

C. Kyle Musgrove

Partner, Gemini Law LLP



 kmusgrove@geminilaw.com

Kyle Musgrove is an experienced patent trial and appellate lawyer and a partner at Gemini Law. In his nearly thirty years of practice, Kyle has led multiple trial teams in obtaining successful results for his clients. Kyle also has briefed and argued appeals to affirm victories secured at trial. He has even led appellate proceedings on behalf of his clients where the underlying case was handled at the trial court by other firms. Kyle's experience includes securing trial and appellate victories of non-infringement and invalidity involving patents directed towards products having over \$1 billion of yearly revenue.

Kyle's practice primarily is directed to Hatch-Waxman, 505(b)(2) and BPCIA patent litigation. He realizes, however, that litigation is not an end unto itself, rather it must operate in pursuit of a client's business interests. Thus, Kyle is also an experienced counselor and licensing attorney and uses those skillsets to help his client extract the business solution it desires and, in some instances, to avoid litigation altogether. In this regard, he has helped clients in the earliest phases of product design to help them avoid patents. Kyle also has experience with inter partes proceedings and trade secret, ITC, and antitrust litigation. Outside of the litigation realm he provides opinions regarding infringement and validity, assists clients with securing strategic patents, drafts detailed statements and "patent dance" communications, and advises clients on particular FDA issues.

Prior to joining Gemini in 2024, Kyle was a partner at an Intellectual Property boutique and at two large general practice firms. In addition to his law degree, he has an undergraduate degree in Chemical Engineering.

CREDENTIALS

Education

- J.D., The University of North Carolina School of Law, 1995
 - Award: Order of the Coif
 - Award: North Carolina Journal of International Law, Staff Member
 - Award: Moot Court Board
- B.S. in Chemical Engineering, Tulane University, 1992

Bar admissions and qualifications

- **Bar**
 - New York
 - Washington, D.C.
 - North Carolina
- **Courts**
 - U.S. Court of Appeals for the Federal Circuit

Awards / Honors

- IAM Patent 1000
- LSG Life Sciences Star

EXPERIENCE

Select Trial and Appellate Experience

Kyle has been lead litigation counsel on more than 50 matters. A select few of those are described below:

- *In re: Entresto (Sacubitril/Valsartan Patent Litigation, 20-md-02930 (D. Del.):* Kyle co-led multiple trials on different patents related to a client's ANDA product. After the last trial the case was resolved amicably. The earliest trial, however, was part of a multiple defendant trial, and 2 patents were invalidated based on arguments advanced by Kyle and his team during the trial. Kyle opened on those prevailing issues and closed on all issues on behalf of all defendants. The brand product involved exceeded \$1 billion annually in sales.
- *Biogen Int'l GmbH v. Banner Life Sciences LLC, 18-02054 (D.Del.) aff'd 20-1373 (Fed. Cir.):* Kyle represented a 505(b)(2) applicant seeking to market its product prior to the expiration of a Patent Term Extension. Kyle successfully briefed and argued a motion for judgment on the pleadings regarding the legal effects of a PTE on a product that was covered by the claims prior to the extension of term but was not part of the FDA review of the brand product. Based on that legal argument, the District Court granted a motion on the pleadings of non-infringement. The Federal Circuit denied a motion for a preliminary injunction while the Federal Circuit considered the appeal, and the Federal Circuit also affirmed the finding of non-infringement. The brand product at issue had more than \$1 billion annually in sales.
- *Sebela Int'l Ltd. v. Princeton Pharmaceutical, Inc., 14-cv-07400 (D.N.J.), appeal dismissed, 18-1036 (Fed. Cir.):* Kyle led the trial team on the portion of this case which found non-infringement of a patent directed to a particular crystalline form. Kyle also cross-examined an expert relating to invalidity regarding two other patents. Those patents were held invalid.
- *Alza Corp. v. Andrx Pharmaceuticals, LLC, 05-642 (D. Del.), aff'd 2009-1350 (Fed. Cir.):* Kyle led a trial team that found the sole remaining asserted patent both not infringed and invalid for lack of full scope enablement. The invalidity determination was affirmed on appeal. Kyle argued the appeal. The brand product at issue had more than \$1 billion annually in sales.
- *SmithKline Beecham v. Teva Pharmaceuticals, 02-03779 (D.N.J.):* Kyle was second chair at this trial. The case settled after trial and after the trial court had invalidated the compound claim at issue from the bench and had reserved on whether the method claims were invalid.
- *Geneva v. Glaxosmithkline PLC, 01-00391 (E.D. Va.), aff'd 02-1439 (Fed. Cir.):* Kyle was a member of the trial team that invalidated several patents for obviousness type double patenting. The patents were held invalid from the bench at the end of trial. He was also involved with the briefing on the appeal that affirmed that finding. The brand product involved exceeded \$1 billion annually in sales.