

Chicago
Courthouse Place
54 West Hubbard St.
Suite 300
Chicago, IL 60654

Mark E. Ferguson

T: 312.494.4404
F: 312.494.4440
mark.ferguson@bartlit-beck.com

PROFESSIONAL PRACTICE

Mark Ferguson is one of the six partners who left Kirkland & Ellis in 1993 to found Bartlit Beck. Mark has extensive trial and appellate experience in federal and state courts throughout the U.S., and has taken more than 30 significant matters to judgment, including jury trials, bench trials, arbitrations and other proceedings. His work has included a wide range of subjects, ranging from complex computer hardware, software and semiconductor patents to financial and securities matters to products liability, business torts, housing discrimination and employment matters.

In addition to his client work, Mark has served as an adjunct faculty member in Northwestern University Law School's trial advocacy program, as well as for programs sponsored by the National Institute for Trial Advocacy (NITA), the ABA National Institute, the Corporate Counsel Institute, and the American Management Association. He is a member of the Board of Directors of the Lyric Opera of Chicago and Past President and a member of the Board of the Springboard Foundation.

Mark's practice has included significant work in the following areas, including the trials and other matters set forth below:

Patent, Trademark and Other Technical Litigation

Patent litigation, including jury trials, for clients including Hewlett-Packard, 3Com, United Technologies/Hamilton Sundstrand, Infineon Technologies, BISSELL Inc., StorageApps, Inc., Siemens, Miles, Inc., CMI Corporation, Navteq and United Parcel Service as both plaintiffs and defendants; Lanham Act, trademark and trade dress litigation for clients including BISSELL Inc. and W.R. Grace & Co.; other technical litigation, including representation of ABB and its affiliates in disputes relating to performance of nuclear and conventional power generation systems.

Products Liability

Defense of class action, mass action and individual products liability and other claims for clients including Bayer MaterialScience, Bayer CropScience, NL Industries, Inc.

EDUCATION & HONORS

University of Michigan Law School, 1983, J.D., *magna cum laude*

Order of the Coif
Senior Editorial Board,
Michigan Law Review

Awarded the Bodman,
Longley Scholarship for
achievements in the area
of commercial law

Northwestern University,
Medill School of
Journalism, 1980, B.S.J.

BAR ADMISSIONS

Illinois Supreme Court
United States District
Court, Northern District of
Illinois (Trial Bar since
1987)

United States Court of
Appeals for the Second,
Third, Seventh and Federal
Circuits

PROFESSIONAL ACTIVITIES AND COMMUNITY SERVICE

Member, The Sedona
Conference - Working
Group 5 (Patent Claim
Construction Process)

www.bartlit-beck.com

Served on faculty for numerous programs sponsored by National Institute for Trial Advocacy, ABA National Institute, Corporate Counsel Institute, American Management Association and other organizations

Served as Adjunct Professor, Northwestern University School of Law - Litigation and Advocacy

Member, Board of Directors, Lyric Opera of Chicago

Past President and Board Member - The Springboard Foundation (a supporting organization of the Chicago Community Trust focused on raising and providing funds for grass-roots after school and enrichment programs for inner city Chicago children)

Complex Business and Commercial Litigation

Representation of clients including ABB, Inc., Dun & Bradstreet, Bessemer Securities, W.R. Grace & Co. in litigation arising out of corporate mergers, acquisitions and other commercial disputes.

Accounting and Financial

Representation of several Big Four accounting firms in securities and alleged accountants' liability matters.

Defamation, Privacy and Business Torts

Represented Dun & Bradstreet, DePaul University and other clients in defamation/privacy actions including jury trials and appeals; represented numerous clients in business interference, fraud and deceptive trade practices cases.

Antitrust and Trade Regulation

Clients have included Hewlett-Packard Co., NCR Corporation, Dun & Bradstreet, Inc., Dart & Kraft, Inc., FMC Corp. and other companies. Matters include litigation and counseling under the Sherman, Clayton and FTC Acts and state antitrust statutes, as well as successful representation of several clients in merger proceedings before the FTC and Department of Justice, and in federal courts.

Securities

Clients have included W.R. Grace & Co., Motorola, Inc., Price Waterhouse, Katy Industries, First Chicago Corp., Gerrity Oil & Gas Co., Securities Settlement Corporation, and other corporations and individuals named as defendants in class-action, derivative and individual suits under state and federal securities laws and RICO, or subjects of SEC investigation.

Insurance Coverage Litigation

Environmental coverage litigation on behalf of NL Industries, Inc.

Banking and Lender Liability

Representation of clients including Bankers Trust and GMAC in matters relating to lender liability, fraud and other matters.

Franchise, Dealer and Distributor Disputes

Numerous matters for several clients, including Atari, Inc., Dean Foods (as Baskin-Robbins area franchisor) and W.R. Grace & Co.

CASES TRIED OR OTHERWISE TAKEN TO JUDGMENT

In Re Genetically Modified Rice Litigation (2006-2010)

Mark is representing Bayer CropScience as national lead counsel in Multi-district Litigation concerning unintended release of experimental genetically modified rice. During 2009-2010, he tried four 3-4 week jury trials in United States District Court, Eastern District of Missouri (Judge Perry). The litigation is ongoing.

Krippelz v. Ford Motor Co. (2008)

Mark represented inventor Jacob Krippelz, Sr. in patent infringement action against Ford Motor Co. involving automotive exterior mirror lighting systems. The two-week Jury trial took place in the United States District Court, Northern District of Illinois (Judge Zagel). The jury returned verdict in our client's favor in the amount of \$23 million, later enhanced to more than \$60 million upon a finding of willful infringement and after accrual of prejudgment interest.

EMC Corp. v. Hewlett-Packard Co. (2004)

Mark represented Hewlett-Packard as defendant in patent infringement action relating to storage area network technology. The three week jury trial took place in the United States District Court in Worcester, Mass. (Judge Gorton). The trial resulted in a verdict against HP, and settled while on appeal.

Grand Eagle Companies, Inc. v. ABB, Inc., et al. (2001-2002)

Mark represented ABB and ABB T&D in contract and trade secret litigation relating to nuclear power and industrial circuit breaker servicing business. The preliminary injunction trial took place in the Court of Common Pleas, Cuyahoga County, Ohio (Judge Corrigan). Our client prevailed in that trial and the case settled thereafter.

Combustion Engineering, Inc. and ABB, Inc. v. Imetal (2001)

Mark represented Combustion Engineering and ABB, Inc. as plaintiffs in litigation arising out of a sale and purchase of a refractory business by French corporation Imetal, SA. The case was decided by the United States District Court for the Southern District of New York (Judges Martin and Marrero). Summary judgment was granted in favor of our clients CE and ABB on an affirmative \$30 million-plus contract claim. The initial judgment was affirmed in part and remanded in part on appeal, and the remainder of case was won on remand.

Avery Dennison v. The FLEXcon Company (2000)

Mark represented FLEXcon as defendant in patent litigation relating to multilayer film facestocks for labels, tapes and signs. The case was decided by the Northern District of Illinois (Judges Andersen and Rosenbaum). Summary judgment of non-infringement was entered in our client FLEXcon's favor. The judgment was affirmed on appeal.

BISSELL Homecare, Inc. v. Oreck Corporation (1999)

Mark represented BISSELL as declaratory plaintiff and counter-defendant in a design patent and trade dress infringement case involving lightweight upright vacuum cleaners. The preliminary injunction trial took place in the United States District Court, Western District of Michigan (Grand Rapids) (Judge Bell). The plaintiff's motion for an injunction against our client was denied, and this ruling was upheld on appeal. The case settled thereafter.

Etak, Inc. v. Zexel Corporation v. Navigation Technologies Corporation (1997)

Mark represented Navigation Technologies Corporation (NavTeq) as third-party defendant in a patent action relating to computerized in-vehicle navigation system hardware, software and display technology. The case was decided by the United States District Court, Northern District of California (San Francisco) (Judge Conti). Summary judgment of non-infringement and/or invalidity was granted in favor of our client on 91 of 92 patent claims asserted. Plaintiff and defendant settled thereafter, eliminating all claims against our client NavTeq.

Maeser v. United Parcel Service, Inc. et al. (1997)

Mark represented UPS as defendant in a patent action relating to computerized scanning and data entry devices. The case was decided by the United States District Court, District of Arizona (Phoenix) (Judge Broomfield). Summary judgment of both non-infringement and invalidity was entered in our client's favor on all asserted claims.

Ortho Diagnostics, Inc. v. Miles, Inc. (1994)

Mark represented Miles as defendant in patent action concerning laser-optical flow cytometer (blood testing device). The 4-week jury trial took place in the United States District Court, Southern District of New York (Judge Conner). The trial resulted in a verdict in our client's favor, including judgment of both non-infringement and invalidity for all patents in suit. This case was identified by *The National Law Journal* as one of the Top Defense Verdicts of 1994.

Bourke, et al. v. The Dun & Bradstreet Corporation (1998)

Mark represented Dun & Bradstreet in case challenging a company-wide determination of performance bonuses following a spin-off reorganization. Northern District of Illinois (Judge Gettleman) and Seventh Circuit. Case won below and on appeal.

Bobrowicz v. Lee Hecht Harrison (1997)

Mark represented national outplacement consulting firm Lee Hecht Harrison as defendant in action alleging that LHH improperly "steered" outplaced employees away from competitors of its client. The case was decided by the United States District Court, Northern District of Illinois (Judge Plunkett), and was won on a dispositive motion, without appeal.

Whirlpool Financial Corp. v. W.R. Grace & Co. (1995)

Mark represented W.R. Grace as defendant in a securities fraud action relating to acquisition financing transaction. The case was decided by the United States District Court, Northern District of Illinois (Judge Shadur) and the Seventh Circuit. Mark's client W.R. Grace won below and on appeal.

Patton v. Ohr Properties Management (1993)

Mark represented plaintiffs in pro bono housing discrimination case. The week-long jury trial took place in the United States District Court, Northern District of Illinois (Judge Holderman). Mark's client, the Patton family, won both compensatory and punitive damages.

Holefca, et al. v. Price Waterhouse (1993)

Mark represented Price Waterhouse in securities fraud class action arising out of the failure of US Mutual Savings & Loan Association. The case was decided in the United States District Court, Eastern District of Michigan (Judge Duggan). Partial summary judgment was entered in favor of Mark's client, and class certification was defeated. The case settled thereafter without exchange of monetary compensation.

West Indies Automotive v. GMAC (1992)

Mark represented GMAC in \$40 million lender liability case. The three-week jury trial took place in the United States District Court, St. Thomas, U.S.V.I. (Judge Farnan). This case was won below and affirmed on appeal.

In re DBA Systems, Inc. Securities Litigation (1992)

Mark represented outside director of DBA Systems in securities fraud class action alleging fraud on the market and insider trading. The case was decided by the United States District Court, Middle District of Florida (Judges Fawcett and Young). Mark obtained summary judgment in his client's favor dismissing most claims and the case settled thereafter.

Young v. Connecticut Mutual (1990-91)

Mark represented Corporate Compensation Plans, Inc. in trial court and on appeal in business interference and contract case. The case was decided by the United States District Court, Northern District of Illinois (Judge Hart) and Seventh Circuit. Mark's client won below and on appeal.

Mendenhall v. Barber-Greene (1990)

Mark represented CMI Corp. and the individual licensor-inventor of an asphalt recycling process and apparatus as plaintiffs in a patent infringement case against Barber-Greene. The one-month jury trial took place in the United States District Court, Northern District of Illinois (Judge Will). The jury found in favor of Mark's clients.

Amlt Realty Co. v. The Koll Co. (1990)

Mark represented Koll in dispute over an alleged oral contract for the sale of real estate. The preliminary injunction trial took place in the United States District Court, Northern District of Illinois (Judge Shadur). The preliminary injunction trial was lost and an injunction entered; the case settled thereafter.

Leventhal v. Katy Industries (1989-90)

Mark represented Katy and several individual directors in private class action fraud case under SEC Rule 10b-5. The two-month jury trial took place in the United States District Court, District of Delaware (Judge Farnan). This case was won, with a verdict in favor of all defendants, and affirmed on appeal.

HVAC Systems, Inc. v. Dun & Bradstreet, Inc. (1989)

Mark represented Dun & Bradstreet as defendant in a commercial libel action. The case was decided by the United States District Court, Northern District of Illinois (Judge Kocoras). Summary judgment was obtained in favor of Mark's client on all counts; with no appeal.

Capitol Steel Co. v. Dun & Bradstreet, Inc. (1987-88)

Mark represented Dun & Bradstreet as defendant in a business libel case. The three-month jury trial took place in Sacramento, California Superior Court (Judge Boskovitch). The case was won, with a verdict in favor of Mark's client and no appeal.

Larese v. Dean Foods Co. (1987)

Mark represented the area franchisor of Baskin-Robbins stores in a franchisee termination case. The jury trial took place in the United States District Court, District of Colorado (Denver) (Judge Kane). The case won with a verdict in favor of Mark's client and no appeal.

Atari, Inc. v. Continental Merchandisers, Inc. (1986)

Mark represented Atari in a fraud and contract case against a video game and computer distributor. The two-week arbitration took place before American Arbitration Association, San Francisco. The decision was in favor of Mark's client.

Atari, Inc. v. Harris Trust & Savings Bank (1985)

Mark represented Atari in litigation over a bank's failure to pay a draft under an irrevocable letter of credit. The case was decided in the United States District Court for the Northern District of Illinois (Judge Hart). Summary judgment was entered in favor of Mark's client requiring payment of the draft amount plus interest.

OTHER REPRESENTATIVE CASES

Significant Current Matters

In Re Flat Panel LCD Antitrust Litigation

Mark represents Hewlett-Packard in litigation relating to claims of price fixing by several major foreign manufacturers of flat-panel LCD displays. (N.D. Cal., Judge Illston)

Hewlett-Packard v. Oracle

Mark represents Hewlett-Packard in litigation relating to Oracle's decision no longer to port new Oracle software products to HP's Itanium line of server products. The case is pending in the Superior Court for Santa Clara County (Judge Kleinberg).

Dyson v. BISSELL

Mark represents BISSELL as defendant in a Lanham Act action brought by Dyson concerning vacuum cleaners. The case is pending in the United States District Court for the Northern District of Illinois (Judge Der-Yeghiayan).

Convolve v. Hewlett-Packard Company

Mark represents Hewlett-Packard in defensive patent and trade secrets litigation involving disk drive systems and technology. (S.D.N.Y., Judge Daniels).

Other Significant Matters

Nicor, Inc. Shareholder Litigation

Mark represented Nicor in consolidated shareholder derivative litigation arising out of Nicor's merger with AGL Resources, Inc. The matter settled without payment of cash consideration. (Circuit Court of Cook County, IL, Chancery Division, Judge Martin)

***Tanner v. International Isocyanate Institute, et al.* (2008-2011)**

Mark represented Bayer MaterialScience as defendant in class action products liability action concerning Methylene Diphenyl Diisocyanate (MDI)-containing products used in underground coal mining applications. (N.D. Ala.) The case settled.

***Tandberg v. Hewlett-Packard Company* (2007-2008)**

Mark represented Hewlett-Packard in defensive and offensive patent litigation involving data storage tape drive systems and related products. (D. Colo., Judge Babcock). The case settled.

***Hewlett-Packard Company, et al. v. EMC Corporation* (2003-2005)**

Mark represented Hewlett-Packard in both offensive and defensive patent infringement litigation relating to networked storage systems, computer peripheral devices, printers, and other electronic data systems. (N.D. Cal., Judge Fogel). The case settled as part of global settlement of multiple actions.

***3Com v. Cambia Networks, Inc.* (2002-2003)**

Mark represented 3Com in a trade secret case relating to third generation ("3G") wireless data technology. (Circuit Court of Cook County, Judge Jaffe). The case settled.

***NL Industries, Inc. v. Commercial Union, et al.* (1995-2000)**

Mark represented NL as plaintiff in an environmental insurance coverage litigation. (D.N.J. and 3d Cir.) As part of this litigation, Mark argued the seminal Third Circuit case concerning choice of law in multi-site environmental insurance coverage action, obtaining a favorable decision for NL.

Siemens, AG v. LG Semicon; Hyundai v. Infineon Technologies, et al. (2000)

Mark represented Siemens and Infineon in litigation relating to semiconductor device and process patents. (D. Del., Judge McKelvie and N.D. Ca., Judge Ware). The case settled.

Siemens Canada, Ltd. v. Lectron (2000)

Mark represented Siemens Canada as plaintiff in a patent case concerning electronically controlled fuel vapor management valve technology. (N.D. Ill., Judge Manning). The case settled.

Board of Trustees of City Colleges v. Arthur Andersen (2000)

Mark represented Arthur Andersen as defendant in litigation relating to derivative securities trading. (Circuit Court of Cook County, Illinois, Judge Billik). Mark obtained partial summary judgment as to most of plaintiff's damages claim, and the case settled thereafter.

In re Asbestos IV (Kanawha County, West Virginia) (1995)

Mark represented NL Industries in a mass asbestos products liability case in West Virginia state court (Charleston, Judge MacQueen). The case settled during trial.

Cline, et al. v. Gerrity Oil & Gas Company (1995)

Mark represented Gerrity and several individual officers and directors in a securities fraud class action arising out of alleged nondisclosure of information relating to reserves and production. (S.D.N.Y., Judge Owen). The case settled.

NEWS

Bartlit Beck Files Suit On Behalf of H-P in Oracle Software Dispute

Bartlit Beck Wins Enhanced Damages For Willful Patent Infringement Against Ford Motor Company

Mark Ferguson, Adam Mortara, and Hamilton Hill Obtain Finding of Willful Patent Infringement Against Ford

Mark Ferguson, Adam Mortara, and Hamilton Hill Win \$23 Million Patent Verdict for Individual Inventor Against Ford Motor Company

The Next Generation Of Killer Litigators

Playing Defense Had Its Moments in 1994

BIG WINS

Bartlit Beck Wins \$56 Million for Inventor Against Ford, *Jacob Krippelz, Sr. v. Ford Motor Company (2009)*

Bartlit Beck Wins \$30 Million Summary Judgment for ABB, Inc. in Patent Indemnity Dispute Arising Out of the Sale and Purchase of a Refractory Business, *ABB v. Imetal (2001)*

Bartlit Beck Defeats Vehicle Navigation Patent Claims for NavTech, *Etak v. Zexel and NavTech (1997)*

Bartlit Beck Wins Non-Infringement and Invalidity Judgments on Medical Diagnostics Patent, *Ortho v. Miles* (1994)