

## KATHERINE L.I. HACKER

PARTNER

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Kat Hacker is a trial lawyer with significant courtroom experience in high-stakes cases in state and federal court. Kat has spent nearly 100 days in trial, including trials followed closely by news outlets around the world. Most recently, Kat was one of four Bartlit Beck lawyers who tried a race discrimination case against Harvard, arguing that Harvard's undergraduate admissions process discriminates against Asian Americans. One of Kat's cross-examinations in that trial led to a headline grabbing mid-trial discovery that Harvard changed its admissions officer training for the first time in more than thirty years just months before the trial. The change went to the heart of the case because for the first time in its history Harvard gave written instructions warning admissions officers not to fall prey to implicit bias or racial stereotyping about Asian Americans. Although the trial court ruled in Harvard's favor, the case is being appealed and is widely expected to reach the United States Supreme Court.

Kat has also handled a number of intellectual property cases. For example, Kat second-chaired a patent trial for Amazon about whether Amazon should be liable for patent infringement when third-party sellers offer and sell infringing products on Amazon.com. The jury returned a complete defense verdict that was upheld on appeal. Kat also served as co-lead counsel for Wowza Media Systems in a patent infringement case about video compression. The plaintiff tried to get more than two dozen cases consolidated into multidistrict litigation. Despite Wowza's small size compared to other defendants like Google, Apple, and Netflix, the defendants entrusted the argument in front of the Judicial Panel on Multidistrict Litigation to Wowza's team. After a victory where the Panel refused to consolidate the cases, Wowza settled, escaping the case within just five months of it being filed.

### EDUCATION & HONORS

University of Texas School of Law, 2010, J.D., with High Honors

Managing Editor, *Texas Law Review*

Articles and Notes Editor, *Texas Review of Entertainment and Sports Law*

Order of the Barristers

Order of the Coif

Voir Dire Competition, 2009 and 2010 Champion

Phi Delta Phi, Director of Programming

University of Texas Friar Society (highest and oldest honor society)

Vanderbilt University, Political Science, 2007, B.S., *summa cum laude*

## CLERKSHIPS

Honorable David M. Ebel, United States Court of Appeals for the Tenth Circuit, 2010-2011

## AWARDS & RECOGNITION

Recognized in Benchmark Litigation as Future Star 2021

## ADMISSIONS

Texas

Colorado

## CASES TRIED OR OTHERWISE TAKEN TO JUDGMENT

### ***Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*** (D. Mass.)

Trial counsel in three-week race discrimination case against Harvard for its admissions practices that discriminate against Asian-American applicants.

### ***Equal Employment Opportunity Commission v. Texas Roadhouse*** (D. Mass.)

Trial counsel for landmark pattern or practice age discrimination claim brought by EEOC against national restaurant chain. After three-week jury trial in January 2017, case ended in a mistrial because jury was deadlocked after deliberating for one week. Case settled very favorably before retrial.

### ***Confidential Arbitration*** (AAA)

Trial counsel for oil and gas exploration and production company in commercial and state securities law dispute. Claimant sought more than \$25 million. After a two-week arbitration hearing, the arbitration issued a favorable decision on every claim and ordered the claimant to pay our client's attorneys' fees.

### ***Device Enhancement LLC v. Amazon.com, Inc.*** (D. Del.)

Lead trial counsel for Amazon in a patent infringement suit about Amazon's Silk web browser. Won motion to dismiss challenging the patent as invalid for claiming an abstract idea under Section 101 and *Alice Corp. v. CLS Bank International*.

### ***Milo & Gabby, LLC v. Amazon.com, Inc.*** (W.D. Wash. and Fed. Cir.)

Trial and appellate counsel for Amazon.com in a patent infringement suit. Secured complete defense verdict for Amazon in a jury trial concerning whether Amazon is liable for patent infringement when third-party sellers offer and sell infringing products on Amazon.com. Milo and Gabby appealed both the jury's verdict on patent infringement and the judge's summary judgment decision on copyright infringement. The Federal Circuit affirmed the case in its entirety.

***ContentGuard Holdings, Inc. v. Amazon.com, Inc. et al.*** (E.D. Tex.)

Trial counsel for Amazon.com in a patent infringement suit about Amazon's use of digital rights management technology for eBooks sold through the Kindle app, movies sold through the Amazon Instant Video app, and music sold through the Amazon Music app. Case settled favorably shortly before trial.

***Core-Mark International, Inc. et al. v. Sonitrol Corp.*** (Colo. Dist. Ct. and Colo. Ct. App.)

Trial and appellate counsel for Sonitrol, former subsidiary of Tyco International, in one-week damages-only retrial. Before Bartlit Beck got involved, a previous jury found Sonitrol willfully and wantonly breached its burglar-alarm monitoring contract with Core-Mark. Sonitrol's breach stemmed from its failure to detect three burglars in Core-Mark's warehouse, which allowed the burglars to loot the warehouse for three hours. Eventually, one of the burglars lit two fires that burned for five days and destroyed the entire warehouse. Core-Mark claimed damages for both the theft and arson, which totaled over \$23 million in damages and climbed to over \$50 million with pre-judgment interest. Despite the fact that the jury in the previous trial had given Core-Mark all the damages they asked for and despite the fact that the court precluded Sonitrol from calling a damages expert, the jury in the retrial awarded Core-Mark only \$2.75 million in theft-related damages, the damages number Sonitrol sponsored. The jury awarded no fire-related damages. The Colorado Court of Appeal affirmed the jury's verdict.

## **CURRENT REPRESENTATIONS**

***Align Technology, Inc. v. 3Shape A/S and 3Shape Inc.*** (D. Del.)

Trial counsel for plaintiff Align Technology (maker of the popular Invisalign system) in action alleging 3Shape's infringement of certain Align patents that claim technology for monitoring patient progress and converting three-dimensional digital models of teeth into physical models. Case set for trial in November 2020.

***Per- and Polyfluoroalkyl Substances (PFAS) Cases***

Lead national counsel for DuPont on claims that its 2015 spin-off of The Chemours Company was a fraudulent transfer. Handling those claims in the aqueous film-forming foam multidistrict litigation in the District of South Carolina as well as cases in California, Louisiana, New Hampshire, New Jersey, New York, Ohio, Tennessee, Texas, and Vermont.

***Elm 3DS Innovations, LLC v. Micron Technology, Inc., Samsung Electronics Co., Ltd., SK hynix Inc.*** (D. Del.)

Trial counsel for Elm 3DS in a patent infringement case about three-dimensional integrated circuits.

## **OTHER REPRESENTATIVE CASES**

***Realtime Adaptive Streaming LLC v. Wowza Media Systems, LLC*** (D. Colo.)

Co-lead counsel for Wowza in a patent infringement case about the use of the H.264 video compression standard. Plaintiff filed dozens of cases across the country and tried to get them consolidated into multidistrict litigation. We defeated that motion, and the case settled favorably shortly afterwards.

***SushiQuik, LLC v. Amazon.com, Inc.*** (D. Colo.)

Lead trial counsel for Amazon in a trademark infringement case about sushi-rolling kits sold on Amazon.com. Secured voluntary dismissal before discovery even started.

***Washington v. Trinity Industries, Inc. & Trinity Highway Products, LLC*** (M.D. N.C.)

Defended Trinity in action alleging personal injuries from Trinity's ET-Plus guardrail end terminal system. Case settled favorably shortly before trial.

***U.S. Airways v. Sabre Holdings Corp. et al.*** (S.D.N.Y.)

Trial counsel for Sabre in antitrust action relating to the display of U.S. Airways' fares in Sabre's Global Distribution System.

***Santa Clara County et al. v. NL Industries, Inc.*** (Santa Clara Super. Ct.)

Trial counsel for NL Industries in a public nuisance action related to lead-based paint brought by a number of California municipalities.

***ADT Holdings, Inc., ADT Security Services, Inc., and Automated Security Corp. v. National Union Fire Insurance Company of Pittsburgh, PA*** (10th Cir.)

Appellate counsel for Tyco International Ltd.'s ADT subsidiaries in an insurance coverage action related to the warehouse fire trial, *Core-Mark International, Inc. et al. v. Sonitrol Corp.* Case was jointly dismissed as coverage issues did not need to be decided based on the favorable result in *Core-Mark*.

***Good Shepherd Hospital v. CompleteRx, Ltd.*** (Tex. App.)

Trial and appellate counsel at former firm for CompleteRx, Ltd., a pharmacy management company, in a breach of contract dispute with an ex-client hospital. Briefed, argued, and won writ of mandamus from a Texas state court of appeals requiring the trial court to allow CompleteRx to use the Texas offer of settlement statute.

***Medivation, Inc. v. Regents of the University of California and Aragon Pharmaceuticals, Inc.*** (San Francisco Super. Ct.)

Trial counsel at former firm for Aragon Pharmaceuticals, Inc. in a breach of contract case concerning the right to develop certain chemical compounds for the treatment of prostate cancer. Won summary judgment granting Aragon the exclusive right to develop a promising prostate cancer treatment valued at over \$200 million and rejecting all of the plaintiff's claims for damages. The case was upheld by the California Court of Appeal.

## **BIG WINS**

Bartlit Beck Wins Two Large Trials In Denver

06.15.2019

Grimsley, Hughes, Hacker and Taylor Win Major Trial Victory for Tyco

## **NEWS**

Bartlit Beck Earns Top Rankings by Benchmark Litigation

10.01.2020

Bartlit Beck Defeats Centralization in Large Proposed Patent MDL

08.01.2018

Law Week Colorado Profiles the Colorado General Counsel Group and its newest participant, Kat Hacker

03.23.2018

John Hughes, Kat Hacker and Joseph Doman secure important win for Amazon in the Federal Circuit.

05.30.2017

Bartlit Beck team successfully deadlocks jury in landmark age discrimination case brought by the EEOC

02.07.2017

Kat Hacker and Wins Patent Case for Amazon

05.18.2016

Hughes, Hacker and Doman Win Major Trial Victory For Amazon

11.2015

Grimsley, Hughes, Hacker and Taylor win major trial victory for Tyco

04.2014