



Deepak Gupta

Partner

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Deepak Gupta's practice is focused on intellectual property and business litigation. He is the founder of the firm's Internet Law Group and the primary point of contact for a wide variety of internet-related matters.

The bulk of Deepak's practice consists of patent and copyright litigation, mostly driven by claims related to the Digital Millennium Copyright Act, as well as the Computer Fraud and Abuse Act. His clientele ranges from very large tech companies, including several in the Fortune 5, down to very small tech startups, and everything in between.

As a litigator, Deepak brings to bear a combination of battle-tested trial advocacy techniques, solid strategic and procedural judgment and a tenacious competitive spirit. He also has a solid grounding in science and technology, including an undergraduate degree in symbolic systems. Clients acknowledge, and come to rely on, his sense of judgment and his skill at discerning the overall landscape of a dispute -- a good balance between aggressive and conservative.

When it's both feasible, and in his clients' best interest, Deepak prefers to negotiate and settle cases -- discussion and compromise are almost always preferable to the risk, expense, and demands of a trial. That being said, if a case does end up going to court, he is an aggressive, very competitive advocate. His courtroom track record inevitably informs his settlement negotiations -- a proven, known ability to prevail in court makes prospective opponents much more open to and cooperative in negotiation.

As a legal advisor, Deepak has the ability to integrate big-picture case strategy and motion practice. This means understanding the facts that are to his client's advantage as well as the weaknesses of his opponent's case, and using both to bring some force to the fact pattern. In formulating arguments, he tries, usually with success, to characterize the applicable facts and law in a moral way. There's always some element of right and wrong at work in any dispute, and there's also a business element to it. Business functions because certain principles are observed, and by using those principles to highlight the rationale behind his clients' position, Deepak is an effective, innovative advocate for his clients.

Distinctions

- Northern California *Super Lawyers* (2016-2018)
- Northern California *Super Lawyers Rising Stars* (2010-2015, 2018)

Experience

hiQ Labs Inc. v. LinkedIn Corp.

Represented startup hiQ Labs Inc. in a precedent-setting litigation for data analytics, mining, and aggregator companies and their right to access publicly available data under the Digital Millennium Copyright Act, the Computer Fraud and Abuse Act (CFAA), and a California state law on unauthorized computer access. The Ninth Circuit Court of Appeals affirmed hiQ's preliminary injunction against LinkedIn.

Services

- Technology
- Copyright
- Data Analytics
- Intellectual Property Litigation
- Internet Law
- Patent Litigation
- Patent Office Litigation
- Privacy and Cybersecurity

Education

- Harvard Law School (J.D., 2002)
 - . Sheldon Fellowship; Editor, *Harvard Civil Rights-Civil Liberties Law Review*
- Stanford University (B.S., 1995)
 - . Symbolic Systems

Bar Admissions

- California

Clerkships

- Constitutional Court of South Africa, Zak Yacoob
- Constitutional Court of South Africa, Albie Sachs

Zep Solar

Defended Zep Solar (which was later acquired by SolarCity) in patent infringement lawsuits filed in the International Trade Commission and the Northern District of California relating to efficient techniques for mounting solar panels. After obtaining early dismissal of Plaintiffs' claim for declaratory judgment of noninfringement because there was no subject matter jurisdiction, we sought a stay of the litigation pending an inter partes reexamination of the patent-in-suit in the Patent and Trademark Office. The asserted patents were invalidated virtually in their entirety, and the cases then settled.

Bilski et al v. Kappos (561 U.S. 593 (2010))

Submitted an amicus brief on behalf of Dolby Laboratories for the Supreme Court of the United States in the landmark *Bilski* ruling relating to business method patents. The Supreme Court relied on and cited for the proposition in overturning the Federal Circuit Court of Appeals opinion and addressing the scope of what is patentable under section 101 of the Patent Act. Specifically, that exclusive adoption of a "machine-or-transformation test" for patent eligibility "would create uncertainty as to the patentability of software, advanced diagnostic medicine techniques, and inventions based on linear programming, data compression, and the manipulation of digital signals."

Disney Enterprises, Inc. et al. v Hotfile Corp., et al.

Represented a cloud storage company against copyright infringement claims brought by five major movie studios in federal district court in Florida. The case involved cutting-edge issues of law under the DMCA, the Stored Communications Act and the Copyright Act in the cloud-computing context. 798 F. Supp. 2d 1303 (S.D. Fla. 2011)(motion to dismiss denied in part)

Tse v. Google, 570 Fed.Appx. 941 (Fed. Cir., 2014)

Represented Google in the Federal Circuit Court of Appeals seeking affirmance of a Northern District of California ruling that a digital rights management patent was invalid. The Federal Circuit ruled in favor of our client, affirming invalidity of the asserted patents.

Tse v. Google, Inc.

Defended Google from assertions of patent infringement related to digital rights management technology. Prevailed on an early summary judgment motion of patent invalidity for lack of adequate written description support.

Authors Guild v. HathiTrust

We submitted an *amicus* brief on behalf of the Electronic Frontier Foundation in support of the HathiTrust "mass digitization" project. HathiTrust, backed by a consortium of university libraries and Google, has digitized millions of copyrighted books and incorporated them into a database without the consent of copyright owners. The brief addressed whether changing a work from print form to a digital database in order to add new uses counts as "transformative" under copyright fair use factor 1. In June 2014, the Second Circuit affirmed the district court's decision that HathiTrust Digital Library's use of the copyrighted works for full-text search constitutes a "fair use." The court also affirmed the district court's ruling that fair use allows the libraries to provide the works in formats accessible to the print-disabled.

Hall Data v. Dropbox

Defended Dropbox in patent proceedings related to database synchronization technologies initially filed in the

Eastern District of Texas. After successfully obtaining transfer of the action from the Eastern District of Texas to the Northern District of California, we obtained a dismissal with prejudice on behalf of our client following a court-ordered settlement conference.

Rosen v. Hosting Services, Inc.

We defended internet service provider Hosting Services who was sued for contributory copyright infringement. We defeated all of Plaintiff's claims at summary judgment, arguing his notice of the alleged infringement had been inadequate to impart sufficient knowledge of the location of alleged infringement such that Hosting Services was under a duty to takedown the files.

Rothschild Location Technologies v. Popular Ridesharing Company

Defended a popular ridesharing company in Eastern District of Texas patent proceedings from allegations that our client's on-demand transportation services infringe Rothschild's patents relating to GPS technology. Obtained a favorable settlement for our client.

Viacom International, Inc. et al. v. YouTube, inc. et al.

We filed an *amicus* brief on behalf of several national consumer groups asking the Second Circuit to affirm the district court's grant of summary judgment in favor of YouTube and Google against the plaintiffs' claims of copyright infringement based on the DMCA "safe harbors."

Warner Bros. Records v. SeeqPod

We defended search engine SeeqPod in a copyright infringement matter brought by Warner Brothers Records and several other major music labels in the Central District of California. Warner is alleging that SeeqPod's technology allows the infringement of copyrighted materials, and is seeking a preliminary injunction. We are defending the action based on a number of "safe harbors" under the Digital Millennium Copyright Act ("DMCA").

Publications

March 26, 2020

Litigation Management Checklist in the Time of COVID-19

September 20, 2019

Facebook Suspends Apps That Scrape Data From Its Platform Following Cambridge Analytica Scandal

6/18/2014

Second Circuit Confirms HathiTrust Digital Library's Full-Text Search Constitutes Fair Use in Copyright Case

2/12/2014

3D Printing, Copyright Challenges, and the DMCA

7/15/2013

Selling Your Digital Media Made (Not) Easy

6/2/2011

Court Establishes Willful Blindness Standard for Induced Patent Infringement

Outside the Office

Deepak is married, with three children. He's an enthusiastic, albeit somewhat rusty, rock guitarist, as well as an avid reader of history. He's also a science nerd, reading about evolutionary theory, interested in biotechnology, and a frequent presenter on Internet law for the American Bar Association and the San Francisco Bar Association.