

MARK E. FERGUSON

PARTNER

54 West Hubbard Street, Chicago, IL 60654 | 312.494.4404 | mark.ferguson@bartlitbeck.com

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, civil rights, and employment matters. He is a Fellow of the American College of Trial Lawyers.

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, the ABA National Institute, the Corporate Counsel Institute, and the American Management Association. He is a member of the Advisory Board of NYU Law School's Engelberg Center on Innovation Law and Policy and The Board of Advisors of Northwestern University's Medill School of Journalism, Media, Integrated Marketing Communications. He serves as an Officer and Trustee of the Daniel Murphy Scholarship Fund, and is Past President and a member of the Board of Directors 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 and trial representation of 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, and NL Industries, Inc.

Complex Business and Commercial Litigation

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

Accounting and Financial

Representation of Big Four accounting firms in securities and professional liability matters.

Defamation, Privacy, and Business Torts

Representation of corporations and other organizations in defamation/privacy actions, including in jury trials and appeals; representation of numerous clients in business interference, fraud, and deceptive trade practices cases.

Antitrust and Trade Regulation

Clients have included Hewlett-Packard, NCR Corporation, Dun & Bradstreet, Dart & Kraft, Inc., FMC Corp., and other companies. Matters have included litigation, and counseling under the Sherman, Clayton, and FTC Acts, and state antitrust statutes.

Securities and Shareholder Actions

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 other shareholder suits under state and federal securities laws and RICO.

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.

EDUCATION & HONORS

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

Order of the Coif

Executive Note Editor, *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.

AWARDS & RECOGNITION

Fellow, American College of Trial Lawyers

Recognized in Benchmark Litigation as a National and Illinois Litigation Star

Recognized in Illinois Super Lawyers

Selected as member of the Lawdragon 500

Selected for recognition in The Best Lawyers In America

Selected as BTI Consulting Client Service All-Star

Named American Lawyer "Litigator of the Week," Nov. 17, 2017, for jury trial win in *Network-1 v. Hewlett Packard Enterprise*, E.D. Texas

Recipient of Financial Times North America Innovative Lawyers Collaboration Award

ADMISSIONS

United States Supreme Court

Illinois Supreme Court

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

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

CASES TRIED OR OTHERWISE TAKEN TO JUDGMENT

***Network-1 v. Hewlett Packard Enterprise* (2017)**

Co-lead counsel for Hewlett Packard Enterprise in a week-long patent jury trial involving Power over Ethernet technology. The case resulted in a defense verdict, in which all asserted claims of the patent were found not to be infringed and were also found to be invalid. Following post-trial motions, the district court upheld the non-infringement verdict but vacated the verdict of invalidity. On appeal, the Federal Circuit affirmed in part, reversed in part and remanded the case for further proceedings. (E.D. Tex.; Judge Schroeder).

***Hewlett-Packard v. Oracle* (2011-2016)**

Working with lawyers from several other firms, led the Bartlit Beck team representing Hewlett-Packard in litigation relating to Oracle's 2011 decision to no longer develop new Oracle software products for HP's Itanium processor-based line of mission critical servers. The first phase, a bench trial in 2012, resulted in a declaratory judgment in favor of our client HP and against Oracle on all matters before the court, and established a contractual obligation to continue developing software products for the Itanium line of servers. In the second phase, tried in 2016, the jury returned a \$3 billion verdict in favor of our client HP and rejected Oracle's counterclaims. (Superior Court for Santa Clara County, California; Judges Kleinberg and Kirwan).

In Re Genetically Modified Rice Litigation (2006-2010)

Represented Bayer CropScience as national lead counsel in multidistrict litigation concerning unintended release of experimental genetically modified rice. During 2009-2010, tried four three to four week jury trials in the United States District Court for the Eastern District of Missouri (Judge Perry). The litigation was settled following a series of bellwether trials in federal and state court.

Krippelz v. Ford Motor Co. (2008)

Represented inventor Jacob Krippelz, Sr. in a 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 for the Northern District of Illinois (Judge Zagel). The jury returned a verdict in our client's favor in the amount of \$23 million, later enhanced to approximately \$56 million after a finding of willful infringement and after including pre- and post-judgment interest. The judgment was reversed on appeal and judgment of invalidity entered in favor of Ford.

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

Represented Hewlett-Packard in a patent infringement action relating to storage area network technology. The three-week jury trial took place in the United States District Court for the District of Massachusetts (Judge Gorton). The trial resulted in a verdict against HP, and the case settled as part of a larger set of claims and counterclaims while on appeal.

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

Represented ABB and ABB T&D in contract and trade secret litigation relating to the parties' industrial circuit breaker servicing businesses. 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)

Represented Combustion Engineering and ABB, Inc. in litigation arising out of the sale and purchase of a refractory business. 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)

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

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

Represented BISSELL as declaratory plaintiff and counter-defendant in a design patent and trade dress infringement case involving lightweight upright vacuum cleaners. The week-long preliminary injunction trial took place in the United States District Court for the Western District of Michigan (Grand Rapids) (Judge Bell). The plaintiff's motion for a preliminary 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)

Represented Navigation Technologies Corporation (now 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 for the 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 NavTeq.

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

Represented UPS in a patent action relating to computerized scanning and data entry devices. The case was decided by the United States District Court for the 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)

Represented Miles in a patent action concerning laser-optical flow cytometers (blood testing devices). The four-week jury trial took place in the United States District Court for the Southern District of New York (Judge Conner). The trial resulted in a verdict in our client's favor, including a 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)

Represented Dun & Bradstreet in a case challenging a company-wide determination of performance bonuses following a spin-off reorganization. The case was decided in favor of Dun & Bradstreet by the United States District Court for the Northern District of Illinois (Judge Gettleman), and the judgment was affirmed on appeal.

Bobrowicz v. Lee Hecht Harrison (1997)

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

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

Represented W.R. Grace in a securities fraud action relating to an acquisition financing transaction. The case was decided in favor of W.R. Grace by the United States District Court for the Northern District of Illinois (Judge Shadur), and the judgment was affirmed on appeal.

Patton v. Ohr Properties Management (1993)

Represented plaintiffs in a pro bono housing discrimination case. The week-long jury trial took place in the United States District Court for the Northern District of Illinois (Judge Holderman). The Patton family prevailed and were awarded both compensatory and punitive damages.

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

Represented Price Waterhouse in a 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 for the Eastern District of Michigan (Judge Duggan). Partial summary judgment was entered in favor of Price Waterhouse, and class certification was denied. The case settled thereafter without exchange of monetary compensation.

West Indies Automotive v. GMAC (1992)

Represented GMAC in a \$40 million lender liability case. The three-week jury trial took place in the United States District Court for the District of the Virgin Islands (St. Thomas) (Judge Farnan). The case was won below, and the judgment was affirmed on appeal.

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

Represented an outside director of DBA Systems in a securities fraud class action. The case was decided by the United States District Court for the Middle District of Florida (Judges Fawcett and Young). Obtained summary judgment in client's favor dismissing most claims, and the case settled thereafter.

Young v. Connecticut Mutual (1990-1991)

Represented Corporate Compensation Plans, Inc. in trial court and on appeal in a business interference and breach of contract case. The case was decided in favor of CCP by the United States District Court for the Northern District of Illinois (Judge Hart), and the judgment was affirmed on appeal.

Mendenhall v. Barber-Greene (1990)

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 for the Northern District of Illinois (Judge Will). The jury found in favor of CMI and its licensor-inventor.

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

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

Leventhal v. Katy Industries (1989-1990)

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

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

Represented Dun & Bradstreet in a commercial libel case. The case was decided in favor of Dun & Bradstreet by the United States District Court for the Northern District of Illinois (Judge Kocoras) with all counts dismissed.

Capitol Steel Co. v. Dun & Bradstreet, Inc. (1987-1988)

Represented Dun & Bradstreet in a commercial libel case. The three-month jury trial took place in Sacramento, California Superior Court (Judge Boskovitch). The trial resulted in a verdict in favor of Dun & Bradstreet with no appeal.

Larese v. Dean Foods Co. (1987)

Represented an area franchisor of Baskin-Robbins stores in a franchisee termination case. The jury trial took place in the United States District Court for the District of Colorado (Denver) (Judge Kane). The case resulted in a verdict in favor of Dun & Bradstreet with no appeal.

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

Represented Atari in a fraud and contract case against a video game and computer distributor. The two-week arbitration took place before the American Arbitration Association, San Francisco. The panel decided in favor of Atari.

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

Represented Atari in litigation over Harris Bank's failure to pay a draft under an irrevocable letter of credit. The case was decided in favor of Atari by the United States District Court for the Northern District of Illinois (Judge Hart).

OTHER REPRESENTATIVE CASES

OTHER SIGNIFICANT MATTERS

Medline Industries, Inc. Ethylene Oxide Litigation (Current)

Represent Medline in multi-plaintiff, multi-case, litigation claiming injurious exposure to ethylene oxide allegedly arising from its use in Medline's medical sterilization facility. Cases pending in Circuit Court of Cook County and United States District Court for the Northern District of Illinois.

Eacott v. Hewlett Packard Enterprise (2019-2020)

Represented HPE in alleged whistleblower litigation filed in Superior Court for Santa Clara County (San Jose). The case settled.

Klein v. International Game Technology (2014-2015)

Represented IGT and certain directors and officers in shareholder litigation arising out of IGT's merger with GTECH. The matter settled without payment of cash consideration. (Eighth Judicial District, Clark County, NV, Judge Gonzales)

In re ODD Antitrust Litigation (2013-2015)

Represented Hewlett-Packard in antitrust litigation relating to claims of price fixing by suppliers of Optical Disc Drives. Major claims were settled, and the remaining claims were consolidated with another pending case. (N. D. Cal., Judge Seeborg)

In Re Flat Panel LCD Antitrust Litigation (2011-2013)

Represented Hewlett-Packard in litigation relating to claims of price fixing by suppliers of flat-panel LCD displays. The cases settled. (N.D. Cal., Judge Illston)

Dyson v. BISSELL (2012-2013)

Represented BISSELL in a Lanham Act action brought by Dyson concerning vacuum cleaners. The case settled. (N.D. Ill., Judge Der-Yeghiayan)

Nicor, Inc. Shareholder Litigation (2010-2011)

Represented Nicor in 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)

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

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

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

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

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. The case settled as part of a settlement of multiple actions. (N.D. Cal., Judge Fogel)

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

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

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

Represented NL in an environmental insurance coverage litigation. As part of this litigation, argued the seminal Third Circuit case concerning choice of law in multi-site environmental insurance coverage actions, obtained a favorable decision for NL. The parties thereafter settled NL's coverage claims. (D.N.J. and 3d Cir.)

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

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

Siemens Canada, Ltd. v. Lectron (2000)

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

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

Represented Arthur Andersen in litigation relating to the firm's audit of City Colleges' derivative securities trading practices. Partial summary judgment was entered in favor of Arthur Andersen as to most of plaintiff's damages claim, and the case settled thereafter. (Circuit Court of Cook County, Illinois, Judge Billik)

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

Represented NL Industries in a multi-plaintiff asbestos products liability case in West Virginia state court. The case settled during trial. (Charleston, W.V., Judge MacQueen)

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

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. The case settled. (S.D.N.Y., Judge Owen)

PROFESSIONAL ACTIVITIES AND COMMUNITY SERVICE

Member, Advisory Board, NYU Engelberg Center on Innovation Law and Policy

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

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

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

Member, Board of Advisors, Northwestern University, Medill School of Journalism, Media, Integrated Marketing Communications

Board Member and past President of 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)

Vice Chair and Trustee, Daniel Murphy Scholarship Fund

BIG WINS

Mark Ferguson, Mark Ouweleen, and Faye Paul win rare defense victory in EDTX patent infringement trial for Hewlett Packard Enterprise

Mark Ferguson, Mike Valaik and Kate Roin Lead Bartlit Beck Team in \$3 Billion Win for HP Enterprise
07.01.2016

Bartlit Beck Wins \$56 Million for Inventor Against Ford

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

Bartlit Beck Defeats Vehicle Navigation Patent Claims for NavTech

Bartlit Beck Wins Non-Infringement and Invalidity Judgments on Medical Diagnostics Patent

NEWS

Bartlit Beck Earns Top Rankings by Benchmark Litigation
10.01.2020

Bartlit Beck Founding Partner Mark Ferguson Inducted as a Fellow of the American College of Trial Lawyers
03.09.2020

Mark Ferguson named "Litigator of the Week" by AmLaw Litigation Daily after EDTX defense-side patent trial win

11.17.2017

Mark Ferguson, Mark Ouweleen, and Faye Paul win rare defense victory in EDTX patent infringement trial for Hewlett Packard Enterprise

11.15.2017

Bartlit Beck HP team receives Financial Times' "North America Innovative Lawyers 2016" Collaboration Award

12.08.2016

Mark Ferguson, Mike Valaik, and Kate Roin Lead Bartlit Beck Team in \$3 Billion Win For HP Enterprise

07.01.2016

Bartlit Beck Files ODD Price Fixing Case for Hewlett-Packard

10.2013

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

11.2009

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

03.2009

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

12.2008

The Next Generation Of Killer Litigators

Illinois Legal Times, 01.1996

Playing Defense Had Its Moments in 1994

The National Law Journal, 07.1994