

Alton L. Absher III

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Services

Intellectual Property

ITC Section 337

Licensing, Transactions &
Monetization

Market Protection - Opinions &
Dispute Avoidance

Patent Litigation

Patents

Post-Grant Proceedings

Industries

Financial Services

Retail & Consumer Goods

Technology

Alton Absher III is a member of the firm's Patent Litigation Team. He focuses his practice in patent litigation, licensing, and proceedings before the Patent Trial and Appeal Board and International Trade Commission. He has significant experience in all phases of litigation, including trials and appeals. Mr. Absher practices in a wide range of technologies, including computer hardware and software, smartphones, and telecommunications standards.

Prior to joining the firm, Mr. Absher was a Unix Systems Engineer for Lowe's Companies, Inc. While with Lowe's, he engineered integrated hardware and software solutions for approximately 1,000 retail locations and designed, tested and implemented a security system that involved customizing open-source software. He also wrote low-level software to interface numerous peripheral devices with point-of-sale systems and was a member of a team that developed a Linux point-of-sale system. While at Wake Forest University, Mr. Absher was a recipient of the Law Faculty Scholarship.

Mr. Absher has been recognized as a 2013 "Legal Elite" by *Business North Carolina* magazine in the area of Intellectual Property Law. He has also been named a North Carolina "Rising Star" in 2017 and the four years immediately preceding for Intellectual Property Law by *Super Lawyers* magazine.

Experience

Represented Delta Air Lines and United Airlines in a patent infringement litigation in the Eastern District of



Texas. The plaintiff asserted patents related to secure online transactions against Delta, United, and several other defendants. Case settled. (Judge Gilstrap). *Stambler v. Atmos Energy Corp., et al.*, No. 10-594 (E.D. Tex. filed Dec. 28, 2010).

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. 05-0293 (E.D. Tex. filed June 28, 2005) and *DataTreasury Corp. v. Wells Fargo & Co., et al.*, No. 06-0072 (E.D. Tex. filed Feb. 24, 2006). (Judge Folsom).

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.

Lead Counsel for Cisco in a patent infringement litigation in the Eastern District of Virginia. The plaintiff asserted 11 patents related to encryption and network hardware technology against Cisco and several other defendants. In connection with defending Cisco, we performed significant analysis on the network hardware at issue. The court stayed the case for all defendants except for IBM, which was successful in getting summary judgment of non-infringement and on appeal. (Judge Brinkema). *TecSec, Inc. v. IBM Corp., et al.*, No. 1:10-cv-115 (E.D. Va. filed Feb. 5, 2010).

Represented Manhattan Associates in a patent infringement litigation in the District of Massachusetts. The plaintiff asserted a patent related to supply chain software against Manhattan Associates and several other defendants. Case settled. (Judge Young).

Sky Technologies LLC v. Microsoft Corp., et al., No. 1:11-cv-10833 (D. Mass. filed May 11, 2011).

Representing *amicus curiae* The Financial Services Roundtable in pending appeal involving the proper standard for direct patent infringement when separate actors each perform different steps of a method claim. *Akamai Technologies, Inc. et al v. Limelight Networks, Inc.*, Fed. Cir. Appeal No. 2009-1372 (pending).

Represented a major North American bank in a suit alleging infringement of two patents relating to methods for authenticating information and parties in online banking transactions. The plaintiff has sued approximately 30 banks and financial institutions in the action and has filed companion cases against many of the defendants'



third party vendors. Case settled.

The firm served as lead counsel and defended a California-based boutique, high-end, pet lifestyle company, in a patent suit relating to car pet seats. The litigation proceeded through early stages of discovery before we reached a favorable settlement.

Counsel for Red Hat, Inc., Amazon.com, SoftLayer Technologies, Rackspace, Whole Foods, The Planet.com Internet Services, and NYSE Euronext 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.

Bedrock Computer Technologies, LLC v. SoftLayer Technologies Inc., et al., No. 06-269 (E.D. Tex. filed June 16, 2009) and *Red Hat Inc. v. Bedrock Computer Technologies, LLC*, No. 09-549 (E.D. Tex. filed Dec. 9, 2009). (Judge Davis and Magistrate Judge John Love).

Defending Motorola Mobility LLC in the District of Delaware. Intellectual Ventures filed a patent infringement action against Motorola accusing certain smartphones and tablets of infringing six different patents directed toward (1) back-lit LCD screens, (2) distributing software updates, (3) transporting content to mobile devices, (4) portable computer/docking stations, (5) allocation of wireless bandwidth, and (6) file transfer systems. (Judge Robinson).

Intellectual Ventures I LLC, et al. v. Motorola Mobility, LLC, Civ. No. 11-908 (D. Del. filed Oct. 6, 2011).

The firm served as lead counsel on behalf of Alfresco Software in a lawsuit involving allegations of patent infringement related to content management systems. The lawsuit involved nine patents from two distinct families of patents, each covering different subject matter. After successfully transferring the case from the Eastern District of Virginia to the Northern District of California, Alfresco invalidated two of the asserted patents at the 12(b)(6) stage under the Supreme Court's *Alice* standard for patentable subject matter under 35 U.S.C. 101. The remainder of the case was settled shortly thereafter on confidential terms. *Open Text SA v. Alfresco Software Ltd., et al.*, 13-cv-04843 JD (N. D. Cal., filed October 18, 2013).

Representing Nissan in IPR of U.S. Patent No. 6,549,130. The '130 patent relates to remotely controlling a vehicle.

Nissan North America Inc. v. Joao Control & Monitoring Systems LLC, Case No. IPR2015-01509.

Education

Wake Forest University School of Law, J.D. (2007) *cum laude*, *Order of the Coif*

University of North Carolina at Asheville, B.S., Computer Science (2000)



Admissions

North Carolina (2007)

Court Admissions

U.S. Court of Appeals for the Federal Circuit (2011)

U.S. District Court for the Eastern District of Texas (2008)

U.S. District Court for the Middle District of North Carolina (2007)

U.S. Patent and Trademark Office (2007)

Professional & Community Activities

American Bar Association, IP Litigation Committee, Young Lawyers Subcommittee, Co-Chair (2009-2012)

American Bar Association, IP Litigation Committee, Patent Law Subcommittee, Co-Chair (2012-2017)

North Carolina Bar Association, Co-Editor of IP Links Newsletter (2010-2012)

North Carolina Bar Association, IP Section Council, Member (2012-Present)

North Carolina Museum of Natural Resources, Advisory Council, Member (2014-2017)

Piedmont Wind Symphony, Board Member (2019-Present)

Wake Forest Law Review, Managing Editor (2006-2007)

Insights

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35 Kilpatrick Townsend Attorneys Named to the North Carolina Pro Bono Honor Society

May 24, 2019

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Kilpatrick Townsend Elects New Partners

January 1, 2018

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Kilpatrick Townsend Elects New Partners in Winston Salem

December 18, 2017

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Updated: President Trump Turns to the U.S. Trade Representative for China IP Investigation

September 14, 2017



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U.S. International Trade Commission Considers \$37M Fine for Continued Patent-Infringing Imports

June 8, 2017

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Kilpatrick Townsend Attorneys Named 2016 North Carolina Super Lawyers

January 15, 2016

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Kilpatrick Townsend's Media Report December 25, 2015 - January 7, 2016

January 8, 2016

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Kilpatrick Townsend Attorneys Named 2015 North Carolina Super Lawyers

January 28, 2015