O'MELVENY & MYERS LLP

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David Almeling is a counsel in O'Melveny's San Francisco office and a member of the Intellectual Property and Technology Practice within the Litigation Department. David represents clients in intellectual property litigation, with a primary focus on patent and trade secret litigation. He also represents clients in trademark, copyright, and unfair competition matters.

David frequently speaks and publishes on issues concerning trade secret law and patent law. His most recent publication is the book *Keeping Secrets: A Practical Introduction to Trade Secret Law and Strategy,* which was published in 2012 by Oxford University Press.

David was named on *The Recorder's* 2013 list of "Lawyers on the Fast Track," which identifies 50 California lawyers "whose early accomplishments indicate they will be tomorrow's top lawyers and leaders."

Illustrative Professional Experience

- Defended a multinational public cloud computing in a patent case involving web-based interactive map technology, resulting in a complete victory in which the U.S. Patent & Trademark Office invalidated the asserted patent in an inter partes reexamination. (E.D. Tex.)
- Represented a medical device company in six cases involving software and hardware used to design orthodontic braces, resulting in a favorable settlement that included a significant payment to the client. The cases involved patent, trade secret, and trademark claims. (N.D. Cal., W.D. Wis., ITC, and California state court)
- Defended a multinational public consumer electronics and software company in a patent infringement case involving antivirus software and firewalls, resulting in a favorable settlement involving the licensing of a portfolio of patents shortly after service of strong invalidity contentions. (E.D. Tex. and S.D. Fla.)
- Defended an innovator of HD semiconductor chips in a case that involved trade secret, copyright, antitrust, and unfair competition claims. After the successful defeat of a motion for preliminary injunction, the litigation was resolved through a favorable settlement. (N.D. Cal.)
- Defended an electronic design automation company in a patent infringement case relating to automated design of integrated circuitry, resulting in a favorable settlement after a summary judgment ruling that the plaintiff lacked standing. (N.D. Cal.)
- Represented a leader in biometric payment solutions in an appeal that decided the ownership of fifteen patents, resulting in a Federal Circuit decision that gave a complete victory to the company. (Federal Circuit)
- Represented a leading provider of syndicated consumer research in asserting patent infringement involving technology that measured usage and performance of mobile devices, resulting in a favorable claim construction that lead to a favorable settlement. (N.D. Cal.)
- Represented two global electronics companies in their assertion of patent infringement claims against a provider of wireless networking technology, resulting in a Federal Circuit decision approving, for the first time, of proving infringement through compliance with a technical standard. (Federal Circuit and W.D. Wis.)
- Represented an international nonprofit athletic institution in a trademark infringement case against various websites that sold fraudulent tickets, resulting in a complete victory in the form of permanent injunctions against the websites. (D. Ariz. and N.D. Cal.)
- Represented a leader in biometric fingerprint security solutions in a case involving trade secret claims, resulting in a favorable settlement that created the world's largest provider of fingerprint sensor and identity management software. (N.D. Cal.)
- Defended a multinational public cloud computing and internet search company in a patent infringement action relating to the use of electronic tokens to conduct internet commerce, resulting in a fast and favorable settlement. (E.D. Tex.)
- Represented a nonprofit IP institute and filed an amicus brief on their behalf regarding the patentability of basic scientific research in the pharmaceutical industry. (U.S. Supreme Court)
- Defended a public semiconductor manufacturer in a patent case involving oscillators using voltage and temperature compensated amplifiers, resulting in a complete victory in which the case was dismissed with prejudice shortly after O'Melveny filed a Rule 11 motion. (E.D. Pa.)
- Represented a public semiconductor manufacturer in its assertion of patent infringement claims related to all-silicon oscillators for generating clock signals in integrated circuits, resulting in a favorable settlement. (N.D. Cal.)
- Defended a public semiconductor manufacturer in a patent case involving PCI Express technology, resulting in a fast and favorable settlement. (E.D. Tex.)
- Represented a large number of companies and individuals — both trade secret owners and alleged misappropriators — in various aspects of civil and criminal trade secret disputes that do not go to court, including devising trade secret protection programs, investigating alleged misappropriation and valuing trade secret

professional focus

Intellectual Property and Technology
Patent and Technology Litigation
Trade Secrets
Litigation

education

Duke University, J.D.: high honors; Order of the Coif; Note Editor, *Duke Law Journal*; Moot Court Board

University of Florida, B.A., Political Science: highest honors; Valedictorian; Phi Beta Kappa

admitted

California

publications

Seven Reasons Why Trade Secrets Are Increasingly Important (*27 Berkeley Technology Law Journal 1091*, November 2012)

A Look At State Court Trade Secret Stats (*IP Law 360,* March 1, 2011)

A Statistical Analysis of Trade Secret Litigation in State Courts (*Gonzaga Law Review,* February 2011)

A Statistical Analysis of Trade Secret Litigation in Federal Courts (*Gonzaga Law Review,* March 2010)

Tracking Trade Secret Stats (*IP Law 360,* March 25, 2010)

A Practical Case For Federalizing Trade Secret Law (*IP Law 360,* June 23, 2009)

Four Reasons to Enact a Federal Trade Secrets Act (*Fordham Intellectual Property Media & Entertainment Law Journal,* April 2009)(Copyright © 2009 Fordham Intellectual Property, Media & Entertainment Law Journal and David S. Almeling)

The Identification Issue (*National Law Journal*, August 2008)

DOJ, FTC Redefine Antitrust Rules on Patnet Pools (National Law Journal, October 29, 2007)

The Infringement-Plus-Equity Model: A Better Way To Award Monetary Relief in Trademark Cases (*Journal of Intellectual Property Law,* Spring 2007)

claims, negotiating pre-litigation resolutions, and hiring and terminating employees.

- Represented, pro bono, a plaintiff who alleged a school district discriminated against her because of her Egyptian nationality and Islamic faith. The case resulted in a precedent-setting settlement and wide-ranging injunctive relief that lead to the district adopting best-in-class anti-harassment policies. (Ninth Circuit and D. Nev.)
- Currently defending a public multinational consumer electronics and software company in a patent case involving sixteen patents relating to various phone, audio, camera, and mobile device technologies. (D. Del.)
- Currently defending a multinational public cloud computing and internet search company in a patent case involving the organization of map data on portable wireless devices; the case is stayed pending the resolution of a reexamination of the assert patent. (S.D. Cal.)
- Currently defending a multinational public cloud computing and internet search company and a multinational consumer electronics company in a patent case involving a method for providing navigational instructions that include photographs of locations along the route. (D. Del.)
- Currently defending an online video service in a patent case involving a method for internet-based interactive video content programming; the case is stayed pending the resolution of a reexamination of the assert patent. (C.D. Cal.)
- Currently representing a biometric sensors company in an arbitration involving claims of trade secret misappropriation and breach of contract.

Patenting Nanotechnology: Problems with the Utility Requirement (Stanford Technology Law Review, 2004)

Professional Activities

Law Clerk, Honorable Gerald B. Tjoflat, US Court of Appeals, Eleventh Circuit (2004-05)
Admitted to Practice, US District Court, Northern, Southern, Central, and Eastern Districts of California; US Court of Appeals, Ninth, Eleventh, and Federal Circuits; US Supreme Court
Chair, Media Relations Subcommittee and the Amicus Subcommittee, Trade Secret Committee of the American Intellectual Property Law Association
Member, San Francisco Bar Association Section on Intellectual Property; American Bar Association Section on Intellectual Property Law; The Lawyers and Judges Golf Association of Northern California
Programming Director, Trade Secret Committee of the California Bar Association
Author, "Seven Reasons Why Trade Secrets Are Increasingly Important," 27 *Berkeley Technology Law Journal* 1091 (November 2012), which was judged one of the best intellectual property articles published in 2012 and was selected for inclusion and republication in the 2013 edition of the *Intellectual Property Law Review*; "Keeping Secrets: A Practical Introduction to Trade Secret Law and Strategy" (Oxford University Press 2012); "The New, Improved Prior Use Defense: The Same Patent vs. Trade Secret Calculus," *Trade Secret Litigator* (April 17, 2012); "First Patent Reform, Now Trade Secret Reform," *Patently-O* (October 12, 2011); "A Look At State Court Trade Secret Stats," *IP Law 360* (March 1, 2011); "A Statistical Analysis of Trade Secret Litigation in State Courts," 46 *Gonzaga Law Review* 57 (February 2011), which was judged one of the best intellectual property articles published in 2011 and was selected for inclusion and republication in the 2012 edition of the *Intellectual Property Law Review*; "Tracking Trade Secret Stats," *IP Law 360* (March 25, 2010); "A Statistical Analysis of Trade Secret Litigation in Federal Courts," 45 *Gonzaga Law Review* 291 (March 2010); "A Practical Case For Federalizing Trade Secret Law," *IP Law 360* (June 23, 2009); "Four Reasons to Enact a Federal Trade Secrets Act, " 19 *Fordham Intellectual Property, Media & Entertainment Law Journal* 769 (April 2009); "Trade Secrets: The Identification Issue," *National Law Journal* (August 2008); "DOJ, FTC Redefine Antitrust Rules on Patent Pools," *National Law Journal* (October 29, 2007); "The Infringement-Plus-Equity Model: A Better Way to Award Monetary Relief in Trademark Cases," 14 *Journal of Intellectual Property Law 205* (2007); "Patenting Nanotechnology: Problems with the Utility Requirement," *Stanford Technology Law Review,* N1 (2004); "The Problems of Pouring-Rights Contracts," 53 *Duke Law Journal* 1111 (2003)
Speaker, "What Lawyers and Their Clients Need to Know about the Changing Balance of Power Between Trade Secrets and Patents," American Intellectual Property Law Association (April 23, 2013); "Introduction to Trade Secret Law, Its Increasing Importance, and Its Changing Balance with Patent Law," University of Washington School of Law (October 29, 2012); "Understanding Patent Law and Trade Secret Law for In-House Counsel and Other Non-IP Lawyers," Bridgeport Continuing Education (August 24, 2012); "Why Trade Secret Litigation is Booming, and Why That Matters to Clients," Sonoma County Bar Association (January 23, 2012); "Why Every Lawyer Should Know More about Trade Secret Law," California Bar Association IP Institute (November 11, 2011); "Six Reasons That Trade Secrets Matter More and More to American Companies," Bridgeport Continuing Education's Prosecuting and Defending Corporate Raiding, Customer Trade Secret, and Employee Mobility Cases (February 25, 2011); "Trade Secret Litigation - A Statistical Analysis of Recent Trends and Implications," California State Bar Cyber Institute (January 19, 2011); "Trade Secret Considerations for In-House Counsel and Executives," California State Bar Cyber Institute (January 11, 2011); "Someone Stole My Trade Secrets, Now What Do I Do?" Joint CLE provided by O'Melveny & Myers and Navigant Consulting (October 12, 2010); "The Evolution of Trade Secret Law: Reflecting on 30 Years of the Uniform Trade Secrets Act," Hamline Law Review Symposium (April 16, 2010)
Adjunct Teaching Position, Advanced Patent Law, Santa Clara University School of Law (2007)