



Brett Foster

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Overview

BRETT HELPS HIS CLIENTS PROTECT AND ENFORCE THEIR INTELLECTUAL PROPERTY RIGHTS, AND DEFENDS THEM AGAINST IMPROPER ATTACKS. HE HAS EXTENSIVE EXPERIENCE IN PATENT, TRADEMARK, TRADE SECRET, AND FALSE ADVERTISING CASES IN FEDERAL DISTRICT COURTS THROUGHOUT THE COUNTRY.

BRETT FOSTER is a partner in Dorsey's Salt Lake City office. Brett is a leading national patent and intellectual property trial lawyer. He has served as lead counsel in cases throughout the Country (in 23 different states, mostly via *pro hac vice* admissions), and has taken many intellectual property cases to verdict. Brett and his trial teams are renowned for their success in high-stakes -- often bet the company -- complex cases.

Representative Trials

Brett has served as lead counsel for trial teams that have enjoyed many jury trial successes, including the following representative cases:

- Brought home a willful infringement jury verdict in a District of Utah patent infringement case involving blending technology, and persuaded the Court to award enhanced damages (~\$24 million collected judgment and permanent injunction). The United States Court of Appeals for the Federal Circuit affirmed the judgment;
- Delivered a willful infringement verdict and an enhanced damages award (~\$4 million collected judgment and permanent injunction) in a Northern District of Iowa patent case involving game call technologies. The United States Court of Appeals for the Federal Circuit affirmed that judgment;
- Scored a ~\$5 million verdict in a trade secret misappropriation and breach of confidentiality agreement case in the District of Utah involving turbine engine and aircraft wash technologies; and
- Involved in trade secret misappropriation and confidentiality agreement jury trial in the District of Utah; \$20 million jury verdict.

Representative Dispositive Motions

Brett has served as lead trial counsel for trial teams that have enjoyed many defense victories, including the following:

- Summary judgment granted in a patent infringement case (non-infringement) in the Western District of Michigan involving equipment wash technologies;
- Summary judgment granted in a patent infringement case (non-infringement) in the District of Arkansas involving archery technologies;
- Summary judgment victory in a patent infringement case (non-infringement) in the District of Alabama involving hunting decoy technologies; attorneys' fees were also awarded;
- Summary judgment granted in a patent infringement case (non-infringement) in the District of Ohio involving blending technologies;
- Summary judgment granted resolving three separate patent infringement claims (non-infringement and invalidity) and three false advertising claims in the District of Utah involving equipment wash and turbine engine wash technologies;
- Motion to dismiss granted in the District of Utah, resolving a patent infringement case (Section 101 invalidity) involving simulation software, affirmed by the Federal Circuit; and
- Summary judgment granted in an breach of contract case in the District of Idaho involving agricultural equipment technology; attorneys' fees were awarded.

Representative Preliminary Injunction Victories

Motion for a preliminary injunction are often a key, decisive battle-front in intellectual property cases. Such motions usually involve an evidentiary mini-trial before the court with live witnesses, including direct and cross-examination. Brett has lead trial teams that have delivered many difficult-to-get preliminary injunctions for his clients and his teams have defeated such motions, including the following representative cases:

- Preliminary injunction granted in a District of Utah Lanham Act false advertising case involving dietary supplements, following an evidentiary hearing;
- Preliminary injunction ordered in a District of Utah patent infringement case involving archery technologies, following an evidentiary hearing;
- Two consecutive preliminary injunctions granted in a District of Nevada patent and trade dress case involving firearms technology, affirmed by the Ninth Circuit Court of Appeals;
- Preliminary injunction issued in a District of Kansas patent infringement case involving ozone technologies, after an evidentiary hearing;
- Preliminary injunction motion denied by the District of Utah in a copyright matter, after an evidentiary hearing.

Synergistic Work of Prosecution and Litigation Teams

Post grant proceedings at the USPTO's PTAB have become a critical part of patent litigation. Brett and his trial teams work seamlessly with Dorsey's patent prosecution teams, where are led by his brother and partner since 1994, Grant Foster, and Mark Miller, his partner since 2004. Brett has assisted Dorsey's PTAB post grant team in invalidating a number of asserted patents in post grant proceedings. Notably, Brett and Grant argued back-to-back appeals at the Federal Circuit relating to a successful patent verdict and PTAB victories on the asserted patents. The synergistic teamwork of the patent prosecution and litigation teams is a key to their consistent success in patent litigation.

Favorable Settlements

Statistically, most intellectual property cases settle. Brett not only zealously leads his trial teams in litigation, but he also enjoys the skill set of negotiating effective settlements for his clients.

Honors and Recognition

Chambers USA has consistently recognized Brett as a leader in Intellectual Property. Chambers USA ranks Brett in the elite "Band 1" individual category. Brett has also earned the distinction of being among *The Best Lawyers in America* for many years. In 2021, Best Lawyers named Brett the "Salt Lake City Lawyer of the Year" in Litigation-Patent. Utah Business Magazine has also recognized Brett as one of "Utah's Legal Elite" for many years. He has been recognized by Benchmark Litigation has recognized him as a "Local Litigation Star". Brett has garner the "IP Star" recognition by Managing Intellectual Property for several years. IAM Patent 1000 for many years has also recognized Brett as one of the world's leading patent litigation professionals.