

Byron R. Chin

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Byron Chin is an intellectual property litigator. Mr. Chin has experience with patent litigation, inter partes review proceedings, complex business litigation, patent opinions, and trademark litigation. He has expertise in medical devices, biologics, pharmaceuticals (Hatch-Waxman Act/ANDA), consumer products, licensing disputes, cybersecurity, privacy issues, and international trade sanctions. Mr. Chin also litigates before administrative entities in pro bono work relating to affirmative and defensive asylum cases, and veterans' benefits.

Prior to joining Kilpatrick Townsend, Mr. Chin was a summer associate at a New York-based law firm. There, he focused on patent litigation, patent prosecution, and trademark law. In law school, Mr. Chin was also a Senior Articles Editor of the *U.C. Davis Law Review*.

Mr. Chin was recognized from 2013 to 2020 as a Northern California "Rising Star" for Intellectual Property



Litigation by *Super Lawyers* magazine. Mr. Chin actively participates in the local legal community and mentors law students through the San Francisco Intellectual Law Property Association.

Mr. Chin speaks conversational Mandarin and Cantonese. Mr. Chin is a licensed Part 107 sUAS pilot, and an amateur seabird conservationist.

Experience

Currently defending GoPro in a patent infringement lawsuit in the District of Delaware filed by 360Heros on mechanical rigs designed to hold cameras in place to film 360 degree footage, and in a concurrent *inter partes* review proceeding. *360Heros, Inc v. GoPro, Inc.*, Case No. 1:17-cv-01302-LPS-CJB (D. Del. filed Sept. 13, 2017).

Represented GoPro in a lawsuit filed in the Northern District of California against 360Heros asserting claims of copyright and trademark infringement and seeking declaratory judgment rulings of non-infringement and invalidity of 360Heros' patent. Successfully obtained summary judgment of copyright infringement against 360Heros, ruling that 360Heros lacked standing to assert its patent against GoPro at time litigation was instituted, and an adverse inference sanction against the defendant for forgery of evidence. *GoPro, Inc. v. 360Heros, Inc.*, Case No. 3:16-cv-01944-SI (N.D. Cal. filed April 13, 2016).

Representing a *Fortune* 10 telecommunications company in prosecuting multiple lawsuits filed in federal courts across the country against various unauthorized dealers relating to unauthorized access and unlocking of cell phones, fraud, and trademark infringement.

Prevailed in litigation on behalf of DreamHost, an electronic communications service provider, against the U.S. Department of Justice (DOJ) in a highly-publicized privacy battle, wherein the Court ultimately precluded the DOJ from obtaining information about individuals visiting and communicating with the political advocacy website DisruptJ20 in relation to the Inauguration Day protests. *In re Dreamhost, Inc.*, Case No. 2017 CSW 3438 (D.C. Sup. Ct.).

Represented Mylan in ANDA litigations over the generic version of Toviaz®. Both litigations, brought within days of each other in differing jurisdictions, involved the same five patents. Kilpatrick prepared and had instituted 5 *inter partes* reviews on the asserted patents. After district court trial and hearings on the IPRs, the parties reached a favorable settlement for our client Mylan. *Pfizer Inc. and UCB Pharma GMBH v. Mylan Pharmaceuticals Inc.*, No. 15-0079 (D. Del. filed Jan. 23, 2015) and *Pfizer Inc. and UCB Pharma GMBH v. Mylan Pharmaceuticals Inc.*, No. 15-0013-IMK (N.D.W.Va. filed Jan. 27, 2015).

Summary judgment victory for Seattle Genetics in a technology licensing and breach of contract dispute involving a life-saving cancer therapy. After years of litigation and arbitration in district courts, state courts and the



American Arbitration Association in Arizona and Washington, Kilpatrick Townsend obtained a definitive victory on summary judgment for Seattle Genetics against Arizona State University in the District of Arizona. The Court held on August 4, 2015, that ASU's patent infringement claims were barred by the written terms of a contract amendment it had executed with SeaGen over ten years ago. *Arizona State University v. Seattle Genetics, Inc.*, No. CV 14-653-PHX-NVW (D. Ariz. filed Mar. 31, 2014).

Counsel for respondents Sennheiser electronics & Co. GmbH and Sennheiser USA in patent investigation involving Bluetooth headphones. Settled favorably before significant discovery or litigation activity. *In re Certain Wireless Headsets*, ITC Investigation No. 337-TA-943 (filed Dec. 4, 2014).

Defended Edwards Lifesciences in a four patent case Medtronic brought involving Edwards' flagship prosthetic surgical heart valves. Furthermore, Kilpatrick Townsend led the countersuit asserting Edwards patents infringed by Medtronics' valve reconstruction products. The team successfully challenged the validity of three of the four Medtronic patents-in-suit and two other threatened patents in proceedings before the U.S. Patent and Trademark office, winning cancellations of virtually all pertinent claims. The case settled as part of a global settlement of multiple cases with an exchange of cross-licenses and license payments by Medtronic of over \$1 billion. *Medtronic, Inc. et al. v. Edwards Lifesciences Corp, et al.*, No. 11-cv-01650 (D. Minn. filed June 24, 2011).

Represented plaintiff Actuate Corporation in U.S. District Court for the Northern District of California in a breach of contract, copyright infringement and unfair competition action against defendants AON Corporation and TWG Warranty Group based on their use of Actuate's software. Matter settled on the eve of trial. *Actuate Corp. v. Aon Corp., et al.*, No. 10-5750 (N.D. Cal. filed Dec. 16, 2010).

Represented appellee Watson Pharmaceuticals, Inc. in successful defense of district court's order dismissing Bayer's claims of patent infringement. The Federal Circuit agreed with Watson that for a generic drug maker to infringe a method-of-use patent, the proposed label must indicate that the drug is approved (i.e., safe and effective) for the claimed method. *Bayer Schering Pharma AG v. Lupin, Ltd., et al.*, 2012 U.S. App. LEXIS 7570, Fed. Cir. Appeal No. 2011-1143 (April 16, 2012).

Represented Watson in ANDA litigation of generic version of SEASONIQUE®. *Duramed Pharmaceuticals, Inc. v. Watson Laboratories, Inc., et al.*, No. 3:08-cv-116 (D. Nev. filed Mar. 6, 2008).

Obtained summary judgment and a permanent injunction against a computer company utilizing Apple's copyrighted operating system software on non-Apple hardware based upon copyright infringement and violation of the Digital Millennium Copyright Act. The ruling resulted in a published opinion which affirmed liability for distributing copies of operating software and circumvention technology. The Ninth Circuit affirmed the permanent injunction and inapplicability of copyright misuse. *Apple Computer Inc. v. Psystar Corporation*, 673 F.Supp.2d 943 (N.D. Cal. 2009), 673 F.Supp.2d 931 (N.D. Cal. 2009), 586 F.Supp. 2d 1190 (N.D. Cal. 2008), *aff'd in relevant*



part, 658 F.3d 1150 (9th Cir. 2011) (affirmed on infringement, remand regarding sealing of certain information), *cert. denied* 132 S. Ct. 2374 (May 14, 2012).

Education

Georgetown University M.S. (2004) Physiology and Biophysics

University of California, Davis School of Law J.D. (2008) *UC Davis Law Review*, Senior Articles Editor; *UC Davis Business Law Journal*, Executive Editor

Williams College B.A. (2003) Biology and Psychology

Admissions

California (2008)

Professional & Community Activities

American Intellectual Property Law Association, Member

Asian Pacific American Bar Association of Silicon Valley, Member

San Francisco Intellectual Property Law Association, Patent Chair

Insights

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24 Kilpatrick Townsend Attorneys Recognized in 2020 *Northern California Super Lawyers*

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January 13, 2020

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The Evolving Scope of the Inter Partes Review Statutory Time Bar

October 7, 2019

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Kilpatrick Townsend Attorneys Named 2019 Northern California Super Lawyers

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Twenty-Six Kilpatrick Townsend Attorneys Named 2018 Northern California Super Lawyers & Rising Stars
July 23, 2018

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Twenty-Four Kilpatrick Townsend Attorneys Named 2017 Northern California Super Lawyers & Rising Stars
August 9, 2017

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Kilpatrick Townsend Attorneys Named 2015 Northern California Super Lawyers
July 21, 2015