



Marc A. Fenster

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Practice Areas

Intellectual Property
Litigation

Education

University of California, San Diego
(BS, 1991, Bio-engineering)
University of California, San Diego
(MS, 1992, Bio-Engineering)
University of California, Los
Angeles School of Law
(JD, 1995)

Marc Fenster is a litigation partner at **Russ August & Kabat** and is head of the Intellectual Property Department.

Mr. Fenster specializes in intellectual property and litigation, with an emphasis on high-technology patent litigation. Prior to joining **Russ August & Kabat**, Mr. Fenster was a lawyer at Irell & Manella LLP from 1995 to 2003, where he was a member of the Intellectual Property and Litigation work groups.

Mr. Fenster has handled complex commercial cases involving patents, trademarks, copyrights, securities, licensing, class-actions and contracts. Some high-tech patent cases in which Mr. Fenster has served as counsel include: PACid v. Intel, a series of patent cases involving encryption technology; TQP v. Merrill Lynch, a series of patent cases involving encryption technology; Ring Technology Enterprises, Inc. v. A-Data, a series of patent cases involving memory technology; VoxPath v. Verizon, a patent case involving voice over IP; Absolute Software, Inc. v. Stealth Signal, a series of patent cases involving software for tracking stolen laptop computers; Minerva v. Motorola, a series of patent cases involving smart phone technology; Novartis v. Elan Pharmaceutical Research, a patent case involving transdermal nicotine patches; Hyseq, Inc. v. Affymetrix, Inc., and Affymetrix v. Incyte Pharmaceutical, Inc., a series of patent cases involving DNA microarray technology; Intravascular Research Ltd. v. EndoSonics Corp., a patent case involving intravascular ultrasonic imaging catheters; Elan Pharmaceutical Research v. Biovail, a pharmaceutical patent infringement case; Thermoscan v. Safe Design, Ltd., a patent case involving infrared thermometers; and Cole v. Kimberly-Clark Corp., a patent case involving disposable children's training pants.

Mr. Fenster was recognized as a 2009 Southern California Rising Star by the publishers of Los Angeles Magazine.

In 2008 and 2009, Mr. Fenster led the litigation efforts that resulted in dozens of settlements totaling tens of millions for his clients.

In 2009, Mr. Fenster successfully asserted a patent on behalf of Pelican Products against a competitor, with the competitor agreeing to an injunction and damages.

In 2009, Mr. Fenster successfully represented Maxon Lift Company in a declaratory relief action against a competitor, obtaining a complete release and covenant not to sue.

In 2007, Mr. Fenster, along with David Gabor and Irene Lee, successfully represented Pinkberry in a trademark and trade dress case against an alleged infringer, Kiwiberri.

In 2006, Mr. Fenster obtained a \$4 million jury verdict and successfully defended all counterclaims after a 5 week jury trial in a trade secret/fraud case involving after-market video game accessories.

In 2006, Mr. Fenster obtained summary judgment of non-infringement for the defendant in Dial Industries v. Lipper International, a patent case in the Central District of California involving expandable drawer organizers.

In 2006, Mr. Fenster successfully defended a client in a theft of trade secret case involving medical software, with the case settling on very favorable terms for his client.

In 2005, Mr. Fenster obtained a jury verdict of non-infringement for a defendant in a patent trial in Central District of California involving construction equipment.

In 2004, Mr. Fenster won a trial before the Delaware Chancery Court for advancement of legal fees for a former officer of Homestore.com. He then argued and won the appeal before the Delaware Supreme Court in 2005, resulting in the leading decision regarding advancement, *Homestore v. Tafeen*, 888 A.2d 204 (Del. 2005).

In 2003, Mr. Fenster successfully represented Idealab and two independent outside directors in *Kline Hawkes v. Idealab*, a shareholder litigation in which the Series D preferred shareholders sought to involuntarily dissolve the company. After over a year of litigation, the trial judge sustained Idealab's and the outside directors' demurrers without leave to amend.

Mr. Fenster also advises clients regarding various intellectual property and licensing issues in a non-litigation context, particularly start-up high-tech clients seeking to protect and exploit their intellectual property assets.

Mr. Fenster's undergraduate and graduate coursework focused on mass transfer, biochemistry, microbiology, human physiology, biomechanics, mechanical engineering and computer programming. His Master's thesis involved a computer model of the micro-circulation in skeletal muscle, including passive and active vessel properties, hematocrit and blood rheology.

While at the UCLA School of Law, Marc avidly participated in competitive Moot Court and represented UCLA at the state Moot Court tournament.