HUSCH BLACKWELL



Rudy Telscher

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OVERVIEW

Rudy is one of the country's premier intellectual property litigators.

With only one exception, Rudy has not lost a trial, arbitration or other case-dispositive motion in well over a decade. The exception involved a case in which the jury verdict obtained was ten times lower than the amount sought by plaintiff in closing argument.

During this time, and for each case not settled following decision, Rudy has been affirmed on appeal. At the same time, he is well-known for shaping litigation solutions that make economic sense for businesses.

For more than 25 years, Rudy has litigated and tried disputes over patent, trademark, copyright, trade secret, internet and First Amendment matters in district and appellate courts throughout the United States, including notable jurisdictions such as the Eastern District of Texas, the District of Delaware, and the Central and Northern Districts of California. Additionally, Rudy handled argument before the U.S. Supreme Court in a case that altered the balance of power in patent litigation.

In addition to his traditional IP litigation practice, Rudy also serves as a co-chair of the firm's Artificial Intelligence practice group.

> *"Rudolph is my go-to counsel for anything, but he excels in situations which are already messy when he is called in. He is the best I have seen with his use of diplomatic measures."*
>
> — Chambers USA 2024

Industries

Life Sciences
Manufacturing
Technology

Services

Artificial Intelligence
Aviation
Copyrights
Intellectual Property
Intellectual Property Litigation
Post-Issuance Proceedings
Section 337
Trade Secrets & Business Information Protection
Trademarks

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Rudy and the team advise clients on AI policies and procedures, regulatory matters, corporate transactions involving AI, venture capital funding of AI development, and labor and employment implications—and Rudy has a particular focus on the unique IP issues that often arise in connection with the use of AI. He is a regular speaker on AI and the law at events throughout the country.

Prior to entering law school, Rudy worked as an engineer for a leading defense contractor, applying his skills in the areas of avionics systems engineering and software development.

Rudy is a member of the firm's Executive Board.

Case Study

Emerson Process Management Co.

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

Featured Experience

Solutions With Teeth: *CBC v. Major League Baseball*

From a pure legal standpoint, the issue was whether the use of player statistics to play fantasy sports violated player rights of publicity and, even if it did, whether the First Amendment trumped any such state rights of publicity. At the time of the suit, the fantasy industry was valued at $1.5 billion annually.

A deeper dive into the facts revealed a much more compelling story for the fantasy industry and against Major League Baseball than that signaled by the pure legal issue. As it turns out, Major League Baseball played no part in developing fantasy sports. An editor for *The New York Times* thought of it. In the 1980s, devoted fans created and managed their own statistical games with an estimation of 500,000 fans playing annually.

In the 1990s and moving forward, software companies like CBC developed state-of-the-art software to manage the statistic interface and to create many forms of interesting fantasy games. The software made it far easier for the average fan to play and track the games, dramatically increasing the popularity of fantasy sports.

At the time of the suit, an estimated 15 million fans played fantasy sports annually. CBC brought in many witnesses to explain in detail how fantasy sports had actually made Major League Baseball far more money by causing devoted fans to watch many more games than just those of their home town team and encouraging them to buy more merchandise, satellite television packages and fantasy sports media, to name just some of the benefits. Indeed, the fantasy industry helped Major League Baseball and its players; it had not damaged them in the least.

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This compelling version transcended the mere legal issues. CBC prevailed at the District Court level and was affirmed on appeal.

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.)

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Experience

- Provided lead counsel representation of Octane Fitness LLC (*Octane Fitness LLC v. Icon Sports*) 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 District Court denied fees. Merits and reply briefs to U.S. Supreme Court were authored by team and joined by numerous amici, including U.S. Solicitor General. In *Octane Fitness LLC v. Icon Fitness and Health Inc.*, Supreme Court reversed Federal Circuit and set totality of 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 finally found original claims against Octane Fitness exceptional, and team secured fee award of $1.4 million for client. Rudy handled oral argument before Supreme Court.
- Represented CDM Fantasy Sports against Major League Baseball, making new law in turning back Major League Baseball's attempts to monopolize $1.5 billion per year fantasy sports industry. Case ended with Supreme Court denying certiorari. (*CBC Distribution v. Major League Baseball*) 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.
- Obtained jury verdict of willful patent and copyright infringement in favor of Litecubes, which was upheld on appeal at the Federal Circuit and deemed Top 10 appellate decision of 2008. Case involved Litecube product, as featured on "Good Morning America," "The Jay Leno Show," the American Music Awards and "CSI: Miami." (*Litecubes v. Glow Products*)

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Experience

- Obtained summary judgment of inequitable conduct in patent infringement case filed against our 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. (*3D Medical Imaging Systems LLC v. Visage Imaging Inc. and Pro Medicus Limited*)
- Served as lead counsel for Fortune 500 company defending against claim of patent infringement against our client and primary customer regarding use of software products to automate industrial wastewater treatment. Successfully obtained stay of litigation prior to discovery commencing so parties could brief motion for summary judgment of patent ineligible subject matter under *Section 101* and *Alice*. District Court granted motion finding asserted patent invalid and entered judgment for clients. (*Neochloris Inc. v. Emerson Process Management*)
- Counseled Hunter Engineering in patent arbitration regarding its revolutionary wheel balancer technology. Following week-long trial, arbitrator awarded Hunter seven-figure compensation based on above industry average 7 percent royalty rate, and further ordered defendant to pay attorneys' fees and all arbitration costs. (*Hunter Engineering v. Snap-On*)
- Represented Emerson subsidiary responsible for DeltaV distributed control system against patent infringement claim involving a network router. Briefed *Alice* motions to dismiss and simultaneously filed declaratory judgment action in WDTX and successfully convinced judge to retain case in WDTX. Convinced plaintiff to dismiss claims in both districts without payment of damages. (*Wetro Lan LLC v. Emerson Electric Co.*)

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Experience

- Won summary judgment on non-infringement. Case involved technology for measuring wave patterns of antennas, most prominently for cellphones. Key term in dispute was "means plus function" claim and case turned on whether ETS system for pivoting antenna through various positions was equivalent to structure disclosed in patent and covered by "means plus function" clause. Despite issue being one of fact, we developed compelling factual record in discovery and successfully moved for summary judgment of noninfringement. (*MVG v. ETS Lindgren*)
- Represented Synergetics in trade secrets case involving laser products used in vitreoretinal eye surgery. Obtained jury verdict awarding $2.3 million, including punitive damage award. Verdict was upheld on appeal. (*Synergetics v. Hurst & McGowan*)
- Represented Wolff Shoe Co. in copyright infringement case involving ornamental design on shoe. Jury award to Wolff of $2.2 million in actual damages was notable because defendant had sold only limited number of infringing shoes. (*Wolff Shoe Company v. Mosinger Company, LLC, d/b/a Mark Lemp Footwear*)
- Brought suit on behalf of Graphics House in dispute over inventorship of patent. Obtained jury verdict that Graphics House was sole inventor, finding that defendant infringed patent and awarding damages for past infringement and permanent injunction entered. (*Graphics House v. Bead Pens International*)
- Obtained $1.5 million verdict for Hawthorne Education Services in copyright infringement case against doctor; verdict was upheld on appeal by Sixth Circuit. Notable accomplishment was that defendant had only $12,000 in total sales of Hawthorne's copyrighted book, yet much larger verdict was obtained. (*Hawthorne Education Services v. Dr. Ronald Friedman*)
- Defended Q3 Products in trade secret theft claim and patent infringement claims regarding two patents covering dental tool. Jury found that Q3's product did not infringe either patent, that both patents were invalid and that there was no trade secret theft. Affirmed on appeal by Federal Circuit. (*Young Dental v. Q3 Products*)

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Experience

- Represented CBS in matter brought against National Football League Players Association. On First Amendment grounds, CBS defeated the NFL's allegations that use of player images and names in fantasy football games violated player rights of publicity. (*CBS v. National Football League Players Association*)
- Defended '745 LLC against patent infringement allegations brought by Gibson Guitar regarding a virtual music reality system. After Markman hearing, '745 secured claim construction ruling that construed four terms in '745's favor. Gibson filed dismissal with prejudice following ruling. (*Gibson Guitar Corp. v. '745, LLC*)
- Successfully defended Western Excelsior Corp. against claims of patent infringement and trade dress infringement of product appearances. Patented technology involved soil erosion fabrics, their chemical composition and methods of manufacture. Plaintiff sought preliminary injunction, which was defeated. Following Markman hearing, Western Excelsior prevailed on all three claim terms in dispute. Plaintiff dismissed its lawsuit with prejudice. (*Propex Operating Company, LLC v. Western Excelsior Corporation*)
- Brought suit against Texas Instruments on behalf of Digit Wireless in patent case involving keyboard technology for wireless telephones and other handheld electronics. Successfully asserted patents and obtained favorable damage amount for client in confidential settlement agreement. (*Digit Wireless v. Texas Instruments*)
- Defended Nations Mortgage when national bank sued it for trademark infringement of its Legacy Nations Bank trademark, including color schemes of mark. Assisted Nations Mortgage in developing abandonment defense that had implications for plaintiff's mark, as well as several legacy marks. Plaintiff agreed to confidential settlement, despite Nations Mortgage having no claims against plaintiff. (*Bank of America v. Nations Mortgage*)

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Experience

- Served as lead counsel successfully defending Laird against patent infringement and trade secret allegations brought by Galtronics relating to antenna technology for cellphones. In response to suit, assisted Laird in identifying patents for countersuit; Laird filed countersuit. Within months of Galtronics filing suit, Laird developed defenses leading to Galtronics filing covenant not to sue and dismissal of all claims with prejudice against Laird. Laird later settled its lawsuit with Galtronics for confidential settlement amount. (*Galtronics v. Laird; Laird v. Galtronics*)
- Prevailed in Markman hearing, clearing defendant's flooring products of infringement. Further discovery revealed strong case for inequitable conduct, causing the plaintiff to file covenant not to sue and motion to dismiss its case. (*Dodge Regupol v. RB Rubber*)
- Represented Triumph Pharmaceuticals against accusations of infringement of two patents relating to chemical formulations for mouthwash. Filed four motions for summary judgment relating to noninfringement and invalidity contentions. Court granted summary judgment in Triumph's favor on all four motions, finding noninfringement of both patents and holding that both were invalid. (*Triumph Pharmaceuticals v. Oxyfresh Worldwide*)
- Served as lead counsel against allegations of patent infringement relating to laser probes. Based on prior art uncovered by litigation team, Rudy helped his 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 Catlow in patent infringement lawsuit involving gasoline nozzles. Jury awarded only nominal damages ($10,000), and we persuaded court to not enter a permanent injunction. (*Husky v. Catlow*)
- 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*)

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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.
- Achieved an early victory for our client by filing case dispositive motion to dismiss with prejudice under Section 101 and the *Alice* doctrine. The district court granted the motion and the case is currently on appeal. (*Mortgage Application Technologies v. MeridianLink Inc.*)
- Earned a high-profile victory for Sotera Wireless before the PTAB, knocking out all disputed patent claims (175 in total) across eight related IPR petitions. The Board also reversed its previous stance on several patentability issues at stake in the IPRs, instead finding in the Final Written Decisions that the full record supported Sotera's arguments.
- Prevailed before the U.S. Court of Appeals for the Federal Circuit on behalf of Sotera Wireless as it successfully invalidated eight of a competitor's patents in final, non-appealable judgments. Husch Blackwell had previously knocked out all disputed patent claims—175 in total—across eight related inter partes review (IPR) petitions before the Patent Trial and Appeal Board (PTAB) of the United States Patent and Trademark Office, resulting in a precedential PTAB decision that provides a strategy for petitioners to avoid discretionary denial of IPR under the *Fintiv* factors. (Not all decisions by PTAB are marked precedential, but the Board found Husch Blackwell's arguments and methods so useful that it marked this decision precedential to help future IPR parties in navigating PTAB procedure. Read more here.)
- Represented leading supplier of lithium-ion battery powered products and portable power solutions defending patent infringement claim in district court. Obtained early dismissal after presenting our client's invalidity positions.

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Experience

- Represented multiple suppliers and retailer of lithium-ion battery-powered products and portable power solutions defending patent infringement claims in a case before the United States International Trade Commission. Obtained early termination (dismissal) of our clients after presenting our clients' positions regarding invalidity, unclean hands, and non-infringement.

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Recognition

- *Managing Intellectual Property*, Case of the Year, Editor's Choice: *Octane Fitness, LLC v. Icon Health & Fitness, Inc.*
- *Managing Intellectual Property* IP Stars, Trademark star and Patent star
- *Missouri Lawyers Media*
  - Top 100 POWER List for Intellectual Property Law, 2023
  - POWER List for Intellectual Property Law, 2022
- *Missouri Lawyers Weekly*, Influential Appellate Advocate
- *National Law Journal Trailblazer* - Intellectual Property
- *Law360*, MVP Awards, Intellectual Property
- *Benchmark Litigation*, Local Litigation Star
- *The Best Lawyers in America®*
  - Litigation - Intellectual Property, 2012-2027
  - Litigation - Patent, 2021-2027
  - Patent Law, 2026-2027
- Lexology Client Choice Awards, Intellectual Property-Patents, Missouri
- *Missouri & Kansas Super Lawyers*, Intellectual Property Litigation
- "Lawyer of the Year" finalist in connection with representation in the fantasy sports case against MLB and the NFL
- *Chambers USA*, Intellectual Property Law, 2025-2026
- Thomson Reuters Stand-out Lawyer, 2025 and 2026

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Education

- J.D., University of Iowa College of Law
  - with high distinction
- B.S., University of Missouri
  - with honors
  - Electrical Engineering

Admissions

- Missouri
- U.S. Supreme Court
- Illinois
- U.S. Court of Appeals, Federal Circuit
- International Trade Commission
- U.S. Patent and Trademark Office

Community Leadership

- Oak Hill/Villa Duchesne, Girls Soccer Team, Grades 1-7, Head Coach; Girls Basketball Team, Grades 3-7, Assistant Coach
- Oak Hill Boys Soccer Team, Grades 5-6, Head Coach
- Villa Duchesne, Annual Giving, Classroom Ambassador, 2010-2014; Annual Giving, Chairperson, 2013; Mock Trial Program, Head Coach, 2014-present; Engagement Committee, 2014-2016; Advancement Committee, 2017; Strategic Planning Committee, 2018-present

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2026 Benchmark Litigation - Litigation Star

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