

Robert S. Frank, Jr.

Partner



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Practice Areas

Commercial Litigation Involving Technology Companies
Intellectual Property Litigation
Insurance & Reinsurance Litigation and Arbitration
Antitrust
Life Sciences
Technology

Education

Harvard Law School
LLB (1967) *cum laude*

Bowdoin College
AB (1964) *cum laude*, Phi Beta Kappa

Admissions

Massachusetts
U.S. Courts of Appeals, First, Third, Fourth,
and Federal Circuits
U.S. District Court, Massachusetts
U.S. Supreme Court

“A world-class trial lawyer whose ability to understand what is needed to win the case is his greatest strength.”
– *Chambers USA*

A former managing partner and chairman of Choate, Bob Frank helps companies across a range of industries to successfully resolve their most critical business disputes. Known for both his integrity and deep experience, his clients have included Hewlett-Packard, General Electric, Akamai Technologies, Momenta Pharmaceuticals, Wyeth, Data General, Hartford Insurance, Enstar, Cisco Systems, and Eastman Kodak.

Representative Engagements

- ***Hewlett-Packard Company v. Oracle Corporation, Cal Superior Court:*** Trial counsel for Hewlett-Packard in contract litigation against Oracle arising from HP's claim that Oracle breached its obligation to port new versions of Oracle's database and other Oracle software to HP's Itanium server platform. This first trial was conducted without a jury. The Court interpreted the parties' contract and found in HP's favor.
- ***Hewlett-Packard Company v. Oracle Corporation:*** Trial counsel for Hewlett-Packard in a jury trial in Santa Clara County Superior Court that was the second phase of the trial described above. After a five week trial, the jury returned a verdict in favor of Hewlett-Packard awarding HP \$3 billion and rejecting Oracle's counterclaim in its entirety. It is believed that this was the largest single plaintiff jury award in history.
- ***Rhode Island v. Hewlett-Packard:*** Lead trial counsel for HP in a five-day evidentiary hearing in Rhode Island state court at which the State of Rhode Island sought a preliminary injunction against HP arising from HP's contract to provide a new computer system for Rhode Island's motor vehicle department. The injunction was denied.
- Lead U.S. counsel for all civil claims arising out of Hewlett-Packard's \$11 billion acquisition of Autonomy Corporation, plc.
- ***Starr Surplus Lines v. Heinz (W. D. Pa.):*** Lead trial counsel for Starr in a trial in which Starr sought rescission of a policy of insurance involving contaminated food products. Rescission was granted. The decision was affirmed on appeal.
- ***Akamai Technologies v. Limelight Networks, D. Mass.:*** Lead trial counsel for Akamai Technologies in patent infringement case involving the delivery of Internet content. After a three week trial, the jury returned a verdict in favor of Akamai in the amount of more than \$45 million.

- ***Momenta v. Amphastar et al., D. Mass:*** Lead trial counsel for Momenta Pharmaceuticals in patent infringement action. Obtained preliminary injunction precluding sales of generic enoxaparin by Amphastar Pharmaceuticals.
- Lead trial counsel for Wyeth in a series of patent and contract disputes against Baxter International, including a six-day trial in Delaware Chancery Court (settled after trial).
- ***Data General Corporation v. Grumman Systems Support Corporation, D. Mass:*** Lead trial counsel for Data General in copyright infringement/trade secret misappropriation case. The case was tried to jury for nine weeks and resulted in a judgment for Data General in the amount of \$52.4 million. The judgment was affirmed on appeal.
- ***Polaroid Corporation v. Eastman Kodak Company, D. Mass:*** Represented Eastman Kodak in what was then the largest patent infringement case in the history of the United States. Bob was responsible for Kodak's successful defense against Polaroid's claim that Kodak willfully infringed seven Polaroid patents. Kodak's potential exposure with respect to this claim was \$8 billion.

Representative Appellate Engagements

- ***Compagnie de Reassurance D'Ile de France v. New England Reinsurance Company, First Circuit:*** Represented affiliates of Hartford Insurance Group in the appeal of a case in which thirty-four British and continental European reinsurers alleged that they were induced by fraud to enter certain reinsurance treaties. The case presented a variety of insurance, contract, and fraud issues. The reinsurers had prevailed at trial. Bob obtained a reversal of the trial court's decision. \$106 million was at issue.
- ***Lojack Corp. v. Clare Inc., Mass App Ct:*** Represented Clare Inc. in breach of contract case arising out of unsuccessful ASIC development project. \$36 million jury verdict against Clare was reversed.
- ***Read v. Powerscreen Inc., Federal Circuit:*** Represented Powerscreen Inc. in a patent infringement appeal. \$34 million jury verdict against Powerscreen reversed.

Other Engagements

- Shareholder Litigation – Advised Demand Review Committees, designed Demand Review processes, represented defendant companies and officers of defendant companies.
- Cisco Systems – Related to actions alleging breach of fiduciary duty in connection with Cisco's acquisition of Starent Networks Corp.
- EMC Corporation – Copyright infringement and trade secret misappropriation actions (one involving diagnostic software, another involving document management systems, breach of contract action arising from a component acquisition agreement).
- Cabot Corporation – Litigation regarding rights under \$300 million Supply Agreement; litigation against Puerto Rico Electric Power Authority over its obligation to engage in competitive bidding.
- Voice Signal Technologies – Speech recognition patent and trade secret litigation.
- Insulet Corporation – Patent litigation involving insulin delivery systems.
- Adobe Systems, Inc. – Internet patent litigation.

- AIG – Multiple appeals of adverse lower court decisions involving responsibility for cost of defense, alleged bad faith settlement practices, and patent infringement.
- John Hancock Life Insurance Co. – Successful appeal relating to rights under ERISA Plan.
- Harvard University – Contract and biotechnology patent infringement action.
- Dartmouth College – Patent licensing dispute.
- Dana Farber Cancer Institute – Negotiation of Dana Farber/Partners Cancer Center joint venture.
- Teradyne, Inc. – Computer hardware patent litigation.
- FileNet Corporation – Computer software patent litigation.
- New Japan Radio Corp. – Litigation under the semiconductor Chip Protection Act.
- Computer Associates International, Inc. – Securities fraud, employee non-compete, and trade secret litigation.
- Eisai Company Limited – Pharmaceutical patent litigation.
- General Electric Co. – Water purification patent litigation; contract disputes.
- Transkaryotic Therapies, Inc. – Biotechnology patent litigation.
- Phillips North America Corp. – False advertising litigation.

Professional and Community Involvement

- Fellow, American College of Trial Lawyers
- Chairman, Winchester (Mass.) School Committee
- Chairman, Winchester Finance Committee
- Member, Winchester Town Meeting from 1979 to 2008
- Former Managing Partner, Choate
- Former Chair, Choate's Executive Committee

Recognition

- *BTI* Client Service All-Star
- Fellow, American College of Trial Lawyers
- *Chambers USA* (2003-2023)

- *Best Lawyers in America* (1993-2024)
- *Massachusetts Super Lawyers Top 100*
- “World’s Leading Patent Litigator” by *IAM 250*
- “World’s Leading Patent Practitioner” by *IAM Patent 1000* (2022)
- “IP Star” by *Managing Intellectual Property*
- “Litigation Star” by *Benchmark Litigation*
- *Business Today* “Top 10 Influential Intellectual Property Lawyers Dominating Massachusetts in 2023”