



## Steve E. Holtshouser

### SENIOR COUNSEL

ST. LOUIS, MO

PHONE: 314.345.6269

EMAIL: STEVE.HOLTSHOUSER@HUSCHBLACKWELL.COM

### OVERVIEW

Steve is a seasoned, successful federal court trial attorney who practices both intellectual property litigation and white collar defense/internal investigations.

Steve is passionate about protecting client interests and achieving the best outcome. He brings to clients over 35 years of experience in federal courts throughout the United States in criminal and civil cases. In IP litigation, he protects key drivers of business success, including patents, trade secrets and confidential information, trademarks and copyrights. When clients find themselves in the government's crosshairs, they benefit from his background as an Assistant U.S. Attorney and his drive to provide effective defense against criminal and civil investigations and allegations. In internal investigations, he is driven to find the truth and advise clients how to best address potential problems before they become the subject of full-blown government scrutiny.

Effective representation often requires establishing good working relationships with opponents and Steve prides himself on his ability to work respectfully with opposing counsel. When a case has to be tried, Steve has the judgment and experience to be the trial lawyer of choice. As lead counsel, Steve has tried more than 40 complex federal jury trials to verdict and briefed and argued more than 35 federal appeals including one *en banc* argument in the Eighth Circuit. In 2014, he was a member of the team that briefed and won the *Octane Fitness* patent fees case in the U.S. Supreme Court. Remarkably, he has a perfect record of success in trial and on appeal.

### Industries

Manufacturing  
Technology  
Transportation

### Services

Copyrights  
Government Solutions  
Intellectual Property  
Intellectual Property Litigation  
Section 337  
State Attorneys General Practice  
Trade Secrets & Business  
Information Protection  
Trademarks  
White Collar, Internal  
Investigations & Compliance

**White Collar Defense/Internal Investigations.** Steve's deep experience in all federal crimes and with numerous U.S. Attorney's offices as well as the Department of Justice makes him an excellent choice for criminal representation and internal investigations. He has defended cases involving trade secret theft, fraud and health care fraud. No client he has represented has been charged with a crime. As a prosecutor, his experience includes large domestic and international white collar fraud, tax, federal capital murder and public corruption offenses. As a Supervisor in the U.S. Attorney's Office, Steve oversaw a white collar crime unit, a health care fraud unit, an environmental crimes task force, an anti-terrorism task force and a cybercrimes unit. For many years, he was one of the lead federal capital prosecutors in the United States, performed in that role in several federal districts, served on the Attorney General's Capital Crimes Review Committee and Working Group, and co-authored capital jury instructions in the Eighth Circuit. Now, his vast experience is put to work protecting the business and liberty interests of clients.

**IP Litigation.** Steve's prior criminal experience with technology and science helped him easily transition to successfully representing patentees and IP owners as well as accused infringers. To date, no clients he represented have had to pay a dime to an opponent. His patent cases most often involve electronic hardware, computer software, IOT products and automation. In one significant case, a settlement was reached in which a client ended up owning the plaintiff and its asserted patents. In several, he has invalidated the patents asserted against his client including prior to expensive discovery.

In patent litigation throughout the United States, Steve draws on his deep writing and trial experience to investigate facts and identify credible witnesses, develop offensive and defensive strategies for achieving the desired outcome, and reduce diverse, complex technologies to fit the varied expertise and time limitations ever present in federal court. A large part of Steve's success is: 1) the result of working closely with clients to understand their technologies, products and brands; and 2) efficiently conveying the facts and law to judges and juries. Given the high costs and risks of federal IP litigation, Steve actively seeks early and efficient resolution of disputes.

**Federal Judicial Service.** Steve's diverse talents in federal court are recognized by the judges he most often appeared before – he was appointed to serve and continues to serve the bench as a member of the Eastern District of Missouri Federal Practice Committee and as a trustee of the Federal Memorial Practice Trust. In addition, he serves as a Master member of the St. Louis Chapter of the American Inns of Court.

## Case Study

### Emerson Process Management Co.

Emerson achieved a complete defense victory in patent case in Eastern District of Texas.

## Experience

### FEDERAL CRIMINAL EXPERIENCE

- Successfully represented former federal IT sub-contractor investigated for theft of trade secrets in Southern District of Illinois. Client not charged with offense.
- Represented individual being investigated for role in shipment of adulterated dog food, a strict liability FDA offense, between supplier and co-manufacturers of dog food for approximately 9 months until termination of representation due to conflict.
- Lead co-trial counsel in multi-week trial of attorney/Anglican Bishop who conducted 10-year international Ponzi scheme. Investors lost \$75 million and defendant sentenced to 40 years in prison. Affirmed on appeal and subject of episode of “American Greed” on CNBC, “Wolf in Priest’s Clothing,” Season 8, Episode 12, first aired in 2014. (*U.S. v. Sigillito*, 759 F.3d 913 (8th Cir. 2014))
- Selected to lead team of firewall attorneys who temporarily relocated to Fargo, N.D., to assist the U.S. Attorney for the District of North Dakota investigate, prosecute and try defendant who kidnapped, assaulted and murdered local college student. Responsible for penalty phase investigation and advise trial counsel. Death penalty verdict affirmed on appeal. (*U.S. v. Rodriguez*, 581 F.3d 775 (8th Cir. 2009))
- Lead trial and appellate counsel in capital prosecution of bank robber who murdered security guard during course of robbery attempt. Admitted evidence included nuclear DNA identification. Death penalty conviction after 4 week trial; affirmed on appeal. (*U.S. v. Bolden*, 545 F.3d 609 (8th Cir. 2008))
- Lead counsel in investigation and prosecution of operators of world’s largest offshore online sportsbook, Betonsports.com, a publicly traded company. Prosecution resulted in prison sentences and forfeiture of \$44 million held in Swiss bank accounts which were part of an Isle of Jersey trust. As part of the prosecution efforts to secure forfeitable assets, appeared in the Royal Court of Jersey to preserve order freezing trust assets. (*U.S. v. Kaplan, et al.*, 2009 WL 3698003 (E.D.Mo. 2009))

## Experience

- Lead trial counsel in successful prosecution of bank robbery ring known for kidnapping bank managers at home to gain entry to banks after hours. Multi-week trial relied on combination of forensic and circumstantial evidence including cell tower tracking, fingerprints, footprints, hair and fiber analysis and the first-ever introduction of mitochondrial DNA evidence in a Missouri court. Defendants' sentences ranged from 25 to 60 years. (*U.S. v. Coleman, et al.*, 349 F.3d 1077 (8th Cir. 2003)); (*U.S. v. Coleman*, 202 F.Supp.2d 962 (E.D.Mo. 2002))

### FEDERAL IP LITIGATION EXPERIENCE

- Represented several subsidiaries of Fortune 500 manufacturer in consolidated Eastern District of Texas patent infringement suit brought by large and well-financed Canadian patent troll. Multiple claims of five different patents were asserted primarily against subsidiary that engineers and markets distributed control system for plant automation and process control. Previous assertions of same patents had resulted in multimillion-dollar settlements from large process control companies. Our team extensively briefed and argued motions challenging validity of patents under two lines of cases, one requiring software patents to claim implementation on fixed and tangible medium and another under *Alice*, a 2014 Supreme Court decision that invalidated patents using conventional computer technology to claim and preempt abstract idea without adding anything inventive. Our team also had foresight to challenge venue and transfer in anticipation of Supreme Court argument in *TC Heartland* and the Federal Circuit decision in *In re Google*. In March 2017, District Court accepted our client's invalidity arguments and dismissed most claims. As a result, plaintiff dismissed few remaining claims to appeal District Court's order to Federal Circuit, thus enabling cross-appeal of venue and transfer rulings and further wreck troll's business model. (*Automation Middleware Solutions Inc. v. Emerson Process Management LLP, et al.*). (See Case Study.)

## Experience

- Member of team providing lead counsel representation of Octane Fitness, LLC (*Octane Fitness, LLC v. Icon Sports*) before the U.S. Supreme Court in its appeal of denial of attorneys' fees in a patent infringement case. Obtained summary judgment on infringement claims against Octane Fitness and the District Court denied fees. Merit and reply briefs to the U.S. Supreme Court were authored by the team and joined by numerous amici, including the U.S. Solicitor General. In *Octane Fitness, LLC v. Icon Fitness and Health, Inc.* 134 S.Ct. 1749 (2014), the Supreme Court reversed the Federal Circuit and set a "totality of the circumstances" standard for finding exceptionality to award fees under 35 U.S.C. § 285 to a successful accused infringer. The case garnered significant national media attention and altered the balance of power in patent litigation. (On remand, the District Court finally found the original claims against Octane Fitness exceptional and the team secured a fee award of \$1.4 million for the client.)
- Part of team that served as lead counsel for Fortune 500 company defending against claim of patent infringement by defendant and customer using software products to automate industrial wastewater treatment. Successfully obtained stay of case in early stage so parties could brief motion for summary judgment of patent ineligible subject matter under *Section 101* and *Alice*. Drafted key briefs. District Court granted motion finding the asserted patent invalid and entered judgment for clients. (*Neochloris, Inc. v. Emerson Process Management*, 1:14-cv-09680-EEC (N.D. Il.))
- Member of team representing Fortune 500 company against patent troll in E.D.Tx. suit claiming patent infringement against IOT thermostat. Briefed motions to dismiss based on *Alice* and motion to transfer based on Section 1404. Led independent investigation to establish that plaintiff claims of principal place of business in E.D.Tx. were false. Prior to extensive discovery and Markman briefing, successfully convinced plaintiff to dismiss complaint with prejudice. (*FTC Sensors LLC v. Emerson Electric Co.*, 2:15-cv-2002 JRG-RSP)

## Experience

- Member of team representing Emerson subsidiary responsible for DeltaV distributed control system against patent infringement claim against network router. Briefed *Alice* motions to dismiss and simultaneously filed declaratory judgment action in WDTX and successfully convinced judge to retain the case in WDTX. Convinced plaintiff to dismiss claims in both districts without payment of damages. (*Wetro Lan LLC v. Emerson Electric Co.*, No. 2:15-cv-414 RWS-RSP)
- Replaced patentee's former counsel, obtained favorable settlement for patentee alleging infringement of industrial fieldbus networking connectivity patent. Invention utilized electronic alpha-numeric screens to set and view parameters of the module at the field level. Following discovery and expert depositions, a favorable Markman ruling was obtained. Subsequently, Daubert motions to strike defense validity and damages experts were briefed, argued and granted. The team also succeeded in striking defense motion for summary judgment of invalidity. Steve was lead counsel on most depositions and at oral argument on a portion of the Daubert hearing. (*Numatics, Inc. v. Balluff, Inc.* 2:13-cv-11049-DML (E.D.MI.))
- Lead counsel representing Fortune 500 company that received third-party subpoena in memory chip patent infringement case. Following investigation and conferences with subpoenaing party, successfully obtained drastic limits on document production, agreement to accept unsworn interview in lieu of deposition and covenant not to sue on patents in suit. (In re Recipient of Third-party subpoena).
- Selected to replace previous counsel for patent infringement defendant, manufacturer of cervical cancer biopsy brush, on eve of written and deposition discovery. After interposing opposition to plaintiff's motion to stay pending Inter Partes Review in a related proceeding and opening credible communication with opposing counsel, obtained favorable settlement resulting in defendant taking license to one patent from one plaintiff and obtaining the IP of another plaintiff. (*CDx Diagnostics v. Histologics, Inc.*, 2-13-cv-07909-DOC (C.D.Ca.))

## Experience

- Represented patentee asserting infringement of patents covering use of nitrogen in smoke machines used to detect auto emission control system leaks. Engaged shortly before trial to replace prior counsel, argued summary judgment motions, won sanctions order against defendant and obtained fee award. Despite prior extensive representation, plaintiff's case was weak and plaintiff was exposed to more liability than it could successfully recover. After protracted negotiations, global settlement of all claims were reached that ended the dispute and plaintiff's exposure.
- Member of trial team and lead appellate counsel in two capital jury trials of bank robbers who murdered security guard during bank robbery. (*U.S. v. Allen and Holder*, 247 F.3d 741 (8th Cir. 2001) (Allen I)) Both sentenced to death. Lead counsel in successful 8th Circuit en banc appeal of panel reversal. Convinced 8th Circuit en banc, including original panel, to affirm convictions. Established that omission of essential element in grand jury indictment was not structural error and therefore subject to harmless error review. (*U.S. v. Allen*, 406 F.3d 940 (8th Cir. en banc 2005) (Allen III)). Thereafter served as lead trial counsel in approximately 8 weeks of civil post-conviction review hearings. See, *Holder v. U.S.*, 2008 WL 2909648 (E.D.Mo. 2008), *aff'd*, 721 F.3d 979 (8th Cir. 2013); and *Allen v. U.S.*, 2011 WL 1770929 (E.D.Mo. 2011). In *Allen*, served as lead counsel in 6-week hearing on claims. District Court entered 278-page Memorandum and Order denying all post-conviction attacks. *Allen v. U.S.*, 2014 WL 2882495 (E.D.Mo. 2014). The Court credited Steve's cross-examination with demonstrating "the importance of cross-examination in exposing incredible testimony." 2014 WL 2882495 \*109.

## OTHER FEDERAL LITIGATION EXPERIENCE

- Lead counsel for attorney who was subject of meritless Motion for Sanctions. Entered appearance several months after motion filed and after extensive briefing. Based on independent factual investigation and negotiation with opposing counsel, Movant dismissed motion with prejudice and without further briefing, preparation or contested hearing. Efforts also lead to subsequent dismissal of motion as to two other attorneys.



## Experience

- Selected as Examiner by U.S. Bankruptcy Court in E.D. of Missouri to investigate disposition of assets by debtor in Vietnam. Partial investigation conducted and bankruptcy petition dismissed by Court.
- Authored drafts of District Court findings of fact and conclusions of law in landmark case involving First Amendment rights of high school newspaper authors. 607 F.Supp. 1450 (E.D.Mo. 1985). Supreme Court ultimately affirmed District Court's judgment. (*Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988))

## PRO BONO

- In pro bono representation, advised team that secured dismissal of charges against auto dealer charged with failing to pay sales tax on vehicles bought at out-of-state auctions.

## Recognition

- *The Best Lawyers in America*®, Litigation-Intellectual Property, 2018-2024
- Featured on CNBC's *American Greed*, "Wolf in Priest's Clothing," Season 8, Episode 12, July 2014
- *Missouri Lawyer Weekly*, "Attorney of the Year," 2009
- Appointed as Examiner by U.S. Bankruptcy Court for Eastern District of Missouri, In re Gannon International, Ltd., No. 13-46321-659



## Education

- J.D., Washington University in St. Louis School of Law
  - *magna cum laude*
  - Order of the Coif
  - *Washington University Law Quarterly*
- B.A., Saint Louis University
  - Political Science
  - Certificate in Business Administration

## Admissions

- Missouri
- U.S. Supreme Court
- Illinois
- U.S. Court of Appeals, Eighth Circuit
- U.S. District Court, Eastern District of Missouri
- U.S. District Court, Eastern District of Michigan



2024 Best Lawyers