



## *Thomas G. Saunders*

### **PARTNER**

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Tom Saunders' practice focuses on appellate and government and public policy litigation with a particular emphasis on intellectual property. He has extensive experience representing clients in patent and complex civil cases and has built a reputation as a leading advocate in high-stakes appellate litigation. He has argued and won two cases, involving patents and government contracts, in the US Supreme Court, where he previously clerked for Justice Ruth Bader Ginsburg. He has also argued and won cases in multiple courts of appeals, including numerous victories in the Federal Circuit. He has worked on more than 55 Federal Circuit cases and led the merits briefing in 6 Supreme Court cases.

Mr. Saunders also has significant experience in civil litigation involving the government and quasi-governmental entities. He advises clients on constitutional matters, questions of public policy and strategy, and administrative law.

Mr. Saunders has been recognized as an Appellate MVP of the Year by *Law360*, a top appellate practitioner by *Best Lawyers in America* and a Litigator of the Week Runner Up by *Litigation Daily*. Select comments about Mr. Saunders from clients and market participants include:

- “Tom is the most intelligent attorney in the country right now. I’ve worked with many different firms and I haven’t seen anyone like him. He’s super-intelligent and can absorb huge amounts of information and come to a resolution.”
- “Tom Saunders is a very good lawyer. He is sharp and direct, and he identifies the issues quickly and with precision.”
- “Tom Saunders is remarkable. He is someone who goes to the Supreme Court and is working on governmental change and defining the law. You meet someone like him only every 20 years. He is truly amazing. He is really, truly a standout.”

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## Solutions

Litigation

Administrative Law

Government and Regulatory  
Litigation

Life Sciences

Appellate and Supreme Court  
Litigation

Trials

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## Experience

### NOTABLE ARGUMENTS

- *Kingdomware Technologies v. United States*, 136 S. Ct. 1969 (2016): Mr. Saunders argued and won in the Supreme Court on behalf of Kingdomware Technologies when the Court ruled that a 2006 law giving small businesses owned by service-disabled veterans preferences in VA contracting is mandatory. The decision affects billions of dollars of contracts awarded each year.
- *Kimble v. Marvel Entertainment, LLC*, 576 U.S. 446 (2015): Mr. Saunders argued and won an important patent case in the Supreme Court, which upheld a 50-year-old decision that restricts a patent owner's ability to collect royalties that accrue beyond the expiration of its patent term. The decision affects not only patent licensing, but also sets important precedent on when the Court should apply the doctrine of *stare decisis*.
- *REV, LLC v. United States*, 91 F.4th 1156 (Fed. Cir. 2024): Mr. Saunders argued and won a remand in a bid protest appeal involving a \$22.3 billion procurement
- *Lynn v. Becton, Dickinson and Company*, No. 23-3214, 2024 WL 449355 (6th Cir. 2024): Mr. Saunders argued and won affirmance of a favorable summary judgment ruling interpreting a patent license agreement
- *Netflix, Inc. v. DivX, LLC*, 80 F.4th 1352 (Fed. Cir. 2023): Mr. Saunders argued and won a remand in an appeal addressing analogous art
- *Becton Dickinson and Company v. Baxter Corp.*, 998 F.3d 1337 (Fed. Cir. 2021) and 839 F. App'x 546 (Fed. Cir. 2021): Mr. Saunders argued and won two appeals from the Patent Trial and Appeal Board, convincing the Federal Circuit to hold that the decision against his client was unsupported by substantial evidence and to affirm the two decisions in its favor.
- *OSI Pharm., LLC v. Apotex Inc.*, 939 F.3d 1375 (Fed. Cir. 2019): Mr. Saunders argued and won a ruling reversing a Patent Trial and Appeal Board decision invalidating his client's important patent on a groundbreaking cancer drug.
- *Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801 (Fed. Cir. 2021): Mr. Saunders argued and won a remand in a claim construction appeal
- *Qiagen North American Holdings, Inc. v. HandyLab*, No. 2020-2249, 2021 WL 5024387 (Fed. Cir. 2021): Mr. Saunders argued and won affirmance of a finding of non-obviousness in a microfluidics case
- *Qualcomm Inc. v. Intel Corp.*, 838 Fed. App'x 564 (Fed. Cir. 2021): Mr. Saunders argued and won a claim construction appeal involving processor-to-processor communication claims.

- *AbbVie Biotechnology Ltd. v. United States*, No. 2017-2304 (Fed. Cir. 2020): Mr. Saunders argued an appeal involving claims to the first-approved treatment regimen for the best-selling drug in the world
- *Enzo Life Sciences, Inc. v. Becton, Dickinson and Company*, 780 F. App'x 903 (Fed. Cir. 2019): Mr. Saunders argued and won an anticipation/obviousness appeal involving hybridizable nucleic acids.
- *Delano Farms Co. v. California Table Grape Commission*, 778 F.3d 1243 (Fed. Cir. 2015): Mr. Saunders argued on behalf of the California Table Grape Commission, achieving a complete victory when the Federal Circuit upheld the validity of key patents against a public use challenge based on the use of plant material misappropriated from a USDA facility.
- *Wood v. Beauclair*, 692 F.3d 1041 (9th Cir. 2012): Mr. Saunders argued and won in the Ninth Circuit on behalf of a prisoner who was sexually assaulted, leading to the reversal of the decision dismissing the prisoner's claim.

### **SUPREME COURT AND EN BANC PATENT CASES**

- *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, 797 F.3d 1020 (Fed. Cir. 2015) (en banc): Mr. Saunders helped lead the team that represented Akamai in the Supreme Court and prevailed on remand when the en banc Federal Circuit clarified the law of joint infringement and reinstated a multimillion dollar jury award in Akamai's favor.
- *TiVo Inc. v. EchoStar Corp.*, 646 F.3d 869 (Fed. Cir. 2011) (en banc): Mr. Saunders helped lead the team addressing the standard for finding contempt based on the violation of a permanent injunction. The Federal Circuit's affirmance of the contempt ruling against the opposing party led to a \$500 million settlement in favor of his client.
- *Sandoz Inc. v. Amgen Inc.*, 137 S. Ct. 1664 (2017): Mr. Saunders helped lead the briefing in the first Supreme Court case interpreting the Biologics Price Competition and Innovation Act.
- *SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC*: Mr. Saunders helped lead the team representing First Quality in the Supreme Court on the question of applying laches to patent damages.
- *Promega Corp. v. Life Technologies Corp.*: Mr. Saunders helped lead the team that represented Promega in the Supreme Court on the scope of liability under 35 U.S.C. § 271(f)(1).

### **OTHER HIGHLIGHTS**

- Securing a complete reversal in the Federal Circuit of a \$1.67 billion patent-infringement verdict (then the largest in US history) against a leading biotechnology company on its flagship therapeutic.
- Securing Federal Circuit affirmance of a non-enablement ruling, eliminating client's exposure on a patent for which other companies had paid settlements totaling over \$100 million.
- Representing a major pharmaceutical company in an appeal to the DC Circuit under the Administrative Procedure Act.
- Representing a medical device company in a Lanham Act appeal, after successfully arguing a motion in the Second Circuit for a stay pending appeal.
- Representing a major synthetic turf company in a bankruptcy estimation

proceeding regarding the value of a patent claim.

- Representing a leading rental company in an Eleventh Circuit appeal from a trademark judgment.
- Representing a major biopharmaceutical company in a Federal Circuit appeal from an *inter partes* review in the PTO that presented questions of first impression.
- Representing a top-ten pharmaceutical company in a Federal Circuit appeal from an ANDA judgment invalidating its claim to a new chemical entity that revolutionized the treatment of hepatitis B.
- Representing a major pharmaceutical company defending its favorable ANDA judgment in the Federal Circuit.
- Representing a medical device company in a patent and contract dispute.
- Representing a major agribusiness company in a Federal Circuit appeal defending a judgment awarding it attorney's fees.
- Filing amicus briefs in the Supreme Court regarding the scope of patentable subject matter under 35 U.S.C. § 101, assignor estoppel, and indefiniteness.
- Representing the Motion Picture Association of America in the Supreme Court and the Tenth Circuit its efforts to defend the constitutionality of the copyright restoration provisions in Section 514 of the Uruguay Round Agreements Act.
- Representing a consumer electronics company in the Federal Circuit and in *en banc* proceedings to defend its successful enforcement of a permanent patent injunction in contempt proceedings.
- Submitting comments to the PTO regarding genetic diagnostic testing on behalf of a major biotechnology company.
- Representing a medical device manufacturer on appeal in the Federal Circuit from an *ex parte* reexamination.
- Filing cert petitions in the Supreme Court on behalf of a software company, a medical diagnostics company, an e-commerce company, a leading drug manufacturer, a chemical company, and other clients.
- Filing briefs in opposition to cert in the Supreme Court on behalf of various clients.
- Filing an amicus brief on behalf of a major pharmaceutical company in the *en banc* Federal Circuit proceedings to determine whether 35 U.S.C. § 112 contains a separate written description requirement.
- Representing the pharmaceutical industry in its successful challenge to an unconstitutional statute regulating patented pharmaceuticals.
- Representing a software company in its Federal Circuit appeal from an award of attorney's fees in patent infringement litigation.
- Defending agricultural commodity research and promotion programs against First Amendment and other constitutional challenges.

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## Recognition

- Recognized in *Litigation Daily* as Litigator of the Week Runner Up for significant triple patent case victory for Becton, Dickinson.
- Selected by peers for inclusion in *Best Lawyers in America* for his appellate practice in 2024.
- Named a 2016 and 2017 Appellate Rising Star by *Law360*.
- Recommended by *The Legal 500 United States* for his appellate practice from 2016–2018.
- Selected as a *Law360* Appellate MVP of the Year in 2015.
- Named to the Lawdragon 500 Leading Litigators in America list.

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## Credentials

### EDUCATION

JD, Yale Law School, 2004

*Notes Editor, Yale Law Journal*

AB, Harvard University, 2000

*summa cum laude*

*Phi Beta Kappa*

### ADMISSIONS

District of Columbia

New York

### CLERKSHIPS

The Hon. Ruth Bader  
Ginsburg, US Supreme Court,  
2007 - 2008

The Hon. Pierre N. Leval, US  
Court of Appeals for the  
Second Circuit, 2004 - 2005