



Austen C. Endersby

Partner

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Chair of the International Trade Commission Litigation group, Austen focuses his practice on disputes involving intellectual property law, corporate law and commercial law. He primarily handles cases in U.S. District Courts across the country and the U.S. International Trade Commission in Washington, D.C.

His patent litigation work involves a range of products, including mechanical devices, financial solutions and pharmaceutical products. Austen has handled trademark litigations in a variety of fields, including the fashion and apparel industry and the interior design industry. He also serves as Delaware counsel to corporations in patent infringement cases in the District of Delaware.

Services

- Intellectual Property
- Litigation
- IP Litigation

Before Fox Rothschild

Prior to joining the firm, Austen was an associate at Morris, Nichols, Arsht & Tunnell LLP in the Intellectual Property Litigation practice group. During law school, he served as a judicial intern and law clerk for Chief Judge Joseph H.H. Kaplan of the Baltimore City Circuit Court. Austen also was an articles editor for the *Maryland Law Review*.

Bar Admissions

- District of Columbia
- Delaware

Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals, Federal Circuit
- U.S. District Court, District of Columbia
- U.S. District Court, District of Delaware
- U.S. District Court, Eastern District of Michigan

Education

- University of Maryland School of Law (J.D., *cum laude*, 2008)
- Johns Hopkins University (B.A., *with honors*, 2004)

Memberships

- Delaware State Bar Association
- Intellectual Property Section of the Delaware Chapter of the Federal Bar Association
- International Trade Commission Trial Lawyers Association

Representative Matters

- *In the Matter of Certain Portable Battery Jump Starters and Components Thereof*, Inv. No. 337-TA-1256 (U.S. International Trade Commission 2021) – obtained dismissal of patent infringement case brought in the ITC against U.S. distributor of vehicle battery jump starter devices following determination by U.S. Patent & Trademark Office that the relevant patent claims are invalid.
- *In the Matter of Certain Collapsible and Portable Furniture*, Inv. No. 337-TA-1178 (U.S. International Trade Commission 2021) – represented U.S. distributor of camping furniture and equipment in case brought in the ITC by competitor for alleged infringement of patent relating to collapsible rocking chairs. Following trial in December 2020, obtained Commission Opinion in May 2021 finding that the client's accused rocking chairs do not infringe the patent-in-suit and that the competitor failed to satisfy the ITC's domestic industry requirement because the competitor's own products are not covered by the patent-in-suit.
- *Tile Tech, Inc. v. Appian Way Sales, Inc., et al.*, C.A. No. 2:17-cv-01660-JLR (W.D. Wash. 2017) – represented defendants/counterclaimants in patent infringement and false advertising case involving cylindrical-shaped pedestal devices used in connection with the paving of subsurfaces. Part of a team that developed key prior invention and on sale bar defenses, and false advertising and patent infringement counterclaims, leading to a very favorable settlement for the defendants.
- *In the Matter of Certain High-Potency Sweeteners, Processes for Making Same, and Products Containing Same*, Investigation No. 337-TA-1030 (U.S. International Trade Commission 2017) – represented Respondent Vitasweet and obtained a dismissal/withdrawal of the Complaint due to issues regarding the invalidity of the asserted patent relating to a process for manufacturing acesulfame potassium.
- *In the Matter of Certain Footwear Products*, Inv. No. 337-TA-936 (U.S. International Trade Commission 2020) – represented U.S. distributor of fashion footwear company in high profile Section 337 Investigation involving allegations of trade dress infringement and dilution by Converse. Served as second chair on trial team in 2015, obtaining post-trial initial determination that all accused shoes then being sold by the client were not infringing. In 2020, on remand from the U.S. Court of Appeals for the Federal Circuit, obtained Commission Opinion that all accused shoes at issue in the case were not infringing.
- *In the Matter of Certain Woven Textile Fabrics and Products Containing Same*, Inv. No. 337-TA-976 (U.S. International Trade Commission 2015) – represented textiles company in Section 337 Investigation involving allegations of infringement of a patent relating to high thread-count cotton/polyester blend fabrics; obtained favorable settlement for the client.
- *The Sliding Door Company v. KLS Doors LLC and Cox USA*, C.A. No. 13-196 (C.D. Cal. 2013) – part of a team that obtained a favorable settlement for defendants following a favorable claim construction ruling in a patent and trade dress infringement case relating to a sliding door system.
- *Nano-Second Technology Co. Ltd. v. Dynaflex Int'l et al.*, C.A. No. 2:10-09176 (C.D. Cal. 2013) – part of a team that obtained a favorable settlement for defendants following a favorable summary judgment ruling on invalidity in a case involving a patent directed to gyroscopic wrist exercisers.
- *Memory Integrity v. LG Electronics*, C.A. No. 13-1806 (D. Del. 2013) – served as Delaware counsel for LG Electronics in a patent infringement case involving microprocessor technology.
- *Pfizer, Inc. v. MSP Singapore Company*, C.A. No. 11-713 (D. Del. 2011) – served as Delaware counsel for defendant in a patent infringement case involving a New Drug Application for ezetimibe-atorvastatin tablets.
- *Elan Pharma International Ltd. et al. v. Anchen Pharmaceuticals Inc. et al.*, C.A. No. 8:09-cv-01193 (C.D. Cal. 2009) – represented patent holders in a patent infringement case involving an Abbreviated New Drug Application for a generic version of Luvox.