

Brian Rosenthal

Partner

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New York

Brian Rosenthal is a partner in the New York office of Gibson Dunn. He is a member of the Intellectual Property practice.

Brian is a trial lawyer with a particular emphasis on patent litigation. His patent litigation practice has spanned a wide range of technologies, with a concentration on computer software, electronics and medical devices.

Brian has litigated over 125 patent cases, most as lead counsel, handling all aspects of litigation from complaint to trial and appeal. He has led—and won—several jury trials and arbitrations. Brian has also argued and won several patent cases to the Court of Appeals for the Federal Circuit. He has represented such companies as Cisco, VMware, AT&T, Dell EMC, SharkNinja, Verizon, Daimler, Sprint, Rubrik, Sophos, Philips Electronics, Google, Gemalto, Nespresso, Acushnet, Eleka, NXP Semiconductors, ARM, Eurocopter and MicroStrategy.

Brian also has substantial experience handling Patent Office validity proceedings including inter partes review and post grant review petitions, most often in parallel with ongoing high-stakes litigation. His practice also includes strategic counseling and licensing related to intellectual property matters.

Consistently recognized as a leading patent lawyer, Brian's awards and accolades reflect his skills and accomplishments. In 2024, *Managing IP* named Brian Rosenthal as Intellectual Property - Litigator of the Year for New York at its annual Americas Awards event, recognizing the biggest achievements and developments in the IP sector over the past year. *Chambers* recognizes Brian as a leading attorney in New York for Intellectual Property: Patent, where he has been ranked in their USA guide since 2023. A *Chambers* respondent reported "Brian really owns the courtroom and has great long-term vision." In 2023, *Law360* recognized Brian as an Intellectual Property MVP, an award featuring lawyers who "have distinguished themselves from their peers by securing hard-earned successes in high-stakes litigation, complex global matters and record-breaking deals." Brian was the exclusive recipient of *Lexology's* 2019 Client Choice award for Patents in New York, an award determined solely by client input. In nominating him for the award, clients described him as an "outstanding lawyer" who is "business minded" and "strategic," and one who is "extremely knowledgeable and thinks quickly on his feet." Others noted that "Brian is an effective communicator; he explains complex issues, both technical and legal, in a way that is easy to understand yet comprehensive." Earlier in his career, he was profiled as one of *Law360's* 2014 Rising Stars: Top Attorneys Under 40 in the Intellectual Property category. Brian has been recognized by *Super Lawyers* annually, as a "Rising Star" from 2013-2015, and a "Super Lawyer" from 2016-2024. He has also been recognized by *IAM Patent 1000* as a leading patent lawyer 2017-2024, and named an "Patent Star" by *Managing Intellectual Property* magazine 2021-2024.

Brian graduated *magna cum laude* from Cornell Law School and received his B.Sc.



Capabilities

Intellectual Property
Technology Litigation
Trade Secrets
Trials

Credentials

Education

Cornell University - 2000 Juris Doctor
University of Western Ontario - 1997
Bachelor of Science

Admissions

District of Columbia Bar
New York Bar

Honours in Computer Science, with a minor in Economics, with distinction, from University of Western Ontario.

Notable Engagements:

- VMware and Dell EMC: Lead trial counsel defending clients against plaintiff WSOU's \$435 million claim of infringement of three patents related to cloud computing. On third day of jury trial, won first ever directed verdict of non-infringement before Judge Albright in the Western District of Texas, leading to a complete defense victory.
- Cisco: Lead trial counsel against plaintiff Corrigent's \$350 million claim of infringement of four patents related to computer networking. Won summary judgment on three of the four asserted patents before trial, reducing trial demand to \$120 million. After all the evidence was in, won directed verdict of non-infringement, leading to complete defense victory. This was the third-ever such directed verdict before Judge Albright in the Western District of Texas.
- Cisco: Lead trial counsel against plaintiff WSOU's infringement case on five computer networking patents in Western District of Texas. Successfully obtained dismissal with prejudice of three of the five asserted patents and summary judgment of a fourth before trial, reducing trial damages demand to \$20 million. Won complete defense verdict of non-infringement, invalidity, and prior use on remaining patent after a one-hour jury deliberation. This marked the first known defense verdict on the prior use defense under 35 U.S.C. § 273(a) in the United States.
- Zhejiang Medicine Company and ZMC-USA: Lead trial counsel for ZMC against competitor Kaneka Corporation in 8-year patent infringement case involving dietary supplement coenzyme Q10. After two-week jury trial in Southern District of Texas, won verdict of non-infringement and complete victory.
- Gemalto: Lead trial counsel for Gemalto as against Merchant Customer Exchange in week-long arbitration over breach of a mobile payment platform contract. Won all of our client's requested relief: \$45.8 million (including attorney fees), resulting in complete victory.
- Changzhou Kaidi Electrical: Lead trial counsel for Changzhou Kaidi Electrical against Okin America involving claims of infringement of a linear actuator patent. After two-week jury trial in District of Maryland, won verdict of non-infringement and complete victory.
- SharkNinja: Lead trial counsel representing SharkNinja in the ITC against chief competitor iRobot's claims of infringement of five patents related to vacuum robots. Won Final Determination of no violation on four of the five patents, leading to an exclusion order that covers only a single obsolete feature of a discontinued product.
- Verizon: Second-chair trial lawyer for Verizon in \$845 million patent infringement claim by General Access. Obtained first-ever new trial on all issues for a defendant before Judge Gilstrap in the Eastern District of Texas. Argued and won IPR on lead patent the day before retrial began, leading to highly favorable settlement after the first day of the retrial.
- Dell EMC: Represented Dell EMC against plaintiff ACQIS in \$80M patent infringement case on 11 patents related to PCI Express in District of Massachusetts. Argued and won claim constructions across the board based on parallel IPRs, directly leading to summary judgment of non-infringement on all patents. Won exceptional case finding and attorneys' fees award of \$5 million.
- SharkNinja: Lead counsel for SharkNinja in wide-ranging set of cases against Dyson regarding hair care and vacuum patents. Dyson sought millions from our client related to a hair care patent and SharkNinja responded with its own cases including 5-patent ITC case and 8 patent District of Massachusetts case. Dyson counter-sued with 9 patent case in Eastern District of Texas. Served as global coordinating counsel of related litigations in Germany, France, UK, Singapore,

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Korea, Japan, Australia and China. Obtained very favorable settlement for our client on the eve of our ITC trial against Dyson.

- Google and Motorola: Represented Google and Motorola against BE Technology against its patent infringement claims involving cloud computing and targeted advertising. Led and argued inter partes review petitions invalidating all asserted claims of both asserted patents. Argued and won Federal Circuit appeal, resulting in complete victory.
- Dell EMC: Lead counsel for Dell EMC in 8-patent case filed by WSOU asserting infringement of networking patents. Obtained dismissal of all eight patents before trial.
- Philips: Represented Philips against Moddha Interactive in patent infringement and state law action. Dismissed all counts in District Court. Argued and won appeal to Federal Circuit, resulting in complete victory.
- Cisco: Lead counsel for Cisco in five patent case filed by Lionra in Eastern District of Texas. Won summary judgment of non-infringement before trial.
- SharkNinja: Lead counsel for SharkNinja in five-patent and false advertising litigation against competitor iRobot in district court. Argued and defeated iRobot's preliminary injunction motion based on alleged infringement of three asserted patents, and successfully stayed and dismissed remaining patents.
- StoneCastle: Represented StoneCastle Financial Corp. against Island IP's claims of patent infringement and trade secret misappropriation. Won a motion to dismiss all five asserted patents as ineligible under 35 U.S.C. § 101.
- Acushnet: Represented Acushnet against Callaway Golf in six-year litigation in which Callaway sought \$246 million in damages for alleged infringement of four golf ball patents. Argued and won inter partes reexaminations invalidating all four patents. Won verdict of invalidity of all four patents after two jury trials, resulting in complete victory.
- Gemalto: Lead counsel for Gemalto and its subsidiary against M2M Solutions in patent infringement claim related to two patents related to Machine-to-Machine communication. Argued and won key claim construction resulting in stipulation of non-infringement and dismissal of case.
- Google: Represented Google against BriteSmart and Patrick Zuili against patent infringement claims that Google's advertising systems infringed patents related to pay-per-click advertising systems. Filed and argued three Covered Business Method petitions before the Patent Trial and Appeal Board resulting in Final Written Decisions invalidating all asserted claims of all three patents.
- Gemalto: Lead counsel for Gemalto against KPN in patent infringement claim related to error detection in cellular communication standards. Argued and won judgment on the pleadings before ultimately settling the case on favorable terms.
- Gemalto: Lead counsel for Gemalto as third party in Court of Federal Claims patent litigation by SPA Syspatronic. Argued and won invalidity of key claims as indefinite, leading to favorable settlement.
- Google: Represented Google against buySAFE in its claim of infringement of an eCommerce patent. Invalidated buySAFE's patent under 35 U.S.C. § 101. Obtained affirmance from Federal Circuit in precedential opinion.
- ARM: Represented ARM against Nazomi's claim of infringement of patents related to Java acceleration of microprocessors. Obtained summary judgment of non-infringement, which was affirmed by the Federal Circuit.
- Rubrik: Represented Rubrik against competitor Actifio's patent infringement lawsuit in which Actifio asserted four patents related to data backup technologies. After Actifio filed preliminary injunction motion, deposed Actifio's expert, directly leading to Actifio dropping the preliminary injunction motion and dismissing the case.

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- AT&T: Represented AT&T in complex patent infringement case in which plaintiff Sol IP asserted 27 patents against LTE and WiFi technologies. Case settled favorably.
- Dell: Lead counsel for Dell in four patent case filed by Corrigent in District of Delaware. Successfully dismissed two patents pre-trial.
- Sophos: Lead counsel for Sophos in 20-patent case against Webroot and OpenText pending in Western District of Texas. Obtained significant case-narrowing order from Judge Gilliland, immediately followed by favorable settlement.
- Verizon: Representing Verizon against Headwater Research in patent case pending in Eastern District of Texas in which plaintiff seeks close to \$200M in damages.

Confidential Arbitration: Lead counsel in \$50M international arbitration related to computer networking patents, culminating in week-long hearing in New York. Decision pending.

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