i Ltd. Partnership* (standard of proof for challenges to patent validity).
- *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.* (rejecting "scheme liability" as basis for imposing liability on secondary actors in securities fraud actions under SEC Rule 10b-5 and Section 10(b) of the Securities Exchange Act of 1934).
- *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.* (overruling Dr. Miles rule of per se invalidity for vertical minimum resale price maintenance agreements under Section 1 of the Sherman Act).
- *KSR Int'l Co. v. Teleflex Inc.* (clarifying standard for determining when an invention claimed in a patent is "obvious," and therefore ineligible for patent protection, under Section 103(a) of the Patent Act).
- *Environmental Defense v. Duke Energy Corp.* (Clean Air Act New Source Review case clarifying test for determining whether a "modification" to a pollutant-emitting source has occurred so as to require a permit under the Prevention of Significant

Capabilities

Appellate and Constitutional Law
Administrative Law and Regulatory Practice
Antitrust and Competition
Class Actions
Congressional Investigations
First Amendment and Free Expression
Intellectual Property
Litigation

Credentials

Education

Yale University - 1987 Juris Doctor
Willamette University - 1984 Bachelor of Science

Admissions

District of Columbia Bar

Clerkships

US Supreme Court, Hon. Anthony M. Kennedy, 1988 - 1989
US Court of Appeals, 9th Circuit, Hon. Alex Kozinski, 1987 - 1988

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Deterioration program).

- *Illinois Tool Works, Inc. v. Independent Ink, Inc.* (overturning longstanding presumption of market power that arose in tying cases under Section 1 of the Sherman Act when the defendant held a patent on the tying product).
- *Quanta Computer, Inc. v. LG Electronics, Inc.* (patent infringement action involving application of patent-exhaustion doctrine to method claims and to sales of components of patented systems).
- *Dura Pharmaceuticals, Inc. v. Broudo* (requiring securities fraud plaintiffs invoking the fraud-on-the-market theory to plead and prove loss causation by identifying a causal connection between the alleged fraud and the security's subsequent decline in price).
- *National Cable & Telecom. Ass'n v. Brand X Internet Servs.* (upholding FCC's determination that cable modem broadband Internet access service is solely an unregulated "information service" under the federal Communications Act and does not include a regulated "telecommunications service" component).

Thomas is a Fellow of the American Academy of Appellate Lawyers and is a frequent lecturer in his areas of expertise. While at the Department of Justice, he served as Appellate Counsel to the Intellectual Property Task Force Executive Staff, and he was awarded the John Marshall Award for Outstanding Legal Achievement, the Department's highest award presented to attorneys for contributions and excellence in legal performance, in recognition of his handling of patent-law matters before the Supreme Court. Most recently, Thomas has garnered national recognition for his Appellate Practice in *The Legal 500* – United States, *Best Lawyers in America,* and in *Chambers USA*, which has repeatedly highlighted Thomas for his "expertise in appellate litigation" and experience with employment and antitrust disputes, as well as Congressional Investigations. Thomas was also recently named a "Litigation Star" by *Benchmark Litigation.*

Thomas served as an Assistant to the Solicitor General of the United States from 1992-1994. He also served as a law clerk to Justice Anthony M. Kennedy of the Supreme Court and to Circuit Judge Alex Kozinski of the United States Court of Appeals for the Ninth Circuit. He received his law degree from Yale Law School in 1987, where he was a Senior Editor of the *Yale Law & Policy Review*. He received his Bachelor of Science degree *magna cum laude* in mathematics/computer science and economics from Willamette University in 1984.

Thomas is admitted to practice in the District of Columbia.

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