



# WILLIAM M. JAY

Partner

DC Litigation Leader and Co-Chair, Appellate Litigation

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Willy Jay is co-chair of Goodwin's Appellate Litigation practice and is head of the Litigation Department in the firm's Washington, D.C. office. Mr. Jay uses his deep experience litigating before the U.S. Supreme Court and U.S. Courts of Appeals to help clients formulate winning appellate strategy. His appellate skill led *Benchmark Litigation* to name him the nationwide Appellate Lawyer of the Year for 2020. A former Assistant to the Solicitor General and Supreme Court clerk, he has argued 17 cases before the Supreme Court, briefed more than 50 Supreme Court cases on the merits, and briefed more than 150 cases at the certiorari stage. In recent years he argued five of the most significant intellectual-property cases at the Court, involving patent, copyright, and trademark law.

Mr. Jay has handled cases in every federal court of appeals as well. He has filed more than 200 briefs in federal and state appeals courts and argued in nine federal circuits. He has notable expertise in the Federal Circuit, where he has filed more than 60 briefs in patent appeals and been recognized as "Appellate Litigator of the Year" by *Managing IP*. Mr. Jay also regularly counsels clients on appellate strategy at the trial level, preparing and arguing key motions and post-trial briefing before district courts and federal and state administrative agencies.

Mr. Jay is recognized in *Chambers USA: America's Leading Lawyers for Business*, where clients praise him for being "a rocket scientist" whose 'spectacular brief writing' and 'keen and analytical mind' mark him out as a 'rising star' at the appellate bar." Another client noted that Mr. Jay "is an extraordinary litigator" who 'has a unique way of synthesizing complex arguments and making them understandable.'" Mr. Jay is also listed in *Legal500* and *Best Lawyers in America*. *Law360* named him an "Appellate MVP." He has been named "Litigator of the Week" by the *AmLaw Litigation Daily* and a "Rising Star" by both the *National Law Journal* and *Law360*.

Mr. Jay has particular experience in appellate cases involving intellectual property (including patent, copyright, and trademark law), financial services, administrative law (with a particular focus on pharmaceutical regulation), environmental law, class action practice, federal preemption of state law, and the First Amendment (including campaign finance regulation, election law, and election crimes).

## AREAS OF PRACTICE

Complex Litigation + Dispute Resolution  
Appellate and Supreme Court Litigation  
Business + Commercial Litigation  
Mining  
Patent Litigation  
Hatch-Waxman, Biologics and Biosimilars Litigation  
Trademarks  
Copyrights  
Patent Trial + Appeal Board  
ERISA Litigation  
Environmental  
Pharmaceuticals  
Administrative Law and FDA Litigation  
Higher Education  
Healthcare Litigation  
Healthcare  
Late Stage Drug Development

## EXPERIENCE

Since joining Goodwin, Mr. Jay has handled complex litigation matters in the Supreme Court; in the First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Eleventh, D.C. and Federal Circuits; in several state appellate courts; and in various trial courts and administrative agencies.

His recent Supreme Court matters include victories in four significant intellectual-property cases:

- *Patent claim construction -- Teva Pharmaceuticals USA, Inc. v. Sandoz, Inc.*: The Supreme Court agreed to take up the subject of patent claim construction for the first time in nearly 20 years and hear Teva's challenge to the Federal Circuit's longstanding precedent insisting on reviewing factual issues *de novo*. Mr. Jay was counsel of record on the successful petition for certiorari and the merits briefs and argued the case in October 2014. In January 2015, the Supreme Court agreed with Teva's arguments by a vote of 7-2, vacating a Federal Circuit decision that had invalidated patent protection for Teva's blockbuster multiple sclerosis drug, Copaxone® 20mg.
- *On-sale bar – Helsinn Healthcare S.A. v. Teva Pharmaceuticals USA, Inc.*: This was the Supreme Court's first opportunity to consider the revised standards for patentability under the 2011 America Invents Act. Mr. Jay was counsel of record on the merits brief and argued the case in December 2018. The court unanimously agreed with Mr. Jay's argument that an invention is "on sale" for purposes of the statute if it is sold or offered for sale, and that it does not matter whether the sales are public or make the invention "available to the public" more broadly.

- *Copyright eligibility -- Star Athletica, L.L.C. v. Varsity Brands, Inc.:* The Supreme Court took this case to clarify when an artistic design feature can qualify for a copyright. Mr. Jay argued the case in October 2016 for the copyright owner, which designed original artwork appearing on clothing. The Supreme Court ruled for Mr. Jay's client by a vote of 6-2 that the designs were copyright-eligible and rejected the argument that the designs were influenced.
- *Trademark preclusion -- B&B Hardware, Inc. v. Hargis Industries, Inc.:* The Supreme Court ruled for the first time that the Trademark Trial and Appeal Board can render a decision binding on a federal district court in trademark-infringement litigation. Mr. Jay's client had won a decision before the Trademark Board on the "likelihood of confusion" between two trademarks; the Court held by a vote of 7-2 that the infringer could not relitigate that same issue before a jury. Mr. Jay was counsel of record on the successful petition for certiorari and the merits briefs and argued the case in December 2014.
- Mr. Jay also recently persuaded the Supreme Court to grant certiorari to resolve questions about the scope of the Fair Housing Act. Mr. Jay was counsel of record on the petition for certiorari and the merits briefs for several major lending institutions. The Supreme Court agreed with Mr. Jay's argument and set aside the appellate decision applying a relaxed causation standard.
- Mr. Jay represented a group of Indian tribes in successfully defending a district-court injunction in a conservation case involving interpretation of several 150-year-old treaties.

Mr. Jay's other recent appellate matters include:

- Persuading the Federal Circuit to reverse adverse decisions in patent-infringement litigation, *inter partes* review, and "covered business method" review. In particular, Mr. Jay has repeatedly succeeded in overturning decisions by the Patent Trial and Appeal Board; one of his wins, about the scope of "covered business method" review, was named one of 2016's "Milestone Cases" by *Managing IP*. Mr. Jay's recent Federal Circuit matters have included work involving medical technology, robotics, consumer electronics, semiconductors, pharmaceuticals, biologics/biosimilars, and software.
- Successfully representing pharmaceutical companies in litigation challenging the FDA's approval of new drug products, both in federal district courts and in the D.C. Circuit.
- Successfully defending, in the Fourth Circuit, a complete defense victory at trial in a certified class action under the Real Estate Settlement Procedures Act. Mr. Jay co-authored the successful briefs and argued the appeal. Mr. Jay also co-authored the successful appellate briefs in a companion case (involving another certified class) under the Maryland Finder's Fee Act, in which the Fourth Circuit also affirmed a complete defense victory.
- Representing Gillette in a Third Circuit appeal against one of its competitors, defending Gillette's right to bring patent infringement claims in court and not in arbitration.
- On behalf of four nationwide mortgage lenders, persuading the Ninth Circuit to dismiss a False Claims Act lawsuit demanding a multi-billion-dollar recovery.
- Successfully winning rehearing *en banc* in the First Circuit on behalf of a national bank in a putative nationwide class action, and co-authoring briefs that won a complete victory on rehearing *en banc*.
- On behalf of the American Petroleum Institute, successfully defeating an environmental challenge under the Endangered Species Act and Administrative Procedure Act to Interior Department rules governing oil shale exploration.

## **PROFESSIONAL EXPERIENCE**

Prior to joining Goodwin in 2012, Mr. Jay served for five years as Assistant to the Solicitor General at the U.S. Department of Justice. In that capacity, he handled Supreme Court and appellate matters for a wide variety of federal agencies, including every Cabinet Department and numerous executive and independent agencies. Previously, he was a litigation associate with Gibson, Dunn & Crutcher in its Appellate and Constitutional Law Practice Group.

## **RECOGNITION**

*Benchmark Litigation* recognizes Mr. Jay as a 2021 Litigation Star in Washington DC for his work in Appellate.

As Assistant to the Solicitor General, Mr. Jay received the Attorney General's Distinguished Service Award for his work on litigation arising from the bankruptcy of Chrysler, as well as a Special Commendation from the DOJ's Environment and Natural Resources Division for his work on litigation involving oil drilling, invasive species and interstate water rights.

While in law school, Mr. Jay was executive editor of the *Harvard Law Review*.

## **AWARDS**



## **PUBLICATIONS**

Contributor, [Guide to Biosimilars Litigation and Regulation in the U.S., 2019-2020 ed.](#), published by Thomson Reuters, November 2019

## **CREDENTIALS**

### **EDUCATION**

J.D., 2001

Harvard Law School  
(*magna cum laude*)

**A.B., Government, 1998**

Harvard College

*(magna cum laude)*

## **CLERKSHIPS**

2004-2005 U.S. Supreme Court, Honorable Antonin Scalia

U.S. Court of Appeals for the Ninth Circuit, Honorable Diarmuid F. O'Scannlain

## **ADMISSIONS**

### **BAR**

District of Columbia

Virginia

### **COURTS**

U.S. Supreme Court

U.S. Court of Appeals for the First Circuit

U.S. Court of Appeals for the Second Circuit

U.S. Court of Appeals for the Third Circuit

U.S. Court of Appeals for the Fourth Circuit

U.S. Court of Appeals for the Fifth Circuit

U.S. Court of Appeals for the Sixth Circuit

U.S. Court of Appeals for the Seventh Circuit

U.S. Court of Appeals for the Eighth Circuit

U.S. Court of Appeals for the Ninth Circuit

U.S. Court of Appeals for the Tenth Circuit

U.S. Court of Appeals for the Eleventh Circuit

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

U.S. Court of Appeals for the Federal Circuit

U.S. District Court for the District of Colorado

U.S. District Court for the District of Columbia

U.S. Court of International Trade