

Hon. Kathleen M. O'Malley



Hon. Kathleen M. O'Malley (Ret.) was a federal judge for more than 27 years. She was appointed by President Barack Obama for the United States Court of Appeals for the Federal Circuit and served as a United States Circuit Judge on that court from 2010 until her retirement from the bench in March 2022. Before that, she was appointed by President Bill Clinton for the United States District Court for the Northern District of Ohio and served for 16 years between 1994 and 2010. Judge O'Malley was the first former District Court Judge appointed to the Federal Circuit.

At the Federal Circuit, Judge O'Malley presided over appellate matters within the court's jurisdiction, including those involving patents, trademarks, international trade, government contracts, tax, federal takings cases, monetary claims against the United States government, federal personnel merit systems protection board appeals, veterans' benefits, public safety officers' benefits claims, and government whistle-blower claims. She authored over 500 written opinions. She also sat by designation on the United States Courts of Appeals for the Third, Sixth, Ninth, and Eleventh Circuits.

At the Northern District of Ohio, Judge O'Malley presided over approximately 4,000 civil cases and 800 criminal cases. Specially, she presided over 45 civil trials and 60 criminal trials. She was the first judge in the Northern District of Ohio to preside over a Multi-District Litigation ("MDL") case and one of only a few judges in the country to preside over three MDLs simultaneously.

Judge Kathleen O'Malley served on the U.S. Court of Appeals for the Federal Circuit until her retirement in March 2022. Prior to becoming a Judge, Judge O'Malley served as First Assistant and Chief of Staff to then-Ohio Attorney General Lee Fischer, supervising the office's 1,100 employees, and, before that, as the Chief Counsel to the Attorney General, supervising the work of over 350 attorneys and litigating major matters on behalf of the State of Ohio and its elected officials. Before her public service, Judge O'Malley litigated complex business cases at large law firms in Ohio.

Currently, Judge O'Malley focuses her practice on litigation consulting on a broad range of subject matters, all forms of alternative dispute resolution, and intellectual property policy work. She also serves on many judicial committees, including the Judicial Advisory Committee of the National Board of Complex Litigation and the Judicial Committee of the World Intellectual Property Organization. For her contributions to the development of IP law alone, she has received numerous accolades including, among others, the Sedona Conference "Lifetime Achievement Award," the New Jersey Intellectual Property Law Association Jefferson Medal, the New York Intellectual Property Law Association "Outstanding Public Service Award," the Intellectual Property Owners Association "Distinguished IP Professional Award," and the American Intellectual Property Law Association "Excellence Award."

Judge O'Malley's experience acquired from her years on the bench, in the government, and in private practice make her extraordinarily qualified to assist parties in resolving disputes through arbitration or mediation, conducting mock trials and mock appellate arguments, consulting on litigation strategy, and serving as an expert witness or Special Master.

Areas of Expertise:

- ANTITRUST
- APPELLATE
- ATTORNEY FEE
- BIOPHARMA
- CLASS ACTION
- COMMERCIAL LITIGATION
- INTELLECTUAL PROPERTY
- INTERNATIONAL ARBITRATION
- MDL
- MONITORING
- PATENT
- PHARMACEUTICALS
- SECURITIES/FINANCIAL SERVICES
- SPECIAL MASTER
- STANDARD ESSENTIAL PATENTS (SEP)
- TRADE SECRET

REPRESENTATIVE MATTERS

Antitrust:

- In re Scrap Metal Antitrust Litig., No. 1:02CV0844, 2004 WL 7340436 (N.D. Ohio Mar. 31, 2004), *aff'd*, 527 F.3d 517 (6th Cir. 2008).
- Spartanburg Reg'l, Healthcare Sys. v. Hillenbrand Indus., Inc., No. 1:05MC060, 2005 WL 2211163 (N.D. Ohio Sept. 9, 2005).
- Power Analytics Corp. v. Operation Tech., Inc., 820 F. App'x 1005 (Fed. Cir. 2020).

Appellate:

Judge O'Malley served for more than 11 years as a Circuit Judge on the Federal Circuit. As a U.S. Circuit Judge, Judge O'Malley authored in excess of 500 written opinions while on the federal appellate bench and has sat by designation with multiple regional circuits.

Attorney Fee:

- In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig., 268 F. Supp. 2d 907 (N.D. Ohio 2003).
- In re Telxon Corp. Sec. Litig., Case No. 5:98-cv-2876, slip ops. 236-40 (N.D. Ohio Feb. 13, 2004).

- Kilopass Tech., Inc. v. Sidense Corp., 738 F.3d 1302 (Fed. Cir. 2013).
- In re Rembrandt Techs. LP Pat. Litig., 899 F.3d 1254 (Fed. Cir. 2018).
- Drop Stop LLC v. Jian Qing Zhu, 757 F. App'x 994 (Fed. Cir. 2019).

Biopharma/Pharmaceuticals:

- Biomedical Patent Mgmt. Corp. v. California Dept. of Health Servs., 505 F.3d 1328 (Fed. Cir. 2007) (O'Malley, J., sitting by designation).
- Abraxis Bioscience, Inc. v. Navinta LLC, 672 F.3d 1239 (Fed. Cir. 2011).
- Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd., 821 F.3d 1359 (Fed. Cir. 2016).
- Medicines Co. v. Hospira, Inc., 827 F.3d 1363 (Fed. Cir. 2016) (en banc).
- Athena Diagnostics, Inc. v. Mayo Collaborative Servs., LLC, 927 F.3d 1333 (Fed. Cir. 2019).
- Valeant Pharms. N. Am. LLC v. Mylan Pharms. Inc., 978 F.3d 1374 (Fed. Cir. 2020).

Class Actions:

- Hayman v. PricewaterhouseCoopers LLP, Case No. 1:01cv1078, slip. op. 38 (N.D. Ohio Aug. 26, 2002).
- In re Scrap Metal Antitrust Litig., Case No. 02cv844, 2004 WL 7340436 (N.D. Ohio Mar. 31, 2004), *aff'd*, 527 F.3d 517 (6th Cir. 2008), cert. denied, 129 S. Ct. 1673 (2009).
- Zangara v. Travelers Indem. Co. of Am., Case No. 1:05CV731, 2006 WL 825231 (N.D. Ohio Mar. 30, 2006).
- Stanich v. Travelers Indem. Co., 259 F.R.D. 294 (N.D. Ohio 2009).
- Card v. City of Cleveland, 270 F.R.D. 280 (N.D. Ohio 2010).
- McKinney v. Bayer Corp., 744 F. Supp. 2d 733, 742 (N.D. Ohio 2010).

Commercial Litigation:

- Hamilton W. Dev., Ltd. v. Hills Stores Co., 959 F. Supp. 434 (N.D. Ohio 1997).
- In re Telxon Corp., No. 1:01CV1078, 2005 WL 385964 (N.D. Ohio Jan. 11, 2005).
- Robert Bosch LLC v. Pylon Mfg. Corp., 659 F.3d 1142 (Fed. Cir. 2011).
- Buckhorn Inc. v. ORBIS Corp., 547 F. App'x 967 (Fed. Cir. 2013).
- Gensetix, Inc. v. Bd. of Regents of Univ. of Texas Sys., 966 F.3d 1316 (Fed. Cir. 2020).

Contracts:

- In re Telxon Corp., No. 1:01CV1078, 2005 WL 385964 (N.D. Ohio Jan. 11, 2005).
- Absolute Mach. Tools, Inc. v. Clancy Mach. Tools, Inc., 410 F. Supp. 2d 665 (N.D. Ohio 2005).

- Agility Pub. Warehousing Co. KSCP v. Mattis, 852 F.3d 1370 (Fed. Cir. 2017).
- United States Army Corps of Engineers v. John C. Grimberg Co., 817 F. App'x 960 (Fed. Cir. 2020).
- Safeguard Base Operations, LLC v. United States, 989 F.3d 1326 (Fed. Cir. 2021).
- Shell Oil Co. v. United States, 7 F.4th 1165 (Fed. Cir. 2021).

Corporate Investigations/White Collar:

- United States v. Johnson, Case No. 98cr98, slip op. 98 (N.D. Ohio Feb. 19, 1999).
- Youngstown Mob Cases, including United States v. Altshuler, Case No. 4:97cr385 (N.D. Ohio July 16, 2007). Over a several year period in the mid-to-late 1990s, Judge O'Malley presided over a series of cases arising out of a decades-long investigation of organized crime in Youngstown, Ohio. These cases involved the prosecution of more than 60 defendants, and related to wide-scale government corruption.
- Judge O'Malley also presided over public corruption cases involving governments in Cuyahoga and Stark County, the Cleveland Metropolitan Housing Authority, and a then-sitting State Senator. These cases involved the prosecution and conviction of numerous high-profile defendants.

False Advertising:

- Zeger v. Swack Ltd. P'ship, No. 1:07CV1469, 2007 WL 1748714 (N.D. Ohio June 18, 2007).
- Premier Bus. Grp., LLC v. Red Bull of N. Am., Inc., No. 08-CV-01453, 2009 WL 3242050 (N.D. Ohio Sept. 30, 2009).
- Taser Int'l, Inc. v. Phazzer Elecs., Inc., 754 F. App'x 955 (Fed. Cir. 2018).

INTELLECTUAL PROPERTY

Copyright and Trademark:

- Am. Fam. Life Ins. Co. v. Hagan, 266 F. Supp. 2d 682 (N.D. Ohio 2002).
- Tacori Enterprises v. Rego Mfg., No. 1:05CV2241, 2008 WL 4426343 (N.D. Ohio Sept. 25, 2008).
- Coach Servs., Inc. v. Triumph Learning LLC, 668 F.3d 1356 (Fed. Cir. 2012).
- Oracle Am., Inc. v. Google Inc., 750 F.3d 1339 (Fed. Cir. 2014).
- In re Tam, 808 F.3d 1321 (Fed. Cir. 2015) (en banc), as corrected (Feb. 11, 2016), aff'd sub nom. Matal v. Tam, 137 S. Ct. 1744 (2017).
- Oracle Am., Inc. v. Google LLC, 886 F.3d 1179 (Fed. Cir. 2018), rev'd and remanded, 141 S. Ct. 1183 (2021), and vacated in part, No. 2017-1118, 2021 WL 1941874 (Fed. Cir. May 14, 2021).

- *Kaszuba v. Iancu*, 823 F. App'x 973, 975 (Fed. Cir. 2020), cert. denied sub nom.
- *Kaszuba v. Hirshfeld*, 142 S. Ct. 85 (2021), reh'g denied, 142 S. Ct. 731 (2021).

Patent (a small representative sample):

- *Weatherchem Corp. v. J.L. Clark, Inc.*, 937 F.Supp. 1262 (N.D. Ohio 1996), aff'd in part, modified in part, vacated in part, 163 F.3d 1326 (Fed. Cir. 1998).
- *Traffix Devices Inc. v. Plastic Safety Sys*, No. 1:98-cv-02833 (N.D. Ohio Dec. 07, 1998).
- *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201 (Fed. Cir. 2014).
- *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355 (Fed. Cir. 2016).
- *Aqua Prod., Inc. v. Matal*, 872 F.3d 1290 (Fed. Cir. 2017) (en banc).
- *Valeant Pharms. N. Am. LLC v. Mylan Pharms. Inc.*, 978 F.3d 1374 (Fed. Cir. 2020).
- *In re MaxPower Semiconductor, Inc.*, 13 F.4th 1348 (Fed. Cir. 2021).
- *ROHM Semiconductor USA, LLC v. MaxPower Semiconductor, Inc.*, 17 F.4th 1377 (Fed. Cir. 2021).

Trade Secret:

- *Nat'l Interstate Ins. Co. v. Perro*, 934 F. Supp. 883 (N.D. Ohio 1996).
- *In re Telxon Corp.*, No. 1:01CV1078, 2005 WL 385964 (N.D. Ohio Jan. 11, 2005).
- *Convolve, Inc. v. Compaq Computer Corp.*, 527 F. App'x 910 (Fed. Cir. 2013).
- *TNS Media Rsch., LLC v. Tivo Rsch. & Analytics, Inc.*, 629 F. App'x 916 (Fed. Cir. 2015).

Mass Torts:

- *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330 (N.D. Ohio 2001).
- *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.*, 268 F. Supp. 2d 907 (N.D. Ohio 2003).
- *In re Welding Fume Prod. Liab. Litig.*, No. 1:03 CV 17000, 2006 WL 1173960 (N.D. Ohio Apr. 5, 2006).

MDL:

- *In re Inter Op Hip Prosthesis Liab. Litig.*, 174 F. Supp. 2d 648 (N.D. Ohio 2001).
- *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.*, 268 F. Supp. 2d 907 (N.D. Ohio 2003).
- *In re Commercial Money Ctr., Inc.*, Case No. 1:02cv16000, 2005 U.S. Dist. LEXIS 45490 (N.D. Ohio Aug. 19, 2005), aff'd in part, rev'd in part, *Commercial Money Ctr., Inc. v. Ill. Union Ins. Co.*, 508 F.3d 327 (6th Cir. 2007).

- In re Welding Fume Prod. Liab. Litig., 245 F.R.D. 279 (N.D. Ohio 2007).

Monitoring

When serving as a District Judge, Judge O'Malley oversaw Special Masters and Receivers in various matters including one involving a large-scale Ponzi scheme and oversaw numerous class action settlements.

Securities/Financial Services

- Realtek Indus., Inc. v. Nomura Sec., 939 F. Supp. 572 (N.D. Ohio 1996).
- In re Keithley Instruments, Inc. Sec. Litig., 268 F. Supp. 2d 887 (N.D. Ohio 2002).
- Anderson v. Delta Funding Corp., 316 F. Supp. 2d 554, 558 (N.D. Ohio 2004).
- In re Telxon Corp. Sec. Litig., Case No. 5:98-cv-2876 (N.D. Ohio Jan. 11, 2005).
- Fairholme Funds, Inc. v. United States, 26 F.4th 1274, 1287 (Fed. Cir. 2022).
- Washington Fed. v. United States, 26 F.4th 1253 (Fed. Cir. 2022).

Former Positions

- United States Circuit Judge, United States Court of Appeals for the Federal Circuit, 2010-2022
- United States District Judge, Northern District of Ohio, 1994-2010
- First Assistant Attorney General & Chief of Staff, Office of the Attorney General of the State of Ohio, 1992-1994
- Chief Counsel, Office of the Attorney General of the State of Ohio, 1990-1992
- Partner, Porter Wright Morris & Arthur LLP, Cleveland, OH, 1985-1990
- Associate, Jones Day Reavis & Pogue, Cleveland, OH, 1983-1985
- Associate, Jones Day Reavis & Pogue, Cleveland, OH, 1983-1985

Admitted To Practice

- Ohio
- New York (now inactive)
- U.S. District Court for the Northern District of Ohio
- U.S. District Court for the Southern District of Ohio
- U.S. Court of Appeals for the Sixth Circuit

- U.S. Court of Appeals for the Eleventh Circuit
- U.S. Supreme Court

Selected Speeches

Judge O'Malley has served as a panelist or speaker at numerous conferences, symposia, law school seminars, or moot courts and civic organizations, including the following:

- Keynote Speech, Intellectual Property Society of Australia and New Zealand Annual Meeting, Adelaide, South Australia, Australia (2010)
- The Role of the Courts in Patent Law and Policy, Georgetown Law & Stanford Law School Patent Conference, Washington, DC (2011)
- Annual Meeting Keynote Speech, Intellectual Property Owners Association, Boston, MA (2013)
- Opening Keynote, Georgetown Law & Berkeley Center for Law & Technology Patent Conference, Washington, DC (2013)
- Keynote Speech, American Conference Institute's Conference on Patent Reform, New York, NY (2013)
- Keynote Speech, Los Angeles Intellectual Property Law Association Judges Dinner, Los Angeles, CA (2014)
- PatCon Keynote Speech and Judges Dinner Keynote Speech, University of San Diego School of Law, San Diego, CA (2014)
- Annual Nies Lecture, Marquette University Law School, Milwaukee, WI, Apr. 16, 2014
- Keynote Speech, Edward Coke Inn of Court Annual Supreme Court Dinner, Washington, DC (2015)
- Commencement Address, Case Western Reserve University School of Law, Cleveland, OH (2015)
- Judges Appreciation Dinner Keynote Speech, Austin Intellectual Property Law Association, Austin, TX (2015)
- Judges Dinner Keynote Speech, Cincinnati Intellectual Property Law Association, Cincinnati, OH (2015)
- Patent Section Lecture, Vanderbilt Law School, Nashville, TN, Feb. 4, 2016
- Jurist-In-Residence Appellate Advocacy and IP Law Society, The University of Iowa College of Law, Iowa City, IA (2016)
- Keynote Speech, Cleveland Intellectual Property Law Association April Meeting (2016)

- Keynote Speech, Joint Patent Practice Seminar, New York, NY (2016)
- Civil Jury Project, New York University School of Law, New York, NY (2016)
- Spangenberg Lecture, Case Western Reserve University School of Law, Cleveland, OH (2016)
- Keynote Speech, American Intellectual Property Law Association Mid-Winter Meeting, Naples, FL (2017)
- Keynote Speech, BIO Intellectual Property Conference, Annapolis, MD (2017)
- Keynote Speech, The New York Intellectual Property Law Association, New York, NY (2018)
- Annual Meeting Keynote Speech, Intellectual Property Owners Association, Chicago, IL (2018)
- Fox Intellectual Property Lecture, The Harold G. Fox Moot (Canada), via video recording (2019)
- Mervis Lecture, William & Mary Law School (2020)

Other Engagements

- Judge O’Malley is a member for the Judicial Advisory Committee of the World Intellectual Property Organization.
- Since joining Irell, Judge O’Malley has conducted several moot courts for prominent law firms preparing for appellate arguments in federal courts of appeal. She also has conducted mock trials for firms preparing for trial-level matters.
- Judge O’Malley has provided expert testimony in Intellectual Property matters.

Selected Publications Since 2012

- Kathleen M. O’Malley, “An Expanded ‘Slim Volume’ on the Limited Role of Courts in Shaping Patent Policy.” 22 Fed. Cir. B.J. 91 (2012).
- Kathleen M. O’Malley, “Interesting Times at the Federal Circuit.” 63 Am. UL Rev. 949 (2013).
- Kathleen M. O’Malley, “The Respective Roles of the Courts and Congress in Shaping Patent Policy.” 42 AIPLA QJ 1 (2014).
- Kathleen M. O’Malley, “The Intensifying National Interest in Patent Litigation.” 19 Marq. Intell. Prop. L. Rev. 1 (2015).
- Kathleen M. O’Malley, “Trial by Jury: Why It Works and Why It Matters.” 68 Am. UL Rev. 1095 (2018).
- Kathleen M. O’Malley, “Losing Vision: The U.S. Founding Fathers Understood the Importance of a Strong Patent System—What Has Happened?” 32 I.P.J. 105 (2020).

Selected Professional Appointments & Affiliations

- American Bar Association, Standing Committee on Specialization, Certification in Complex Litigation
- American Intellectual Property Lawyers Association
- American Law Institute
- Committee to Rewrite the Manual on Scientific Evidence, joint appointment by the Federal Judicial Center and National Academies of Sciences
- Lecturer, Intellectual Property in the New Technological Age, Federal Judicial Center with Berkeley Center for Law & Technology
- Board Member, Intellectual Property Owners Education Foundation
- Board Member, Foundation for Advancement of Diversity in Intellectual Property Law
- Master Benchers, Kathleen M. O'Malley Inn of Court
- Judicial Counselor, Giles S. Rich American Inn of Court
- Past President, Edward Coke Appellate Inn of Court
- Committee on Intellectual Property, National Academy of Sciences
- Senior Advisor, Renewing American Innovation Project at the Center for Strategic and International Studies
- Judicial Advisor, Working Groups 9 and 10, Sedona Conference

Selected Awards

- Excellence Award, American Intellectual Property Law Association (2022)
- Intellectual Property Owners Association's Distinguished IP Professional Award (2020)
- Intellectual Property Business Congress Global IP Hall of Fame inductee (2019)
- Outstanding Public Service Award, New York Intellectual Property Law Association (2019)
- Lifetime Achievement Award, Cleveland Intellectual Property Law Association (2016)
- Jefferson Medal, New Jersey Intellectual Property Law Association (2015)
- Extraordinary Service, Bar Association of DC (2014)
- Lifetime Achievement Award, Sedona Conference (2013)
- Civil Justice Award for Promoting Special Master Service and Civil Justice, Academy of Court Appointed Masters (2012)

Education

- J.D., Case Western Reserve University (Summa Cum Laude, Order of the Coif, 1982)
- B.A., Kenyon College (Magna Cum Laude, Phi Beta Kappa, High Honors & Double distinction, 1979)