

## MICHAEL J. VALAIK

PARTNER

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Mike Valaik has tried cases to juries and judges throughout the United States, representing clients in some of Bartlit Beck's biggest wins. Mike represented Hewlett-Packard against Oracle in a breach of contract case resulting in a \$3.1 billion verdict for his client, HP, after a five-week jury trial in San Jose. Mike coordinated and orchestrated the successful patent and antitrust defense of Bayer's leading drug Cipro, which was a sixteen-year battle in federal and state courts including appellate victories in both the Federal Circuit and Second Circuit. Mike led UTC's patent litigation against Rolls-Royce regarding swept fan blade technology where ultimately Rolls-Royce sought billions of dollars in damages and lost on summary judgment. Mike was also trial counsel for UTC in a ten-week bench trial in 2004 based on a False Claims Act case relating to the "Great Engine War" between Pratt & Whitney and GE in the 1980s.

Mike has also tried numerous other cases to verdict, including pro bono representation of an Albanian woman seeking asylum in the United States after being a victim of human trafficking. His experience includes patent litigation in the aerospace, biotech, and computer fields, as well as general commercial litigation such as breach of contract, fraud, antitrust, and other issues.

Mike combines his trial experience with strong leadership skills. Mike graduated with Honors from the United States Naval Academy and received a M.A. in modern military history from the University of Maryland after graduation from Annapolis. Mike joined the firm in 2000, after spending four years practicing at Baker & Daniels in Indianapolis.

Mike is also an Adjunct Professor of Law at Northwestern Law School where he teaches "High-Tech Trial Techniques." He also teaches NITA's trial programs in multiple cities.

### EDUCATION & HONORS

Georgetown University Law School, 1996, J.D., *cum laude*

University of Maryland, 1988, M.A. (European History)

Thesis: *Winston Churchill and the Naval Estimates Crises of 1909 and 1914*

United States Naval Academy, 1988, B.S., with Honors

## GOVERNMENT SERVICE

Captain, United States Marine Corps (1988-1996)

Led Marines in the evacuation of 4,000 people, including diplomats, from the Liberian Civil War in Operation Sharp Edge (1990).

Led Marines in ground combat offensive against Iraqi enemy forces in Operation Desert Storm in Kuwait. Awarded Navy Commendation Medal for service in combat (1991).

## AWARDS & RECOGNITION

Naval Academy Graduate Education Scholar (selected to complete Masters Degree program after finishing curriculum in 3 ½ years)

Honors Program (selected for advanced studies in History)

## ADMISSIONS

Illinois

Indiana

## CASES TRIED OR OTHERWISE TAKEN TO JUDGMENT

### ***GE v. RTC*** (2016-Present)

Trial counsel for Raytheon Technologies Corp. in defense of its patents covering Pratt & Whitney's new Geared Turbofan engine (GTF) in both the U.S. and Europe. From 2016 to the present, General Electric has filed thirty-seven Inter Partes Proceedings (IPRs) in the Patent Office challenging Pratt's patents. The technology includes the architecture of geared jet engines, fan section innovations, composite casings and metallic coatings, and other technologies covering the GTF engine. Mike argues IPRs at trial, retains and works with experts worldwide, and provides overall strategic direction to RTC. While Patent Office statistics show that 80% of patents are invalidated after IPR institution, RTC has won the majority of the IPRs that Mike has argued at the trial stage.

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

Represented 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.)

***Rolls-Royce plc v. UTC*** (E.D. Va. 2005-2011)

Trial counsel for United Technologies Corporation in one-week patent trial regarding swept fan blade technology in Alexandria, Virginia in December 2005. The court ruled that the parties' respective patents did not interfere and that ruling was affirmed by the Federal Circuit. Continued representation of UTC after the Federal Circuit ruling in 2010 when Rolls-Royce sued UTC for patent infringement in the Eastern District of Virginia. The technology at issue related to the jet engines (particularly the fan blades) used on the world's largest airplane, the Airbus A380, as well as a host of other airplanes. Rolls-Royce sought almost \$4 billion in damages and an injunction preventing further sales of the accused engines. The court granted summary judgment in United Technologies' favor, finding that United Technologies' engines did not infringe the Rolls-Royce patent. The court also struck Rolls-Royce's multibillion-dollar damages theory on the grounds that it was based on misstatements of the law, a lack of sound evidence, and unsupported economic assumptions.

***In re Ciprofloxacin Hydrochloride Antitrust Litigation*** (E.D.N.Y. 2005; Fed. Cir. 2008; Superior Court of California, San Diego 2009; 2d Cir. 2010; 4th District Cal. Ct. App. 2011)

Counsel for Bayer AG and Bayer Corporation in nationwide class action antitrust litigation in connection with Bayer's settlement of patent litigation against Barr Laboratories. Bayer owned the patent on Cipro, one of the world's leading antibiotics. Barr sought approval from the FDA for a generic version of Cipro and, pursuant to the Hatch-Waxman statute, Bayer sued Barr in the Southern District of New York. On the eve of trial in January 1997, Bayer and Barr settled with Bayer making payments amounting to \$398 million. Bayer defeated three later generic challenges.

The antitrust plaintiffs contended that it was an antitrust violation for Bayer to pay Barr to settle Hatch-Waxman litigation. The MDL proceeding was before Judge David G. Trager in the Eastern District of New York. Developed arguments and wrote Bayer's brief in opposition to plaintiffs' motion for partial summary judgment that Bayer's payment was a *per se* antitrust violation. Judge Trager ruled in Bayer's favor and adopted Bayer's analytical framework for analyzing Hatch-Waxman settlements (261 F. Supp. 2d 188). Thereafter, the Eleventh and Second Circuits adopted Judge Trager's reasoning (402 F.3d 1056; 466 F.3d 187).

Following the *per se* ruling, Judge Trager invited Bayer to file a motion for summary judgment. Again, developed arguments and wrote Bayer's briefs, and Judge Trager granted Bayer's motion (363 F. Supp. 2d 514). Plaintiffs appealed to the Second Circuit, which transferred the Indirect Purchaser Plaintiffs' (the consumers') appeal to the Federal Circuit due to an alleged state-law *Walker Process*-type claim based on fraud on the Patent Office. Wrote Bayer's appellate briefs in the Second and Federal Circuits. Both Circuits affirmed Judge Trager's decision and adopted his reasoning (544 F.3d 1323 (Fed Cir. 2008); 604 F.3d 98 (2d Cir. 2010)). The Supreme Court denied certiorari in both appeals, and the MDL federal litigation has concluded in Bayer's favor.

***United States v. United Technologies Corp.*** (S.D. Ohio)

Represented UTC at trial and on appeal in the Department of Justice's \$600 million False Claims Act lawsuit. The government claimed that UTC division Pratt & Whitney inflated prices of F-15 and F-16 jet engines in the "Great Engine War" with GE, a multibillion-dollar competitive Air Force procurement in the 1980s.

After a ten-week bench trial, the trial court held that Pratt had made three false statements in a 1983 offer and imposed a \$7.1 million statutory penalty, but the court rejected the government's \$600 million damages theory, and held that actual damages were zero. After two rounds of appeals, the Sixth Circuit held that the trial record established that the government failed to prove any damages and remanded the case.

On remand, the government abandoned its damages claims, and in June 2016 the trial court entered final judgment awarding a total of \$11.1 million (\$1.2 million in disgorgement, \$2.8 million in interest, and the \$7.1 million penalty). The government declined to appeal, ending the case.

***Bayer Schering v. Barr*** (D.N.J. 2007-2009)

Trial counsel for Bayer Schering in ANDA IV Hatch-Waxman litigation involving a patent on Yasmin® against Barr Laboratories. On December 4, 2007, Judge Peter Sheridan, United States District Court for the District of New Jersey, completed a two-week bench trial on Barr's challenges based on obviousness, invalidating public use, and inequitable conduct. The court found the patent invalid due to obviousness and ruled for Bayer Schering on the public use and inequitable conduct challenges.

***Rago, et al. v. Federal Signal Corporation*** (Cook County, Illinois 2008)

Trial counsel for Federal Signal in five-week jury trial of product liability claims brought by twenty-seven Chicago firefighters. Plaintiffs alleged that Federal Signal sirens caused permanent hearing loss. Jury verdict for Federal Signal on all claims of all plaintiffs.

***Hyseni v. I.N.S.*** (2004)

Trial counsel for a young Albanian woman in pro bono asylum hearing before Immigration Judge. Client requested asylum in the United States to escape persecution based on gender. Asylum granted.

## **OTHER REPRESENTATIVE CASES**

***Carrier Class Action Litigation***

Represented Carrier in four consumer class action lawsuits relating to secondary heat exchangers in furnaces manufactured by Carrier. Won Wisconsin case on summary judgment. Other lawsuits settled.

***GenProbe v. Bayer HealthCare and Bayer Corporation***

Represented Bayer HealthCare's diagnostic division in patent infringement suits related to GenProbe patents on nucleic acid detection assays. The cases settled favorably to Bayer.

## **BIG WINS**

Bartlit Beck Helps UTC Successfully Resolve Long-running False Claims Act Litigation Against DOJ

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

Bartlit Beck Wins Summary Judgment for United Technologies in Patent Infringement Suit

Cert denied: Bartlit Beck Plays Key Role in End to Federal Cipro Antitrust Class Actions

Bartlit Beck Successfully Defends Pratt & Whitney Against \$624 Million Claim

Fred Bartlit, Peter Bensinger and Mike Valaik Win Federal Circuit Appeal on Behalf of Bayer in Leading Patent-Antitrust Case, In re Ciprofloxacin Hydrochloride Antitrust Litigation

Bartlit Beck Wins Complete Defense Verdict in Cook County Jury Trial of 27 Firefighters' Hearing Loss Claims

Bartlit Beck Wins Summary Judgment, Defeating \$10 Billion Antitrust Claims Against Bayer Corp.

## NEWS

Bartlit Beck Wins Patent Appeal For United Technologies Corporation  
07.10.2019

Bartlit Beck HP team receives Financial Times' "North America Innovative Lawyers 2016" Collaboration Award  
12.08.2016

Bartlit Beck helps UTC successfully resolve long-running False Claims Act litigation against DOJ  
08.29.2016

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

Bartlit Beck Wins Summary Judgment for United Technologies in Patent Infringement Suit  
05.2011

Cert denied: Bartlit Beck Plays Key Role in End to Federal Cipro Antitrust Class Actions  
03.2011

Jason Peltz and Mike Valaik Win Summary Judgment For DIRECTV In Patent Infringement Suit  
12.2009

Fred Bartlit, Peter Bensinger and Mike Valaik Win Federal Circuit Appeal on Behalf of Bayer in Leading Patent-Antitrust Case, In re Ciprofloxacin Hydrochloride Antitrust Litigation  
11.2008