

TIMOTHY G. BARBER

Representative Lead Arbitrations and Trial Engagements

1. Represented a confidential client in an arbitration arising from construction of a crude oil refinery. This matter went to hearing over 6 weeks before the International Chamber of Commerce in the summer of 2021 and dealt with one of the largest construction projects in South America. The client was awarded approximately 1.9 billion dollars on its claims and defeated a counterclaim seeking 400 million dollars.
2. Represented a major energy company in three patent infringement arbitrations against its main competitor. The arbitrations involved twelve patents and more than 120 claims related to fracking technology. The two arbitrations filed by the competitor were successfully resolved with no payment by the client and receipt of a royalty-free license to use competitor's technology. The third arbitration was asserted by the client and was also successfully resolved.
3. **Rhone-Poulenc Agro, S.A., (now known as Bayer CropScience SA) v. Monsanto Company (now known as Pharmacia Corporation) and DeKalb Genetics Corporation** -- USDC, MDNC. Lead counsel for plaintiff.
Plaintiff claimed its research partners stole from it the rights to a genetic construct that rendered corn immune to RoundUp herbicide. Suit was filed in the United States District Court for the Middle District of North Carolina. The claims were ultimately tried over two years before three separate juries. The initial trial resolved plaintiff's claims for breach of contract, fraud, misappropriation of trade secrets and unjust enrichment. Trial lasted approximately 6 weeks. The jury negated a license, awarded \$15 million in unjust enrichment damages and \$50 million in punitive damages.
4. **Rhone-Poulenc Agro, S.A., (now known as Bayer CropScience SA) v. Monsanto Company (now known as Pharmacia Corporation) and DeKalb Genetics Corporation** -- USDC, MDNC. Lead counsel for plaintiff.
The second of the trilogy of cases discussed above involved the patent rights to the genetic construct. Plaintiff sought damages for patent infringement, while defendants sought a determination of invalidity due to alleged inequitable conduct before the Patent and Trademark Office. Trial lasted approximately 3 weeks. The jury found in plaintiff's favor on all issues. A confidential, predetermined royalty amount was paid.
5. **Rhone-Poulenc Agro, S.A., (now known as Bayer CropScience SA) v. Monsanto Company (now known as Pharmacia Corporation) and DeKalb Genetics Corporation** -- USDC, MDNC. Lead counsel for plaintiff.
The final trial involved plaintiff's claim that its inventors should be added to defendants' patents related to RoundUp Ready Corn. It brought an action to change inventorship pursuant to 35 U.S.C. § 256. Trial lasted approximately 3 weeks. An advisory jury answered all issues in plaintiff's favor. A parallel six-week arbitration was also decided in plaintiff's favor. The trial court entered judgment affirming plaintiff's claim to inventorship of one patent and denying it on the other. The Patent and Trademark Office was instructed to add plaintiff's scientists as named inventors of the '497 patent, thereby giving plaintiff the right to make, sell and use the invention.

6. **Food Lion, Inc. v. Capital Cities/ABC, Inc., ABC Holding Co., Inc., American Broadcasting Companies, Inc., Lynne Litt, Richard N. Kaplan, Ira Rosen and Susan Barnett** -- USDC, MDNC. Lead counsel for plaintiff.

Landmark case addressing the legal limits on the media's right to gather news. Plaintiff sought damages stemming from story in which *PrimeTime Live* reporters fraudulently obtained jobs within Food Lion stores and shot hidden camera video intended to show unsanitary food handling practices. Following a 13-week, tri-furcated trial, the jury found in favor of Mr. Barber's client on all counts.

7. **Monsanto Company v. Bayer BioScience N.V.** -- USDC, EDMO. Lead counsel for defendant.

Brought in to replace counsel who had lost the case on summary judgment. Obtained reversal at CAFC and tried case upon remand. Plaintiff sought a declaratory judgment that patent on genetic construct was invalid and unenforceable. Defendant counterclaimed, asserting infringement. Trial lasted 3 weeks. The jury found in plaintiff's favor.

8. **Dr. Henry Huang vs. California Institute of Technology, et al.** -- USDC, C.D.Cal. Lead counsel for plaintiff.

Brought in immediately before trial to try case. Action to correct inventorship on patent for DNA sequencer (machine that enabled mapping of human genome). Trial lasted approximately 2 weeks. Court found in defendants' favor, noting that decision was based on failure to meet clear and convincing standard.

9. **Polyvision Corporation v. Smart Technologies Corp.** -- United States District Court -- W.D. Michigan, Southern Division. Lead counsel for plaintiff.

And

Smart Technologies Corp. v. Polyvision Technologies. United States District Court, W.D. Michigan, Southern Division. Lead counsel for defendant.

Cases were tried back-to-back before judge. Patent owner brought action against competitor alleging infringement of patents relating to self-tensioning membrane digitizer feature in electronic whiteboard technology. Competitor counterclaimed alleging infringement of its patents on touch-sensitive interactive whiteboard products. Trials lasted one week (tried using chess clock). Court entered judgment in client's favor on case brought by competitor. The other case settled before a verdict was rendered.

10. **AT&T / Section 271, 1996 Telecommunications Act** – Public utilities commissions in Alabama, Georgia, Kentucky, North Carolina, and South Carolina. Lead counsel for AT&T.

BellSouth sought determination under the Telecommunications Act of 1996 that it had opened the doors to competition for local telephone service, thereby allowing BellSouth the right to compete in the long-distance market. Trials were held in Kentucky, Alabama, North Carolina, South Carolina and Georgia over a 14 month period. Each trial lasted approximately one week. The various rulings allowed AT&T to prevent BellSouth's

premature entry into the long-distance market. BellSouth was the last of the regional Bell companies to enter that market.

11. **AT&T / P-100, Sub 133G** -- -- North Carolina Public Utilities Commission. Lead counsel for AT&T.

Trial to determine size of universal services fund designed to supplement local carrier for provision of local telephone service to all North Carolina citizens. Plaintiff BellSouth sought a fund in excess of \$500 million, most of which would be paid by AT&T. AT&T sought a determination that no such fund was needed. The trial lasted 2 weeks. The Commission ordered no contribution by AT&T.

12. **Metric Constructors, Inc. v. Hawker Siddeley Power Engineering, Inc. d/b/a Hawker Siddeley Power Eng., Inc. and Panda-Rosemary Corporation** -- Superior Court, Halifax County, NC. Lead counsel for plaintiff.

Plaintiff sought damages for defendants' failure to timely provide design information for fast-track construction of cogeneration power plant. Amount sought was \$8.1 million. Defendant counterclaimed for breach of contract. Trial lasted approximately 6 weeks. Jury found for plaintiff on all counts. Damages awarded were \$8.1 million.

13. **Overseas Direct Import Co v. Family Dollar Stores Inc.** - U.S.D.C Southern District of New York. Lead counsel for defendant.

Plaintiff brought suit seeking damages and injunctive relief for copyright and trademark infringement. After an eight-day trial, the jury found in favor of defendant on all counts.

Selected Media Coverage

Damning Undercover Tactics as "Fraud" by Russ Baker. *Colombia Journalism Review*; Mar/Apr 1997. <https://undercover.hosting.nyu.edu/s/undercover-reporting/item/13959>

<https://www.upi.com/Archives/1999/06/03/French-firm-wins-suit-against-Monsanto/1072928382400/>