

Snell & Wilmer



David G. Barker

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Main Bio

David Barker has litigated intellectual property and other complex business disputes for over 10 years. His experience trying cases and helping clients secure and protect intellectual property rights gives him perspective in supporting different business objectives. While those objectives can require extended litigation, they are often met through negotiated resolution and settlement. David helps clients craft approaches that make the most business sense.

David represents businesses as plaintiffs and defendants in a variety of matters, including disputes involving patent infringement, trademark and trade dress infringement, copyright infringement, unfair competition, deceptive advertising, trade secret misappropriation, cybersquatting, and software development and licensing. Sometimes beyond, but often in conjunction with intellectual property, David advises clients in complex business disputes involving breach-of-contract, business torts, defamation, fraud, and other matters.

David's case experience includes representing businesses during inter partes review proceedings before the Patent Trial and Appeal Board, trademark opposition and cancellation proceedings before the United States Trademark Trial and Appeal Board, proceedings under the Uniform Domain Name Dispute Resolution Policy, and arbitration proceedings before the American Arbitration Association.

David is a registered patent attorney and has prosecuted patent, trademark, and copyright applications. He has counseled clients regarding intellectual property portfolio development and strategy, and has experience in licensing, business transactions, due diligence and clearance, infringement, validity, and patentability analyses.

David manages and regularly contributes to Snell & Wilmer's IP litigation blog, SWIPlit.com.

Representative Experience

- Lead trial counsel for Arizona training company pursuing claims of trademark infringement and trade secret misappropriation in Maricopa County Superior Court
- Lead counsel for Arizona solar company defending against an inter partes review at the Patent Trial and Appeal Board
- Trial counsel for global research and design company in Northern District of California defending against claims asserting breach of a development agreement

- Trial counsel for Arizona recreation company pursuing claims of trademark infringement in Maricopa County Superior Court
- Trial counsel for Utah higher education provider pursuing claims for breach of fiduciary duty, fraud, and civil conspiracy in Utah State District Court
- Arbitration counsel for Arizona cannabis company pursuing claims for breach of contract in the American Arbitration Association
- Lead counsel for real estate company pursuing claims of copyright and trademark infringement and breach of contract in Southern District of Texas
- Lead counsel for Arizona firearms manufacturer pursuing claims for patent infringement in the District of Arizona
- Lead counsel for Arizona real estate developer pursuing claim for cancellation of a trademark in the Trademark Trial and Appeal Board
- Counsel for Arizona consumer products company defending against patent infringement claims in the District of Arizona.
- Counsel for cryptocurrency company in trademark enforcement matters
- Counsel for trademark owners pursuing claims for trademark cybersquatting under the Uniform Domain-Name Dispute-Resolution Policy (UDRP)

Education

- Duke University School of Law (J.D.)
 - Executive Editor, Duke Law and Technology Review
 - Secretary, Duke Intellectual Property and Cyberlaw Society
 - Robert William and Robert Wheaton Walter Scholar
- Brigham Young University (M.S.)
- Brigham Young University (B.S., Mechanical Engineering)
 - Heritage Scholar
 - Member, Tau Beta Pi

Languages

- Swedish (Conversational)

Professional Memberships & Activities

- Association for Unmanned Vehicle Systems International (2015-2019)
- American Intellectual Property Law Association (2012-2016)

Representative Presentations & Publications

- "[Supreme Court Holds International Use Not Trademark Infringement](#)," Co-Author, SWIPLit Blog (July 11, 2023)
- "[USPTO's Cert Petition Argues Constitutionality of Lanham Act's Living Individual Restriction](#)," Co-Author, Snell & Wilmer's Intellectual Property Litigation Blog (March 10, 2023)

- ["Supreme Court Grants Certiorari in Amgen v. Sanofi to Decide Enablement Question,"](#) Co-Author, Snell & Wilmer SWIPLit Blog (January 19, 2023)
- ["Federal Circuit Holds Patent Venue Decision Based on Remote Workers Did Not Warrant Mandamus Relief,"](#) Co-Author, SWIPLit Blog (November 8, 2022)
- ["Eighth Circuit Affirms Dismissal of 'Love Happens' Trademark Infringement Suit for Lack of Personal Jurisdiction,"](#) Co-Author, SWIPLit Blog (August 15, 2022)
- ["Ninth Circuit Upholds Trademark Protections for Manufacturer of E-Cigarettes Containing Delta-8 THC,"](#) Co-Author, SWIPLit Blog (June 30, 2022)
- "Intellectual Property Pre-Litigation Tips," Co-Presenter, Snell & Wilmer Virtual CLE Series (June 9, 2022)
- "Prince, Warhol, and Google? Recent Intellectual Property Cases at the Supreme Court," Presenter, Association of Corporate Counsel, Arizona Chapter (April 26, 2022)
- ["Supreme Court Holds Off-Premises Signs Require Less Than Strict Scrutiny Under First Amendment,"](#) Co-Author, Snell & Wilmer Legal Alert (April 25, 2022)
- ["Andy Warhol, Prince, and the First Amendment: U.S. Supreme Court Grants Review of Questions Concerning 'Fair Use' Under Copyright Act,"](#) Co-Author, SWIPLit Blog (April 18, 2022)
- ["The Lanham Act's 'Living Individual' Restriction & The First Amendment,"](#) Author, Bloomberg Law (March 7, 2022)
- ["Supreme Court: Mistakes of Law Can Excuse Inaccurate Copyright Registration,"](#) Co-Author, SWIPLit Blog (February 24, 2022)
- ["Federal Circuit Rejects "Unanswered Questions" Indefiniteness Standard,"](#) Co-Author, SWIPLit Blog (February 2, 2022)
- ["Federal Circuit Upholds a Silent Written Description,"](#) Author, SWIPLit Blog (January 5, 2022)
- ["Federal Circuit Erases Juno's \\$1 Billion Judgment by Invalidating Patent for Inadequate Written Description,"](#) Co-Author, SWIPLit Blog (August 27, 2021)
- ["Supreme Court Determines New Limitations to Assignor Estoppel Doctrine,"](#) Co-Author, SWIPLit Blog (July 1, 2021)
- ["Supreme Court Grants Certiorari to Decide if PTAB Judges Are Constitutional,"](#) Co-Author, SWIPLit Blog (October 15, 2020)
- ["Vibrations at the Federal Circuit: American Axle and the "New" "Nothing More" Test of Patent Subject Matter Eligibility,"](#) Co-Author, SWIPLit Blog (August 4, 2020)
- ["Supreme Court Determines No Claim Preclusion of Defense in Trademark Infringement Suit,"](#) Co-Author, SWIPLit Blog (May 15, 2020)
- ["Supreme Court Holds PTAB Decisions on IPR Time Limit Nonappealable,"](#) Co-Author, SWIPLit Blog (April 21, 2020)
- ["Ninth Circuit Holds 'Bad Spaniels' Dog Toy Is an 'Expressive Work',"](#) Co-Author, SWIPLit Blog (April 10, 2020)
- ["Led Zeppelin Ruling Overturns Ninth Circuit's 'Inverse Ratio Rule',"](#) Co-Author, SWIPLit Blog (March 10, 2020)
- ["Supreme Court Holds "Expenses" Exclude PTO Employee Salaries in Civil Action Challenges Under the Patent Act,"](#) Co-Author, SWIPLit Blog (December 12, 2019)

- "[House Approves Legislation to Create Copyright Small Claims Board,](#)" Co-Author, SWIPLit Blog (October 24, 2019)
- "[The Truth Is in the Syrup: Bud Light Ordered to Remove 'No Corn Syrup' from Packaging in False Advertising Battle,](#)" Co-Author, SWIPLit Blog (September 18, 2019)
- "[Republishing DNC's Stolen Secrets Not Trade Misappropriation,](#)" Author, SWIPLit Blog (August 5, 2019)
- "[Supreme Court to Decide Two Trademark Cases,](#)" Co-Author, SWIPLit Blog (July 5, 2019)
- "[Supreme Court Holds Bar on Immoral or Scandalous Trademarks Unconstitutional,](#)" Co-Author, SWIPLit Blog (June 25, 2019)
- "[Legislators Propose Patent Eligibility Overhaul,](#)" Co-Author, SWIPLit Blog (May 28, 2019)
- "[SCOTUS Resolves Circuit Split: Trademark License Rejection in Bankruptcy Does Not Terminate Licensee's Usage Rights,](#)" Co-Author, SWIPLit Blog (May 23, 2019)
- "[Federal Circuit Holds Tribal Immunity Does Not Bar IPR of Tribe-Owned Patents,](#)" Co-Author, SWIPLit Blog (July 24, 2018)
- "[Supreme Court Opens the Door to Recovering Lost Foreign Profits in Patent Cases,](#)" Co-Author, SWIPLit Blog (June 25, 2018)
- "[Federal Circuit Considers Possible Tribal Immunity from Inter Partes Review,](#)" Co-Author, SWIPLit Blog (June 11, 2018)
- "[District Courts Disagree on Venue-Waiver Issues After TC Heartland,](#)" Author, SWIPLit Blog (July 26, 2017)
- "[Glimmers of Justice Gorsuch's Prospective IP Jurisprudence,](#)" Co-Author, Snell & Wilmer Publication (April 12, 2017)
- "How Does IP Fit Into My Business Plan," Co-Presenter, Snell & Wilmer Seminar (November 15, 2016)
- "3D Printing and the Third Industrial Revolution," Co-Presenter, Snell & Wilmer (June 21, 2016)
- "How Will the Federal Defend Trade Secrets Act Affect Trade Secrets in Arizona?" Co-Presenter, State Bar of Arizona Intellectual Property Section CLE Seminar, Phoenix, AZ (March 14, 2016)
- "[Free Speech, the Right to Bear Arms, and 3D Printing,](#)" Author, LinkedIn Pulse (October 27, 2015)
- "[Supreme Court Holds Patent Royalties Expire When Patent Expires,](#)" Co-Author, SWIPLit Blog (June 22, 2015)
- "[Protecting Food Industry Innovations as the Scope of Patentable Subject Matter Narrows,](#)" Author, The Record Reporter (March 9, 2015)
- "[Patent Assertion Entity Settles FTC Charges,](#)" Co-Author, SWIPLit Blog, (November 12, 2014)
- "[Supreme Court: Patent Owner Bears Burden of Proof in Noninfringement Declaratory Judgment Action By Licensee,](#)" Author, SWIPLit Blog (January 23, 2014)
- "[Dish's PrimeTime Anytime and AutoHop Unlikely to Infringe Fox's Copyrights,](#)" Author, SWIPLit Blog (July 26, 2013)
- "[Culpable Mental States in Intellectual Property Cases: An Emerging, Common Law-Like Uniformity,](#)" Author, Landslide Magazine (March/April 2012)
- "Update on Personal Jurisdiction in the Ninth Circuit," Presenter, Snell & Wilmer (September 2011)
- "Managing Your IP Portfolio Through Economic Challenges," Presenter, Snell & Wilmer (June 2010)

- "[Update on Culpable Mental States and Related Ethical and Privilege Implications in Federal Civil Litigation](#)," Co-Author, ABA Business Law Section Spring Meeting, Denver, CO (April 23, 2010)
- "Troll or No Troll? Policing Patent Usage With an Open Post-Grant Review," Author, Duke L. & Tech. Rev.0009 (2005)
- "Temperature Measurements Using a High-Temperature Blackbody Optical Fiber Thermometer," Co-Author with Matthew R. Jones, J. Heat Transfer, 125(3) (2003)

Professional Recognition & Awards

- Southwest Super Lawyers[®], Intellectual Property Litigation (2024)
- The Best Lawyers in America[®], Litigation - Intellectual Property (2021-2024); Patent Law (2022-2024)
- Southwest Super Lawyers[®], Rising Stars Edition, Intellectual Property Litigation (2012-2017)

Community Involvement

- Phoenix Boys Choir, Masters Men's Choir
- Madison Meadows Middle School Camp at Friendly Pines, Prescott, Arizona, Volunteer (2013, 2015, 2019, 2022)
- Boy Scouts of America
 - Cubmaster and Den Leader, Cub Scout Pack 33 (2010-2011)
 - Eagle Scout
- YMCA Baseball Coach (2010-2011)

Previous Professional Experience

- Workman Nydegger, Summer Clerk, Salt Lake City, UT
- Sacks Tierney P.A., Summer Associate, Scottsdale, AZ

Bar Admissions

- Arizona
- United States Patent and Trademark Office

Court Admissions

- Supreme Court of Arizona
- United States Court of Appeals, Ninth Circuit
- United States District Court, District of Arizona

Client News

- Snell & Wilmer Represents Leading Cryptocurrency Exchange BitMEX[®] in Recovery of All Domain Names From Cybersquatters