

**Blair A. Silver**

Attorney
Washington, DC
bsilver@bannerwitcoff.com
Main: 202.824.3000
Fax: 202.824.3001

Recognized as a top attorney at the Patent Trial and Appeal Board, Blair has more than a decade of experience in complex intellectual property disputes and appellate matters. He also has been recognized by Super Lawyers as a Washington, D.C. "Rising Star" in appellate and intellectual property litigation from 2016-19.

Blair has represented clients in a wide variety of high-stakes appellate matters before the U.S. Supreme Court and the U.S. Court of Appeals for the Federal Circuit on cutting-edge legal issues. He also has provided strategic appellate advice and counseling to Fortune 500 companies preparing for trial and possible appeal in patent cases with more than \$1 billion at stake. In the trial court, Blair has briefed, argued, and won dispositive motions and litigated cases from filing through trial on behalf of companies ranging in size from technology startups to recognized industry leaders. He has been counsel of record and the driving force in over 70 inter partes review and covered business method review proceedings before the Patent Trial and Appeal Board.

With a background in electrical engineering, Blair has extensive experience with a vast range of technologies and industries, including electronics and computers, financial technology, medical devices, pharmaceuticals, and consumer products. He also has worked on high-profile copyright and trademark infringement and dilution litigations.

As a member of the American Intellectual Property Law Association, he recently wrote an amicus brief in *Return Mail Inc. v. U.S. Postal Service*. The high court's decision was consistent with the position the AIPLA took in the brief. He was also recently appointed to the Amicus Briefs Committee of the American Bar Association Section of Intellectual Property Law (ABA-IPL). Blair formerly served as a law clerk to Judge Alan D. Lourie of the Federal Circuit.

Education

Tufts University
2005, B.S., Electrical Engineering, *Magna Cum Laude*

Georgetown University
2008, J.D., *Cum Laude*

Admissions

Bar Admissions

2011, District of Columbia

2009, New York

Court Admissions

U.S. Supreme Court

U.S. Court of Appeals for the Federal Circuit

U.S. Court of Appeals for the Ninth Circuit

United States Court of Appeals for Veterans Claims

U.S. Court of Appeals for the District of Columbia

U.S. District Court for the Eastern District of Texas

Practices

Appellate Litigation

Jury Trials

Litigation

PTAB Litigation

Industries

Electrical + Computer Technologies

Internet, E-Commerce + Business Methods

Representative Matters

Representative Appellate Litigation Matters

- Represented a major media and technology company in numerous appeals to the Federal Circuit from dozens of successful inter partes reviews before the Patent Trial and Appeal Board related to set-top box technology and interactive television program guides.
- Represented the American Intellectual Property Law Association before the Supreme Court as amicus curiae in *Return Mail, Inc. v. United States Postal Service*, No. 17-1594 (U.S.).
- Represented 14 leading technology companies before the Supreme Court as amici curiae in *Oil States Energy Serv., LLC v. Greene's Energy Group, LLC*, No. 16-712 (U.S.).
- Advised a major media and technology company on appellate strategy, issue preservation, briefing, and trial and post-trial strategy in a VoIP technology case involving more than \$1 billion in damages in D. Kan.
- Represented a leading social media company against a non-practicing entity on appeal before the Federal Circuit in defense of a stipulated judgment of noninfringement based on the district court's construction of claim terms. The Federal Circuit affirmed the district court's claim construction entirely, thus securing the judgment of noninfringement.
- Represented a leading social media company in an appeal before the Federal Circuit against a non-practicing entity in defense of a judgment of noninfringement in the wake of accusations of judicial bias during questioning by the district court judge during trial. The appeal also involved a large number of additional issues related to invalidity, damages, and the exclusion of expert testimony. The Federal Circuit affirmed the district court's judgment of noninfringement and determined the district court's questioning was not an abuse of discretion.
- Successfully advised a major media and technology company on issue preservation and post-trial strategy and briefing involving synchronous optical networking ring technology, which led to complete reversal of a \$27 million patent infringement jury verdict in D. Del.

Representative Intellectual Property Litigation Matters

- Represented a financial technology data aggregator start-up against an incumbent competitor in a patent infringement case in D. Del. involving seven patents, multiple inter partes reviews, and antitrust counterclaims. Successfully briefed, argued, and won a motion to exclude the testimony of the plaintiff's damages expert on the eve of trial. The case settled favorably shortly afterwards.
- During a remand trial on patent damages involving a user interface patent in S.D. Cal in July 2011, secured a jury verdict of \$70 million, the exact amount presented to the jury.
- Represented a leading news organization in a copyright infringement dispute regarding Shepard Fairey's unauthorized use of a photograph of President Obama to make the Obama "Hope" poster and related merchandise during the 2008 presidential election. Uncovered extensive fabrication and destruction of documents by Fairey, which led to a criminal investigation by the U.S. Attorney's Office. The civil litigation later settled favorably, including shared rights to make posters and merchandise using the "Obama Hope" image and other future collaboration.
- Defended household consumer goods company in a patent infringement suit in E.D. Tex. related to chemical composition of fabric refreshers. After potential antitrust and unfair competition violations were uncovered, the case settled favorably.
- Defended respondent in an International Trade Commission investigation involving four patents relating to flash memory, securing a determination that the complainant, who had recently filed for bankruptcy, lacked sufficient domestic industry.

Representative Patent Trial and Appeal Board Matters

- Represented a major media and technology company in dozens of inter partes review proceedings related to set-top box and interactive program guide technology.
- Represented leading pharmaceutical company in a series of inter partes reviews regarding drug-eluting contraceptive implants.
- Successfully represented a large technology company in multiple inter partes review proceedings related to camera phones, resulting in the Patent Trial and Appeal Board cancelling more than 85 percent of the challenged claims asserted against our client and completely invalidating one of two the patents asserted against our client.

- Represented a job aggregator in two covered business method review proceedings against a non-practicing entity, ancillary to a district court litigation, which settled globally shortly after covered business method review was instituted on patent eligibility grounds under 35 U.S.C. § 101.

Blair handled some of these matters prior to joining Banner Witcoff.

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Banner & Witcoff recognized by MIP as a top PTAB Petitioner in 2018

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Banner & Witcoff recognized by Law360 for role in AIPLA amicus brief over finding that federal government qualifies as a “person”

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Banner & Witcoff Welcomes Of Counsel to Washington, D.C.