

David J. Ball
Partner

New York
T: +1.212.508.6133
F: +1.800.404.3970
E: david.ball@bracewell.com

About David

David is a member of the firm's litigation department, where he concentrates on intellectual property, international arbitration, and restructuring matters. David's understanding of complex products, varied industries, and technical and financial analysis lends itself to his varied practice.

David's intellectual property litigation practice (patent, trademark, trade secret, copyright and IP theft), involves trials and appeals, as well as license drafting, IP royalty audits and related disputes. He has experience litigating offensive and defensive patent infringement matters across a wide range of technologies in federal district courts and before the International Trade Commission, in addition to assisting clients with contentious, in- and out-of-court licensing disputes. David utilizes his litigation background to draft IP agreements, patent licenses and joint collaboration arrangements involving the transfer and development of intellectual property rights.

David's international arbitration practice frequently intersects with his intellectual property experience in representing companies as claimant and respondent under all manner of arbitration rules, including AAA, CPR, ICC, and ICSID, in licensing, development, and commercialization disputes.

David's restructuring practice involves representing debtors and creditors in bankruptcy litigation, both as it relates to intellectual property assets and beyond. He is routinely called upon to quickly understand different industries and the economics of client's businesses to work with financial advisors and expert witnesses. David has experience in Chapter 11, Chapter 15 and Chapter 9 bankruptcy matters, and has litigated numerous Chapter 11 matters – most recently in *MTE Holdings* and *Alta Mesa* – before the bankruptcy courts and federal appeals courts. In addition, David's work extends to representing board members in connection with their fiduciary duties during restructurings.

Prior to joining Bracewell, David served as a clerk in the Southern District of New York for the Honorable William C. Conner and on the Tenth Circuit Court of Appeals for the Honorable Monroe G. McKay.

Recent Notable Matters

Toshiba America Electronic Components, Inc. — secured voluntary dismissal with prejudice and without any payment after four-year litigation over patents related to self-encrypting solid state and hard disc drives

Toshiba America Business Solutions, Inc. — successfully invalidated five US patents which had been asserted by Monument Peak Ventures, LLC ("MPV") against firm clients Toshiba Corp., Toshiba America Electronic Components, Inc., and Toshiba America Business Solutions, Inc. The technologies at issue related to facial recognition algorithms, digital marketing, and the capture and manipulation of digital images.

Natixis — as administrative agent for the first lien lender group in the MDC Energy LLC (d/b/a MDC Texas Energy) Chapter 11 bankruptcy case

Biotechnology arbitration — first chaired 8-day ICC arbitration defending biotechnology company accused of breach of contract and resulting in award of no damages.

CARES Act Loan Programs — advising lenders and borrowers on documenting and other aspects of the loan programs offered under the US Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

HTC Corporation — Obtained a complete victory for consumer electronics company HTC in a trademark infringement case in the Eastern District of Virginia. Recently won a ruling entitling HTC to recover $1.5 million in fees based on the exceptional nature of the case.

Big Fish Games, Inc. — defense in multiple patent infringement actions resulting in outright dismissal based on invalidation of numerous patents, upheld on appeal before the Federal Circuit

Toshiba Tec Corporation — asserting nine patents in infringement action against competitor related to toner cartridges

Toshiba Corp. and its subsidiaries — defense in an International Trade Commission patent infringement investigation concerning digital signal processing

Ahern Rentals, Inc. — Noteholder group in Chapter 11 proceedings of Ahern Rentals, Inc. that resulted in a full recovery for the noteholders after the court agreed to terminate Ahern's exclusive right to file a plan of reorganization. The *M&A Advisor* recognized this transaction in two categories in the 2014 Turnaround Awards, including as the **Restructuring Deal of the Year** (over $500 million to $1 billion).

Energy & Exploration Partners, LLC — Debtors in Chapter 11 proceedings resulting in the restructuring of more than $1 billion of funded debt enabling the company to emerge from Chapter 11 with a deleveraged balance sheet and new financing to support future operations. The transaction was named by Global M&A Network as the 2017 Turnaround Atlas Awards **Turnaround of the Year** ($1 billion $2 billion) Network.

Optim Energy, LLC — debtor in Chapter 11 proceedings, including the successful 363 sale of the Twin Oaks Plant to a unit of Blackstone Group and the confirmation of a plan of reorganization for the debtors' other

remaining power generation business

Major European electronics manufacturer — disputes and audits arising out of its licensing of various technologies

B.E. Meyers & Co., Inc. — sued licensee of in breach of license agreement action to obtain right to perform audit and conducted the audit

International Trademark Association — authored Fourth Circuit amicus brief in Shammas v. Focarino concerning fees charged to trademark applicants

International Trademark Association — authored Supreme Court amicus brief in Hana Financial, Inc. v. Hana Bank on behalf of successful respondent

JPMorgan Chase — obtained dismissal and affirmance on appeal before Eighth Circuit of class actions concerning mortgage practices

JLB Capital — successfully represented hedge fund in bankruptcy litigation and appeals before 11th Circuit and Nevada Supreme Court arising out of collapse of billion-dollar casino construction project

Overstock.com — internet taxation appeal before the New York Court of Appeals

Publications and Speeches

"Valuing a Business," *Commercial Litigation in New York State Courts*, 2020 edition.

"Business Valuation (Chapter 156)," *Commercial Litigation in New York State Courts* (5th ed.) (forthcoming).

"Best Practices to Establish and Maintain a Proactive Royalty Compliance Program," *Association of University Technology Managers* (AUTM), September 30, 2016.

"Patent Damage Pitfalls Await the Unprepared," *IP Magazine*, September 2016.

"Trademark Tacking And What It Means For Your Brands," *World Trademark Review*, August/September 2015.

"Brand Owners Can Make Trademark Tacking Stick," *Law 360*, January 26, 2015.

"Reading the Tea Leaves on Cybersecurity Regulation," *American Banker*, November 26, 2014.

"IP Owners Beware: The Third Industrial Revolution is Upon Us" *LawyerMade*, September 2014.

"Expedited Procedures in New York Courts Guarantee Trial in Just Nine Months" *Transaction Advisors*, August 2014.

"Software patents survive Supreme Court's Alice decision, but questions linger" *Westlaw Journal Computer and Internet*, Vol. 32, Issue 3, July 2014.

"Delaware Court Clarifies Director and Officer Liability in M&A Transactions," *Transaction Advisors*, July 2014.

Education

New York University School of Law, J.D.
2004 – *cum laude*

Tufts University, Bachelor of Arts
2000 – *cum laude*

Noteworthy

Lawdragon Inc., *Lawdragon 500 Leading Litigators in America*, IP, International Arbitration, Restructuring, 2024

Euromoney Institutional Investor PLC, *Benchmark Litigation*, New York Intellectual Property, 2020

The Legal 500 United States, Intellectual Property - Trademarks: Non-Contentious (full coverage), 2018

Euromoney Institutional Investor PLC, *Benchmark Litigation*, 40 & Under Hot List, 2017

Thomson Reuters, *New York Metro Super Lawyers*, 2023

Thomson Reuters, *New York Metro Super Lawyers*, Rising Stars, 2014 - 2016

Southern District of New York, Honorable William C. Conner , Law Clerk

Tenth Circuit Court of Appeals, Honorable Monroe G. McKay, Law Clerk

Bar Admissions

New York
New Jersey
District of Columbia
Washington