



## *Robert J. Gunther Jr.*

### **PARTNER**

Vice Chair, Litigation/Controversy Department

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Robert Gunther has over 35 years of experience as a trial lawyer representing life sciences, pharmaceutical and technology clients in intellectual property and technology litigation at both the trial and appellate levels. Mr. Gunther is a Fellow of the American College of Trial Lawyers, and he has consistently been selected by *Chambers USA*, *Managing IP* magazine, *LMG Life Sciences* and *IAM* as a leading lawyer in the area of patent litigation.

Mr. Gunther has successfully tried patent, trademark, trade secret, license disputes and other intellectual property cases before numerous federal district courts, state courts and arbitration tribunals. He has also argued appeals before the US Court of Appeals for the Federal Circuit, litigated patent disputes before the US International Trade Commission and litigated *inter partes* review proceedings before the Patent Trial and Appeal Board of the US Patent and Trademark Office.

Mr. Gunther has handled cases involving an array of technologies, including biotechnology, pharmaceuticals, medical devices, financial methodologies, petrochemical processes, computer hardware and software, telecommunications and networking, video game and graphic display hardware and software, optical discs and consumer products, among others. His intellectual property clients have included Abbott Laboratories, Affymetrix, Aries, Cephalon, Chugai Pharmaceutical, Eastman Kodak Company, Genentech, Memorial Sloan Kettering Cancer Center, Mentor Graphics, Nintendo, Playtex Products, QinetiQ, Reckitt Benckiser, Roche Diabetes Care, Roche Molecular Systems, Sumitomo Electric, Swatch / Omega and WebMD.

Most recently, during May / June 2022, Mr. Gunther led a trial team that successfully defended Reckitt Benckiser against claims of fraud and trade secret misappropriation relating to an over-the-counter pharmaceutical product in federal court in Newark, New Jersey. Following a four week trial, the jury unanimously ruled in favor of Reckitt on all issues.

From 2018 to 2021, Mr. Gunther was a member of WilmerHale's Management Committee.

## *Professional Activities / Community Service*

- Member, American Intellectual Property Law Association
- Member, Board of Directors, Brooklyn Defender Services
- Member, Board of Directors, St. John's University School of Law Alumni Association

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## Solutions

Intellectual Property Litigation  
Life Sciences

Litigation  
Artificial Intelligence

Trials

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## Experience

### TRIAL

- *Absorption Pharmaceuticals v. Reckitt Benckiser* (D.N.J.): Defended Reckitt against allegations of fraud and trade secret misappropriation relating to an over-the-counter pharmaceutical product. Following a four-week trial, the jury unanimously returned a verdict in favor of Reckitt on all issues.
- *Roche Diabetes Care v. Insulet* (D. Del): Represented Roche in this patent infringement suit against Insulet relating to insulin pump technology. Following a favorable claim construction and denial of Insulet's motion for summary judgment, the case settled on favorable terms.
- *Swatch Group v. 375 Canal Street LLC* (S.D.N.Y.): Counsel for Swatch and its Omega subsidiary in the first case to take a claim of contributory trademark infringement based on landlord liability to trial. Following a five-day trial, the jury returned a unanimous verdict finding the defendant landlord liable for counterfeiting activity on its premises and awarding \$1.1 million in damages based on the sale of a single counterfeit watch.
- Representing a major life sciences innovator in multiple IPRs and litigations under the BPCIA.
- *Enzo Biochem v. Roche* (D. Del): Achieved a significant victory on behalf of our clients, multiple medical device and diagnostics companies, when the District of Delaware granted summary judgment invalidating the key patent asserted against our clients. The summary judgment ruling was upheld on appeal by the Federal Circuit.
- *American Process Inc., et al. v. GranBio Investimentos S.A.* (N.D.Ga.): Achieved a favorable outcome for GranBio, a Brazilian biotechnology and clean energy company, when the Northern District of Georgia granted our motion to compel arbitration, denied plaintiffs' motion for preliminary injunction and stayed the case pending arbitration.
- *Eastman Kodak Corporation v. Ricoh* (S.D.N.Y.): Counsel for Kodak in this case involving breach of patent license agreement. Following trial, the jury returned a

verdict in favor of Kodak, leading to a judgment of over \$75 million.

- *Abbott Laboratories v. Centocor* (D. Mass.): Counsel for Abbott in this case asserting infringement of two Abbott patents relating to antibody technology.
- *Apotex v. Cephalon* (E.D. Pa.): Counsel for Cephalon in this ANDA litigation asserting patent infringement claims against Apotex's proposed generic version of Provigil.®
- *Contour Design, Inc. v. Chance Mold, Ltd.* (D.N.H.): Following successful jury trial, obtained permanent injunction preventing defendant from making and selling ergonomic mouse products incorporating Contour's proprietary design information, and award of damages and attorney's fees in favor of Contour.
- *Polymer Technology Systems v. Roche* (S.D. Ind.): Counsel for Roche in this declaratory judgment case alleging non-infringement and invalidity of a Roche patent relating to diabetes blood testing meters. Obtained complete dismissal of case in favor of German DIS arbitration initiated by Roche against PTS.
- Counsel for Respondent in multi-patent case in U.S.I.T.C. involving digital camera technology. Case settled favorably following hearing.
- *In re Hardware Emulation Systems* (U.S.I.T.C.): Counsel for Mentor Graphics. Obtained advisory opinion that Mentor's remote access to hardware emulation devices located outside the US did not violate a prior ITC exclusion order.
- *Roche Diagnostics v. Enzo Biochem; Affymetrix v. Enzo Biochem* (S.D.N.Y): Counsel for Roche and Affymetrix in declaratory judgment actions seeking determinations that Enzo patents relating to nucleic acid labeling reagents are not infringed and invalid. The case recently settled on favorable terms.

## APPELLATE

- *Eastman Kodak Company v. Asia Optical Co., Inc.*, 12-3206-cv (2d Cir. 2013) (argued): affirming judgment of over \$33 million in favor of Kodak for breach of patent license agreement.
- *C-COR, Inc. (formerly nCUBE) v. SeaChange, Int'l*, 436 F.3d 1317 (Fed. Cir. 2006) (argued): affirming district court judgment that SeaChange willfully infringed C-COR's patent on a flexible video on demand server architecture. Also handled the trial of this case.
- *SeaChange, Int'l v. C-COR, Inc. (formerly nCUBE)*, 413 F.3d 1361 (Fed. Cir. 2005) (argued): reversing district court judgment of infringement of SeaChange's patent by C-COR and finding no infringement as a matter of law.
- *Playtex Products, Inc. v. Proctor & Gamble Co.*, 400 F.3d 901 (Fed. Cir. 2005) (argued): reversing and vacating summary judgment of non-infringement of Playtex's patent on a popular consumer product.
- *Wang Labs, Inc. v. America Online, Inc.*, 197 F.3d 1377 (Fed. Cir. 1999) (argued): affirming summary judgment of non-infringement by AOL of patent that, according to Wang, represented the invention of the Internet browser.

## ARBITRATION

- *Qiagen v. Roche* (ICDR Arbitration): Counsel for Roche in this international arbitration involving claims of breach of patent cross-license relating to HPV. Following trial, Tribunal ruled in favor of Roche on all issues and awarded attorney's fees. Award confirmed in S.D.N.Y.

- Counsel for Petitioner in ad hoc Swiss arbitrations relating to misappropriation of trade secrets relating to chemical intermediates.
- Counsel for claimant in AAA arbitration relating to trade secrets in the financial services sector.

#### INTER PARTES REVIEW

- *Ariosa Diagnostics, Inc., v. Illumina, Inc.*, IPR2104-01093: Counsel to Petitioner, Ariosa in this IPR challenging the validity of a patent relating to multiplexed nucleic acid reactions.
- *Roche Molecular Systems, Inc. V. Illumina, Inc.*, IPR2015-01091: Counsel to Petitioner, Roche Molecular Systems in this IPR challenging patent validity.

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## Recognition



### ***Leading Lawyer for Intellectual Property***

*Chambers USA*

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2010-2023



### ***Recognized as an IP Star***

*Managing IP*

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2013-2023



### ***General Patent Litigator of the Year: New York***

*LMG Life Sciences Awards*

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2020

- Elected a Fellow of the American College of Trial Lawyers in 2014.
- Named the 2020 General Patent Litigator of the Year: New York by *LMG Life Sciences*, recognized as a "Life Sciences Star" for outstanding intellectual property litigation work in the 2012–2023 editions of *LMG Life Sciences* and named to its 2017–2019 and 2023 awards shortlist for General Patent Litigator of the Year: New York.
- Selected by peers for inclusion in *Best Lawyers in America* for biotechnology and life sciences law, litigation – intellectual property law and litigation – patent law in 2023 and 2024.

- Named a leader in the intellectual property: patent field in the 2015–2024 editions of *Chambers Global*.
- Regularly recognized by *Chambers USA Guide* in New York for intellectual property patent law , with a source cited as saying he "has the ability to connect with clients, opponents, judges and jury members and therefore is very effective."
- Recognized as a 2020 New York Trailblazer by the *New York Law Journal*.
- Selected as a 2013–2023 IP Star by *Managing IP*, a guidebook that identifies leading IP lawyers in the United States.
- Named a 2013–2017 and 2019–2023 leading practitioner by *IAM Patent 1000 – The World's Leading Patent Practitioners* and also listed as a leading patent litigator in the 2011 edition of *IAM Patent Litigation 250*.
- Chosen annually as a "New York *Super Lawyer*" for intellectual property litigation since 2006.
- Recognized as a leading lawyer in the 2018 edition of *Life Sciences Expert Guide*.
- Received the 2015 Alumni Award from *St. John's University Law Review*.
- Named to the Lawdragon 500 Leading Litigators in America list.

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## Credentials

### EDUCATION

JD, St. John's University School  
of Law, 1984

*cum laude*

*Associate Editor, St. John's Law  
Review*

BA, St. John's University, 1981

*summa cum laude*

### ADMISSIONS

New York