

# Fisher Broyles

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**Practice Areas:** Intellectual Property; International Disputes; International Trade; Patents; Strategic IP Counseling; Technology; Trade Secrets

**Bar Admissions:** District of Columbia; Maryland

**Education:** University of Pennsylvania, JD, 1997; University of Pennsylvania, BA, 1994

**Experience:** Winston & Strawn; Finnegan Henderson; United States International Trade Commission

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Paul is a leading Section 337 litigator before the U.S. International Trade Commission (ITC) and the current President of the ITC Trial Lawyers Association. Paul has a reputation for matching extensive knowledge of the ITC's practice and procedure with superior trial advocacy skills. Paul earned this reputation through his successful results as trial counsel in over 15 ITC trials and his involvement in over 45 ITC investigations. He also earned his reputation by starting at the beginning, with years of experience as the attorney-advisor to the ITC's Chief Administrative Law Judge Paul J. Luckern.

In 2020 and again in 2019, The Legal 500 recognized Paul for his "true ITC expertise" noting that he knows how to present cases "in the manner most conducive to success in this specialized area." IAM Patent 1000 recognized Paul in 2019 as being "as knowledgeable as they come on procedural and economic issues." IAM Patent 1000 has also recognized Paul for his top-end skills as an intellectual property litigator and singled him out nationally for his ITC work and highlighting his trial abilities noting an admiring client's comment that "Goulet is an agile thinker who can make tough decisions quickly."

Paul has an intense focus, diving deeply into the unique dispositive issues that the ITC will address, while at the same time advancing the client's litigation and business strategies. Paul is also known for making or breaking the ITC's case-dispositive "domestic industry" requirement, with extensive experience working with his clients, including foreign entities, to establish a domestic industry recognized by the ITC, and a proven ability to defeat his clients' adversaries claims of domestic industry. As a result, clients have achieved results that exceeded the original expectations of management and the public, even in the face of difficult challenges and fierce competition.

Paul has been a key participant in the global smartphone patent wars—having represented some of the world's leading handset manufacturers and network infrastructure makers in the ITC—but he has also worked on a wide variety of technologies, from laser diodes, integrated circuit chipsets and graphics rendering to medical imaging, wind turbines, bulk welding wire, and hybrid electric transmissions.

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In addition to his deep experience at the ITC, Paul has worked extensively with U.S. Customs and Border Protection, the agency charged with enforcement of the ITC's exclusion orders. He has not only filed ruling requests, but he is also skilled in working informally with Customs to secure enforcement against an adversary's infringing products and safe passage for his clients' redesigns.

### Representative Experience

- Favorable settlement as trial counsel for Ericsson on its patent portfolio against Apple, as reported in the press. See Reuters, Dec. 21, 2015, "Ericsson signs patent deal with Apple, shares soar." Ericsson was engaged in an extensive patent and licensing litigation that Apple began in 2015. In response, we brought two ITC actions for Ericsson to exclude Apple smartphones, tablets, computers, watches, and TVs from the United States. The patents covered features of LTE, GSM, Bluetooth, Wi-Fi, multiband cellular, Wi-Fi calling, touch screens, and smart batteries. Trial was completed in the first case in December 2015, and before a decision was reached by the judge, Apple agreed to a license. (337-TA-952; 337-TA-953)
- Favorable settlement for major memory manufacturer against Spansion/Cypress as trial counsel in two ITC actions involving flash memory. Spansion began litigation in 2013 and had obtained \$150 million from Samsung in settlement of prior ITC action concerning the same portfolio. In response, we brought an ITC action against Spansion on an expedited basis in 2014. Both cases were tried in October 2014. The decision by the judge in the case against Spansion was imminent when Spansion settled. As reported in its Form 10K dated Feb. 11, 2015, Spansion "made a cash payment to" our client, and Spansion's settlement costs were \$29.5 million. (337-TA-893; 337-TA-909)
- Served as trial counsel for HTC in an action to exclude Apple 4G LTE iPhone and iPad products. Tried the case in September 2012 after prevailing at Markman hearing in April 2012 on two patents directed at OFDMA. A decision was imminent when Apple settled. (337-TA-808)
- Won for Blackberry, as trial counsel, an ITC action brought by Kodak. Kodak had obtained almost \$1 billion from Samsung and LG after prevailing in a prior ITC action on the same patent. After trial and Markman hearing, Chief Judge Luckern held the Kodak patent invalid and that Blackberry smartphones did not infringe. The ITC issued a final determination in 2012. (337-TA-703)
- Served as lead trial counsel for Federal-Mogul Corporation against Valeo involving patents related to windshield wipers. Valeo settled on eve of Markman hearing. (337-TA-928)
- Served as trial counsel for Ericsson in ITC patent brought by Adaptix. Rather than respond to our motion for sanctions for Adaptix's lack of a good faith basis for asserting patent infringement, Adaptix withdrew its complaint before the hearing. (337-TA-871)

- Served as trial counsel for S3G in an action based on texture compression. The case was tried in March–April 2011 after prevailing at Markman hearing in November 2010. In 2011, the judge ruled Apple infringed two patents and recommended exclusion of unlicensed Apple Mac computers. Jurisdictional ruling was appealed and oral argument imminent when Apple settled. (337-TA-724)

### Publications and Presentations

- Moderator, “A Discussion With The Administrative Law Judges,” United States International Trade Commission Trial Lawyers Association Annual Meeting, November 13, 2020
- Speaker, “Establishing a Domestic Industry at the ITC,” ITCTLA and Philadelphia Intellectual Property Lawyers Association, September 17, 2019
- Speaker, “Litigating as a Downstream Respondent at the ITC,” ITCTLA and IP Section of State Bar of Georgia, May 2, 2019
- Speaker, “Licensee-Based Domestic Industry,” International Trade Commission Trial Lawyers Association annual meeting, November 15, 2018
- Co-author, “ITC Lowers The Bar For Section 337 Domestic Industry,” Law 360, October 29, 2018
- Commentary on Patent Litigation Best Practices: International Trade Commission Section 337 Investigations Chapter; The Sedona Conference Working Group 10 (WG10); Co-author, February, 2018
- “Case Studies and Discussion: Real World Examples of Using IP to Gain Competitive Advantage,” “How Japanese Companies Establish an ITC U.S. Domestic Industry,” and “Tools for Managing the Speed and Complexity of ITC Cases,” Winston & Strawn IP Business Strategy for Gaining Strategic Advantage in U.S. Markets – Tokyo Seminar, May 30, 2016
- “Case Studies and Discussion: Real World Examples of Using IP to Gain Competitive Advantage,” “How Taiwanese Companies Establish an ITC U.S. Domestic Industry,” and “Tools for Managing the Speed and Complexity of ITC Cases,” Winston & Strawn IP Business Strategy for Gaining Strategic Advantage in U.S. Markets – Taipei Seminar, May 27, 2016
- “Process and Strategy of Discovery in U.S. Litigation,” Multi-Discipline Management of Technology (MMOT) Intellectual Property Training Program, July 13-17, 2015
- “ITC Procedures—Panel Discussion,” Winston & Strawn Asia Executive Summit – Toyko Seminar, April 16, 2015

- “ITC Procedures—Panel Discussion,” Winston & Strawn Asia Executive Summit – Hsinchu Seminar, April 13, 2015
- “Demonstration of a Patent Valuation Program – Fact Pattern and Sample Patents and Economic Valuation,” Winston & Strawn Asia Executive Summit – Hsinchu Seminar, April 13, 2015
- “Demonstration of a Patent Valuation Program – Fact Pattern and Sample Patents,” Winston & Strawn Asia Executive Summit – Hsinchu Seminar, April 13, 2015
- “MOCK PRE-TRIAL—ITC Pre-Trial Strategies and Procedures: How to Work with Opposing Counsel, Review Objections, and Tailor your Approach to Specific ALJ Procedures,” American Conference Institute’s ITC Litigation & Enforcement Conference, Feb. 24, 2015
- Co-author, “An Option for Public Interest Fact Finding at the Commission,” 337 Reporter, 2010
- Co-author, “Requests to Stay ITC Investigations Pending Reexamination of the Patent-In-Suit,” 337 Reporter, Autumn 2008
- “Burden of Proof and the Defense of Independent Development in Trade Secret Litigation,” June 2003
- Co-author, “Unrecognized Risks of ITC Remedial Orders,” Managing Intellectual Property, Patent Yearbook, 2003
- Co-author, “Use of the International Trade Commission’s Evidentiary Record in a District Court Proceeding: The Mechanisms and Implications of Transfer of the Commission Record,” 337 Reporter, Winter 2003

### Honors, Awards, and Activities

- Recognized as a leading attorney in International Trade: Intellectual Property (Section 337) by Chambers USA since 2018
- Recognized in Patent Litigation: International Trade Commission by The Legal 500 US since 2016
- Recognized nationally in ITC litigation by IAM Patent 1000 since 2015
- President of the ITC Trial Lawyers Association (ITCTLA)
- Member of Hispanic National Bar Association (HNBA)