



INTELLECTUAL PROPERTY LITIGATION

BRINKS
HOFER
GILSON
& LIONE®

RECENT LITIGATION HIGHLIGHTS

Over time, an elite group of intellectual property firms has been sought for the enforcement and defense of intellectual property litigation. Brinks Hofer Gilson & Lione stands among the top tier of those firms.

Throughout our history, Brinks has specialized in intellectual property litigation. We not only know the law, but also our lawyers have helped to shape it in major decisions by the Supreme Court and the Federal Circuit Court of Appeals. We have developed a nationwide reputation as winning litigators. That is no coincidence, because our patent litigators have a science or engineering degree, and - together with our trademark litigators - bring unparalleled expertise and experience to bear on our clients' behalf.

The critical combination that Brinks lawyers bring to litigation is an understanding of technology, knowledge of the nuances of the law and the ability to communicate with lay people. This is borne out by Brinks attorneys' success in state and federal courts, where they have won substantial verdicts, as well as the International Trade Commission. In addition, Brinks attorneys have an excellent track record in negotiating the settlement agreements that terminate most intellectual property lawsuits.

ACTIVE LITIGATION MATTERS

Companies choose Brinks to represent them in their most important litigation matters. Our active litigation matters include the following cases:

- Brinks is representing several major pharmaceutical companies in Hatch-Waxman cases that involve drugs that generate billions of dollars per year.
- Brinks is representing a multi-national consumer products company in a federal antitrust case. The claimed damages exceed \$100 million.
- Brinks is representing a furniture manufacturer in multiple district court actions regarding its iconic and award-winning chair design.
- Brinks is representing a large consumer products company in more than 15 lawsuits relating to its intellectual property and non-competition agreements.

■ TRIALS AND HEARINGS

R.J. REYNOLDS TOBACCO COMPANY

Brinks represented R.J. Reynolds Tobacco Company in a patent infringement case brought against it by Star Scientific, Inc. in the District of Maryland. The case involved two patents for a method of substantially preventing the formation of tobacco-specific nitrosamines with Star Scientific requesting damages of more than a billion dollars. Brinks took the lead in a bench trial before the court that focused on the defense of inequitable conduct that Brinks developed during discovery. According to R.J. Reynolds, Star improperly attempted to procure patent coverage for old tobacco curing technology and, in the process, concealed that old technology from the Patent Office. On June 26, 2007, U.S. District Court Judge Marvin J. Garbis concluded that R.J. Reynolds won the trial and issued a 47-page written opinion holding that Star's patents were unenforceable for inequitable conduct in the Patent Office and entered final judgment that Star's patents were both unenforceable and invalid. As a result, after six years of litigation, all of Star's claims against R.J. Reynolds were dismissed. The final judgment incorporates earlier January 2007 rulings by Judge Garbis granting summary judgment in favor of R.J. Reynolds and deemed Star Scientific's patent claims invalid as fatally indefinite.

KIMBERLY-CLARK WORLDWIDE, INC.

The U.S. District Court for the Northern District of Georgia granted a permanent injunction in favor of Kimberly-Clark against ValuMax International, Inc. in a trademark infringement and dilution case involving color. The court ordered that ValuMax be permanently enjoined from using an orange color for its medical face mask product or from using any other mark that could cause confusion or dilute Kimberly-Clark's trademark-registered Color Orange. It further ordered ValuMax to destroy all medical face masks of an orange color similar to that used by Kimberly-Clark.

ZF FRIEDRICHSHAFEN A.G. AND ARVINMERITOR, INC.

Brinks represented ZF Friedrichshafen A.G. and ArvinMeritor, Inc. as respondents in a §337 patent infringement investigation before the International Trade Commission. The ITC granted our clients' motion for summary determination with respect to one of the six asserted patents and, at the patent owner's request, terminated the investigation for two other patents and several claims of the remaining patents. After a ten-day hearing on the merits, the Judge ruled in favor of our clients on all but one claim of one patent. When our clients designed around that claim, the Judge ruled in January 2006 that the redesign did not infringe, and the ITC adopted the ruling.

VISTEON CORPORATION

Brinks represented Visteon Corporation in a jury trial in Delaware. Visteon was accused of infringing two patents relating to catalytic converters. While the jury was deliberating, the parties reached an extremely favorable settlement agreement.

■ TROs AND PRELIMINARY INJUNCTIONS

TECHTRONIC INDUSTRIES, INC.

Brinks filed a patent infringement case in federal court in Chicago on behalf of Techtronic Industries (maker of Ryobi® tools) and Richard Pando. After expedited discovery and a series of hearings, Brinks won a preliminary injunction and secured a settlement to stop defendants from selling a laser level product with a motor-powered suction base.

SWANSON TOOL COMPANY, INC.

At the request of Brinks attorneys, the U.S. District Court in Chicago ordered the seizure of counterfeit tools from a number of importers and retailers. Three days later, U.S. Marshals and Brinks attorneys were at the defendants' premises conducting simultaneous seizure raids in Chicago and Houston, which netted more than 1,500 counterfeit tools. The court issued preliminary injunctions against the defendants and entered judgment against one of the defendants, Frankwell Trading Company, Inc., for \$600,000 in statutory damages, along with attorneys' fees and costs.

SUN-NORTH SYSTEMS LTD. AND ENVIRA-NORTH SYSTEMS LTD.

In Kentucky, a federal district court refused to grant a preliminary injunction against our Canadian clients, Sun-North Systems Ltd. and Envira-North Systems Ltd. ("Sun-North"). Delta-T filed an arbitration claim against Sun-North for patent infringement and a lawsuit seeking to enjoin Sun-North from disclosing a prior art reference to others in the industry pending the arbitration. After an evidentiary hearing with several witnesses, the court denied the preliminary injunction on the grounds that Delta-T had not shown a likelihood of success on the merits of its claim and that the proposed injunction might harm Sun-North and the public interest.

■ APPEALS

R.J. REYNOLDS TOBACCO COMPANY

The United States Court of Appeals for the Seventh Circuit affirmed judgment in favor of our client, R.J. Reynolds Tobacco Company, in its trademark case against Cigarettes Cheaper, a large cigarettes retailer. In May 2004, Brinks obtained a jury verdict of \$3.56 million, which was later increased to more than \$5 million with prejudgment interest, in a trademark case filed in the U.S. District Court for the Northern District of Illinois. The jury found that the defendant retailer, which had sold gray market cigarettes bearing the CAMEL, WINSTON or SALEM trademarks, committed trademark infringement and willful trademark dilution.

AERO PRODUCTS INTERNATIONAL, INC.

The United States Court of Appeals for the Federal Circuit affirmed a nearly \$12 million patent judgment in favor of Aero Products International, Inc. and Robert B. Chaffee against Intex Recreation Corporation. In February 2004, a Northern District of Illinois jury found that Intex willfully infringed Aero's patent and trademark rights. U.S. District Judge John W. Darrah doubled the patent damage and also awarded Aero its attorneys' fees. In so doing, Judge Darrah noted that the "high level of Plaintiffs attorneys' trial practice skills was a significant factor in achieving a favorable result for the Plaintiffs." The total award exceeds \$12 million.

Zyliss Haushaltwaren AG and Zyliss USA Corporation

Brinks secured a victory on behalf of Zyliss after it was sued in the U.S. District Court for patent infringement over its Easy Spin™ Salad Spinner. Once the lawsuit was filed, the plaintiff, OXO, moved for a preliminary injunction, which would have effectively barred Zyliss from selling its popular salad spinner, at least for the duration of the lawsuit. The U.S. Court of Appeals for the Federal Circuit affirmed the lower court's decision in denying the plaintiff's motion for a preliminary injunction. After the decision was upheld, the plaintiff dismissed its case against Zyliss, and Zyliss continues to sell its expanding line of salad spinners.

ALTICOR INC.

Brinks attorneys persuaded the Court of Appeals for the Federal Circuit to affirm a jury verdict of non-infringement. JumpSport had asserted two patents against Alticor's sale of trampolines with safety enclosures. The Court's affirmance issued ten days after oral argument.

GENENTECH, INC.

Brinks represented Genentech, Inc. at the Federal Circuit in a successful defense of a favorable court decision dismissing both declaratory judgment patent claims and antitrust claims. The Supreme Court granted certiorari, and on January 9, 2007, the Court determined that a licensee in good standing was not required under Article III to terminate the license agreement before seeking a declaratory judgment that the underlying patent was invalid, unenforceable or not infringed. The Supreme Court remanded the case.

■ PRO BONO

We believe that we have a professional responsibility to contribute our time, skills and other resources to provide legal services to people who cannot otherwise afford them. Many of our attorneys accept matters referred by the Legal Assistance Foundation of Metropolitan Chicago, Lawyers for the Creative Arts, National Immigrant Justice Center, Cabrini Green Legal Aid Clinic, Legal Services of South Central Michigan and other organizations. In addition to team participation, several of our attorneys serve in key leadership roles within organizations that are structured to help those in need. In 2007, Brinks was honored as the recipient of the Golden Gavel Award from the Coordinated Advice and Referral Program for Legal Services (CARPLS) in recognition of its financial and organizational support.

USEBRINKSSM
Intellectual Property Law Worldwide

AWARDS & ACHIEVEMENTS

BRINKS HOFER GILSON & LIONE IS A LEADER IN ALL AREAS OF INTELLECTUAL PROPERTY. WE HAVE RECEIVED THESE RECENT ACCOLADES:

Recipient of the Thomas L. Sager Diversity Award, Midwest Region, 2009

Minority Corporate Counsel Association

#1 for Intellectual Property in Illinois, 2003-2008

Chambers USA America's Leading Lawyers for Business

#1 Intellectual Property Firm in Illinois and Chicago, 2009

Best Lawyers in America

#1 Intellectual Property Firm in Illinois, 2005-2009

Practical Law Company, PLC Which Lawyer? Yearbook

#1 for Trademark Litigation in Midwest, 2009

Managing Intellectual Property magazine

Top 10 Intellectual Property Firm, 2006

IP Law 360's survey, "100 Leading Patent Litigation Practices"

Top 10 Firm Representing Fortune 250 Companies for Intellectual Property Litigation and Patent Prosecution, 2005, 2006

IP Law & Business magazine, "Who Protects IP America?"

Corporate Counsel, "Who Represents America's Biggest Companies?"

National Law Journal, "Who Protects Corporate America?"

Top 10 in Contentious Patent Work & Top 20 in Contentious Trademark Work in the United States, 2006

Managing Intellectual Property magazine's survey,

"Leading Patent Firms Revealed"

Top 10 in Patent Litigation in the United States, 2005

Managing Intellectual Property magazine's "World IP Survey"

Top 15 Law Firms in Utility and Design Patent Prosecution and Patent Re-Examination; Top 25 Law Firms in Patent Litigation: Full Coverage, 2008

The Legal 500 - United States

Top 25 in Patent Litigation in the United States and Top 8 in Midwest, 2009

Managing Intellectual Property magazine's "Patent IP Firms of the Year"

NBC Tower, Suite 3600
455 North Cityfront Plaza Drive
Chicago, IL 60611-5599
Telephone 312.321.4200
Fax 312.321.4299

Suite 120
2801 Slater Road
Morrisville, NC 27560-8477
Telephone 919.481.1111
Fax 919.481.1110

Capital Center, Suite 1100
201 North Illinois Street
Indianapolis, IN 46204-4220
Telephone 317.636.0886
Fax 317.634.6701

Suite 800
405 South Main Street
Salt Lake City, UT 84111-3400
Telephone 801.355.7900
Fax 801.355.7901

Suite 200
524 South Main Street
Ann Arbor, MI 48104-2921
Telephone 734.302.6000
Fax 734.994.6331

Crystal Plaza One, Suite 306
2001 Jefferson Davis Highway
Arlington, VA 22202-3603
Telephone 703.415.0303
Fax 703.415.0304

BRINKS
HOFER
GILSON
& LIONE®

usebrinks.com