



Marilyn Neiman

Member

New York

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Marilyn Neiman is a litigator and registered patent attorney with extensive experience in patent litigation from the inception of a case through trial, settlement or disposition by motion practice.

Marilyn has been counsel in many patent, trademark and copyright cases throughout the United States, as well as commercial cases. A significant portion of her work includes patent litigations under the Hatch-Waxman Act. Marilyn has extensive experience litigating highly specialized Hatch-Waxman statutory patent infringement actions involving pharmaceutical drugs, including acetylcysteine, bosutinib, cinacalcet, fexofenadine, fulvestrant, metaxalone, plerixafor, and zoledronic acid. She also has extensive appellate experience before federal appellate courts. In addition to her litigation practice, Marilyn counsels clients concerning the protection of their intellectual property rights, including providing patent validity and infringement opinions. She has represented generic pharmaceutical companies, as well as many other companies involved in a wide range of products and services, including construction equipment, internet technology, and robotic surgery. She represents both patentees and accused infringers.

She is a member of the New York County Lawyers' Association and its Federal Courts Committee.

She has a bachelor's degree in biology from Cornell University, attended two years of medical school at the College of Medicine and Dentistry of New Jersey (passing Part I of the National Medical Boards) and has a law degree from Pace University School of Law.

Experience

Metrokane, Inc. v. Wine Enthusiast, 160 F. Supp. 2d 633 (S.D.N.Y. 2001) (granting defendants' motion to dismiss plaintiff's trade dress and unfair competition claims)

Asch/Grossbardt Inc. v. Asher Jewelry Co., 2003 U.S. Dist. LEXIS 2837 (S.D.N.Y. Feb. 27, 2003) (discovery decision in trademark case)

Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc., 334 F.3d 1294 (Fed. Cir. 2003) (claim construction decision)

Metso Paper, Inc. v. Enerquin Air Inc., No. 06-C-1170, 2008 U.S. Dist. LEXIS 111081 (E.D. Wis. July 23, 2008) (claim construction decision)

King Pharm., Inc. v. Eon Labs., Inc., 616 F.3d 1267 (Fed. Cir. 2010) (affirming grant of summary judgment of patent invalidity)

Cumberland Pharm., Inc. v. Sagent Agila LLC, No. 12-825-LPS, 2013 U.S. Dist. LEXIS 156834 (D. Del. Nov. 1, 2013) (granting motion to dismiss patent infringement claim)

Novartis Pharm., Corp. v. Wockhardt USA LLC, Civil Action No. 12-cv-3967 (SDW) (MCA), 2014 U.S. Dist. LEXIS 85368 (D.N.J. June 24, 2014) (Markman Opinion)

Practice Areas

- Intellectual Property
- Intellectual Property Litigation
- Patents
- Trademark & Copyright

Industry Sectors

- Health Care & Life Sciences

Education

- Pace University School of Law, J.D., 1979
- Cornell University, B.S., 1974

Bar Admissions

- New Jersey
- New York
- United States Patent and Trademark Office

Court Admissions

- U.S. Court of Appeals for the Federal Circuit
- U.S. District Court -- Eastern District of New York
- U.S. District Court -- Southern District of New York
- U.S. Supreme Court

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Emblaze Ltd. v. Apple Inc., No. 5:11-cv-01079-PSG, 2014 U.S. Dist. LEXIS 144197 (N.D. Cal. Oct. 9, 2014) (claim construction order)

Cloud Farm Assocs., L.P. v. Volkswagen Grp. of Am., Inc., No. 10-502-LPS, 2015 U.S. Dist. LEXIS 104184 (D. Del. Aug. 10, 2015) (Markman Opinion)

Amgen, Inc. v. Apotex Inc., No. 15-61631-CIV-COHN/SELTZER, 2017 U.S. Dist. LEXIS 13919 (S.D. Fla. Jan. 31, 2017) (awarding costs to prevailing party in biologics patent case)

Amgen Inc. v. Aurobindo Pharma, Ltd., No. 16-853-GMS, 2018 U.S. Dist. LEXIS 31299 (D. Del. Feb. 27, 2018) (patent claim construction and evidentiary rulings)

Represented Sagent Agila against Cumberland in the District of Delaware. Achieved dismissal of complaint for patent infringement after proving the client's ANDA contained a substance excluded by the patent claims.

Filed suit on behalf of the patentee alleging that defendant's robotic surgical system infringed two patents. The term "remote location" was the subject of claim construction. In the Federal Circuit, we prevailed on our claim construction argument that the scope of the disputed claim term was not limited based on statements made, and the single embodiment disclosed, in the specification.

Handled patent litigation where the patents disclosed a method of increasing the bioavailability of metaxalone by administration of an oral dosage form with food. We presented six prior art references that we contended invalidated the patents and moved for summary judgment. The district court agreed that the claims were either anticipated by, or obvious in light of, the prior art. Many of the claims were anticipated because their sole source of novelty was inherently disclosed by the prior art. The Federal Circuit agreed that all of the claims were anticipated or obvious in light of the prior art.

Represented Sandoz Inc. in King and Mutual v. Sandoz, 08-5974 (D.N.J.), in which Sandoz was alleged to infringe a patent concerning the muscle relaxant Skelaxin®. After an eight-day jury trial, the jury found the patent both invalid and not infringed. Both King and Mutual appealed, but then withdrew their appeal after Sandoz filed its appellate brief.

Represented Metso Paper, Inc. as plaintiff for patent infringement against Enerquin Air on a patent covering a blow box used on machines for making paper. After a favorable court decision construing the claims of the patent, the defendant settled on favorable terms.