

SCOTT E. DAVIS

PARTNER

503.473.0933 | scott.davis@klarquist.com



OVERVIEW

Scott focuses on intellectual property litigation, representing clients in courts throughout the U.S. He has had great success both obtaining relief for intellectual property owners and defending suits in a wide range of technical fields in cases involving patent, trade secret, unfair competition, employment agreement, copyright, DMCA, trademark, trade dress, product configuration, and false advertising claims.

Scott has litigated cases involving chemical, mechanical, internet, software, encryption, computer, clean energy, automotive, apparel, food, agricultural, and pharmaceutical technologies. Representing some of the largest companies in the world as well as smaller businesses and start-ups, he has succeeded for clients such as Adobe, British Airways, Columbia River Knife & Tool, Capsugel, Costco, Danner, DexCom, Intuit, Microsoft, Phibro Animal Health Corporation, SAP, SunModo, Twitter, and Yelp.

Describing his past success and approach with the Klarquist litigation team, *IAM Patent 1000* wrote:

[A] total victory which showcased his theoretical nous and pragmatic, results-oriented approach. “Too often, lawyers with big egos take things over without much concern for what the client is looking for; this is not the case with John and Scott, who always put your objectives first and act like a part of your team. They are both incredibly smart and they work in a cost-effective way.”

Scott joined Klarquist as an associate in 2002 and became partner in 2008.

CLERKSHIPS

▶ U.S. District Court, Central District of California | Law Clerk to U.S. District Judge A. Howard Matz, 2000-2001 | Los Angeles, CA

HONORS & AWARDS

- ▶ 2013 – 2020 *IAM Patent 1000: The World’s Leading Patent Professionals*
- ▶ 2009 – 2017 *Chambers USA*, Oregon, Intellectual Property
- ▶ 2016 – 2020 *Who’s Who Legal: Patents*

EDUCATION

J.D., Order of the Coif,
University of California,
Los Angeles, 2000

M.S., Chemistry,
University of California,
Los Angeles, 1997

B.S., *summa cum laude*
in Chemistry, Oregon
State University, 1996

ADMISSIONS

Oregon, 2002

California, 2000

U.S. Court of Appeals for
the Federal Circuit

U.S. Court of Appeals for
the Ninth Circuit

U.S. District Courts for
the Northern, Central,
and Southern Districts of
California

U.S. District Court for the
District of Colorado

U.S. District Court for the
District of Oregon

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

PRACTICE AREAS

Litigation

Post-Grant USPTO
Proceedings

Klarquist

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PRESENTATIONS & PUBLICATIONS

- ▶ Davis, S. & Vandenberg, J. "When Does a US Patent Cover "Infringement" Occurring Abroad?," The Licensing Journal, September (2007): 13-20
- ▶ "E-discovery: Now What?" National Business Institute (NBI), Portland, OR (November 13, 2008)
- ▶ "Dealing with Corporate and In-House Counsel," National Federation of Paralegal Associations 2009 Convention, Co-presenter, Portland, OR (October 2009)

REPRESENTATIVE CASES

- ▶ *Leupold & Stevens, Inc. v. Lightforce USA dba Nightforce*, No. 3:16-cv-1570-HZ, 434 F. Supp. 3d 886 (D. Or. 2020): Led Klarquist's defense team. Up to 99.6% of Leupold's damages claims were knocked out with Nightforce victories on two of the asserted patents. First, Nightforce prevailed on summary judgment by showing that U.S. Patent 6,816,305 was invalid in view of Nightforce's own prior art NXS riflescope designs sold since 1995, seven years prior to Leupold filing for its patent. On the eve of a trial set to address U.S. Patent 6,351,907, Leupold dropped that patent--shortly after Klarquist tracked down strong evidence relating to a handful of invalidating prior art Schmidt & Bender riflescopes sold in the U.S. before the critical date. Klarquist also had unearthed more than 50 year old federal government records to establish Weatherby Imperial riflescopes as invalidating prior art. The lawsuit was filed on August 2, 2016 and ended on June 14, 2021. The parties agreed to keep the terms of the settlement confidential.
- ▶ *WaveForm Technologies, Inc. v. DexCom, Inc.*, No. 3:16-cv-536-MO (D. Or. Aug. 22, 2019): Led defense team, prevailed on summary judgment with all asserted patent claims determined to be invalid as indefinite in medical device case accusing glucose sensors used in DexCom's CGM products of infringement.
- ▶ *D Three Enterprises, LLC v. SunModo Corp.*, 890 F.3d 1042 (Fed. Cir. 2018), affirming No. 1:15-cv-1151-CBS, 2017 WL 1023389 (D. Colo. March 15, 2017): Led defense team, invalidated more than 30 asserted claims across three patents related to roof mount assemblies that can be used for solar panels. Summary judgment of invalidity pursuant to 35 U.S.C. §§ 112 and 120 was affirmed by the Federal Circuit because the asserted claims were broader than what was disclosed in the initial provisional patent application, rendering the accused products and plaintiff's own published patent applications prior art.

TECHNOLOGY AREAS

Chemical

Life Sciences &
Biotechnology
Mechanical

Software & Internet
Technology
Consumer Products

Green Tech &
Renewable Energy
Agriculture & Food
Science

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▶ *OmniGen Research v. Wang*, No. 6:16-cv-268-MC, 321 F.R.D. 367 and 2017 WL 5505041 (D. Or. 2017): After a successful motion for terminating sanctions based on the defendants' destruction of evidence, obtained a permanent injunction and \$3.8 million judgment against the plaintiffs' former employee and his spouse at a remedies trial. Defendants had started rival businesses to sell knock-offs of OmniGen's feed additives in China, leading to liability for breach of contract, trade secret misappropriation, intentional interference with economic relations, copyright infringement, breach of fiduciary duty, and false advertising.

▶ *Capsugel Belgium NV v. Bright Pharma Caps, Inc. et al.*, No. 3:15-cv-321-PK (D. Or.): Successfully asserted two patents and false advertising claims relating to pullulan-based capsules. Defended parallel PTAB challenges to the asserted patents. Obtained permanent injunction for patent owner Capsugel against all four defendants, including the manufacturer in China, barring infringing sales of pullulan capsules in the United States. Defendants further agreed not to sell any of the capsules at issue in Canada or non-organic pullulan capsules in countries in Europe where Capsugel also has patent protection. Prosecuted a novel false advertising claim between competitors, asserting misuse of the term "organic" and the USDA organic seal in connection with capsules containing the synthetic chemical SLS. Defendants agreed to settle on the day set for a hearing on Capsugel's motion for summary judgment.

▶ *TQP Dev., LLC*, Nos. 2:12-cv-61, 2:12-cv-180, 2:12-cv-570, 2:13-cv-219 (E.D. Tex., Fed. Cir.): Led defense team concurrently representing up to nine clients, including Adobe, British Airways, Costco, Intuit, LinkedIn, Travelocity.com, Twitter, Yelp, and Zones. TQP asserted a patent relating to encryption against the ubiquitous use of RC4 with SSL/TLS for websites. Won summary judgment of non-infringement after hundreds of companies had been sued, more than 139 had settled for a total more than \$45 million, and one company (not represented by Klarquist) had lost at trial. See *TQP Dev., LLC v. Intuit Inc.*, 2:12-cv-180-WCB, 2014 WL 2810016 (E.D. Tex. Jun. 20, 2014).

▶ *Taylor Brands, LLC v. Columbia River Knife & Tool*, No. 2:08-cv-325, 2009 WL 10675598 (E.D. Tenn. Nov. 19, 2009): Led defense team and won summary judgment of non-infringement for CRKT in patent case involving assisted opening pocket knives. Successfully defended judgment on appeal. See 426 F. App'x 909 (Fed. Cir. July 28, 2011) (affirming without opinion).

▶ *Danner, Inc. v. Foley & Lardner, LLP*, No. 09-cv-1220-JE, 2010 WL 2608294 (D. Or. Jun. 23, 2010): Team obtained remand of legal malpractice case to prosecute the action in Oregon state court. After prevailing against three summary judgment motions filed by the defense, the case settled.

▶ *Grasshopper House, LLC v. Accelerated Recovery Centers, Renaissance Malibu Foundation et al.*, 3:09-cv-778-HA (D. Or.): Assumed the role of lead counsel less than 48 hours prior to a show cause hearing and defended against contempt allegations, convincing the Court to dismiss the case for lack of personal jurisdiction and vacate its default judgment and injunction.

▶ *MEI, LLC v. Integral Applied Technology, Inc. et al.*, No. 6:08-cv-6046-AA, 2009 WL 2871125 (D. Or. 2009): Obtained a complete summary judgment victory in a case involving copyright infringement and violations of the DMCA and Lanham Act relating to MEI's software.

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▶ *Vestas-American Wind Technology, Inc. v. Beaird Company, Ltd. et al.*, No. 3:07-cv-1651-PK (D. Or.): Defeated motion to dismiss or transfer the litigation to the declaratory-judgment-defendant's home forum. The case thereafter settled favorably for our client.

▶ *Boydston Metal Works, Inc. v. Cottrell, Inc.*, 519 F. Supp. 2d 1119 (D. Or. 2007): Team defeated motion for summary judgment asserting invalidity and won cross motion for summary judgment, eliminating adversary's lead defense that it had allegedly offered for sale before the critical date its screw actuator technology for auto transporters. The case thereafter settled favorably for our client.

▶ *CollegeNET, Inc. v. ApplyYourself, Inc.*, Lead No. 02-cv-484-HU (D. Or.) and 418 F.3d 1225 (Fed. Cir. 2005): A leading member of team that won and upheld on appeal a jury verdict finding infringement of CollegeNET's patented online application system and form technology.