



Ben Cappel joined AddyHart P.C. in 2020. He has extensive experience in patent law and litigation, including in the pharmaceutical, semiconductor, IT and cloud computing, and gaming sectors. Ben's previous experience includes acting as senior counsel to the YMCA of the USA.

Practice Areas

- Patent Litigation
- Trademark Litigation
- Copyright Litigation
- *Inter partes* reviews (PTAB)
- Intellectual Asset Portfolio Mgmt.

Education

- B.A. *cum laude*
Rutgers University, 2013
- J.D. Seton Hall University
School of Law, 2016

Court Admissions

- New Jersey
- Illinois (*pending waiver*)
- U.S. Dist. Ct. (D NJ)
- U.S. Ct. of Appeals for the Fed. Circ.

Professional Memberships

- AIPLA
- INTA
- IPLAC

Benjamin Cappel joined AddyHart P.C. in 2020 as counsel and became a partner in September 2020. His experience includes litigations in US district courts, appeals at the Federal Circuit, Sect. 337 investigations before the International Trade Commission, and *inter partes* reviews (IPR) and covered business method (CBM) reviews at the USPTO's Patent Trial and Appeal Board (PTAB).

Ben has extensive experience litigating matters in the semiconductor, information technology, pharmaceutical, social media, video-gaming, and cloud computing spaces. He has also developed litigation plans for clients, has established pre-litigation policies and procedures, and has worked with e-discovery vendors and opposing counsel to develop e-discovery plans.

Ben was formerly Senior Counsel to the YMCA of the USA in Chicago, where he managed the organization's intellectual property portfolio, obtaining, licensing, and enforcing its IP rights. During his tenure at the YMCA, he negotiated and structured agreements with professional sports leagues including the NBA and NFL, and was hired to guide and advise for a six-month period the organization's incoming general counsel in managing intellectual property issues.

Ben began his career at Sughrue Mion, PLLC in Washington, D.C., where he successfully litigated Hatch-Waxman matters including the so-called Restasis case for cyclosporine ophthalmic emulsion, *St. Regis Mohawk Tribe v. Mylan Pharmaceuticals, Inc.*, named one of the ten most influential cases of 2018 by *Law360*. He was a member of litigation teams working on Hatch-Waxman matters including Precedex (dexmedetomidine), Namenda XR (memantine hydrochloride) Saphris (asenapine), Effient (prasugrel), Vyvanse (lisdexamfetamine), Treanda (bendamustine), Xyrem (sodium oxybate), and Livalo (pitavastatin).

His experience includes trademark and copyright disputes at the USPTO's Trademark Trial and Appeal Board (TTAB); litigating in the U.S. District Courts for a large software client; and preparing experts for Markman hearings and litigation. He has developed litigation plans for clients, and his experience includes establishing pre-litigation policies and procedures and working with e-discovery vendors and opposing counsel to develop e-discovery plans.

Ben was formerly a Judicial Intern in U.S. District Court in the District of New Jersey, assisting US Magistrate Judge Steven C. Mannion in managing his caseload, including composing legal memoranda providing substantive analysis. After his first year of law school, Ben was a summer associate at Sterne, Kessler, Goldstein & Fox in Washington D.C. He earned his J.D. from the Seton Hall University School of Law and his B.A. *cum laude* from Rutgers University. He works in AddyHart's Chicago office.

Representative Cases: Federal Circuit and PTAB

- *Cooperative Entertainment, Inc. v. Kollektive Technology, Inc.* (Fed. Cir. 2022). Successfully appealed an adverse decision from N.D. Cal. dismissing our client's patent relating to peer-to-peer content distribution as not satisfying 35 U.S.C. § 101. In a precedential opinion, the Federal Circuit vacated and remanded, holding that the pleadings satisfied FRCP 12(b).
- *Wildcat Licensing WI LLC v. Atlas Copco and Assembly Systems, LLC, General Motors, LLC, Faurecia Automotive Seating, LLC and Magna Int'l Inc.* (Fed. Cir. 2022). Represent appellant on appeal of a decision where the PTAB invalidated two Reissue patents related to automotive component manufacturing.
- *Mexichem Amanco Holding S.A. v. Honeywell Int'l. Inc.* (Fed. Cir. 2020). Represented appellant on appeal of a decision of the PTAB upholding a patent related to hydrofluorocarbons (HFO) refrigerants in automobile air-conditioning systems. Settled.
- *Honeywell Int'l. Inc. v. Mexichem Amanco Holding S.A.* (Fed. Cir. 2020). Represented appellee on two appeals of PTAB decisions invalidating patents related to HFO refrigerants used in air-conditioning systems. Settled.
- *Intel Corp., Cavium LLC, and Dell, Inc., v. Alacritech, Inc.* (Fed. Cir. 2019)
- *Cellspin Soft. V. GoPro, Inc.* (Fed. Cir. 2018)
- *Allergan, Inc. v. Teva Pharmaceuticals USA, Inc., et al.* (Fed. Cir. 2017)
- *Inter Partes Review of U.S. Patent No. 8,633,162 IPR2017-00599* (and related IPRs)

Representative Litigation in US District Courts

- *Rearden, LLC, v. The Walt Disney Company, et al.* (N.D. Cal. 2019)
- *Data Scape Ltd., v. Barracuda Networks, Inc.* (E.D. Cal. 2019)
- *Allergan, Inc. v. Teva Pharmaceuticals USA, Inc., et al.* (E.D. Tex. 2015)
- *Derm GmbH et al. v. Needlejig Tattoo Supply, Inc.* (D. Mass. 2017)
- *Derm GmbH et al. v. Joker Tattoo Supply LLC* (E.D. Cal. 2017)
- *Eli Lilly and Co., et al. v. Accord Healthcare, Inc., et al.* (S.D. Ind. 2014)
- *Kowa Company Ltd., et al. v. Sawai USA Inc. et al.* (S.D.N.Y. 2013)
- *Hospira, Inc. v. Amneal Pharm., LLC.* (D. Del. 2015)
- *Shire Pharm. Development Inc., et al. v. Amneal Pharm., LLC et al.* (D.N.J. 2015)
- *Forest Labs, Inc. v. Amneal Pharm. LLC* (D. Del. 2015)

Publications & Presentations

- "PTAB Denies Saint Regis Mohawk Tribe's Motion to Terminate based on Sovereign Immunity" (2018). *Patent Office Trials Blog*.

- “Additional discovery at the patent trial and appeal board: will requests for evidence of commercial success be a success?” (2018). *Financier Worldwide*, March 2018 Issue.
- With John M. Bird et al. *The Essential Case Law Guide to PTAB Trials*. American Bar Association. 2018.
- “Fundamental Issues in the Appellate Standard of Review of Patent Claim Construction and Why the Issue Is Moot in Practice” (2016). *Law School Student Scholarship*. 750.
- “Exploring the ITC as an Alternative Forum in ANDA Litigations” International Symposium on Pharmaceutical, Biotechnology, and Chemical Patent Laws. Mumbai, India.
- “Examining Uncertainties in the Boundaries of 271(e)(1) and the Scope of Divided and Induced Infringement: Understanding which Post-Approval Activities Fall Within the Scope of the Safe Harbor as per *Amphastar Pharmaceuticals, Inc. v. Momenta Pharmaceuticals, Inc.*” International Symposium on Pharmaceutical, Biotechnology, and Chemical Patent Laws. Mumbai, India.

Media Mentions

- “Standard Computer Equipment Can Support Inventive Concept under Alice Step 2.” *National Law Review* 6 Oct 2022. Addresses precedential ruling in AddyHart’s client’s favor in a case under § 101, *Cooperative Entertainment, Inc. v. Collective Technology, Inc.*, relating to peer-to-peer file-sharing for video and videogames.
- Karpan, Andrew. “Fed. Circ. Says Licensing Co.’s Software IP May Be Inventive.” *Law360* 28 Sep 2022. Addresses ruling in *Cooperative v. Collective*.
- Handler, Samantha. “Video Sharing Patent Infringement Case Revived by Appeals Court.” *Bloomberg Law* 28 Sep 2022. Addresses *Cooperative v. Collective*.
- Crouch, Dennis. “Eligibility: Patent’s Claims of Inventive Concept Overcome Eligibility Dismissal.” *PatentlyO* 28 Sep 2022. Addresses *Cooperative v. Collective*.



Atlanta

10 Glenlake Parkway
Suite 130
Atlanta, GA 30328

Chicago

101 N. Michigan Ave.
Suite 1200-1
Chicago, IL 60611

Irvine

5151 California St.
Suite 100
Irvine, CA 92617