



Steven Gardner

PARTNER

1001 West Fourth Street
Winston-Salem, NC, 27101-2400
USA

t +1 336.607.7483

f +1 336.734.2650

Suite 1400, 4208 Six Forks Road
Raleigh, NC, 27609
USA

t +1 919.420.1721

Sgardner@kilpatricktownsend.com

Services

Intellectual Property; Patent Litigation; Patent Prosecution & Counseling; Transactional Intellectual Property; Intellectual Property Litigation

Industries

Aerospace & Defense; Energy, Utilities & Power Systems; Financial Services; Health & Life Sciences; Manufacturing; Semiconductors & Electronics; Technology & Software; Telecommunications

Steve Gardner concentrates his practice on intellectual property, with a primary focus on patent litigation and counseling. He is a registered patent attorney.

Mr. Gardner has represented companies in more than 50 patent suits in federal courts in California, Colorado, Delaware, the District of Columbia, Florida, Georgia, Illinois, Iowa, Louisiana, Missouri, New Jersey, North Carolina, Ohio, Oklahoma, Puerto Rico, and Texas (including multiple suits in the Eastern District of Texas). He has litigated and/or analyzed patents in a wide range of technologies, including software, computer hardware, medical devices, chemical compositions, Internet and e-commerce systems, electronics, manufacturing systems, mechanical devices, optics, pharmaceuticals, and telecommunications.

In addition to representing companies in disputes, Mr. Gardner regularly assists companies with transactional matters relating to intellectual property, including establishing patent programs and committees, analyzing patents held by competitors, engaging in intellectual property due diligence in evaluating potential acquisitions, conducting freedom to practice analysis, providing written opinions, negotiating and drafting license agreements, patent portfolio management, and serving as general intellectual property counsel. He has spoken on patent litigation, opinions and prosecution, as well as other topics, at seminars in Atlanta, Boston, Charlotte, Chicago, Detroit, Palo Alto, Philadelphia, Raleigh, San Francisco, Seattle, Washington and Winston-Salem.

Mr. Gardner has been elected for many years to *Business North Carolina* magazine's "Legal Elite" List as one of the top patent attorneys in North Carolina based on a survey of all members of the North Carolina bar. He was recognized in *The Best Lawyers in America*® for Intellectual Property Law in 2013 and the six years immediately preceding. He has been named as a "Rising Star" in Intellectual Property Litigation and in 2013, Mr. Gardner was recognized as a "Super Lawyer" for Intellectual Property Litigation by *SuperLawyers* magazine. He is listed as a #1 band attorney in the 2012 edition of *Chambers USA: America's Leading Lawyers for Business* for Intellectual Property. Mr. Gardner was recognized as a 2013 "IP Star" by *Managing Intellectual Property* magazine. He is AV® rated by Martindale-Hubbell.*

Prior to joining the firm, Mr. Gardner served as a law clerk to the Honorable Alvin A. Schall, U.S. Court of Appeals for the Federal Circuit, 1995-1996, and to the Honorable Frank W. Bullock Jr., U.S. District Court for the Middle District of North Carolina, 1994-1995.

*CV, BV, and AV are registered certification marks of Reed Elsevier Properties Inc., used in accordance with the Martindale-Hubbell certification procedure's standards and policies.

Experience Highlights

Patent litigation for manufacturer of orthopedic apparatus

The firm served as lead counsel on behalf of a manufacturer of orthopedic apparatus in a patent infringement matter brought by its competitor company involving ankle braces.

[Dotcast, Inc. v. Movie Gallery, Inc., et al.](#)

The firm served as lead counsel on behalf of Dotcast in a suit in the Northern District of Georgia to recover patent rights in the hands of a licensee who failed to make payments. After proceedings in District Court and in bankruptcy proceedings, a settlement favorable to Dotcast was facilitated, including recovery of the patent rights.

Dotcast, Inc. v. Movie Gallery, Inc., et al., No. 07-01181 (N.D. Ga. filed May 23, 2007).

[DataTreasury Corp. v. Wachovia Corp., et al.](#)

[DataTreasury Corp. v. Wells Fargo & Co., et al.](#)

Lead counsel for Wachovia Bank, Branch Banking & Trust Company, M&T Bank and Comerica Bank against DataTreasury in patent infringement suits in the Eastern District of Texas. The patents at issue involved various technologies, including telecommunications, electronic payment and clearing systems, software, business methods, and electrical and mechanical devices. The plaintiff in these cases sued more than 40 defendants, including many leading banks and financial institutions. Cases settled in 2009 and 2010 shortly before trial.

DataTreasury Corp. v. Wachovia Corp., et al., No. 2:05-cv-00293 (E.D. Tex. filed June 28, 2005) and *DataTreasury Corp. v. Wells Fargo & Co., et al.*, No. 2:06-cv-00072 (E.D. Tex. filed Feb. 24, 2006). (Judge Folsom).

[Patent infringement suit for a large financial institution](#)

The firm served as lead counsel on behalf of a large financial institution in a patent infringement suit filed by a financial institution services company related to online banking technology. The case settled favorably shortly before trial.

[Software patent litigation for multiple companies](#)

Lead counsel for various companies in a patent infringement litigation regarding caching functionality in the Linux operating system in the Eastern District of Texas. A favorable settlement occurred shortly before trial.

[Patent litigation for a clinical laboratory services provider](#)

The firm served as lead counsel on behalf of a clinical laboratory services provider, plaintiff, in a lawsuit pending in the Eastern District of North Carolina against defendant. The plaintiff alleged that defendant infringes certain patents exclusively licensed to plaintiff. The patents in the lawsuit related to methods of testing pooled blood samples, and were placed into reexamination by the defendant. The U.S. Patent and Trademark Office (USPTO) reexamined the patents. The court stayed the infringement action pending resolution of the reexaminations by the USPTO. The USPTO confirmed the patentability of each of the challenged claims. Case settled.

[Patent litigation for emerging technology development company](#)

Represented an emerging technology development company in its dispute with a major medical equipment company regarding patent rights. The defendant sued our client in the District of Columbia. After preserving venue in a more favorable location, we successfully obtained dismissal of the District of Columbia action. The dismissal was affirmed by the Court of Appeals for the Federal Circuit.

[Hear-Wear Techs., LLC v. Lotus Techs., LLC](#)

The firm served as lead counsel on behalf of Lotus Technologies in a lawsuit regarding allegations of patent infringement related to hearing aid technology. The matter was settled on confidential terms.

Hear-Wear Techs., LLC v. Lotus Techs., LLC, No. 05-376 (E.D. Tex. filed Aug. 28, 2005). (Judge Schell).

[Patent litigation for one of the largest apparel companies in the world](#)

The firm served as lead counsel on behalf of one of the largest apparel companies in the world and obtained a U.S. patent for apparel packaging that was infringed by a competitor and its customers, several national retailers. Prior to issuance of the patent, we notified the competitor that it would be infringing the patent when it issued. We filed suit in federal court in the Middle District of North Carolina on the day the patent issued. The case settled relatively quickly, resulting in the competitor removing thousands of infringing packages from store shelves across the country and a payment to our client to help cover the costs for enforcing the patent.

[Patent litigation for broadband communications technology developer](#)

The firm served as lead counsel on behalf of broadband communications technology developer in a patent infringement suit involving broadcast delivery of data filed against it by Broadcast Innovation LLC, an Acacia subsidiary. A favorable settlement was reached, after a motion to dismiss was filed.

[Akeva L.L.C. v. adidas Salomon AG](#)

The firm served as local counsel for adidas International Marketing B.V. in a patent infringement action filed by Akeva L.L.C. The complaint sought damages and injunctive relief for adidas's alleged infringement of two patents owned by Akeva. Discovery in the case was completed. The parties submitted briefs regarding claim construction and filed motions for summary judgment. After the District Court issued its ruling on claim construction and Akeva conceded non-infringement, the Court entered a final order and judgment finding that adidas did not infringe any of the claims of the patents asserted by Akeva. On November 13,

2006, the Federal Circuit issued an opinion affirming the District Court's entry of summary judgment in favor of adidas.

Akeva L.L.C. v. adidas Salomon AG, No. 03-1207 (M.D.N.C. filed Dec. 19, 2003).

Banner Pharmacaps Inc. v. Perrigo Co.

Served as lead counsel on behalf of Banner Pharmacaps Inc. in a patent infringement suit against Perrigo. Banner filed the complaint alleging that, by making, using, offering for sale and selling its film-enrobed unitary-core tablets, each defendant infringed Banner's patent. The parties entered a voluntary settlement agreement to resolve the case prior to trial in which the defendants admitted the validity and infringement of the patent.

Banner Pharmacaps Inc. v. Perrigo Co., No.1:04CV00492 (M.D.N.C. filed May 28, 2004).

Billingnetwork Patent, Inc. v. Misys Healthcare Sys., LLC

The firm served as lead counsel on behalf of three parties, Allscripts LLC (f/k/a Misys Healthcare Systems), Payerpath Inc. and Sudaco Inc. in an action for patent infringement pending in the Middle District of Florida. The technology at issue related to an Internet facilitated billing, data processing and communications system. During mediation, we successfully negotiated a favorable settlement with Billingnetwork Patent Inc., and Billingnetwork subsequently dismissed its claims with prejudice.

Billingnetwork Patent, Inc. v. Misys Healthcare Sys., LLC, No. 08-00261 (M.D. Fla. filed Feb. 2, 2008).

Patent infringement for a leading producer of pharmaceutical products

Served as lead counsel on behalf of a leading producers of pharmaceuticals products in a lawsuit alleging that by filing a New Drug Application (NDA) with the United States Food and Drug Administration, the defendants infringed our client's patent. The case is currently stayed in the court pending resolution of issues before the Food and Drug Administration.

Patent litigation for open-source software company

The firm served as lead counsel on behalf of an open-source software company in a patent infringement suit brought by competitor related to database technology. Specifically, the patent at issue involved methods for interfacing software with relational databases.

Patent suit against a furniture manufacturer

Represented a furniture manufacturer in a furniture patent suit filed against the company in the Middle District of North Carolina. We also assisted in a related suit that went to trial in Mississippi. Shortly after a successful result in the Mississippi trial, the North Carolina action settled.

Patent litigation for two Japanese manufacturing companies and their U.S. distributor

The firm served as lead counsel for two Japanese manufacturing companies and their U.S. distributor in patent litigation against a global carpet-manufacturing equipment company. The technology at issue related to carpet manufacturing systems. A settlement favorable to the client was achieved, on confidential terms.

Industrie Natuzzi S.p.A. v. Klaussner Furniture Industries, Inc.

Defended Klaussner Furniture Industries, one of the largest furniture manufacturers in the world, in a design patent suit brought by Natuzzi. The designs involved related to furniture.

Industrie Natuzzi S.p.A. v. Klaussner Furniture Indus., Inc., No. 02-00643 (M.D.N.C. filed Aug. 6, 2002).

Patent litigation for leading pharmaceutical company

Represented a leading producers of pharmaceuticals products in a patent infringement suit brought by a competitor asserting that certain ibuprofen softgels made by our client infringed a patent owned by the competitor. The parties settled the dispute before Banner filed an answer.

Gardner Pie Co. v. Mrs. Smith's Bakeries, Inc.

Served as lead counsel on behalf of Mrs. Smith's Bakeries, a subsidiary of Flowers Foods, a leading producer of packaged bakery foods, in a patent suit by Gardner Pie Co., an Ohio producer of bakery foods. The technology involved related to baked goods manufacturing systems. We filed a motion to dismiss in the Ohio district court and contemporaneously filed a declaratory judgment action in federal court in Georgia. The decision on the motion to dismiss was appealed to the Federal Circuit, but the parties settled the case before oral argument.

Gardner Pie Co. v. Mrs. Smith's Bakeries, Inc., No. 01-1758 (N.D. Ohio filed July 19, 2001).

Massachusetts Inst. of Tech. v. Abacus Software, Inc.

Defended Cerious Software in a patent infringement suit in the Eastern District of Texas involving software for image management. The suit was resolved by settlement. (Judge Folsom).

Massachusetts Inst. of Tech. v. Abacus Software, Inc., No. 01-344 (E.D. Tex. filed Dec. 28, 2001).

Logan v. Burgers' Ozark County Cured Hams, Inc.

Defended a subsidiary of Sara Lee Corporation against claims of patent infringement and negotiated a very favorable settlement at a below market rate from the plaintiff.

Logan v. Burgers' Ozark County Cured Hams, Inc., No. 2-97-CV-1361 (W.D. La. filed July 9, 1997) (case consolidated with Nos. 2-97-CV-1362 and 2-97-CV-1363).

Patent prosecution and counseling services to Adobe Systems Incorporated

Provides patent procurement and counseling services to Adobe Systems Incorporated, one of the largest and most diversified software companies in the world. The company offers creative, business and mobile software and services used by creative professionals, knowledge workers, consumers, original equipment manufacturer (OEM) partners and computer programmers. Much of the firm's work has focused on the software and services used to create, manage, deliver and engage with compelling content and experiences across multiple operating systems, devices and media. The firm works closely with the key technical and business personnel to identify and protect innovations with patent protection to achieve the company's strategic corporate goals. The firm also counsels the company with respect to patent strategy.

Reisenweaver Commc'ns, Inc. v. Econo-Comm, Inc.

Represented Reisenweaver Communications Inc. in a patent action seeking a declaratory judgment that a patent owned by Econo-Comm Inc. was invalid and not infringed by Reisenweaver.

Reisenweaver Commc'ns, Inc. v. Econo-Comm, Inc., No. 00-690 (M.D.N.C. filed July 20, 2000).

Patent litigation for transportation services company

The firm served as lead counsel on behalf of a transportation services company in a patent infringement suit regarding software for managing transportation logistics, and obtained a favorable settlement early in the litigation.

Patent litigation for health care company

The firm served as lead counsel on behalf of a health care company in the Southern District of Illinois against charges of patent infringement by Document Generation Corporation, an Acacia subsidiary. The lawsuit relates to electronic medical record technology. Defendants in the case were successful in persuading the U.S. Patent and Trademark Office to reexamine the patent in suit. The litigation is currently stayed pending the outcome of the reexamination proceeding.

1-800-Flowers.com Inc. v. NCR Corp.

Represented 1-800-Flowers.com in matter where NCR asserted a patent infringement claim relating to e-commerce systems and web services. We filed a declaratory judgment action in the District of Delaware against NCR Corp. on behalf of 1-800-Flowers.com. The matter was resolved favorably to the client after initial investigation which generated valuable prior art and non-infringement positions.

1-800-Flowers.com Inc. v. NCR Corp., No. 1:03-cv-00297 (D. Del. filed Mar. 17, 2003).

Patent litigation for window and door manufacturer

The firm served as lead counsel in the Southern District of Illinois on behalf of a leading developer and manufacturer of windows and doors in a case in which another window manufacturer accused it of infringing its patent related to methods of manufacturing insulated glass units. The case settled early in discovery.

Firestar Software Inc. v. Red Hat, Inc., et al.

The firm served as lead counsel on behalf of Red Hat, an open-source software company, in a patent infringement suit brought by Firestar related to database technology—in particular, object-relational mapping. This suit is believed to be the first patent infringement suit involving open-source software. Red Hat recently settled this suit and another recently-filed suit with the same plaintiff. The settlement was structured to be compatible with all versions of the GPL (General Public License), the open-source license under which many Red Hat products are developed and distributed, and provides licenses to the patents for all of Red Hat's products. In addition, the license extends not only to Red Hat and its customers, but also to members of the open-source community who contribute to the development of Red Hat's products.

Firestar Software, Inc. v. Red Hat, et al., No. 06-00258 (E.D. Tex. filed June 26, 2006). (Judge Ward).

Barry W. Thomas v. Motorola, Inc.; Barry W. Thomas v. Cingular Wireless LLC, et al.; Barry W. Thomas v. Cox Communications, Inc., et al.; Thomas v. Adelphia Communications Corp., et al.; Thomas v. Alltel, et al.

The firm served as lead counsel on behalf of a number of defendants, including Motorola, AT&T, and Cox Communications in two parallel patent infringement actions in the Western District of North Carolina and the Eastern District of Texas regarding technology involving wireless telephone handset equipment, and digital cable or satellite set-top boxes. After a favorable claim construction ruling for our clients in the North Carolina matter, the plaintiff agreed to dismiss its claims for infringement with prejudice in both North Carolina and Texas. (Judge Ward).

Thomas v. Motorola, Inc., No. 05-00493 (W.D.N.C. filed Nov. 28, 2005); *Thomas v. Cingular Wireless LLC, et al.*, No. 05-00495 (W.D.N.C. filed Nov. 28, 2005); *Thomas v. Cox Commc'ns, Inc., et al.*, No. 07-0231 (E.D. Tex. filed June 6, 2007); *Thomas v.*

Adelphia Commc'ns Corp., et al., No. 05-00497 (W.D.N.C. filed Nov. 28, 2005); *Thomas v. Alltel, et al.*, No. 05-0506 (W.D.N.C. filed Dec. 6, 2005).

Represented the patent holder, a sporting goods manufacturer, in patent infringement suits

The firm served as lead counsel on behalf of a patent holder in patent infringement suits in Oklahoma and North Carolina against competitors. The technology involved was related to archery accessories. The suit was resolved by settlement.

Patent litigation for glass company

Represented glass company in a patent infringement suit brought against it by another company. The technology involved related to a door glass manufacturing system.

*Experience gained by attorney prior to joining Kilpatrick Townsend

Publications, Articles and Speaking Engagements

IP Innovations Class: 2012 Patent Case Law (July-December) and Its Impact on In-House Counsel
Kilpatrick Townsend & Stockton LLP, March 07, 2013

An Intellectual Property Law Update — Practical Tips for Corporate Counsel
Association of Corporate Counsel, Research Triangle Area Chapter, December 12, 2012

Inter Partes Review and Post-Grant Review: Strategic Issues to Consider Now
Kilpatrick Townsend & Stockton LLP, September 01, 2012

IP Innovations Class: 2012 Patent Case Law (January-June) and Its Impact on In-House Counsel
Kilpatrick Townsend & Stockton LLP, August 30, 2012

IP Innovations Class: 2011 Patent Case Law (July-December) and Its Impact on In-House Counsel
February 09, 2012

IP Innovations Class: 2011 Patent Case Law (January-June) and Its Impact on In-House Counsel
August 25, 2011

Open Source Licensing: A Review of Significant Decisions
Crystal Gateway Marriott, April 07, 2011

The panel will provide an overview of litigation and licensing issues involving open source software, including patent, trademark, and copyright cases. The panel will highlight unique issues arising in open source software litigation, analyze what license terms are enforceable, and describe the impact of non-compliance with an open source license. Finally, the panel will explain the differences between many of the mainstream open source licenses, and describe from a software vendor level, what factors to consider when selecting an open source license.

Intellectual Property Update & Review for In-house Counsel
Bryon's South End, April 06, 2011

This presentation will include "Top 10" tips and updates on patents, trademarks, copyrights and trade secrets. There will be an update on the latest developments in IP law and trends, including practical tips for corporate counsel.

IP Innovations Class: 2010 Patent Case Law (July - December) and Its Impact on In-House Counsel
Kilpatrick Townsend & Stockton LLP, February 03, 2011

Intellectual Property Update & Review for In-house Counsel
Kilpatrick Stockton, December 08, 2010

IP Innovations Class: 2010 Patent Case Law (January - June) and Its Impact on In-House Counsel
Teleconference, September 15, 2010

IP Innovations Class: 2009 Patent Case Law (July-December) and its Impact on In-House Counsel
Kilpatrick Stockton LLP, February 04, 2010

IP Innovations Class: 2009 Patent Case Law (January - June) and its Impact on In-house Counsel
Teleconference, August 06, 2009

IP Innovations Class: 2008 Patent Case Law (July - December) and its Impact on In-house Counsel
Teleconference, February 03, 2009

Patent Opinions After In re Seagate: What You Should Know
Intellectual Property Desk Reference, January 01, 2009

Obviousness Doctrine Post-KSR: Friend or Foe?
Intellectual Property Desk Reference, January 01, 2009

IP Innovations Class: 2008 Patent Case Law (January - June) and its Impact on In-house Counsel
Teleconference, August 07, 2008

IP Innovations Class: 2007 Patent Case Law (July - December) and its Impact on In-house Counsel
Teleconference, February 07, 2008

IP Innovations Class: 2007 Patent Case Law (January - June) and its Impact on In-house Counsel
Teleconference, August 02, 2007

Basic Framework for Effective Responses to Patent Trolls
IP Links, April 20, 2006

Patent Law Basics: An Overview of Patent Law and Avoiding the Loss of Rights
Intellectual Property Desk Reference, January 01, 2006

Professional & Community Activities

Wake Forest Law Review, Editor-in-Chief (1993-1994)

ABA *Intellectual Property Litigation* Newsletter, Editor-in-Chief (2007-present)

ABA Open Source Software Sub-Committee, Co-Chair (2009-2012)

Institute of Electrical and Electronics Engineers, Member (1988-present)

The Children's Museum of Winston-Salem, Board Member (2005-2010)

UNC Charlotte, Electrical and Computer Engineering Department, Board of Advisors (2005-present)

Education

Wake Forest University, J.D. (1994)
with honors

University of North Carolina at Charlotte, M.S., Electrical Engineering

University of North Carolina at Charlotte, B.S., Electrical Engineering

Phi Kappa Phi, Tau Beta Pi

Bar Admissions

North Carolina (1994)

Admissions

U.S. Patent and Trademark Office

U.S. Court of Appeals for the Federal Circuit

U.S. Court of Appeals for the Fourth Circuit

U.S. Court of Appeals for the Eleventh Circuit

U.S. District Court for the Middle District of North Carolina

U.S. District Court for the Eastern District of North Carolina

U.S. District Court for the Western District of North Carolina

U.S. District Court for the Eastern District of Texas

U.S. District Court for the Central District of Illinois

U.S. District Court for the District of Colorado

U.S. Court of Federal Claims

Clerkships

U.S. Court of Appeals for the Federal Circuit — The Honorable Alvin A. Schall, Circuit Judge (Aug 1995-Aug 1996)

U.S. District Court for the Middle District of North Carolina — Frank W. Bullock, Jr. (Aug 1994-Aug 1995)