

Matthew B. Lowrie

Partner/Retired

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Boston



Matthew B. Lowrie is a partner and intellectual property lawyer with Foley & Lardner LLP. He is experienced in computer architecture, algorithms, networking, software, analog and digital circuits, semiconductor design, telecommunications, consumer products, and medical devices. He formerly served as chair of the firm's Intellectual Property Litigation Practice.

Matt has a national intellectual property litigation practice and has been chosen as lead trial counsel in nearly 200 patent cases, filed in California, Delaware, Florida, Georgia, Illinois, Louisiana, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Texas, Washington, Wisconsin and before the International Trade Commission and the Court of Federal Claims.

In addition to his experience as a litigator and counselor, Matt draws on his experience as a law clerk in the United States District Court of Massachusetts (for the Honorable Robert E. Keeton), as a corporate attorney experienced in licensing as well as corporate transactions, and as someone with a deep technical background, having published and presented his research in books, journals and at international conferences.

Prior to joining Foley, Matt was a founding member of Lowrie, Lando & Anastasi, LLP, where his practice focused on patent litigation, counseling, the patent acquisition process, licensing and, corporate transactions. He also draws on his experience as a shareholder and as the first chairperson of the Litigation Practice Group at Wolf, Greenfield & Sacks – a position he held for more than four years.

Representative Experience

- **Kids II v. XRT.** After XRT filed a counterclaim for \$100 million in Kids II declaratory judgment action over royalty rates, Kids II asked Matt to replace existing counsel. After more than 20 depositions in a two-month period, including eight expert depositions, Kids II secured summary judgment against XRT's material breach claim, thereby eliminating the large damages claim. After a trial to determine the proper rates, the jury determined that the rates were proper for 90% of the disputed products, covering 98%+

of the sales revenues associated with the products. Kids II now intends to recover attorney fees under a contractual provision awarding them to the prevailing party.

- **National Oilwell Varco, L.P. v. Omron Oilfield & Marine, Inc.** Represented Omron who was originally sued by National Oilwell Varco (“NOV”) on a patent directed to oil rigs in 2012 in the Western District of Texas. On February 17, 2015, the Court granted summary judgment to Omron, dismissing the case with prejudice due to NOV’s failure to demonstrate standing. On August 28, 2015, the Foley team then secured an award of over \$1 million in attorneys’ fees and costs for Omron. On March 3, 2015, NOV appealed the case, and after oral argument before Judges Moore, Chen, and, Hughes in September 2016, on January 25, 2017, the Court issued an opinion affirming the district court’s decision that NOV lacked standing, the decision to dismiss with prejudice and the award of fees.

The victory is remarkable because the same patent was litigated by NOV in an earlier case, against a third-party, resulting in a jury finding of liability, an award of over \$20 million for past damages, and a subsequent settlement of \$112 million. Here, Omron not only prevailed on liability, but the client also secured the return of a substantial portion of its fees and costs.

- **MPT Magnetar Technologies Corp, et al v. Six Flags Theme Park Inc. et al.** Represented Six Flags Theme Park, Inc. in this multi-defendant case brought by Magnetar Technologies Corp on patents related to amusement park rides. The suit was brought in March 2007 alleging that numerous roller coasters infringe two patents concerning magnetic brakes. After several years, the client lost confidence in their initial counsel and turned to Foley to take the matter over. The Foley lawyers made a trip to a warehouse in Texas and uncovered a video of a 102(b) prior art system – a video that was slated for destruction. At Foley’s urging, the Court viewed the video, entered a finding of spoliation with respect to documents in that warehouse that had been destroyed, and ordered Plaintiffs to produce one of their lawyers for deposition. At another deposition, Foley lawyers also led a named inventor to testify that the idea for the patent came from an unnamed inventor, from whom our clients had purchased the rights. On July 29, 2014, in a lengthy opinion, Judge Stark in Delaware (on recommendation of Magistrate Judge Thyng) entered summary judgment of invalidity of the first patent on four different grounds: indefiniteness, 102(b) on sale bar, obviousness and improper naming of inventors; and summary judgment of no infringement of the second patent; and excluded any evidence of infringement that the Plaintiff might offer, for either patent, on procedural grounds. He then entered final judgment in favor of our clients, who are now considering a motion to recover attorneys’ fees.

- **Vibrant Media.** General Electric sued Vibrant Media in Delaware on two patents directed to automated insertion of links into web pages for (among other things) advertising. During the district court litigation, a co-defendant settled for millions of dollars. Vibrant, however, refused to settle and pursued an inter partes review (IPR) on each of the patents. On July 28, 2014, the Patent Office issued the second of its decisions on the two IPR trials. The Board has now found that Foley proved all 60 claims of the two patents to be invalid. GE has agreed to stay the underlying litigation pending appeal of the Patent

Office decisions.

- ***University of Florida Research Foundation, Inc. et al v. Motorola Mobility LLC.*** In May 2013, The University of Florida Research Foundation and Rapid Mobile Technologies sued Motorola Mobility for patent infringement of a patent on a test-bed for cellular phones. Motorola had turned to Foley as the case neared claim construction and the client realized that the Plaintiffs would not settle for a reasonable amount. After taking over the case, the Foley team led by Matt, completed discovery and briefed claim construction. After the hearing in Miami, the Court issued a claim construction ruling, stating for every disputed term “I adopt Defendant’s proposed construction.” The Court also noted that predecessor counsel had not complied with the Court’s pretrial order to preserve an indefiniteness defense, but that the Court would permit it to be raised at summary judgment nevertheless and the Court found the argument to be “very persuasive.” The case then settled on June 20, 2014 on terms one of the plaintiffs acknowledged as a defeat.
- ***Synbias Pharma v. Solux.*** Represented Synbias, a global market leader in the supply of pharmaceutical ingredients for certain cancer treatments. Foley filed an action in U.S. District Court for the Southern District of California in San Diego seeking declarations that the patents are not infringed and are invalid. Solux responded, with counterclaims for patent infringement. Foley subsequently moved for early summary judgment on the basis that Synbias is at least a co-owner of the patents and, therefore, Solux cannot assert infringement against Synbias or its customers. The U.S. District Court granted Foley’s motion on August 30, 2013, ruling that Synbias is at least a co-owner of the patents and dismissing Solux’s counterclaims for patent infringement.
- ***Oasis Research, LLC v. Adrive, LLC, et. al.*** Represented Carbonite in the Eastern District of Texas against a claim brought by Oasis Research, LLC, a non-practicing entity that was formed for the purposes of enforcing the patents. We secured a separate jury trial on inventorship issues, in advance of resolution of the other liability issues in the case. In March 2013, we secured a jury verdict for Carbonite that each of the four asserted patents is invalid.
- ***Bose v. SDI Technologies, et al.*** Foley represented SDI in a patent infringement case brought by Bose Corporation in the United States District Court for the District of Massachusetts. Bose alleged that dozens of SDI products infringed a Bose patent covering music systems that included speaker and audio storage components. By obtaining a favorable claim construction and proving as a matter of law that SDI lacked the intent necessary to indirectly infringe the asserted claims, Foley was able to secure a summary judgment of non-infringement of all asserted claims with respect to all accused products.
- ***Cognex v. MVTec.*** Represented 18 of 22 respondents in a three patent ITC investigation concerning machine vision software filed by Cognex Corporation. Cognex had initially sued MVTec on nine patents in the U.S. District Court for Massachusetts, all relating to machine vision and, in particular, methods for finding objects in digital images. After MVTec threw all of the patents into reexamination, Cognex filed an ITC action on three of the nine patents. Cognex was forced to withdraw its claims on one of

those patents during discovery, and the remaining two went to trial before Judge Charneski at the ITC. Following eight days of trial testimony, and extensive post-trial briefing, Judge Charneski found that no claims were infringed and that all of the asserted claims were invalid. In December 2013, the Federal Circuit affirmed the ITC's finding of no infringement of the one surviving patent (the other having been invalidated by Foley in the PTO while the appeal was pending), and not reaching the invalidity findings, which had become moot due to the non-infringement. 337-TA-680

- ***Kenexa BrassRing v. Taleo Corp. and Vurv Technology.*** Represented Kenexa, a leading provider of human resource outsourcing software, in patent infringement litigation against two competitors. We secured a summary judgment for Kenexa that all accused products infringed 54 of the 56 asserted patent claims. The case went to trial in the District of Delaware in June 2011. Foley secured a favorable settlement for Kenexa on the second day of trial, including judgment for Kenexa.
- ***Bancorp Services, L.L.C. v. Sun Life Assurance Co. of Canada.*** Represented Sun Life Assurance Co. of Canada in a patent litigation matter. The Federal Circuit recently affirmed grant of summary judgment in favor of our client, Sun Life, that two patents owned by Bancorp are invalid for failure to claim patent eligible subject matter. Bancorp had appealed from the final decision of the U.S. District Court for the E.D. of Missouri which entered summary judgment that the asserted claims of U.S. Patents 5,926,792 and 7,249,037 were invalid under 35 U.S.C. § 101. The invalidated patents were the subject of three prior appeals to this court, where the defendants in each of those cases lost.
- ***Avellanet v. Belden, Inc.*** Represented Belden, Inc., a leading manufacturer of signal processing equipment. Francisco Avellanet, who had approached Belden for licensing two patents on electrical cables several years ago, filed a lawsuit in the Northern District of Illinois on November 24, 2008, accusing Belden of infringement of both those patents. Foley immediately took an aggressive stance, forcing Francisco to drop one of the patents immediately, even before Belden filed an answer. Foley then managed to keep the case out of discovery, while getting infringement contentions from Francisco. Based on those contentions, Belden revealed prior art that would invalidate the patent if those contentions were accepted by the court and jury. Francisco was forced to withdraw the infringement allegations altogether and the case was dismissed with prejudice.
- ***Belden v. Superior Essex.*** Secured a summary judgment of infringement, and a jury trial verdict of validity, for several Belden patents directed to high-speed data communications cables technologies. After trial, the case settled on terms including a consent judgment for Belden and a license.
- ***Color Kinetics v. Super Vision.*** Super Vision filed a declaratory judgment action in Florida and Color Kinetics responded with a direct patent infringement action in Massachusetts. After having all matters transferred to Massachusetts, Matt secured for Color Kinetics summary judgment on all liability issues, including that all claims of all five patents-in-suit are valid and enforceable, each of the five accused product lines infringe each asserted claim, and rejecting Super Vision's claims of tortious interference and product disparagement. Matt then received a \$1.5 million award of attorney fees.

- **Zipwall.** After securing judgment and an injunction against competitor, KwikPole, Matt filed a patent action against C&S Manufacturing. After several months of litigation, Matt secured final judgment of patent infringement, an injunction, an order to destroy all inventory and marketing collateral, and an award of attorney fees.
- **Hasbro v. RadGames.** When RadGames sought to launch its Super Add-Ons™ board game, for use with the existing Monopoly® game board, Hasbro filed a lawsuit alleging copyright and trademark infringement and secured an ex parte restraining order. After extensive briefing and an evidentiary hearing, the Judge lifted the restraining order and denied Hasbro's motion for a preliminary injunction on the ground that Hasbro was not likely to succeed in its claims, while noting that it "seems unlikely that further factual development will lead to a different outcome." The case settled immediately.
- **Akamai v. Speedera.** In this complicated lawsuit involving cross-claims of infringement of multiple patents directed to Internet routing technology, Judge Zobel of the United States District Court of Massachusetts appointed Matt as special master for discovery.
- **Belden v. CDT.** Matt served as lead counsel in defending this patent lawsuit. After discovery closed, the Court adopted CDT's proposed claim constructions and Belden agreed that it could not succeed given that ruling and appealed. After Matt argued the appeal, the Federal Circuit affirmed. Since then, the companies have merged and the general counsel of the former adversary has selected Matt to handle patent litigation on behalf of the combined company.
- **AW Chesterton v. Durametallic.** Just before trial, Durametallic selected Matt to replace lead trial counsel. After a few weeks of intensive preparation and a last minute deposition of the inventor, Matt presented an opening argument to the jury that offered both new arguments and which formulated the previously articulated theories persuasively. After the first week of trial, the parties settled on a sum substantially lower than previously had been recommended to Durametallic by both the trial judge and a senior judge sitting as a mediator and, at the suggestion of Matt, the settlement was structured to permit an accounting treatment making the settlement yet more favorable.
- **Eisenberg v. Alimed.** After insurance counsel successfully defended this patent lawsuit, insurance counsel, the insurance company and Alimed all agreed that Matt should take the lead in defending the decision on appeal. The Court accepted Matt's arguments and affirmed.
- **Ottawa Heart Institute v. Abiomed.** Ottawa Heart Institute (OHI) asserted claims of patent and trade secret infringement against the device used to power Abiomed's total artificial heart; as a result of the suit, the fund-raising necessary for clinical trials was delayed. After Matt deposed OHI's expert, OHI unilaterally withdrew its claims of patent infringement, without concession from Abiomed. The trade secret claims proceeded to trial. On cross examination by Matt, OHI's expert testified that he could not opine that any trade secrets were taken and got OHI's chief technical officer to confess that virtually all of the asserted trade secrets were not actually secret. After three hours of deliberation, the jury found

for Abiomed with respect to all 26 asserted trade secrets and Abiomed began its successful fund-raising effort the following business day.

- **Cognex v. Matrox.** When Matrox was sued for patent infringement, it selected Matt and Moore to handle defense of the claim. After aggressive development of its defensive position and aggressive pursuit of discovery, Matt and Moore succeeded in getting Cognex to withdraw its claims, without any concession or form of payment by Matrox.

Awards and Recognition

Matt was selected for inclusion in the *Massachusetts Super Lawyers*® lists since 2005 in the areas of Intellectual Property and Intellectual Property Litigation. He has also been selected by his peers for inclusion in *The Best Lawyers in America*® in the fields of Litigation – Patent (2012-2026) and Litigation – Intellectual Property (2013-2026) and was recognized among *IAM Patent 1000 – The World's Leading Patent Practitioners* (2012-2016, 2020-2021). In addition, Matt was recognized by *Chambers USA: America's Leading Lawyers for Business* in the practice area of Intellectual Property (2013-2021) and was named an IP Star by *Managing Intellectual Property* magazine in 2015. He has also been recognized by *The Legal 500* for his work with patent prosecution (2016).

Affiliations

Matt chairs the Intellectual Property Law Committee of the Boston Bar Association and has chaired the Patent Litigation Committee of the Boston Patent Law Association and its Patent Law Committee. He also chaired the Boston Bar Association's Intellectual Property Litigation Committee.

Community Involvement

Matt is an adjunct professor at Suffolk University Law School, where he teaches patent law. He also spent two years teaching software patent prosecution at the Franklin Pierce Law Center. Matt also contributes to his community, serving as a director of the Belmont Foundation for Education, an elected Town Meeting member, and as chair of the Belmont Board of Library Trustees.

Thought Leadership

Matt has published a variety of articles and is frequently quoted in, for example, *The Boston Globe*, *The National Law Journal*, *The Boston Business Journal*, *Massachusetts High Tech Weekly*, *Bureau of National Affairs*, *Pharmaceutical Policy & Report* and, *Credit Card Management Magazine*.

Sectors

- [Semiconductors](#)

Practice Areas

- [Commercial Litigation](#)
- [Electronics](#)
- [Intellectual Property](#)

Education

- Harvard Law School (J.D., magna cum laude)
- University of Illinois (M.S. and B.S.)
 - During graduate school wrote:
 - a book chapter and an invited journal paper on computer software and hardware architecture for artificial intelligence
 - a peer-reviewed paper on Supercomputers for Artificial Intelligence
 - a peer-reviewed paper on Machine Learning
 - a peer-reviewed journal article, and paper presented at an international conference, on fault tolerant computer architecture

Admissions

- U.S. Patent and Trademark Office