



## Kevin M. Flowers, Ph.D.

Special Counsel

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Over the past 27 years, Kevin has successfully represented clients such as Amgen, CureVac, Eli Lilly, Northwestern University, 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.

Currently, Kevin is part of the Marshall Gerstein team representing Amgen in *In re Aflibercept Patent Litigation* concerning Amgen's PAVBLU® (aflibercept-ayyh) medicine, a biosimilar of Regeneron's EYLEA® (aflibercept) product. Our team defeated Regeneron's motion for a preliminary injunction, allowing Amgen to market the first (and to-date, only) biosimilar aflibercept product.

Most recently, Kevin served as trial counsel for plaintiff CureVac in *CureVac v. BioNTech*, winning a settlement of \$740 million from defendants BioNTech and Pfizer just days before a scheduled 3-week jury trial in March 2025, concerning their sales of COMIRNATY® (COVID-19 VACCINE, mRNA). CureVac alleged infringement of four families of patents covering mRNA manufacturing and vaccine technologies, including U.S. Patent Nos. 11,135,312 (method of increasing mRNA stability), 11,149,278 (method of using mRNA having a split-poly(A) tail), 10,760,070 (method of purifying DNA and RNA), and 11,596,686 (spike protein-encoding mRNA having certain substitutions). Kevin's work on the case included successful claim-construction briefing and oral argument, extensive work with fact and expert witnesses, and successful summary judgment briefing and oral argument.

Kevin's previous successes (described further below) include trial and appeal in *Onyx Therapeutics, Inc. v. CIPLA Ltd.* (Kyprolis®); *Amgen Inc. v. Hospira, Inc.* (Epogen®); *Pfizer and Northwestern Univ. v. Teva et al.* (Lyrica®); *Vanderbilt Univ. v. ICOS /Eli Lilly* (Cialis®); *Amgen v. F. Hoffmann-LaRoche* (Epogen®); *Applied Biosystems v. Illumina* (DNA sequencing systems); and *Amgen v. Hoechst Marion Roussel and TKT* (Epogen®), and successes before trial and on appeal in *Schering v. Geneva Pharms* (Claritin®); *Life Technologies v. Illumina* and *Enzo Life Sciences v. Illumina* (DNA-sequencing systems); *Cell Genesys v. ARS* and *ARS v. TKT* (endogenous gene-activation methods); and *Default Proof v. Home Depot* and *RealSource Comms. v. Home Depot* (retail gift-card systems); and *Hyseq v. Affymetrix* and *Affymetrix v. Hyseq* ("gene chips").

These cases and other successes are described below.

- *Onyx Therapeutics, Inc. v. CIPLA Ltd., et al.* (D. Del. and Fed. Cir.): Kevin successfully represented Onyx in this ANDA patent-infringement case involving multiple generic drug manufacturers' versions of Onyx's cancer therapeutic Kyprolis® (carfilzomib). Following a week-long trial, Chief Judge Stark found in favor of Onyx. Kevin also represented Onyx in successfully defending against CIPLA's appeal of the judgment in the U.S. Court of Appeals for the Federal Circuit.
- *Amgen Inc. v. Hospira, Inc.* (D. Del. and Fed. Cir.): Kevin successfully represented Amgen in this BPCIA (biosimilar) case (one of the first cases ever filed under the BPCIA, and the first BPCIA patent-infringement case to be tried to a jury) involving Hospira's biosimilar version of Amgen's blockbuster biopharmaceutical Epogen®. After a week-long trial, the jury returned a verdict in favor of Amgen, and awarded Amgen damages in excess of \$70 million. He also represented Amgen in Hospira's subsequent appeal to the U.S. Court of Appeals for the Federal Circuit, which affirmed the judgment and award of damages to Amgen.
- *Pfizer Inc. and Northwestern Univ. v. Teva Pharms., et al.* (D. Del. and Fed. Cir.): Kevin successfully represented 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®. He represented Northwestern in a two-week bench trial before then-Chief Judge Sleet in Delaware, following which Judge Sleet entered judgment in favor of Pfizer and our client on all issues. He represented Northwestern in the defendants' subsequent appeal in which the Federal Circuit affirmed all aspects of the district-court judgment.
- *Life Technologies Corp. v. Illumina, Inc.* (D. Del., S.D. Cal., and Fed. Cir.): Kevin successfully represented 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, where Judge Bencivengo granted our motion for summary judgment of non-infringement on all of the asserted claims in Life Tech's patents, and Judge Moskowitz denied Life Tech's motion for reconsideration of that judgment. Life Tech dismissed its subsequent appeal to the Federal Circuit.
- *Applera Corp.—Applied Biosystems Group v. Illumina, Inc.* (N.D. Cal. and Fed. Cir.): Kevin 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, the jury found in favor of Illumina regarding ownership of the patents-in-suit and regarding validity of one of the patents. He successfully represented Illumina in Applera's subsequent appeal to the Federal Circuit.

- *Vanderbilt Univ. v. ICOS Corp.* (D. Del., Fed. Cir., and SCOTUS): Kevin successfully 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®). Following a two-week bench trial in Wilmington, Delaware, then-Chief Judge Robinson entered judgment in favor of ICOS. He 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, et al.* (D. Mass. and Fed. Cir.): Kevin was co-lead trial counsel for Amgen in this successful case involving Amgen's patents covering EPOGEN®, the recombinant form of human erythropoietin ("rEPO") that stimulates the production of red blood cells and 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 on all counts (Judge Young had earlier granted summary judgment of infringement with respect to one of the patents-in-suit). Judge William Young entered both preliminary and permanent injunctions against the defendants. The Federal Circuit affirmed the judgment, and the case settled on favorable terms for our client shortly thereafter.
- *Amgen Inc. v. Hoechst Marion Roussel and TKT* (D. Mass. and Fed. Cir.): Kevin successfully represented Amgen in two patent-infringement trials in Boston, and two Federal Circuit appeals by the defendants, in this case involving Amgen's patents covering EPOGEN®.
- *Default Proof Credit Card System v. Home Depot* (S.D. Fla. and Fed. Cir.): Kevin successfully represented Home Depot in this multi-defendant infringement action in which Default Proof alleged that Home Depot and several other major retailers (including Wal-Mart and Starbucks) infringed a patent relating to retail gift-card systems. He obtained 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.
- *Schering Corp. v. Geneva Pharmaceuticals, Inc.* (D.N.J. and Fed. Cir.): Kevin successfully represented Geneva Pharmaceuticals (now Sandoz) in this multi-defendant ANDA case involving generic versions of the blockbuster drug Claritin®. On the parties' cross-motions for summary judgment, then-Chief Judge Bissell granted our motion for summary judgment of invalidity of the patent-in-suit, which the Federal Circuit affirmed in an oft-cited decision.
- *Applied Research Systems v. Cell Genesys Inc. and TKT* (D. Mass.): Kevin successfully 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 then-Chief Judge 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.

- *Danisco A/S et al. v. Novozymes A/S et al.* (S.D.N.Y.): Kevin successfully 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): Kevin 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.): Kevin successfully represented Hyseq in these cases involving patents covering "gene chips." Following favorable rulings in the *Markman* proceedings, we were able to settle the disputes on favorable terms for our client.

Kevin also represented clients in the following cases (\* indicates party represented):

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

Kevin also successfully represented clients such as Amgen in appeal proceedings in the Patent Office.

## Practices

- IP Litigation
- ITC 337 Investigations
- Post-Grant Patent Proceedings

## Industries

- Biotechnology & Life Sciences
- Pharmaceuticals

## Background and Credentials

Kevin received his undergraduate degree in Biology and his Master's degree in Health Education (Exercise Physiology) from The Ohio State University, and 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 his authorship of eleven peer-reviewed publications in leading scientific journals. Kevin 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. During his time in medical school and law school, Kevin was also an adjunct Professor teaching undergraduate courses in Anatomy and Physiology at several universities.

## 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.

Kevin has volunteered as a Court-Appointed Special Advocate (CASA) to assist foster children, as a Big Brother in the Big Brother/Big Sister program, and in the Team Rubicon and Habitat for Humanity programs. He has trained in Brazilian jiu-jitsu for the last six years, and in CrossFit for the last thirteen years.

## Publications and Presentations

August 29, 2005

**“Incentives to foster new antibiotics are proposed”**

*The National Law Journal*

## Client Successes

### **Illumina Continues Critical Work in Human Genomics**

Working at the cutting edge of science and medicine, Marshall, Gerstein & Borun LLP's client, Illumina, Inc., created its Genome Analyzer, HiSeq, and MiSeq instruments to sequence DNA at extremely high speeds. When Life Technologies Corp. claimed that the sequencers infringed three of its DNA amplification patents, Marshall Gerstein's trial attorneys led a three-year defense of Illumina. Ultimately, the district court granted our motion for summary judgment disposing of the infringement claims, later affirming its ruling on Life Technologies' motion for reconsideration. As a result, Illumina can continue with its critical work in the field of human genomics.

### **Marshall Gerstein Counsels CureVac through Global Resolution of Patent Litigation with Pfizer/BioNTech**

Marshall, Gerstein & Borun LLP represented CureVac, a global biopharmaceutical company developing a new class of transformative medicines based on mRNA, in a high-profile intellectual property infringement lawsuit originally filed in June 2022. The case involved allegations that Pfizer and BioNTech's COVID-19 variant-adapted vaccines, including those targeting the Omicron and XBB1.5 variants, infringed CureVac's patents, including European Patent EP4023755 relating to split poly-A tail mRNA vaccines.

In May 2023, CureVac filed counterclaims in the U.S. asserting infringement of nine U.S. patents, later expanded to include a tenth patent (U.S. Patent No. 11,667,910), covering mRNA purification methods — a critical component of the mRNA manufacturing process.

In August 2025, it was announced that BioNTech and CureVac reached a global resolution. Under the terms of the agreements, CureVac and GSK will receive in aggregate a payment of \$740 million as well as single-digit royalties on sales of COVID-19 vaccines in the United States going forward. Additionally, CureVac will receive \$50 million from GSK for monetizing a portion of U.S. product royalties due under its existing license agreement announced on July 3, 2024.

The resolution resolved all pending U.S. and European litigation, including what would have been the first U.S. trial over COVID-19 vaccine patents. It was one of the most-watched biotechnology patent disputes in recent years.

Partner Mark H. Izraelewicz led CureVac's U.S. litigation strategy, alongside a team at Marshall Gerstein, which included Kevin M. Flowers, John R. Labbé, Michael R. Weiner, Sandip H. Patel, Michael J. Allikian, Thomas R. Burns, Izabella N.C. Higson, Daniel Gonzalez, and Christopher J. Hall.

For more coverage, see the following articles:

[CureVac's Patent Settlement: A Strategic Win for mRNA Innovation and Future Revenue Streams](#)

[GSK collects \\$320M as BioNTech, Pfizer settle mRNA patent spat with CureVac | Fierce Pharma](#)