HUSCH BLACKWELL

Kara R. Fussner

PARTNER

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OVERVIEW

Kara dedicates her practice to resolving complex intellectual property disputes involving patents, trademarks, copyrights, rights of publicity, trade secrets and unfair competition.

She works directly with in-house counsel, engineers and business professionals to defend accused companies and enforce their intellectual property assets. This includes forging aggressive litigation strategies and, when necessary, developing cost-efficient strategies for avoiding and reducing the risk of future litigation.

Kara's representative experience includes:

- Serving on the team that represented Octane Fitness, LLC before the U.S. Supreme Court in its patent infringement case, a case that altered the balance of power in patent litigation.
- Representing clients in turning back Major League Baseball's attempts to control the fantasy sports industry.

Industries

Manufacturing
Technology
Transportation

Services

Copyrights
Intellectual Property
Intellectual Property Litigation
Section 337
Trade Secrets & Business Information Protection
Trademarks

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Case Study

Emerson Process Management Co.

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

Experience

PATENT INFRINGEMENT

- Served on team representing Octane Fitness, LLC before U.S. Supreme Court in appeal of denial of attorneys' fees in patent infringement case. Obtained summary judgment on infringement claims against Octane Fitness, and U.S. District Court denied fees. Team authored merits and reply briefs to Supreme Court and was joined by numerous amici, including U.S. Solicitor General. Supreme Court reversed Federal Circuit and set totality of the circumstances standard for finding exceptionality to award fees under 35 U.S.C. § 285. Case garnered significant national media attention and altered balance of power in patent litigation. On remand, District Court found original claims against Octane Fitness exceptional, and team secured fee award of $1.4 million for client. *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*
- Represented several subsidiaries of Fortune 500 manufacturer in consolidated Eastern District of Texas patent infringement suit brought by large, well-financed Canadian patent troll. Multiple claims of five different patents asserted primarily against subsidiary that engineers and markets distributed control system for plant automation and process control. Previous assertions of same patents resulted in multimillion-dollar settlements from large process control companies. Team extensively briefed and argued motions challenging validity of patents. Also challenged venue and transfer in anticipation of Supreme Court argument in *TC Heartland* and Federal Circuit decision in *In re Google*. In March 2017, District Court accepted client's invalidity arguments and dismissed most claims. Plaintiff dismissed a 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.

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Experience

- Obtained summary judgment of inequitable conduct in patent infringement case filed against client, leading provider of medical imaging software. Plaintiff revived asserted patent after previous patent owner allowed patent to lapse for nonpayment of maintenance fees. Without any knowledge of, or investigation into, reasons for nonpayment, plaintiff filed petition to revive patent certifying that nonpayment was "unintentional." District Court found certification was material misrepresentation made with intent to deceive Patent Office, rendering patent unenforceable.
- Defended ‘745 LLC against patent infringement allegations brought by Gibson Guitar on virtual music reality system. After Markman hearing, ‘745 secured claim construction ruling construing four terms in ‘745's favor. Gibson filed dismissal with prejudice following ruling.
- Successfully defended Western Excelsior Corp. against claims of patent infringement and trade dress infringement of the product appearances. The patented technology involved soil erosion fabrics, their chemical composition and methods of manufacture. Plaintiff sought a preliminary injunction, which was defeated. Following the Markman hearing, Western Excelsior prevailed on all three claim terms in dispute. The plaintiff dismissed its lawsuit with prejudice.
- Served as lead counsel against allegations of patent infringement relating to laser probes. Litigation team uncovered prior art and helped client design noninfringing product and obtained summary judgment ruling clearing new product. Case settled in light of new design and prior art found by trial team. (*Iridex v. Synergetics*)
- Defended Optec USA, Inc. in patent infringement claim involving cervical collar. Obtained favorable settlement terms for Optec following Markman ruling. (*WG Holdings LLC et al. v. Optec USA Inc. et al*)
- Achieved victory in patent dispute for loan origination platform developer client, utilizing invalidity defense based on Supreme Court's *Alice* doctrine

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Experience

- Prevailed before the Federal Circuit on behalf of international motor manufacturer in patent case involving complex applications of Illinois contract law to intellectual property licensing agreements.

COPYRIGHT/TRADEMARK INFRINGEMENT

- Represented Wolff Shoe Co. in a copyright infringement case involving an ornamental design on a shoe. The jury award to Wolff of $2.2 million in actual damages was notable because the defendant had sold only a limited number of infringing shoes.
- Member of team which obtained a jury verdict of willful patent and copyright infringement in favor of Litecubes, which was upheld on appeal at the Federal Circuit and deemed a Top 10 appellate decision of 2008. Kara took almost all of the depositions in the case, which involved the Litecube product, as featured on “Good Morning America,” “The Jay Leno Show,” the American Music Awards and “CSI: Miami.”
- Defended Nations Mortgage when a national bank sued it for trademark infringement of its Legacy Nations Bank trademark, including color schemes of the mark. Assisted Nations Mortgage in developing an abandonment defense that had implications for the plaintiff’s mark, as well as several of the legacy marks. The plaintiff agreed to a confidential settlement, despite Nations Mortgage having no claims against the plaintiff.

RIGHT OF PUBLICITY

- Counseled CBS in a matter brought against the National Football League Players Association. On First Amendment grounds, CBS defeated the NFL’s allegations that the use of player images and names in fantasy football games violated player rights of publicity.

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Experience

- Represented CBC Distribution against Major League Baseball. On First Amendment grounds, CBC defeated Major League Baseball's claim that the use of player names and statistics in fantasy baseball games violated player rights of publicity. The case ended with the Supreme Court denying certiorari. Filed amicus brief on behalf of Fantasy Sports Trade Association in Indiana Supreme Court case *Akeem Daniels, Cameron Stingily and Nicholas Stoner v. FanDuel, Inc., and DraftKings, Inc.* Court issued unanimous ruling in favor of FanDuel and DraftKings.

OTHER EXPERIENCE

- Member of team counseling Synergetics in a trade secrets case involving laser products used in vitreoretinal eye surgery. The team obtained a jury verdict awarding $2.3 million, including a punitive damage award. Verdict was upheld on appeal.
- Advised CULedger, a technology startup that brings blockchain solutions to the credit union industry, on corporate organization, operating agreement, private placement memo, and licensing and other technology agreements.

Recognition

- *The Best Lawyers in America®*
    - Litigation – Intellectual Property 2018-2027
    - Litigation – Patent, 2019-2027
- *The Legal 500 United States*
    - Intellectual property - Patents: litigation (International Trade Commission), Recommended lawyer, 2025 and 2026
- *Missouri & Kansas Super Lawyers*, Intellectual Property Litigation, 2019-2023; Rising Stars, 2011, 2013
- Missouri Bar Pro Bono Wall of Fame, 2021

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Education

- J.D., Boston University School of Law
  - *magna cum laude*
- B.A., University of Illinois at Urbana-Champaign

Admissions

- Illinois
- Missouri
- Delaware
- U.S. Supreme Court
- U.S. District Court, Eastern District of Missouri
- U.S. District Court, District of Colorado
- U.S. District Court, District of Delaware
- U.S. Court of Appeals, Third Circuit
- U.S. Court of Appeals, Eighth Circuit
- U.S. Court of Appeals, Ninth Circuit
- U.S. Court of Appeals, Federal Circuit

Clerkship

The Hon. Carolyn Berger, Delaware Supreme Court

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