

Top 40 under 40



Marcus A. Barber

Barber, a partner focused on intellectual property litigation at Kasowitz Benson Torres, moved to the firm's new Silicon Valley outpost in 2014 with an IP litigation group from the Atlanta office. His practice focuses on complex patent infringement cases for technology and telecommunications companies such as Google LLC, Verizon Communications Inc., Uber Technologies Inc. and LG Electronics Inc.

Two upcoming patent trials in a newly prominent venue have him enthusiastic. "They're both in the Western District of Texas," he said, "before Judge Alan D Albright. It's the new hottest place to be."

Albright, who sits in Waco, is intriguing to patent litigators because he himself practiced intellectual property law in Texas at Fish & Richardson and other firms and wrote extensively on patent law before President Trump appointed him to the bench in 2018. Barber's cases could lead to the first trials before the new judge.

In one, Barber represents patent owner MV3 Partners on claims that streaming media company Roku's media players and streaming sticks infringe an MV3 patent covering how to stream media content from a mobile phone to larger screens. *MV3 Partners LLC v. Roku Inc.*,

6:18-cv-00308 (W.D. Tex., filed Oct. 16, 2018).

As it happens, Barber and colleagues filed the case just a month after Albright donned his robe. In June 2019, Barber and the Kasowitz team defeated Roku's motion to transfer the case to the Northern District of California. In October 2019, Albright agreed with MV3 on the construction of the three claims at issue. The trial, which has been delayed by Covid-19 precautions, is set for Sept. 20.

"He moves his docket and he has the expertise," Barber said of Albright. "He's a fantastic judge. And we're likely to have the first patent trial before him."

In the second case, Barber co-leads the firm's representation of Fintiv Inc., a mobile payment company, in a suit against Apple Inc. involving a patent on the management of virtual cards stored on mobile devices. Apple's iPhone, the Apple Watch and the iOS Wallet app all infringe on Fintiv's patents, the suit alleges. *Fintiv Inc. v. Apple Inc.*, 6:18-cv-00372 (W.D. Tex., filed Dec. 21, 2018).

In May 2020, the Patent Trial and Appeal Board denied Apple's inter partes review petition—the first discretionary denial by the PTAB, Barber said. Barber and his team also defeated Apple's request for rehearing by the full U.S. Circuit Court of



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Appeals for the Federal Circuit of a panel's denial of a transfer to the Northern District of California.

"That trial has been delayed by Covid to next March," Barber said. "I hope the virus settles down by then."

— John Roemer