



David Almeling

Partner

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David Almeling is one of the country's leading attorneys in trade secret law. *Legal 500* describes him as one of the "key figures in the trade secrets space," *IAM Patent 1000* calls him a "trade secret authority" and "one of the country's best trade secret litigators," he has taught trade secret law at UC Berkeley Law School for the last few years, and he has testified before Congress on safeguarding trade secrets. David was profiled for his trade secret work in *The National Law Journal's* "Intellectual Property Trailblazers & Pioneers" as one of the top 50 intellectual property lawyers. His book, *Trade Secret Law and Corporate Strategy*, is now in its third edition. David has represented clients in countless matters that span the full range of trade secret and employee mobility issues, from advising on protection programs to investigating alleged thefts to litigating trade secret cases in state and federal court.

David is also an accomplished and successful patent litigator. *IAM Patent 1000* describes him as an "up-and-coming star" who "gets great results." David advises clients on patent strategy and litigates patent cases. He also represents clients at the US Patent & Trademark Office.

Admissions

Bar Admissions

California

Court Admissions

US District Court, Northern, Southern, Central, and Eastern Districts of California

US District Court, Western District of Washington

US Court of Appeals, Third, Seventh, Ninth, Eleventh, and Federal Circuits
US Supreme Court

Education

Duke University, J.D.: high honors; Order of the Coif; note editor, *Duke Law Journal*; Moot Court Board

University of Florida, B.A., Political Science: highest honors; valedictorian; Phi Beta Kappa

Experience

Examples of Patent Litigation

- Defended an industry-leading, Mountain View-based multinational public cloud computing company in over two dozen patent matters, including serving as a second chair in a jury trial in D. Del. and achieving an across-the-board victory with verdicts of invalidity and noninfringement in a case involving terrain visualization software where the plaintiff sought more than \$100 million in damages.
- Defended a Korea-based, multinational public electronics company in five patent cases. One in D. Del. involved a method of providing driving directions and resulted in complete victory in which the patent was invalidated by the PTO. Another case resulted in obtaining a writ of mandamus from the United States Court of Appeals for the Federal Circuit in a unanimous precedential opinion that rejected the plaintiffs' novel attempt to defeat transfer by subdividing their patent rights geographically so that one plaintiff only suffered infringement in specific counties in Texas and directed the Western District of Texas court to transfer the cases to the Northern District of California.
- Defended a Fortune 50 consumer electronics company in several patent cases, including one that involved antivirus software that resulted in a favorable settlement that led to licensing a portfolio of patents. (D. Del., S.D. Fla., E.D. Tex., W.D. Wash.)
- Represented a San Jose-based public semiconductor manufacturer in several patent cases, including one in E.D. Pa. that involved voltage and temperature compensated amplifiers and resulted in a complete victory in which the case was dismissed shortly after O'Melveny filed a Rule 11 motion.
- Represented a biometric payment solutions company in an appeal that decided the ownership of fifteen patents, resulting in a Federal Circuit decision that gave a complete victory to the company. (Fed. Cir.)
- Represented two leading multinational consumer electronics companies in asserting patent infringement claims against a provider of wireless networking technology, resulting in a Federal Circuit decision approving, for the first time, of proving infringement through compliance with a technical standard. (Fed. Cir. and W.D. Wis.)
- Represented a major manufacturer of water sports boats in three patent cases, including cases involving wake-surfing technology that resulted in favorable settlements that included substantial royalty payments. (E.D. Tenn. and M.D. Fla.)
- Defended a California-based leading provider of video-streaming services in two patent cases, both in C.D. Cal., resulting in a favorable resolution that involved no monetary payment by the client.
- David also has substantial experience and success advising companies regarding proceedings in the PTO. He has been involved in dozens of *ex parte* and *inter partes* reexaminations, *Inter Partes* Review proceedings, and Covered Business Method proceedings.

Examples of Trade Secret Litigation and Other Matters

- Represented a California-based life sciences company in a case in which former employees and the new company they formed misappropriated trade secrets to develop competing technology relating to oligonucleotide synthesis and DNA printing technology. The favorable cash settlement of \$22.5M would rank among the top-ten trade secret jury verdicts from 2009-2018 according to data from Lex Machina.

- Represented a New York-based pharmaceutical company in a trade secret case against former employees and the company they founded. The court granted a preliminary injunction that was widely reported and that prohibited defendants from releasing its competing drug product. The Third Circuit upheld the injunction in part, and the case then favorably settled.
- Represented a subsidiary of a California-based public company that provides analog and mixed-signal semiconductors in a trade secret and breach of contract case involving power management semiconductor technology that resulted in a summary jury trial victory and then a favorable post-verdict settlement later that day. (Texas state court)
- Represented a biometric sensors company against two former employees in arbitration involving claims of breach of contract and trade secret misappropriation. The arbitrator, a former federal judge, found in the company's favor. (JAMS)
- Represented a medical device company in six simultaneous cases involving software and hardware used to design orthodontic braces, resulting in a favorable settlement that included a significant payment to the client. The cases involved trade secret, trademark, and other claims. (N.D. Cal., W.D. Wis., ITC, and California state court)
- Represented a leader in biometric fingerprint security solutions in a case involving trade secret claims, resulting in a favorable settlement that created the world's largest provider of fingerprint sensors and identity management software. (N.D. Cal.)
- Represented a fabless semiconductor company based in California in a trade secret and breach of contract case involving network architecture technology that resulted in a favorable settlement. (California state court)
- Defended an innovator of HD semiconductor chips in a case that involved trade secret, copyright, antitrust, and unfair competition claims, resulting in a favorable settlement after the successful defeat of a motion for preliminary injunction on the trade secret claim. (N.D. Cal.)
- Defended a major manufacturer of watersports towboats in a trade secret and design patent case involving marine windshields, resulting in a favorable settlement. (M.D. Fla.)
- Represented a Texas-based mass media company in several trade secret disputes and in a high-profile employee mobility lawsuit involving a radio personality that resulted in a favorable settlement after David helped defeat a motion for preliminary injunction. (California state court)
- Represented the International Olympic Committee in a trademark infringement case against various websites that sold fraudulent tickets, resulting in a complete victory in the form of permanent injunctions against the websites. (D. Ariz. and N.D. Cal.)
- Represented a large number of companies and individuals — both trade secret owners and alleged misappropriators — in various aspects of civil and criminal trade secret disputes that did not go to court, including devising trade secret protection programs, investigating alleged misappropriation and valuing trade secret claims, drafting and responding to cease-and-desist letters, enforcing and defending against non-competition agreements, negotiating pre-litigation resolutions, hiring and terminating employees, performing trade secret audits, and dealing with issues related to employee mobility.
- Represented, pro bono, a plaintiff who alleged a school district discriminated against her because of her Egyptian nationality and Islamic faith. David helped secure, at the time, the then-second largest award in a hostile school environment claim. (Ninth Circuit and D. Nev.)

Professional Activities

Clerkships

- Honorable Gerald B. Tjoflat, US Court of Appeals, Eleventh Circuit (2004-05)

Organizations

- The Sedona Conference, Working Group 12 on Trade Secrets, Vice Chair, Member of Steering Committee and Co-Lead on the Drafting Team responsible for the proper identification of asserted trade secrets
- The Trade Secret Committee of the American Intellectual Property Law Association (former chair of various subcommittees)
- The Lawyers and Judges Golf Association of Northern California

Author (Example Publications)

- "Disputed Issues in Awarding Unjust Enrichment Damages in Trade Secret Cases," 19 Sedona Conf. J. 667 (2018).
- *Safeguarding Trade Secrets in the United States: Hearing before House Subcommittee on Courts, Intellectual Property and the Internet*, April 17, 2018 (written statement)
- "Trade Secret Law and Corporate Strategy," (Third Edition, LexisNexis 2018)
- "A Survey of In-House Attorney Views on Trade Secrets," *IP Law360* (January 12, 2018)
- "The Shifting Junction of Trade Secret Law and Noncompetes," *IP Law360* (August 17, 2016)
- "Trade Secret Law and Corporate Strategy," (Second Edition, LexisNexis 2015)
- "Defend Trade Secrets Act — A Primer, an Endorsement, and a Criticism," *Patently-O* (May 30, 2014)
- "Recent Trade Secret Reform, and What Else Needs to Change," *IP Law 360* (September 23, 2013)
- "Seven Reasons Why Trade Secrets Are Increasingly Important," 27 *Berkeley Technology Law Journal* 1091 (November 2012), judged one of the best intellectual property articles published in 2012 and selected for inclusion and republication in the 2013 edition of the *Intellectual Property Law Review*
- "Keeping Secrets: A Practical Introduction to Trade Secret Law and Strategy," (Oxford University Press 2012)
- "The New, Improved Prior Use Defense: The Same Patent vs. Trade Secret Calculus," *Trade Secret Litigator* (April 17, 2012)
- "First Patent Reform, Now Trade Secret Reform," *Patently-O* (October 12, 2011)
- "Pros and Cons of Criminal Prosecution vs. Civil Enforcement," *Trade Secret Litigation and Prosecution in California Supplement* (2011)
- "A Look At State Court Trade Secret Stats," *IP Law360* (March 1, 2011)
- "A Statistical Analysis of Trade Secret Litigation in State Courts," 46 *Gonzaga Law Review* 57 (February 2011), judged one of the best intellectual property articles published in 2011 and selected for inclusion and republication in the 2012 edition of the *Intellectual Property Law Review*
- "Tracking Trade Secret Stats," *IP Law 360* (March 25, 2010)

- “A Statistical Analysis of Trade Secret Litigation in Federal Courts,” *45 Gonzaga Law Review* 291 (March 2010)
- “A Practical Case For Federalizing Trade Secret Law,” *IP Law* 360 (June 23, 2009)
- “Four Reasons to Enact a Federal Trade Secrets Act,” *19 Fordham Intellectual Property, Media & Entertainment Law Journal* 769 (April 2009)
- “Trade Secrets: The Identification Issue,” *National Law Journal* (August 2008)
- “DOJ, FTC Redefine Antitrust Rules on Patent Pools,” *National Law Journal* (October 29, 2007)
- “The Infringement-Plus-Equity Model: A Better Way to Award Monetary Relief in Trademark Cases,” *14 Journal of Intellectual Property Law* 205 (2007)
- “Patenting Nanotechnology: Problems with the Utility Requirement,” *Stanford Technology Law Review*, N1 (2004)
- “The Problems of Pouring-Rights Contracts,” *53 Duke Law Journal* 1111 (2003)

Speaker (Example Presentations)

- “IP Issues in Business Transactions,” Practising Law Institute (Feb. 3, 2022)
- “Trade Secret Law and Case Management,” The Federal Judicial Center (Aug. 27, 2021)
- “New IP Issues Impacting Business Transactions,” Practising Law Institute (Feb. 12, 2021)
- “Trade Secrets Protection, Enforcement & Litigation,” Sandpiper Partners (Dec. 6, 2020)
- “Caselaw Synergies: Six Recent Trade Secret Cases,” The Sedona Conference (Nov. 9, 2020)
- “Webinar on TSC Commentary on Proper Identification of Asserted Trade Secrets in Misappropriation Cases,” The Sedona Conference (May 19, 2020)
- “Identification of Trade Secrets,” Sedona Conference on Trade Secrets (Nov. 5, 2019)
- “The Intersection of Patent and Trade Secrets,” Federal Circuit Bar Association’s Bench & Bar Conference (Jun. 12, 2019)
- “Trade Secret Update,” Rocky Mountain IP Institute (May 31, 2019)
- “Recent Developments in Trade Secret Law,” Practising Law Institute (Feb. 7, 2019)
- “Identification of Trade Secrets,” The Sedona Conference on Trade Secrets (Nov. 5, 2018)
- “Trade Secret Protection, Enforcement, and Litigation,” Sandpiper Partners (Sept. 27, 2018)
- “Recent Statistics on Trade Secrets and Key Developments in the First Two Years of the DTSA,” Intellectual Property Owners Association (June 5, 2018)
- “Defend Trade Secret Act as It Approaches Its Second Birthday,” Law Seminars International (May 4, 2018)
- “Top 10 Developments in the First Two Years of the Defend Trade Secrets Act,” NYIPLA and NJIPLA Trade Secrets and Cybersecurity Conference (April 18, 2018)
- *Safeguarding Trade Secrets in the United States: Hearing before House Subcommittee on Courts, Intellectual Property and the Internet*, April 17, 2018 (statement of David S. Almeling)
- “Trade Secret Damages,” Inaugural Sedona Conference on Developing Best Practices for Trade Secret Issues (December 7, 2017)

- “Trade Secrets 2016: What Every IP Attorney Should Know”, Practising Law Institute (December 5, 2016)
- “The Defend Trade Secrets Act,” Asian American Bar Association (August 18, 2016)
- “New Patent and Trade Secret Issues Impacting Business Transactions,” Practising Law Institute (February 25, 2016)
- “IP Issues in Business Transactions: Trade Secrets, Utility Patents, and Design Patents,” Practising Law Institute (February 26, 2015)
- “Understanding IP Law for In-House Counsel and Other Non-IP Lawyers,” Bridgeport Continuing Education (February 13, 2015)
- “Developing Best Practices for Protecting Trade Secrets,” Trade Secret Summit (December 5, 2014)
- “New Trade Secret Legislation and the Changing Rules of Trade Secret Litigation,” Bridgeport Continuing Education (June 17, 2014)
- “Updates on Recent Developments in Trade Secret Law: Legislation, Litigation, and Business,” American Intellectual Property Law Association (May 16, 2014)
- “New Legal Issues Impacting IP Transactions: Copyrights, Trademarks, Domain Names, Patents, and Trade Secrets,” Practising Law Institute (February 27, 2014)
- “Patents vs. Trade Secrets: Best Practices for Protecting and Enforcing IP,” California Bar Association Intellectual Property Law Section (August 7, 2013)
- “What Lawyers and Their Clients Need to Know about the Changing Balance of Power Between Trade Secrets and Patents,” American Intellectual Property Law Association (April 23, 2013)
- “Introduction to Trade Secret Law, Its Increasing Importance, and Its Changing Balance with Patent Law,” University of Washington School of Law (October 29, 2012)
- “Understanding Patent Law and Trade Secret Law for In-House Counsel and Other Non-IP Lawyers,” Bridgeport Continuing Education (August 24, 2012)
- “Why Trade Secret Litigation is Booming, and Why That Matters to Clients,” Sonoma County Bar Association (January 23, 2012)
- “Why Every Lawyer Should Know More about Trade Secret Law,” California Bar Association IP Institute (November 11, 2011)
- “Six Reasons That Trade Secrets Matter More and More to American Companies,” Bridgeport Continuing Education’s Prosecuting and Defending Corporate Raiding, Customer Trade Secret, and Employee Mobility Cases (February 25, 2011)
- “Trade Secret Litigation - A Statistical Analysis of Recent Trends and Implications,” California State Bar Cyber Institute (January 19, 2011)
- “Trade Secret Considerations for In-House Counsel and Executives,” California State Bar Cyber Institute (January 11, 2011)
- “The Evolution of Trade Secret Law: Reflecting on 30 Years of the Uniform Trade Secrets Act,” Hamline Law Review Symposium (April 16, 2010)

Adjunct Teaching Positions

- Trade Secret Law and Litigation, UC Berkeley School of Law (2019-current)
- Trade Secret Law, Santa Clara University School of Law (2014)

- Advanced Patent Law, Santa Clara University School of Law (2007)

Honors & Awards

- Recognized by *Best Lawyers*® 2022 for Litigation - Intellectual Property; David has been listed in *Best Lawyers*® since 2020
- Recognized by *The Daily Journal* as a Top Trade Secrets Lawyer (2020)
- Named to the 40 & Under Hot List in Intellectual Property by *Benchmark Litigation* (2018 & 2019)
- Named one of *Law360*'s "Rising Stars" (2017), which identifies the top attorneys in the US under age 40. He was profiled here.
- Recognized as a leading attorney in the *IAM Patent 1000* (2016-2021), which described him as an "up-and-coming star" who "gets great results," and a "trade secret authority" and "one of the country's best trade secret litigators."
- Recommended by *The Legal 500 US* for Trade Secrets (2016-2018, 2020-2021) and Patents: Litigation (2020)
- Named in *The National Law Journal*'s 2014 list of "Intellectual Property Trailblazers & Pioneers," which highlights the top 50 intellectual property lawyers "who are raising the bar in intellectual property law."
- Recipient of a 2014 Distinguished Legal Writing Award from the Burton Awards.
- Named on *The Recorder*'s 2013 list of "Lawyers on the Fast Track," which identifies 50 California lawyers "whose early accomplishments indicate they will be tomorrow's top lawyers and leaders."
- Named a "Rising Star" in intellectual property litigation in each of the 2013-2019 surveys conducted by *Law & Politics Media Inc.* and published in Northern California's *Super Lawyers* magazine and *San Francisco* magazine.