



Kevin M. Flowers, Ph.D.

Partner

Tel 312.474.6615
kflowers@marshallip.com

Kevin M. Flowers, Ph.D., leads our Biotech/Pharma Litigation team. Over the last 17 years, Dr. Flowers has successfully represented clients such as Amgen, Eli Lilly, Illumina, Merck-Serono, Danisco, and Home Depot as first-chair trial and appellate counsel in patent cases involving products with sales in the hundreds of millions to billions of dollars per year. These include *Amgen v. Hoechst Marion Roussel and TKT* and *Amgen v. F. Hoffmann-LaRoche* (Epogen®); *Applied Biosystems v. Illumina*; *Life Technologies v. Illumina*; and *Enzo Life Sciences v. Illumina* (DNA-sequencing systems); *Pfizer and Northwestern Univ. v. Teva et al.* (Lyrica®); *Schering v. Geneva Pharms* (Claritin®); *Vanderbilt Univ. v. ICOS /Eli Lilly* (Cialis®); *Default Proof v. Home Depot* and *RealSource Comms. v. Home Depot* (retail gift-card systems); and *Cell Genesys v. ARS* and *ARS v. TKT* (endogenous gene-activation methods).

Dr. Flowers was named an "IP Star" in *Managing IP's IP Stars Survey* (fka the *World IP Handbook and Survey*) from 2014-2016; one of the "World's Leading Patent Practitioners" from 2014-2016 by *Intellectual Asset Management (IAM)* magazine; and a "Leading Lawyer" by *Leading Lawyers Network Magazine*. Dr. Flowers was also named a 2015 "Life Sciences Star" by *LMG Life Sciences* in recognition of his outstanding work in the life sciences sector.



Practices

- IP Litigation
- Post-Grant Patent Proceedings

Industries

- Biotechnology & Life Sciences
- Pharmaceutical

Representative Experience

- *Pfizer Inc. and Northwestern Univ. v. Teva Pharms., et al.* (D. Del. and Fed. Cir.): Dr. Flowers represents Northwestern University, which holds several patents covering pregabalin, the active ingredient in the blockbuster drug Lyrica®, in this ANDA case against seven generic-drug-company defendants seeking to market generic versions of Lyrica®. Dr. Flowers represented Northwestern in a two-week bench trial conducted before Chief Judge Sleet in Delaware in October 2011. On July 19, 2012, Judge Sleet issued his decision finding in favor of Pfizer and our client on all issues. Dr. Flowers represented Northwestern in the defendants' subsequent appeal of the trial verdict to the Federal Circuit, and on February 3, 2014, the Federal Circuit affirmed all aspects of the district-court decision.
- *Life Technologies Corp. v. Illumina, Inc., et al.* (D. Del. and S.D. Cal.): Dr. Flowers represents Illumina in this case in which Life Tech and Illumina each alleged infringement by the other of multiple patents covering systems and methods for DNA amplification, detection, and sequencing. The action was filed in Delaware, but was transferred to the Southern District of California. On March 21, 2013, the court granted Illumina's motion for summary judgment of non-infringement on all of the asserted claims in Life Tech's patents. On December 23, 2013, the court denied Life Tech's motion for reconsideration of the decision.
- *Applera Corp. – Applied Biosystems Group v. Illumina, Inc., et al.* (N.D. Cal. and Fed. Cir.): Dr. Flowers represented Illumina in this case concerning the ownership and infringement of patents covering "next-generation" ligation-based DNA sequencing methods. During a month-long trial in January 2009, the jury found in favor of the Illumina regarding ownership of the patents-in-suit and regarding validity of one of the patents, and in favor of the plaintiff regarding infringement of one of the patents. Dr. Flowers successfully represented Illumina in AB's subsequent appeal to the Federal Circuit.
- *Vanderbilt Univ. v. ICOS Corp.** (D. Del.) (patents covering Cialis®): Dr. Flowers represented ICOS (now part of Eli Lilly & Co.) in this case in which Vanderbilt sought to add its scientists as co-inventors to patents covering the manufacture, sale and use of tadalafil (the active ingredient in the blockbuster anti-impotence drug Cialis®). Our trial team conducted a two-week bench trial before then-Chief Judge Sue Robinson in the district court in Wilmington, Delaware in January 2008. Chief Judge Robinson issued her decision in favor of ICOS in January 2009. Dr. Flowers successfully represented ICOS in Vanderbilt's subsequent appeal to the Federal Circuit and petition for certiorari to the U.S. Supreme Court.
- *Amgen Inc.* v. F. Hoffmann La Roche* (D. Mass.) (patents covering Epogen®): Dr. Flowers was co-lead for Amgen in this case filed in 2005. The case involved Amgen's patents relating to recombinant forms of human erythropoietin ("rEPO"), a hormone that stimulates the production of red blood cells. Amgen's rEPO product, EPOGEN®, is one of the most successful biotech pharmaceutical products ever. After a six-week trial, the Boston jury returned a verdict in favor of Amgen against the defendants F. Hoffmann-LaRoche Ltd., Roche Diagnostics GmbH, and Hoffmann-LaRoche Inc. The jury found that Roche's proposed production, importation, and sale of its pegylated form of rEPO, referred to as MIRCERA™, would infringe nearly all of the asserted claims, and that those claims are not invalid (the district court had earlier granted summary judgment of infringement with respect to one of the patents-in-suit). In separate hearings, Amgen also prevailed on Roche's obviousness-type-double-patenting and inequitable-conduct defenses. Judge William Young entered both preliminary and permanent injunctions against the defendants. On appeal, the Federal Circuit upheld Judge Young's findings that Roche's product would infringe Amgen's patents, and that those patents were not

invalid. The case settled shortly thereafter, with Roche agreeing to a permanent injunction against marketing its product.

- *Amgen Inc.* v. Hoechst Marion Roussel and TKT* (D. Mass. and Fed. Cir.): Dr. Flowers was co-counsel for Amgen in two patent-infringement trials in the federal district court in Boston in 2000 and 2003 against Hoechst Marion Roussel, Inc. (now Aventis) and Transkaryotic Therapies, Inc. (now Shire Pharmaceuticals). As co-counsel for Amgen, Dr. Flowers helped prevent the defendants from invalidating Amgen's patents-in-suit and marketing another form of rEPO in the United States, decisions which survived several Federal Circuit appeals.
- *Default Proof Credit Card System v. Home Depot** (S.D. Fla. and Fed. Cir.): Dr. Flowers represented Home Depot in this multi-defendant infringement action in which Default Proof, a patent troll represented by Ray Niro, alleged that Home Depot and several other major retailers (including Wal-Mart and Starbucks) infringed a patent relating to retail gift-card systems. Dr. Flowers successfully sought summary judgment of invalidity for indefiniteness (under 35 U.S.C. § 112 ¶ 6) on all asserted claims in the trial court, and was also successful in defeating Default Proof's subsequent appeal in the Federal Circuit (arguing against Ray Niro in both instances).
- *Schering Corp. v. Geneva Pharmaceuticals, Inc.** (D.N.J. and Fed. Cir.): Dr. Flowers served as co-counsel for Geneva Pharmaceuticals (now Sandoz) in this multi-defendant ANDA case involving generic versions of loratadine (the active ingredient in the blockbuster drug Claritin®). On the parties' cross-motions for summary judgment, Chief Judge John Bissell granted our motions for summary judgment of invalidity of Schering's asserted patent covering descarboethoxyloratadine (a metabolite of loratadine), because Schering's earlier-filed (and expired) patent covering loratadine itself inherently disclosed the production of descarboethoxyloratadine. The Federal Circuit affirmed the judgment in an oft-cited decision.
- *Applied Research Systems* v. Cell Genesys Inc. and TKT* (D. Mass.): Dr. Flowers represented Applied Research Systems (a subsidiary of Merck-Serono) in these consolidated 35 U.S.C. 146 and patent-infringement cases involving the appeal of an interference decision on ARS's patents and CGI's patent application directed to methods of endogenous gene activation, and the alleged infringement of ARS's patents by TKT's "gene-activated" recombinant products. After Chief Judge Mark Wolf granted our motion-in-limine to exclude much of CGI's evidence in the § 146 action, CGI and TKT settled the actions on very favorable terms for our client.
- *Illumina, Inc., et al.* v. Complete Genomics, Inc.* (N.D. Cal. and S.D. Cal.): Dr. Flowers represented Illumina in these infringement cases against CGI regarding CGI's systems and methods for DNA sequencing. Following claim construction and dispositive motions in the N.D. Cal. action, the parties agreed to dismiss all claims and counterclaims in August 2013.
- *Danisco A/S et al.* v. Novozymes A/S et al.* (S.D.N.Y.): Dr. Flowers represented Danisco in this case involving Novozymes's alleged infringement of Danisco's patents covering recombinant lipase enzymes and their use in industrial bread-making. Following successful motion practice, we were able to settle the case on terms favorable for our client.

- *Rogers et al. v. Zambryski et al. and Fraley et al. v. Zambryski et al.* (U.S. PTO): Dr. Flowers successfully represented Monsanto in these multi-party interferences involving pioneering claims for genetically modified plants.
- *Hyseq* v. Affymetrix and Affymetrix v. Hyseq** (N.D. Cal.): Dr. Flowers represented Hyseq in these cases involving patents covering “gene chips,” which were settled on favorable terms for our client Hyseq following successful Markman proceedings.

Dr. Flowers has also been successful in the following cases:

- *Cytomedix v. Little Rock Foot Clinic** (N.D. Ill.)
- *Finn Sugar Bioproducts v. Raytheon Engineers & Constructors** (N.D. Ill.)
- *Innovative USA v. Softplay** (E.D. N.Y.)
- *Livorsi Marine* v. Gaffrig Performance Indus.* (N.D. Ill.)
- *Livorsi Marine* v. Nordskog Performance Prods.* (N.D. Ill.)
- *Monroe Truck Equipment v. Henke Mfg.** (N.D. Ill.)
- *Brooklyn Bottling v. Jamaica Drink** (S.D. Fla.) (trademark infringement)
- *EMKG v. Bisco, Inc. et al.** (N.D. Tex.) (dental composite products)

Dr. Flowers also successfully represented clients such as Amgen and Monsanto in high-stakes interference and appeal proceedings in the Patent Office, and has served as first-chair trial counsel in trademark infringement cases.

Dr. Flowers is currently handling the following cases:

- *Amgen Inc. v. Hospira, Inc. et al.* (D. Del.): Dr. Flowers represents Amgen in this BPCIA (biosimilar) case (one of the first cases ever filed under the BPCIA) directed to Hospira’s biosimilar version of Amgen’s blockbuster biopharmaceutical Epogen®.
- *AbbVie Inc. v. Amgen Inc.* (D. Del.): Dr. Flowers represents Amgen in this BPCIA (biosimilar) case directed to Amgen’s biosimilar version of AbbVie’s blockbuster biopharmaceutical Humira® (the best-selling drug in the world).
- *Yeda Research and Development* v. Abbott GmbH* (USPTO and D.D.C.): Dr. Flowers represents Yeda Research and Development (an affiliate of Merck-Serono) in this P.T.O. interference proceeding and 35 U.S.C. 146 district-court actions involving Abbott’s patent and Yeda’s patent application each directed to TNF-binding proteins.

(* indicates party represented)

Background and Credentials

Previously a research scientist and teacher, Dr. Flowers is a trial lawyer with extensive, successful first-chair bench-trial, jury-trial, and appellate experience in cases involving blockbuster products. Dr. Flowers received his undergraduate degree in Biology and his Master’s degree in Health Education (Exercise Physiology) from The Ohio State University. He earned his Ph.D. from the Cellular and Molecular Physiology program at the Pennsylvania State University College of Medicine and Graduate School. His scientific research led to eleven peer-reviewed scientific

publications. Dr. Flowers earned his law degree at The Ohio State University Moritz College of Law, where he was a Managing Editor and contributing author for the *Ohio State Journal on Dispute Resolution* and spent two years as a full-time clerk in a high-profile criminal-defense firm.

On weekends, Dr. Flowers is a competitive runner, cyclist, triathlete, cross-country ski racer, obstacle-course racer, and CrossFit athlete.

Education

- The Ohio State University Moritz College of Law (J.D.)
- Pennsylvania State University (Ph.D.)
 - Cellular and Molecular Physiology
- The Ohio State University (M.A.)
 - Exercise Physiology
- The Ohio State University (B.S.)
 - Biological Sciences

Bar Admissions

- Illinois
- U.S. Court of Appeals, Federal Circuit
- U.S. District Court, Northern District of Illinois, Trial Bar
- U.S. Patent and Trademark Office
- Admitted to practice pro hac vice in various district courts throughout the U.S.