



## Merritt D. Westcott

Partner

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## PRACTICES

Commercial Litigation

Healthcare

Intellectual Property

Intellectual Property Litigation

## INDUSTRIES

Energy

Food & Beverage

Life Sciences

Merritt is a first-chair patent litigator who represents clients in a wide variety of technologies and industry sectors, with a concentration in biotechnology. For more than 20 years, clients have relied on her ability to explain complex scientific and technical issues while also focusing on their business objectives.

Merritt has litigated biotech patent disputes involving genetically engineered crops and food products, monoclonal antibodies, blood cell controls, clinical medical products and devices, and traditional and biosimilar pharmaceuticals under the Hatch-Waxman Act and the BPCIA. She has also litigated complex patent disputes involving oil and gas exploration technology, mass storage systems, telecommunications, computer software, cloud-based CPaaS platforms, methods of manufacturing, food processing, geofencing technology, and steel sheet piling systems.

Merritt handles all aspects of litigation, including pretrial, trial, post-trial, and critical motions. She also counsels clients on patent and IP strategy, pre-suit investigations, due diligence, freedom to operate and proceedings before the Patent Trial and Appeal Board (PTAB).

She holds a Master's degree in genetics and molecular biology and prides herself on providing excellent client service.

## EXPERIENCE

- Represented generic pharmaceutical manufacturer in Hatch-Waxman litigation regarding client's ANDA to make a generic version of the oral solution Xywav® (calcium, magnesium, potassium, and sodium oxybates) (D.N.J.).
- Represented generic pharmaceutical manufacturer in Hatch-Waxman litigation regarding client's ANDA to make a generic version of the oral contraceptive Slynd® (progstin-only oral contraceptive) (D.Del.).
- Represented generic pharmaceutical manufacturer in Hatch-Waxman litigation regarding client's ANDA to make a generic version of the drug Biktarvy® (Bictegravir/emtricitabine/tenofovir alafenamide), vindicated for the treatment of HIV/AIDS (D.Del.).
- Represented generic pharmaceutical manufacturer in Hatch-Waxman litigation regarding client's ANDA to make a generic version of the oral contraceptive Balcoltra® (D.Del.).
- Represented a major telecommunications company in multiple patent litigations relating to text messaging and wireless emergency alert technology (E.D. Tex.)(W.D. Tex.)

- Represented oil and gas company in several patent infringement disputes against infringing competitors in the fracking industry, resulting in favorable settlements and numerous license agreements.
- Represented a large oil field services company in a complex contract litigation regarding “take-or-pay” fracking proppant contracts.
- Represented generic biosimilar pharmaceutical company in BPCIA case involving a TNF-alpha inhibitor.
- Represented branded manufacturer of pharmaceutical treating bone resorption in a Hatch-Waxman case against generic.
- Represented a generic pharmaceutical company in a Hatch-Waxman case involving a drug used to treat various types of blood cancer.
- Successfully defended client who provided a cloud-based CPaaS Platform for mobile dial codes in an antitrust case against Plaintiff’s claims that the defendant’s actions violated Sections 1 and 2 of the Sherman Act.
- Represented a subsidiary of a major steel manufacturer in a long-running feud with a competitor over our client’s patented method of manufacturing sheet pile wall components. Our client won a declaratory judgment on the patent claims, as well as other Lanham Act and unfair competition claims. A previous summary judgment ruling in this case had handed our client a victory on noninfringement.
- Served as appellate counsel before the Federal Circuit, which affirmed a Nebraska district court’s decision in a patent suit finding that scientists of the client invented an integrated hematology control product before scientists from its competitor.
- Represented a healthcare equipment manufacturer in a patent action regarding determination of priority of invention. Client was awarded priority of invention, reversing previous ruling to the contrary by the United States Patent and Trademark Office Board of Patent Appeals and Interferences.
- Acted as trial counsel representing patentee in infringement case regarding hematology control products.
- Obtained summary judgment of infringement and subsequent verdict finding patents valid following a two week jury trial.
- Served as lead counsel defending a patent infringement suit related to methods of food pasteurization. Patentee dismissed case with prejudice and disclaimed the patent in suit with the USPTO.

- Acted as counsel in a patent infringement action regarding hematology instruments. The case was favorably settled during trial.
- Served as counsel in a multiple patent infringement case involving magnetic tape storage device and media. The case was favorably settled during trial after a successful preliminary injunction hearing.
- Served as counsel in a patent infringement case regarding a BST (bovine somatotropin) formulation and processes for purification of protein, resulting in a favorable settlement.
- Represented the defendant in the U.S. District Court for the Northern District of California in a patent infringement suit related to methods of making and using bovine growth hormone.
- Represented the plaintiff in the U.S. District Court for the Eastern District of Missouri in a patent infringement suit relating to methods for detection of intron DNA sequences.

## EDUCATION

- University of Houston Law Center, JD, cum laude, 2000
- The University of Texas at Austin, MS, summa cum laude, 1997
- Texas Christian University, BS, cum laude, 1995

## ADMISSIONS

- Texas
- U.S. Court of Appeals for the Federal Circuit
- U.S. District Court for the Western District of Texas
- U.S. District Court for the Eastern District of Texas
- U.S. District Court for the District of Nebraska

## HONORS

- Recognized by *IAM Patent 1000*, 2023
- Selected as a Rising Star for Intellectual Property Litigation, *Super Lawyers*, 2008-2009, 2011-2013

## PUBLICATIONS

- Author, "Think Hard Before Threatening: Wording Cease and Desist Letters", *Houston Business Journal – Business Survival Guide*, May 1, 2005

## AFFILIATIONS

- Member, American Bar Association

- Member, American Intellectual Property Law Association
- Member, Houston Bar Association
- Member, Houston Intellectual Property Law Association
- Member, Houston IP Inns of Court