



Kirby Drake

Email : Kirby.Drake@klemchuk.com

Education

J.D., Wake Forest University School of Law, 2002

Managing Editor of the Wake Forest Law Review

Citation Editor of Wake Forest Intellectual Property
Association Law Journal

B.S., cum laude, Chemistry, Duke University, 1999

Biography

Kirby Drake, managing principal, is experienced in all areas of intellectual property law, including trade secret, patent, trademark, copyright and confidential information matters. She focuses primarily on intellectual property litigation and patent prosecution, addressing a broad range of technologies, including chemical, pharmaceutical, telecommunications, aerospace, and computer-related matters. Kirby has a wide range of litigation experience, largely focused on patent litigation, having been an integral part of trial teams working on matters from the initial filing phase through trial, both on the plaintiff as well as on the defense side. She also has significant experience in electronic discovery in various types of litigation matters, including managing various e-discovery platforms, and she also regularly writes and speaks on the subject. Kirby has experience handling inter partes reviews and other post-grant proceedings in the Patent Office. She also has experience evaluating patents in patent due diligence for freedom to operate prior to launching a new product or technology, as well as in the context of corporate transactions, such as mergers and acquisitions where patents are involved. Kirby earned a J.D. from Wake Forest University School of Law, and a Bachelor of Science degree cum laude in chemistry from Duke University.

Contact Kirby at Kirby.Drake@klemchuk.com.

Practice Areas

- Patent litigation
- Patent prosecution
- Trade secret and misappropriation litigation
- Trademark litigation
- Intellectual property counseling
- Counseling on electronic discovery matters
- Trade secret protection and enforcement

Professional Activities

American Chemical Society (ACS)

- General Chair, Southwest Regional Meeting (SWRM) 2014
- Member, National Committee on Patents and Related Matters, Chair of Legislation Subcommittee
- Treasurer, Dallas-Fort Worth Local Section (2006-2012)
- Member, Chemistry and the Law Division (CHAL), Small Chemical Business Division (SCHB), and Division of Business Development & Management (BMGT)

State Bar of Texas

- Council Member, Women and the Law Section, 2015-present
- Member, Intellectual Property Section, 2002-present
- Secretary, Intellectual Property Section, 2014-present
- Council Member, Intellectual Property Section, 2011-2014
- Member, Unfair Competition Committee, 2004-present
- Committee Chairperson, Unfair Competition Committee, 2007-2011

Dallas Bar Association

- Vice Chair (2010-2011), Co-Chair (2012-2014), Member (2010-present), Summer Law Intern Program Committee
- Chair (2012), Dallas Bar Association Justice in Education Symposium

- Member, Intellectual Property Section, 2002-present
- Co-Vice Chair (2008) and Co-Chair (2009-2011), Law Day Committee
- Co-Vice Chair (2005-2006) and Co-Chair (2006-2007), Law in the Schools and Community Committee

Honorable Barbara M.G. Lynn American Inn of Court
(Intellectual Property)

- Barrister, 2014-2015

Admitted to Practice

- State of Texas, 2002
- United States Patent and Trademark Office, 2004
- U.S. District Court, Eastern District of Texas, 2004
- U.S. District Court, Northern District of Texas, 2003
- U.S. District Court, Southern District of Texas, 2011
- U.S. District Court, Western District of Texas, 2015
- Federal Circuit Court of Appeals, 2009
- U.S. District Court, District of Columbia, 2010
- U.S. District Court, Western District of Michigan, 2010
- United States Supreme Court, 2013

Honors

- Dallas Bar Foundation, Life Fellow
- "Rising Star," 2007, 2009-2015, a Thomson Reuters service

Speeches, Publications and Presentations

- "Perils and Pitfalls of Do-It-Yourself IP," Dallas Bar Association HEADNOTES, February 2016
- "Perils and Pitfalls of Do-It-Yourself IP," Smith County Bar Association, January 2016

- "Patents in Pumps," Sharks in Heels Workshop for female entrepreneurs, October 2015
- "Counseling Clients About the Perils and Pitfalls of Do-It-Yourself IP," State Bar of Texas, June 2015
- "How to Take Advantage of the First-to-File Patent System," Entrepreneur.com, March 2014
- "Inter Partes Review (IPR) – Learning From the Denied Petitions," State Bar of Texas, March 2014
- "Covered Business Method Review – A Tale of Two Decisions," Intellectual Property & Technology Law Journal, March 2014
- "Inter Partes Review – Taking the Invalidity Battle Back to the Patent Office," Intellectual Property & Technology Law Journal, November 2013
- "An Entrepreneur's Guide to Intellectual Property," Entrepreneurial Insurance Symposium, September 2013
- "Patent Prosecution in the First-to-File World," Intellectual Property & Technology Law Journal, August 2013
- "Outside to In-House Counsel- Making the Switch and Lessons Learned," Panel Moderator, State Bar of Texas Annual Meeting, June 2013
- "Reverse Payments, Generic and Brand-Name Drugs, and Consumer Impact," Commentary, Westlaw Journal Pharmaceutical, Vol. 29, Issue 4, June 2013
- "Federal Trade Commission v. Actavis Inc.: The Future of Reverse Payment Settlements in Pharmaceutical Litigation," Bloomberg BNA, May 2013
- "Pre-Issuance Patent Submissions – A New Way to Participate in Patent Prosecution," Intellectual Property & Technology Law Journal, May 2013
- "Ethical Issues in Discovery," Texas Wesleyan Law Review, Vol. 19, No. 4, Spring 2013
- "Pre-Issuance (Third-Party) Submissions," State Bar of Texas Advanced IP Course, February 2013
- "So a Patent Issues, Now What?" American Chemical Society Southwest Regional Meeting (SWRM), October 2012

- "Pre-Issuance (Third-Party) Submissions" as part of "The America Invents Act: What It Means to You," Dallas Bar Association, August 2013 and October 2012
- "So a Patent Issues, Now What?," Dallas IEEE GOLD, September 2012
- "IP Issues in Advertising and Promotion in the Chemical Industry," American Chemical Society National Meeting, Philadelphia, PA, August 2012
- "Ethics in Discovery," American Intellectual Property Law Association (AIPLA) Spring Meeting, Austin, TX, May 2012
- "IP Issues in Advertising and Promotion in the Chemical Industry," American Chemical Society National Meeting, Denver, CO, August 2011
- "Ethical Issues in Discovery," State Bar of Texas Advanced Patent Litigation Course, July 2011
- "DBA Hosts Mock Voir Dire," Dallas Bar Association HEADNOTES, June 2011
- "Ethical Issues in Electronic Discovery: Lessons to be Learned," Dallas Bar Association, November 2010
- "Ethics and the Law: The Case of Myriad Genetics, Ethics in Patenting and Ethics in Licensing and Commercializing Innovations," Dallas Bar Association, October 2010
- "Food for Thought – The Potential for Food Patenting," American Chemical Society National Meeting, Boston, MA, August 2010
- "Protecting Trade Secrets in the Current Economy," American Chemical Society National Meeting, Boston, MA, August 2010
- "Texas Trade Secret Update," State Bar of Texas Annual IP CLE Program, June 2010
- "DISD Students Participate in Mock Voir Dire," Dallas Bar Association HEADNOTES, June 2010 (quoted)
- "Ethical Issues in Discovery: Lessons to be Learned," Dallas Bar Association, Professionalism Committee, April 2010
- "Protecting Trade Secrets in the Current Economy," State Bar of Texas Annual IP CLE Program, June 2009
- "Trade Secrets and Patents: The Yin and Yang of IP Law," State Bar of Texas Advanced IP CLE Program, March 2009

- “Patents, Competition, Antitrust and Generic Drugs: Resolving Hatch-Waxman Issues,” American Chemical Society National Meeting, Salt Lake City, Utah, March 2009
- “The PRO IP Act – A New Hammer in Protecting and Enforcing Intellectual Property Rights,” Fulbright & Jaworski L.L.P. CLE, December 2008
- “A Primer on Trade Secret Law,” The Advocate, Winter 2008
- “Ethical Issues in Electronic Discovery: Lessons from Qualcomm,” State Bar of Texas Annual IP CLE Program, July 2008
- “So You Have Gotten a Patent – Now What?,” American Chemical Society National Meeting, New Orleans, Louisiana, April 2008
- “Food for Thought – The Potential for Food Patenting,” Institute of Food Technologists, Frisco, Texas, March 2008
- “Ethics in the Marketplace: Can You Keep a (Trade) Secret?,” American Chemical Society National Meeting, Boston, Massachusetts, August 2007
- “New PTO Rules Relating to Patent Prosecution,” Fulbright & Jaworski L.L.P. Web Seminar, September 2006
- “The Paperless Office – Not So Unrealistic Anymore,” Dallas Bar Association HEADNOTES, November 1, 2005
- Co-author with Edward R. Ergenzinger, Jr., “The ‘Depressing’ Effect of Eli Lilly and Co. v. Barr Labs., Inc. on the Pharmaceutical and Biotechnology Industries,” Wake Forest Intellectual Property Law Journal 1, 2002

Volunteer Activities

The Shoulders of Giants, a science-focused non-profit organization

- Board of Directors, 2013 to present

Lake Highlands North HOA

- President, 2012-2015
- Secretary, 2010-2011

University of North Texas School of Law, L.A. Bedford

Mentorship Program

- Mentor, 2015-present

Publications

- Federal Trade Commission v. Watson Pharmaceuticals –
The Future of Reverse Payment Settlements in
Pharmaceutical Litigation
- Pre-Issuance Patent Submissions- A New Way to Participate
in Patent Prosecution

Presentations

- An Entrepreneur's Guide to Intellectual Property
- Pre-Issuance Submissions