quinn emanuel trial lawyers
quinn emanuel urquhart & sullivan, llp

Recent Appellate Representations

SUPREME COURT OF THE UNITED STATES:

- On behalf of our client **Samsung**, we obtained a landmark victory in *Samsung Electronics Co., Ltd. v. Apple Inc.*, the first design-patent case to reach the Supreme Court in over a century. A federal jury had awarded Apple $399 million—the entire profits on Samsung's accused Galaxy phones—for supposed design-patent infringement of certain narrow portions of an iPhone's appearance. After successfully petitioning for certiorari, we obtained a stunning 8-0 reversal vacating that award and adopting Samsung's argument that, in a multicomponent device, infringer's profits under Section 289 of the Patent Act are limited to profits from the component to which the patented design is applied. The high court win was one of the last chapters of the "smartphone wars" between Apple and Samsung, in which our firm represented Samsung in all trials and appeals. Earlier in this case, we overturned a different $382 million portion of the initial judgment, convincing the Federal Circuit to reverse all trade-dress dilution awards and to invalidate Apple's iPhone trade dresses.

- We successfully challenged a federal statute that made it harder for unwed U.S.-citizen fathers than unwed U.S.-citizen mothers to pass citizenship to a child born abroad, which the Supreme Court held unconstitutional under the Fifth Amendment's principle of equal protection in *Sessions v. Morales-Santana*.

- In a case *The New York Times* called "the most important business decision" of its Term, we won a landmark unanimous victory for **Shell Oil** in *Kiobel v. Royal Dutch Petroleum*, which held that the Alien Tort Statute (ATS), enacted by the First Congress in 1789, does not provide a cause of action in U.S. courts for alleged violations of international law that take place in foreign countries. The decision greatly curtails the availability of the ATS as a vehicle to sue corporations in U.S. courts for supposedly aiding and abetting foreign governments' wrongdoing.

- We obtained a 7-2 victory in the Supreme Court for **Roche** in *Bd. of Trustees of Leland Stanford University v. Roche Molecular Systems, Inc.*, which arose from a suit involving patents related to HIV treatment that had been developed in a collaboration between Stanford and Roche's predecessor. The Court sided with Roche, holding that it was a co-owner of the patents-in-suit and rejected Stanford's effort to void its contracts based on its receipt of federal funding, reasoning that the statute governing federal research funding does not give universities automatic ownership of patents.

- We secured a 6-2 victory for **Wyeth LLC** (part of Pfizer Inc.) in *Bruesewitz v. Wyeth*, which held that the National Childhood Vaccine Injury Act preempts state-law claims based on theories of defective design in governmentally-approved child vaccines. The decision has significant implications for public health, as it removes design-defect claims that would have increased manufacturers' costs and depressed vaccine supply and development.

- We won an 8-1 victory for **Shell Oil** in the Supreme Court in *Burlington Northern & Santa Fe Railway v. United States*, which greatly limited "arranger" liability under CERCLA and held that Shell could not be held liable as an arranger for shipping useful chemicals. The decision also clarified the standards for apportionment under CERCLA.

- We obtained a Supreme Court victory for Japanese ocean carrier **"K" Line** in *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*, which unanimously held that ocean carriers are not subject to regulation under the Carmack Amendment when they make intermodal shipments that travel both by sea and by land.

- In *Granholm v. Heald,* our lawyers obtained a 5-4 victory in the Supreme Court on behalf of **California vintners and Michigan consumers** challenging state laws imposing discriminatory restrictions on interstate shipments of wine. The Court held that the Twenty-First Amendment does not give states license to interfere with the national market in a way that violates the Dormant Commerce Clause.

- We have filed numerous *amicus curiae* briefs in Supreme Court business cases on behalf of such clients as the **Chamber of Commerce**, the **New York Stock Exchange** and **NASDAQ**, and, in patent cases, such clients as **Google**, **Cisco**, **Oracle**, **Red Hat**, **Symantec**, **Xilinx**, **Time Warner**, **AOL**, **Xerox**, **IAC/Interactive**, **Infineon**, **Chevron**, **Shell**, and **Affymetrix**.

- We have also filed *amicus* briefs *pro bono* in the Supreme Court on behalf of such clients as former members of Congress; the American Association of University Professors; the Anti-Defamation League; former Secretary of State Madeleine Albright; four former Secretaries of the Interior; the Attorneys General of twenty-seven States and the District of Columbia; and the Conference of Chief Justices.

STATE SUPREME COURTS:

- We obtained a complete appellate victory for **Southern California Gas Co. ("SoCalGas")** in one of the year's most-watched business cases in the California Supreme Court. In a unanimous decision, the court reaffirmed that California follows the economic loss rule, which holds that plaintiffs may not recover in negligence for purely economic losses caused by harm to third parties. The decision required dismissal of actions against SoCalGas for indirect economic harms to local businesses allegedly suffered when local residents relocated temporarily after a gas leak. The decision clarifies California tort law and eliminates the potential threat of billions of dollars in liability against California businesses for purely economic harm in mass disaster cases.

- We secured a 7-0 victory in the California Supreme Court for the **University of Southern California** in a decision holding that state trial courts have a duty to act as "gatekeepers" in excluding speculative and unreliable expert testimony, a decision that moves the California courts closer to the *Daubert* standard used in the federal courts—thereby reducing incentives for forum-shopping in cases involving expert testimony.

- We obtained a 5-0 decision from the New York Court of Appeals for an association of reinsurers vacating a summary judgment in a $400 million reinsurance case and holding that the "follow the fortunes" doctrine does not bar review of whether an insurer's allocation of a settlement to its reinsurers has an objectively reasonable basis.

- We represented then-**New York Governor David Paterson** and then-**Lieutenant Governor Richard Ravitch** in a victory *The New York Times* called "stunning," obtaining a 4-3 victory in the New York Court of Appeals holding that Mr. Paterson had the authority to appoint Mr. Ravitch Lieutenant Governor to fill a vacancy in that office created when Mr. Paterson assumed the Governorship.

- We represented the **National Resources Defense Council** and the **Public Utility Law Project** as *amici curiae* in the New York Court of Appeals in an action where a group of landlords challenged the New York City Water Board's ability to set rates for water usage. The Court adopted the argument that we (but neither of the parties) advanced, ruling that the Water Board had acted within its authority to set rates in ways that would aid low-income households, incentivize water conservation, and reduce stormwater runoff, an emerging and important environmental issue.

- We secured a 7-0 victory in the California Supreme Court for the **University of Southern California** in a decision holding that state trial courts have a duty to act as "gatekeepers" in excluding speculative and unreliable expert testimony, a decision that moves the California courts closer to the *Daubert* standard used in the federal courts—thereby reducing incentives for forum-shopping in cases involving expert testimony.

- We secured a unanimous win in the Delaware Supreme Court, which affirmed a complete defense verdict that we had obtained for **Athilon Capital** and its board of directors. In this bet-the-company case, Quadrant Structured Products (owned by Magnetar) had sought not only hundreds of millions of dollars and findings of breach of fiduciary duty against the members of the board as individuals, but also an order requiring Athilon to liquidate its assets and shut down its business. After our repeated victories, they obtained neither.

- We obtained a unanimous victory for **AIG** in the Delaware Supreme Court, which affirmed dismissal of a suit in which eight plaintiffs alleged AIG breached guaranteed investment contracts by triggering the contracts' event of default provisions.

- Representing **AIG** in a rare win for an insurer in the Supreme Judicial Court of Massachusetts, we successfully petitioned for review of, and then succeeded in reversing, an intermediate appellate court's decision that a "judgment" for purposes of a treble-damages statute includes not only the amount of a judgment but also accrued interest. The court unanimously adopted our interpretation of the statute and thus eliminated over a third of the judgment.

- We obtained a unanimous victory for **AIG** in the West Virginia Supreme Court, which vacated all that was left of a $58 million jury verdict in an environmental insurance coverage dispute. We had first challenged the underlying punitive damages and successfully reduced that verdict by $28 million on post-trial motions. Then, in a unanimous decision, the West

Virginia Supreme Court zeroed out the judgment, rejecting plaintiffs' argument that they were entitled to the remaining $30 million for alleged injuries to a corporation's shareholders. We thus made new law in West Virginia reinforcing the doctrine of corporate separateness.

LOWER FEDERAL AND STATE APPELLATE COURTS:

ANTITRUST

- Acting for a group of plaintiffs including the **City of Philadelphia** and **Prudential**, we played a leading role in obtaining a victory in the Second Circuit in antitrust litigation over financial institutions' manipulation of the U.S. Dollar London Interbank Offered Rate ("Libor"). The Second Circuit reversed a district court's dismissal of plaintiffs' antitrust claims, adopting our arguments and holding that even though the Libor-setting process was cooperative, Libor manipulation still constitutes horizontal price-fixing (a *per se* antitrust violation).

- Acting for **The Home Depot**, we had a central role in persuading the Second Circuit to overturn a $7.25 billion antitrust class-action settlement that had required more than 12 million merchants to release *all* current and future claims against Visa and MasterCard—without permitting merchants to opt out of that release. We convinced the Second Circuit that the class had been inadequately represented and that the insufficient relief and inability to opt out meant the settlement violated class members' due process rights.

- We obtained a unanimous win for **Samsung** in the Ninth Circuit in a case making significant new law on the antitrust statute of limitations. We took over the case after the district court had dismissed Samsung's antitrust claims as untimely. On appeal, the Ninth Circuit reversed and reinstated the claims, holding that the imposition of new anticompetitive royalties restarted the statute of limitations under the "continuing conspiracy" doctrine even if other anticompetitive royalties had been imposed outside the limitations period.

ARBITRATION LAW

- We represented **Wellquest International, Inc.** in an appeal from an order denying a motion to compel arbitration. The arbitration provision at issue covered only claims "arising out of or related to" plaintiff's contractual right to an audit for unpaid royalties, and because plaintiff had never initiated an audit, the trial court denied arbitration for claims for unpaid royalties. We persuaded the California Court of Appeal to reverse, holding that the claims were still "related to" the audit clause and had to be arbitrated.

- We represented the **Abu Dhabi Investment Authority** in an arbitration arising from a $7.5 billion investment in Citigroup. While Citigroup asked the district court to enjoin the arbitration on res judicata grounds, both that court and the Second Circuit on appeal rejected Citigroup's arguments—siding with us and ADIA and holding that the preclusion issue must be decided by the arbitrators in the first instance.

- We represented **Ortho-McNeil**, a subsidiary of **Johnson & Johnson**, in a unanimous Seventh Circuit victory that made new law narrowing "manifest disregard of the law" as a ground for district court vacatur of arbitral awards and reversed a partial vacatur of an award that had favored Ortho in a patent dispute.

- We obtained a victory for **Sequus Pharmaceuticals**, another subsidiary of **Johnson & Johnson**, persuading the Ninth Circuit to issue a decision that strengthened protection of foreign arbitral awards by holding that the removal provision of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards should be construed broadly to prevent state-court end runs around foreign arbitration.

- We represented Koch Industries' **INVISTA** subsidiaries in obtaining dismissal of an appeal by French chemicals firm Rhodia S.A, which had attempted to obtain a stay of litigation in favor of a foreign arbitration involving two Rhodia affiliates and one of the three INVISTA plaintiffs. The Third Circuit's decision allowed INVISTA's claims against Rhodia over rights to an important nylon process to move forward in Delaware state court while the foreign arbitration proceeded.

BUSINESS CONTRACTS AND TORTS

- We achieved a complete victory in the New York Appellate Division, First Department, for our Spanish construction firm clients **Cointer Concessiones** and **Grupo Azvi** in their claims for gross negligence against Scotiabank Capital Markets and The Bank of Nova Scotia relating to a botched financial model that cost our clients tens of millions of dollars. Given the high standard for proving gross negligence, the court dismissed the claim on the pleadings in 2013; we appealed and had the claim reinstated in 2015. Following the completion of fact and expert discovery, the defendants moved for, and the court granted, summary judgment in 2018. We appealed again, and the Appellate Division again agreed with our arguments and reinstated the claim. The case will now proceed to trial.

- We achieved a remarkable across-the-board victory for the **Federal Housing Finance Agency**, as Conservator for Fannie Mae and Freddie Mac, in the Second Circuit, which affirmed our $800+ million trial win against Nomura and RBS. In an exhaustive, 147-page opinion, the court found "no merit in any of Defendants' arguments." Because FHFA had settled related cases, the decision vindicated our years-long litigation strategy as precedent, helping set important standards for securities markets.

- We represented **Financial Guaranty Insurance Company** in a case relating to a $900 million insurance policy on a credit default swap referencing a $1.5 billion collateralized debt obligation. We obtained a complete reversal from the Second Circuit of the district court's order dismissing the complaint for failure to state a claim, protecting our client's right to pursue its claims for fraud, negligent misrepresentation, and negligence.

- We obtained a complete reversal of a $115 million judgment entered against our client **Samsung** before we were retained for the appeal. We persuaded a unanimous New York Appellate Division, First Department, that the contracts at issue unambiguously permitted

Samsung to terminate its participation in a patent pool when it did, which led the court to vacate the award and dismiss all of the patent pool administrator's claims.

- We won a Second Circuit victory for **Allegheny Energy** that not only overturned a $158 million judgment against Allegheny but also reinstated $350 million in counterclaims that Allegheny had asserted against Merrill Lynch. On remand, we took over as trial counsel for Allegheny and secured a favorable settlement.

- We obtained a $70 million post-trial victory, affirmed on appeal to the Federal Circuit, in a fraud case based on allegations that our client **Cisco** had delayed telling plaintiff XpertUniverse that a partnership application had been denied. After a jury awarded $70 million in damages, Cisco retained us for post-trial motions and appeal. We persuaded both the district court and the Federal Circuit that the evidence had been insufficient to support the award, and thus to enter and affirm judgment as a matter of law for Cisco.

- We represented **Cointer Chile** and **Azvi Chile** in its appeal of the dismissal of a breach of contract claim seeking over $80 million in damages based on Scotiabank's alleged gross negligence in preparing a financial model, and persuaded the New York Appellate Division, First Department to reverse the trial court's decision and reinstate the claim.

- We represented **Dr. Enrico Bondi** (Extraordinary Administrator for the former Parmalat companies) in a case involving accounting malpractice by former auditor Grant Thornton. After the case, which was originally filed in Illinois state court but was removed to federal court, initially resulted in a summary judgment in favor of Grant Thornton, we persuaded the Second Circuit to reverse, and to order that the case be remanded on abstention grounds. When the federal district court in Illinois declined to follow that instruction, we again successfully appealed—this time to the Seventh Circuit, which reversed and definitively ordered remand to state court for the proceedings to restart on a clean slate.

- We obtained a unanimous victory for **AIG** in the U.S. Court of Appeals for the Second Circuit in a suit against Bank of America and other banks for fraudulent RMBS practices. The defendants had removed AIG's state-court claims to federal court, basing federal jurisdiction on the fact that a few underlying mortgages had been executed in Guam and other insular territories. The Second Circuit reversed, holding in a case of first impression that the Edge Act confers federal jurisdiction only in suits that arise out of offshore banking or foreign financial transactions by a federal banking corporation that is party to the suit. The cases thus returned to state court and were ultimately successfully settled.

- The New York Appellate Division affirmed our win on a motion to dismiss a complaint brought by actor Harvey Keitel against firm client **E*TRADE**. Keitel had sued E*TRADE for $1.5 million because it decided not to use him in an ad campaign after its ad agency had sent his agent a term sheet, which it referred to as a "binding offer." We convinced both the trial and appellate courts that no valid and binding contract was ever formed.

- We obtained a win for **GFI Group** on an appeal to the New York Appellate Division, First Department in an employment action that involved breaches of restrictive covenants in a former senior manager's employment agreement. The trial court granted the manager

summary judgment both on his claims and on GFI's counterclaims, but after GFI retained us to lead its appeal we persuaded the First Department to vacate the summary judgments and to remand for trial.

- We obtained a unanimous victory for our client **Pinterest** in the New York Appellate Division, First Department, which affirmed the dismissal of all claims asserted against Pinterest in its very first lawsuit, a trade-secret case in which the plaintiff alleged that he had come up with the idea for the wildly successful Pinterest website only to have it misappropriated by Pinterest's first investor. The decision adopted our arguments in explaining that the plaintiff failed to state claims for aiding and abetting breach of fiduciary duty, trade-secret misappropriation, unjust enrichment and unfair competition.

- We obtained a victory in the Second Circuit for **EQUATE Petrochemical Company**, a Kuwaiti firm, in a contract dispute filed by Continental Industries Group. The district court dismissed the case on the pleadings for lack of personal jurisdiction. The Second Circuit unanimously affirmed, finding no general or specific jurisdiction over EQUATE and holding that Continental was not entitled to jurisdictional discovery.

CONSTITUTIONAL LAW AND CIVIL RIGHTS

- We obtained a unanimous decision from the D.C. Circuit, which reversed a district court that had refused, on statute-of-limitations grounds, to enter a default judgment against Iran for its role in sponsoring Al Qaeda's attack that killed the family member of our clients – alongside scores of others – working at the U.S. Embassy in Kenya in 1998. This decision should clear the way for our clients now to recover fair compensation (from a fund Congress has established for this purpose) for Iran's demonstrated state sponsorship of the terrorist attack that claimed the life of their loved one.

- We represented the **Kamehameha Schools**, the world's largest private K-12 educational trust, obtaining an 8-7 *en banc* victory in the Ninth Circuit that held that the schools do not engage in "race discrimination in contracting" in violation of 42 U.S.C. § 1981 by giving an admissions preference to the Native Hawaiian schoolchildren for whose benefit they were founded by one of Hawaii's last monarchs.

- We obtained a unanimous *pro bono* victory in the Second Circuit in an appeal involving the Individuals with Disabilities in Education Act. Because our client had not been able to pay the tuition for the private program in which she had placed her severely autistic daughter up front, the district court had refused to require the NYC Department of Education to pay the tuition. The Second Circuit reversed in a 50-page opinion, holding that the "IDEA promises a free appropriate education to disabled children without regard to their families' financial status."

- In a *pro bono* case representing Latino plaintiffs who alleged that the mobile home park in which they live violated the Fair Housing Act ban on race discrimination by requiring occupants to prove their legal status, we persuaded the Fourth Circuit to reverse both the district court's dismissal of one theory and its grant of summary judgment to the park's owner on another. The Fourth Circuit held that because the documentation policy

threatened a disproportionate number of Latino tenants with eviction, our clients had stated a claim for an FHA violation, rejecting the district court's "grievous error" of ruling that there could be no violation because the policy targeted residency status instead of our clients' identity as Latinos.

COPYRIGHT

- We obtained a unanimous Second Circuit win for **Vimeo,** a video-hosting website, in major record labels' suit for copyright infringement based on music in user-uploaded videos. After the district court granted Vimeo only partial summary judgment based on its ruling that the safe harbor provisions of the Digital Millennium Copyright Act do not apply to pre-1972 sound recordings and that questions of fact remained about Vimeo's knowledge, we successfully petitioned for a rare interlocutory appeal. We then convinced the Second Circuit that the DMCA safe harbor *does* apply to pre-1972 sound recordings, that mere awareness of a "famous" song in a video cannot confer "red flag" knowledge, and that Vimeo was not willfully blind to the alleged infringement.

- We represented the **Baltimore Ravens** and the **NFL** in a copyright case filed by the designer of the Ravens' inaugural but since-changed "Flying B" logo. We persuaded both the district court and a unanimous Fourth Circuit that the challenged documentaries and photographic displays used the logo "as part of the historical record" and therefore constituted fair use regardless of any commerciality, market usurpation, or other factors that might have supported the plaintiff's position. The court also provided a strong defense of the First Amendment value of the fair use doctrine.

CRIMINAL LAW

- We obtained reversal in the Second Circuit of our client's individual white-collar conviction on charges of violating the Iranian trade embargo and operating an unlicensed money transmitting business based on his receipt of family funds sent from Iran through an informal money transfer system called a hawala. The court held that the ITR do not unambiguously prohibit non-commercial remittances, including family remittances, between the United States and Iran, and that the district court had erred by improperly equating operation of a hawala with operation of a money transmitting business. On remand, we convinced the Government to dismiss the remaining charges.

- We represented **Adam Miranda**, an inmate who had been on death row since 1982. After two decades of post-judgment litigation, we persuaded the California Supreme Court to grant a writ of habeas corpus vacating the death penalty imposed on Mr. Miranda based on exculpatory evidence that the prosecution failed to produce. Although the Court ordered a new penalty phase, the State declined to again seek the death penalty.

ENVIRONMENTAL LAW

- We convinced the Fourth Circuit to affirm the dismissal of three consumer class and mass actions against **Hyundai Motor America, Inc.** and a number of Virginia-based Hyundai dealerships arising from facts relating to the Environmental Protection Agency's imposition

of civil fines on Hyundai for asserted Clean Air Act violations involving the method used to calculate vehicle mileage estimates for Elantra model years for 2011-2013.

- We won a major federal preemption decision for **Entergy** in the Second Circuit, which held that the Atomic Energy Act barred Vermont's effort to prevent continued operation of the Vermont Yankee plant for reasons of nuclear safety. After prevailing in a bench trial by demonstrating that state lawmakers had acted with a purpose to regulate nuclear safety (a field reserved to the federal government), we successfully defended that victory on Vermont's appeal to the Second Circuit, securing a unanimous affirmance.

- We also represented **Entergy** before the Vermont Supreme Court, obtaining dismissal of an original complaint seeking a shutdown of the Vermont Yankee Nuclear Power Station, on grounds that no equitable grounds for relief existed.

- We obtained *five* significant Ninth Circuit victories for **Shell**, defeating petitions for review challenging the Bureau of Ocean Energy Management's approvals of Shell's plans for gas and oil exploration in Alaska's Camden Bay and Chukchi Sea and related challenges to EPA's issuance of Clean Air Act permits. The court held, among other things, that the agencies were entitled to significant deference when interpreting the relevant statutes, interpreting their own regulations, and making technical and scientific assessments.

- We represented the **Alliance of Automobile Manufacturers** in one of the highest-stakes appellate and environmental litigation matters in years, helping to obtain a ruling in the D.C. Circuit that nationwide greenhouse gas emission standards for automobiles, on which our client had already relied in constructing their 2012 model year fleet, would survive a challenge from a host of states and other industry groups.

GOVERNMENT AND REGULATORY LAW

- We represented the **Metropolitan Water District of Southern California** in a successful appeal of a decision invalidating its rates for the conveyance of water and awarding the rate challenger, the San Diego County Water Authority, more than $235 million in damages for breach of a contract to charge a lawful conveyance rate. On the central issue in dispute, we obtained a complete reversal in a decision upholding key components of Metropolitan's rate structure and reducing the monetary judgment by 85%.

- In a major victory for **PG&E** in the California Court of Appeal for the Third District, we greatly limited California utilities' litigation exposure from wildfires by eliminating the threat of punitive damages for the 2015 Butte Fire. The court held that, in light of PG&E's extensive vegetation management program along its 135,000 miles of powerlines, PG&E could not possibly be found to have consciously disregarded the risk of tree-related wildfires. In addition to saving PG&E from potentially billions of dollars in punitive damages, the decision creates important new California law protecting companies that institute risk management programs from the threat of such damages.

- In a significant win for our client, **Postmates Inc.**, we convinced the New York Appellate Division, Third Department, to hold that its couriers are independent contractors rather

than employees. This issue—independent contractor vs. employee status—has particular significance to individuals and companies that are part of the "gig economy" and rely on the flexibility and efficiencies offered by the independent contractor model.

INSURANCE

- We represented subsidiaries of **AIG** in successfully persuading the U.S. Court of Appeals for the Second Circuit to reverse a $34 million judgment after jury trial in a reinsurance dispute. After a jury had found AIG liable for fraudulently inducing the plaintiff to enter into six reinsurance agreements, the district court had rescinded the agreements and ordered AIG to pay over $34 million, including $5.75 million in punitive damages. Taking the unusual step of overturning a jury verdict, the Second Circuit unanimously reversed, holding that the claims were barred by the statute of limitations because the plaintiff reinsurer was on notice of key facts from which it could have inferred its claims years prior to filing suit—including from the terms of a contract it had signed but claimed not to have read.

- We obtained a win in the California Court of Appeal for **QBE Insurance (Europe) Limited** and **Beazley Syndicate 2623/623 at Lloyd's**, securing reversal of a $12 million judgment. The two insurers had issued policies that were initially found to cover losses to restaurants related to feared contamination of fresh spinach; we persuaded the Court of Appeal that the plaintiffs had not shown that the losses were caused by conduct covered by the policies, as opposed to market-wide events.

PATENTS

- We successfully defended **SemaConnect, Inc.** in a patent infringement lawsuit brought by one of its competitors, ChargePoint, Inc. SemaConnect won a contract to install electric vehicle charging stations as part of the $15 billion settlement of Volkswagen's vehicle emissions scandal. We successfully sought and obtained dismissal of ChargePoint's complaint at the pleading stage on an expedited schedule. ChargePoint appealed the district court's decision to the Federal Circuit, which affirmed our victory in a precedential decision.

- We obtained an important victory for **The Broad Institute, Inc.** in a patent interference suggested by the University of California and Emmanuelle Charpentier challenging key Broad patents directed to use of CRISPR in eukaryotic cells, humans, other mammals, and plants. CRISPR technology has been widely hailed in the press as one of the most important scientific breakthroughs of this century. We first prevailed in the PTAB, which declared there was no interference in fact and dismissed the interference with our client's patents. We then prevailed in the Federal Circuit, which unanimously affirmed the PTAB's ruling. The court held that patents and applications of Broad Institute and the University of California are about different subjects and do not interfere with each other. This significant win helps protect the Broad's patents and allows it to continue its groundbreaking research in this critically important area.

- We achieved a significant appellate victory for our long-time client **Merck** (US) in connection with its NuvaRing® contraceptive product, convincing the Federal Circuit to

reverse the district court's finding that Merck's patent covering NuvaRing® was obvious. The decision prevents generic competition for NuvaRing® until after the patent expires.

- We represent **Olaplex** in a patent infringement case against the cosmetic conglomerate, L'Oreal. On a motion for preliminary injunction, the district court misconstrued a critical claim term and denied Olaplex's preliminary injunction. On appeal, the Federal Circuit entirely agreed with Olaplex's construction of the claim term, vacated the denial of the preliminary injunction, and remanded the case for further proceedings.

- For our client **IBM**, we obtained a complete affirmance in the Federal Circuit of favorable claim construction rulings that resulted in a stipulated judgement of invalidity of all patent claims plaintiff Twin Peaks Software Inc. had asserted against IBM's newest distributed storage products.

- We represented **Marvell Technology Group** in its appeal from the largest patent infringement verdict in U.S. history. The Federal Circuit sided with Marvell in reversing the district court's finding of willful infringement, and vacating $1.25 billion in damages based on the rule against extraterritorial application of U.S. law.

- We obtained a complete reversal in the Federal Circuit of an $85 million judgment of patent infringement against **Google**. Plaintiff SimpleAir, Inc. had sued Google, Microsoft, and numerous other providers of smartphones and software, claiming its patents covered the technology used to send notifications to mobile devices. Google, while represented by previous counsel, had been found by two juries to infringe and to owe $85 million in royalties. On our successful appeal, the Federal Circuit reversed the district court's key claim construction ruling.

- We represented **Google**, **AOL**, **IAC**, **Target**, and **Gannett** in litigation accusing Google's AdWords and AdSense systems of patent infringement. We obtained reversal of a jury verdict of infringement and validity and an award of $30.5 million in damages. The Federal Circuit held that all of the asserted patent claims invalid for obviousness.

- We represented **TransWeb** in obtaining a unanimous and full Federal Circuit affirmance of our successful defense of patent infringement claims asserted by 3M and pursuit of antitrust counterclaims. We had previously obtained a unanimous jury verdict that 3M's patent claims were invalid, not infringed, and (in an advisory verdict the district court adopted) unenforceable due to inequitable conduct. The jury also found, and the Federal Circuit affirmed, that 3M violated the antitrust laws by attempting to enforce fraudulently obtained patents, awarding approximately $26 million in lost profits and trebled attorneys' fees as antitrust damages.

- We represented **Motorola** in a suit against Apple in which each party accused the other of infringing patents considered essential to the practice of cellular and wifi standards. Sitting by designation in the district court, Seventh Circuit Judge Richard Posner granted summary judgment concerning some patents and dismissed the remaining claims on the ground that both sides' damages experts had been excluded and that injunctive relief was not available. On appeal, the Federal Circuit affirmed several favorable claim constructions, reversed the

exclusion of Motorola's primary damages expert, and held (in accord with our legal argument) that there is no *per se* rule barring injunctions for standards essential patents.

- We secured a key victory in the Federal Circuit for our client **Avanir Pharmaceuticals, Inc.**, an innovator pharmaceutical company, in a "bet-the-company" Hatch-Waxman patent litigation relating to Avanir's flagship Nuedexta® product. The district court ruled in Avanir's favor, which allowed patent protection for Nuedexta® until 2026. Our adversary appealed, but we persuaded the Federal Circuit to affirm the judgment—in a summary Rule 36 order issued on the next business day after oral argument.

- We represented **The Dow Chemical Company** in a Federal Circuit appeal of a jury verdict we obtained in Dow's favor in a patent infringement litigation against Nova Chemicals Corp. and Nova Chemicals Inc. Including prejudgment interest, Dow was awarded $76 million in damages. The Federal Circuit affirmed the judgment in Dow's favor, and the Supreme Court denied Nova's petition for a writ of *certiorari*.

- We also represented **Dow** in a separate but related action, in which Nova raised allegations of perjury and falsified evidence in order to accuse Dow and its counsel of obtaining the earlier infringement judgment through fraud. We convinced the district court to dismiss Nova's complaint with prejudice, and persuaded the Federal Circuit to issue a summary Rule 36 affirmance. We subsequently convinced the Federal Circuit to affirm an award of attorneys' fees against Nova under Section 285 of the Patent Act.

PRODUCTS LIABILITY

- We convinced an appellate court to affirm summary judgment for our client **Coty**, a former Pfizer division, in an asbestos-related personal injury case. The court's ruling that plaintiff's expert's test results were properly excluded because the plaintiff failed to establish an adequate chain of custody for the talc sample tested, which might have been contaminated when used around other products alleged to contain asbestos, makes it more difficult for plaintiffs to present direct evidence of exposure in asbestos contamination cases. Similar cases that have proceeded to trial have resulted in 8-figure verdicts.

- We represented **Colgate-Palmolive Co.** in an appeal to the Fourth Circuit challenging the denial of Colgate's motions to vacate orders remanding two asbestos-related cases to state court. The Fourth Circuit, sitting *en banc*, agreed with our argument that 28 U.S.C. 1447(d)'s prohibition on "review" of remand orders does not preclude "vacatur" of a remand order pursuant to Fed. R. Civ. P. 60(b)(3) due to fraud or other misconduct in procuring that order. This ground-breaking decision provides a powerful new tool for the defense bar and ensures that federal courts are not impotent when plaintiffs and their counsel employ misconduct to avoid federal jurisdiction.

TRADEMARKS AND TRADE SECRETS

- We represented **The Dow Chemical Company** and **Rohm and Haas** against Turkish chemical company Organik Kimya in the International Trade Commission, alleging infringement of two patents and misappropriation of numerous trade secrets. After we

uncovered evidence of massive spoliation, including the intentional destruction of up to 600,000 files in violation of the ALJ's orders, the ITC entered default judgment in favor of a claimant based on a respondent's spoliation for the first time in its history. We also obtained an unprecedented 25-year exclusion order and recovery of almost $2 million in sanctions. The Federal Circuit affirmed, holding that the Commission can issue default judgment sanctions as a penalty and to deter future parties from repeating such conduct.

- We represent a Russian government agency, **Federal Treasury Enterprise Sojuzplodoimport (FTE)**, which seeks to establish that it is rightful owner of the world-famous Stolichnaya trademarks. After the district court ruled that the Russian Government's assignment of its ownership interests to FTE violated Russian law and therefore dismissed FTE's trademark infringement claims for lack of standing, we obtained unanimous reversal and reinstatement from the Second Circuit, which held that the district court violated principles of international comity and the act of state doctrine by even considering the validity of the Russian Government's actions under its own law.

- On behalf of **Mattel**, we obtained a complete reversal in the Ninth Circuit of a $172.5 million judgment entered against Mattel following a jury verdict on a trade-secrets misappropriation claim raised by toy company MGA Entertainment. The Ninth Circuit agreed with Mattel that MGA's trade-secrets claim, which was raised as a "counterclaim-in-reply," was procedurally barred because it was not a "compulsory" response to any claim Mattel had raised, and therefore "should not have reached this jury."

- We obtained a significant victory for **Moldex-Metric, Inc.** in a trademark dispute over lime-green colored ear plugs, convincing the Ninth Circuit to vacate the grant of summary judgment to McKeon Products and holding that functionality of the lime green color must be resolved at trial. This was our second Ninth Circuit victory in this case, having previously convinced the court of appeals to vacate an earlier summary judgment ruling on functionality as well.

BANKRUPTCY APPEALS

- We obtained a victory in for our clients **Len Blavatnik** and **Access Industries** in the Southern District of New York, which overwhelmingly affirmed the bankruptcy court's trial decision in a case where a Litigation Trustee had sought billions of dollars from our clients relating to the 2009 bankruptcy of LyondellBasell Industries, Inc. The bankruptcy court dismissed some of the Trustee's claims before the multi-week trial, after which it again ruled in our clients' favor, awarding the Trustee only about $7 million. On appeal, we convinced the district court to largely affirm the bankruptcy court's pre- and post-trial decisions.

- On behalf of our client, **G-I Holdings**, we won affirmance in the Third Circuit of the bankruptcy court's dismissal of an adversary proceeding filed by the New York City Housing Authority ("NYCHA"). The complaint sought to compel G-I to remove asbestos-containing materials from NYCHA's buildings, a $500-$600 million task. NYCHA sought to circumvent G-I's bankruptcy reorganization plan by arguing that its injunction claim was for equitable relief and not discharged under the bankruptcy code or G-I's plan. But we

persuaded the Bankruptcy Court, the District Court, and finally the Third Circuit that NYCHA's claim was ineligible for any exception to the discharge.