

**From:** Appellate Law360 <news-alt@law360.com>

**To:** <[REDACTED]>

**Subject:** Up Next At High Court: Census Brawl Dominates Busy Week

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 Law360 Appellate

APPELLATE

Monday, April 22, 2019

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## TOP NEWS

### Up Next At High Court: Census Brawl Dominates Busy Week

The Trump administration's attempt to put a citizenship question on the census is the most high-profile case at the Supreme Court this week, but the justices will also tackle issues affecting government contractors and Title VII plaintiffs as it closes out the final argument session of the 2018 term.

[Read full article »](#)

#### Analysis

### Census Citizenship Question Case Likely To Turn On APA

Attorneys anticipate that the question of whether Commerce Secretary Wilbur Ross violated the Administrative Procedure Act will take center stage during oral arguments at the U.S. Supreme Court on Tuesday, in a case challenging his decision to include a question about citizenship status on the 2020 census.

[Read full article »](#)

#### Analysis

### Supreme Court To Mull Title VII's Presuit Hurdles

The U.S. Supreme Court on Monday will hear a Texas county's challenge to a Fifth Circuit decision letting a worker pursue a religious discrimination claim she didn't make to the U.S. Equal Employment Opportunity Commission first, a case that could resolve a circuit split over what workers have to do before bringing federal discrimination suits.

[Read full article »](#)

#### Analysis

### High Court FOIA Case May Alter Labor Agency's Disclosures

The U.S. Supreme Court will hear arguments Monday about the standard for invoking a key exception to the Freedom of Information Act in a case that could make it harder for employers with federal contracts to keep the reams of data they send to the Office of Federal Contract Compliance Programs under wraps, experts say.

[Read full article »](#)

#### Analysis

### 6th Circ. Ruling Raises Bar For Social Media Terrorism Suits

The Sixth Circuit's recent dismissal of a suit blaming Facebook, Twitter and YouTube for radicalizing the man who carried out the 2016 mass shooting at the Pulse nightclub in Florida makes clear that such Anti-Terrorism Act suits have a slim chance of success.

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## LAW FIRMS

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Blank Rome

Burns & Levinson

Carlton Fields

Cleary Gottlieb

Clyde & Co

Cohen Milstein

Cole Scott

Consovoy McCarthy

Cooley

DLA Piper

Davis Malm

Davis Wright Tremaine

## DC CIRCUIT

### UPS Can't Reverse Pa. Facility's Unionization, DC Circ. Says

The D.C. Circuit on Friday rejected UPS Ground Freight Inc.'s effort to overturn the unionization of employees at a Pennsylvania distribution facility, ruling that the International Brotherhood of Teamsters and the National Labor Relations Board had followed all the rules for certifying the union.

*Decision attached* | [Read full article »](#)

### DC Circ. Won't Nix OK Of \$500M Award Against Kazakhstan

Kazakhstan was unable to convince the D.C. Circuit on Friday that a lower court had wrongly refused to consider evidence that a half-billion-dollar arbitration award against it, which was issued to two Moldovan oil and gas investors, had been tainted by fraud.

*1 document attached* | [Read full article »](#)

### Wireless Cos. Urge DC Circ. To Toss FCC's Verizon Fee Ruling

Two wireless providers jointly urged the D.C. Circuit on Friday to reverse a Federal Communications Commission ruling that the roaming rates Verizon charged to local carriers are reasonable, contending the rates aim to quash smaller competitors.

*1 document attached* | [Read full article »](#)

## FEDERAL CIRCUIT

### Fed. Circ. Says Court Wrongly Tossed \$7.5M IP Verdict

A Federal Circuit panel on Friday said a lower court wrongly threw out a \$7.5 million jury verdict against Novozymes A/S in a patent case over technology that helps with ethanol processing, deciding the district court erred when it found the patents were anticipated by an earlier invention.

*Opinion attached* | [Read full article »](#)

### Fed. Circ. Backs ITC In Roomba Co.'s Claim Construction Row

A split Federal Circuit panel on Friday sided with the U.S. International Trade Commission's finding that one of Roomba maker iRobot's patents had not been infringed, delivering a setback to the robot vacuum company months after it clinched an import ban against several of its rivals for ripping off another of its cleaning patents.

*Opinion attached* | [Read full article »](#)

### Full Fed. Circ. Won't Eye Reviving \$19M Samsung IP Verdict

The Federal Circuit won't reconsider its decision to throw out a \$19.2 million patent infringement verdict against Samsung, despite arguments from a nonpracticing entity that the panel wrongly substituted its own judgment for the jury's.

*Order attached* | [Read full article »](#)

### Fed. Circ. Affirms PTAB Ax Of Hologic Medical Device Patent

The Federal Circuit on Friday ruled a Hologic patent related to a treatment for abnormal menstrual bleeding was invalid because it would have been obvious, upholding a decision from the Patent Trial and Appeal Board.

*Opinion attached* | [Read full article »](#)

### Fed. Circ. Affirms ITC Ax Of Car Toll Patent Claims

The Federal Circuit on Friday invalidated parts of two patents covering technology used in electronic toll systems, upholding the U.S. International Trade Commission's decision in an infringement case Neology Inc. brought against rival companies.

Dechert  
Divine & Estes  
Dressman Benzinger  
Duane Morris  
Earthjustice  
Edelson PC  
Epstein Becker Green  
Evans & Dixon  
Faegre Baker  
Fenwick & West  
Fisch Sigler  
Fisher Phillips  
Fletcher Heald  
Freeborn & Peters  
Freshfields Bruckhaus  
Fried Frank  
Frost Brown Todd  
Gibson Dunn  
Goodwin  
Grant & Eisenhofer  
Greenberg Traurig  
Hart McLaughlin  
Hirschfeld Kraemer  
Hogan Lovells  
Holland & Knight  
Horn Aylward  
Hunter Smith  
Hunton Andrews Kurth  
Jackson Murdo  
Jones Day  
Keefer Wood  
King & Spalding  
Kirkland & Ellis  
Kobre & Kim  
Kutak Rock  
Latham & Watkins  
Law Offices of Stephan C. Volker  
Leonard Carder  
Lewis Brisbois  
Littler Mendelson  
Logan Logan & Watson  
Lucas Magazine  
Manatt Phelps  
Markowitz & Richman  
Mayer Brown  
Morgan Brown & Joy  
Morgan Lewis  
Morrison & Foerster  
Munger Tolles  
Nabors Gibling  
Norris & Keplinger

*Opinion attached* | [Read full article »](#)

## **Fed. Circ. Won't Revive Server Patent Axed By PTAB**

The Federal Circuit on Friday upheld the Patent Trial and Appeal Board's decision to invalidate claims from a Rosetta-Wireless Corp. network server patent challenged by Apple and Samsung, and agreed that the data solutions company can't amend its patent.

*Opinion attached* | [Read full article »](#)

## **SECOND CIRCUIT**

### **2nd Circ. Kills \$5M Deal Award Against Brazilian Reinsurer**

The Second Circuit has declined to enforce a \$5 million settlement award against reinsurer IRB Brasil Resseguros SA, finding that it was not a party to the agreement between insurer National Indemnity Co. and steelmaker Companhia Siderurgica Nacional.

*1 document attached* | [Read full article »](#)

### **2nd Circ. Won't Revive Ex-Mt. Sinai Worker's Race Bias Suit**

The Second Circuit on Friday refused to revive a fired worker's race bias suit against Mount Sinai Health System, saying she'd made a "glaringly disproportionate" number of errors while on the job.

*1 document attached* | [Read full article »](#)

### **Madoff Trustee Fights Bid To Pause Foreign Clawback Ruling**

The trustee for Bernie Madoff's fraudulent investment firm has asked the Second Circuit not to stay its decision that he can claw back billions in Ponzi scheme proceeds transferred between foreign parties, saying defendants' planned U.S. Supreme Court appeal is unlikely to succeed.

*1 document attached* | [Read full article »](#)

## **THIRD CIRCUIT**

### **3rd Circ. Says Immigration Board's Examination Fell Short**

The Third Circuit Friday revived a bid from an Indonesian national to avoid deportation, finding that the Board of Immigration Appeals failed to mention many pieces of compelling evidence he presented and that some of those it did mention contradicted its findings.

*Opinion attached* | [Read full article »](#)

### **Comcast Keeps Installer Antitrust Suit Win At 3rd Circ.**

The Third Circuit affirmed a defeat for two Pennsylvania cable installers that accused Comcast of anti-competitive tactics that drove them out of business, reasoning Friday that the telecommunications giant wasn't their only potential business in the region.

*Opinion attached* | [Read full article »](#)

### **NJ Urges 3rd Circ. To Stop PennEast Pipeline Condemnations**

New Jersey on Thursday urged the Third Circuit to overturn a lower court's decision allowing the PennEast Pipeline Co. to file condemnation lawsuits against the state for land the company wants for a \$1 billion natural gas pipeline project.

*Brief attached* | [Read full article »](#)

## **FOURTH CIRCUIT**

### **4th Circ. Trims Sanctions In Fired CarMax Worker's Arbitration**

Norton Rose Fulbright  
Oliver Price & Rhodes  
Orrick Herrington  
Panza Maurer & Maynard  
Paul Hastings  
Paul Weiss  
Pepper Hamilton  
Perkins Coie  
Petti & Briones  
Pierce Bainbridge  
Priddy Cutler  
Quinn Emanuel  
Rathbun Cservenyak  
Robbins Russell  
Ropes & Gray  
Sheppard Mullin  
Shook Hardy  
Sidley Austin  
Simpson Logback  
Sive Paget  
Skadden  
Smith Law Services  
Tran Law Firm  
Tucker Law Group  
Venable LLP  
Vorys Sater  
Weil Gotshal  
White & Case  
Wilk Auslander  
WilmerHale  
Wilson Sonsini  
Windels Marx  
Wolf Haldenstein  
Wollmuth Maher  
Wright Close  
Wyatt Tarrant  
Young Conaway  
Zebersky Payne

## **COMPANIES**

Amazon.com Inc.  
American Bar Association  
American Civil Liberties Union  
American Museum of Natural History  
Apple Inc.  
Association of Corporate Counsel  
BB&T Corp.  
BNP Paribas  
CVC Capital Partners  
CalAtlantic Group Inc.



A former CarMax employee who claims he was unfairly fired deserved some sanctions from a district court for arguing aspects of his arbitration award appeal that were already rejected, but he also raised a fresh argument that didn't warrant a penalty, the Fourth Circuit ruled.

*Opinion attached* | [Read full article »](#)

## FIFTH CIRCUIT

### Anti-Straight Bias Not Forbidden By Title VII: 5th Circ.

A Fifth Circuit panel said Friday that federal workplace discrimination law does not block employers from firing straight workers because of their sexuality, refusing to budge from its stance that Title VII of the Civil Rights Act does not cover sexual orientation.

*Decision attached* | [Read full article »](#)

### 5th Circ. Says Interstate Travel Axes Oil Workers' OT Suit

The Fifth Circuit has affirmed a federal judge's decision absolving Welltec Inc. from oil field workers' wage and hour claims, saying federal overtime pay requirements don't apply because the workers regularly drove across state lines.

*Opinion attached* | [Read full article »](#)

### Old Ruling Shouldn't Direct Texas Tribal Gaming, 5th Circ. Told

The Ysleta del Sur Pueblo argued Thursday that the Fifth Circuit shouldn't have relied on an error-filled 1994 ruling against it to decide that the Alabama-Coushatta Tribe of Texas can't offer bingo under state law, joining the chorus of voices urging the full court to take another look.

*3 documents attached* | [Read full article »](#)

## SIXTH CIRCUIT

### NCAA Referee Passes Death Threats Suit To 6th Circ.

An NCAA men's basketball referee on Friday turned to the Sixth Circuit after his suit accusing two Kentucky radio hosts of inciting death threats and negative reviews of his business was dismissed under First Amendment protections.

*1 document attached* | [Read full article »](#)

## SEVENTH CIRCUIT

### \$2.8M Housing Fund Row Belongs In New Suit, 7th Circ. Says

The Seventh Circuit said an Illinois city and a housing company must start from scratch in a fight over \$2.8 million in reserve funds held by the U.S. Department of Housing and Urban Development.

*Complaint attached* | [Read full article »](#)

### Uphold Arbitration Order In Biometric Case, Southwest Urges

Southwest Airlines employees who are accusing the company of unlawfully collecting their biometric data are trying and failing to sidestep the federal arbitration requirements preempting their suit, the airline told the Seventh Circuit on Thursday.

*1 document attached* | [Read full article »](#)

## NINTH CIRCUIT

### Enviros Say Trump Must Live With Keystone Rejection

Two environmental groups have told the Ninth Circuit that the federal government is wrongly attempting to dodge a ruling invalidating its permit for

California Rural Legal Assistance Foundation Inc.

CarMax Business Services LLC

Citigroup Inc.

Comcast Corp.

Companhia Siderurgica Nacional

Edgeworth Economics LLC

Electronic Frontier Foundation

Essendant Inc.

Exxon Mobil Corp.

Facebook

Florida Power & Light Co.

Food Marketing Institute

GVC Holdings PLC

Geico

General Re Corp.

Google Inc.

HSBC Holdings PLC

Hologic Inc.

Intel Corp.

International Brotherhood of Teamsters

International Speedway Corporation

JAMS Inc.

JEA

Johnson & Johnson

Kapsch TrafficCom AG

Kentucky Bar Association

Lowe's Companies Inc.

MGM Resorts International

MetLife Inc.

Minerva Surgical Inc.

National Collegiate Athletic Association

National Congress of American Indians

National Hispanic Medical Association

National Indemnity Co.

Natural Resources Defense Council

NeoPollard Interactive LLC

New York Immigration Coalition

New York University

Novozymes

Orlando Utilities Commission

PricewaterhouseCoopers

Purdue Pharma LP

QUALCOMM Inc.

Samsung Electronics Co. Ltd.

Southwest Airlines Co.

the Keystone XL pipeline just because President Donald Trump signed a new permit last month.

*1 document attached* | [Read full article »](#)

### **Wells Fargo Battles Cert. In Reimbursement Fight At 9th Circ.**

Wells Fargo urged the Ninth Circuit on Friday to reverse a lower court's decision to certify a class of 2,000 home mortgage consultants and bankers who claim the bank didn't reimburse their expenses or pay commissions on time, arguing that the expenses were optional and commissions can't be determined classwide.

[Read full article »](#)

### **9th Circ. Gives EPA 90 Days To Respond In Pesticide Case**

The Ninth Circuit on Friday gave the U.S. Environmental Protection Agency 90 days to respond to objections filed by health and environmental groups over the agency's decision not to ban the pesticide chlorpyrifos.

*Order attached* | [Read full article »](#)

## **ELEVENTH CIRCUIT**

### **11th Circ. Tosses Underpayment Class Action Against Geico**

The Eleventh Circuit on Friday threw out a class action accusing Geico of under-reimbursing health care providers for their services, holding that the lead plaintiff lacked standing to bring the suit in the first place.

*Opinion attached* | [Read full article »](#)

## **NEW YORK**

### **NY Panel Greenlights Museum Of Natural History Expansion**

A New York state appeals court on Thursday greenlighted the American Museum of Natural History's planned expansion into Theodore Roosevelt Park, finding that the museum has had a right to the disputed land since 1877.

*Opinion attached* | [Read full article »](#)

## **FLORIDA**

### **Home Builder Gets Atty Fees In Property Maintenance Suit**

Home builder CalAtlantic can recover attorney fees after residents at a Florida development dropped a lawsuit against it over property maintenance, with a state appeals court finding Friday that the suit fell within fees provisions in a declaration governing the community.

*Opinion attached* | [Read full article »](#)

### **Fla. Energy Choice Ballot Initiative Attacked From All Corners**

A slew of major Florida interests that are rarely in harmony have lambasted a ballot initiative that purports to create a right to a competitive energy market but that opponents say will upend the energy market in the Sunshine State

*8 documents attached* | [Read full article »](#)

### **Carlton Fields Nabs Fla. Appellate Pro From Akerman**

Carlton Fields has brought aboard a Florida appellate and trial litigator and former St. Petersburg Times journalist as of counsel in its Miami and Tampa offices, the firm announced Thursday.

[Read full article »](#)

## **KANSAS**

[Staples Inc.](#)

[State Farm](#)

[Taylor Bean & Whitaker Mortgage Corp.](#)

[The Nature Conservancy](#)

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[Twitter Inc.](#)

[Uber Technologies Inc.](#)

[UniCredit](#)

[United Farm Workers](#)

[United Parcel Service Inc.](#)

[United Technologies Corp.](#)

[Verizon Communications Inc.](#)

[Wal-Mart Stores Inc.](#)

[Wells Fargo & Co.](#)

[Yale University](#)

[Yelp Inc.](#)

[YouTube Inc.](#)

[iRobot Corporation](#)

## **GOVERNMENT AGENCIES**

[Alabama-Coushatta Tribe of Texas](#)

[Chicago Department of Aviation](#)

[Delaware Court of Chancery](#)

[Department of Commerce](#)

[Equal Employment Opportunity Commission](#)

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[European Union](#)

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[Montana Department of Revenue](#)

[National Indian Gaming Commission](#)

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[Native Village of Noatak](#)

[New Jersey Department of Environmental Protection](#)

[Office of Federal Contract Compliance Programs](#)

[Securities and Exchange Commission](#)

[Texas Workforce Commission](#)

[U.S. Census Bureau](#)

[U.S. Department of Agriculture](#)

## Med Mal Suit Filed 1 Day Late Nixed By Kan. Supreme Court

The Kansas Supreme Court on Friday affirmed the dismissal of a suit accusing health care providers of negligently causing a patient's death, saying the patient's estate failed to present evidence that an electronic filing issue caused the suit to be lodged one day after the statute of limitations expired.

*Opinion attached* | [Read full article »](#)

## KENTUCKY

### Ky. Court Upholds Atty Firing For Refusing Non-Solicit Deal

Kentucky's highest court has unanimously affirmed a lower court's ruling that a law firm did not wrongfully terminate an attorney after she refused to sign a non-solicitation agreement involving clients, as the deal did not violate state legal ethics rules.

*Opinion attached* | [Read full article »](#)

## MICHIGAN

### Live Nation Not Responsible For Concertgoer's Broken Ankle

Promoter Live Nation and Michigan International Speedway are off the hook from a lawsuit brought by a concertgoer who fell and broke her ankle in nearby woods while leaving a music festival, a Michigan appeals court held Thursday.

*2 documents attached* | [Read full article »](#)

## MONTANA

### Exxon Tells Mont. Justices Dividend Deduction Cap Improper

The Montana Department of Revenue ignored its own guidance when the agency didn't permit Exxon Mobil Corp. to fully deduct dividend payments from subsidiaries that hold most of their business assets internationally, the oil giant told the state Supreme Court.

*Brief attached* | [Read full article »](#)

## EXPERT ANALYSIS

### In Virtual Teams For Mass Torts, The 'Law Team' Is Critical

A critical component of any virtual law team assembled for mass tort litigation is a dedicated "law team," which tackles the legal strategy and drafts the many necessary pleadings, motions and other submissions, say attorneys at Pepper Hamilton and Faegre.

[Read full article »](#)

## LEGAL INDUSTRY

### Analysis

#### BigLaw Forced Arbitration Expected To Survive Amid #MeToo

Even though social media pressure spurred on by Harvard law students has led several BigLaw firms to change course on mandatory arbitration, experts say arbitration has gotten a bad rap and so-called coercive contracts, in some form, will ultimately survive the #MeToo movement.

[Read full article »](#)

### Analysis

#### Looking To Go Green? Here's How It Can Work For Your Firm

As another Earth Day arrives, environmental consciousness is on the minds of many in the legal industry, and despite a number of challenges, going

U.S. Department of Homeland Security  
U.S. Department of Housing and Urban Development  
U.S. Department of Justice  
U.S. Department of Labor  
U.S. Department of State  
U.S. Department of Transportation  
U.S. Environmental Protection Agency  
U.S. House of Representatives  
U.S. Immigration and Customs Enforcement  
U.S. Supreme Court  
United States Court of Appeals for the Third Circuit  
Wisconsin Supreme Court  
Ysleta del Sur Pueblo



green is not only a possibility but an opportunity as well.

[Read full article »](#)

### **In Civil Rights Arena, Practice Groups A Rare But Potent Force**

Although a rarity among firms, dedicated practice groups focused on civil rights cases can have a big impact, proponents say, taking cases solo attorneys and government regulators can't.

[Read full article »](#)

#### **Analysis**

### **5 Times Lawyers Settled During The Big Show**

Apple and Qualcomm grabbed headlines when they decided to settle their differences before a San Diego federal jury could decide their multibillion-dollar antitrust dispute. But they aren't the first high-profile litigants to think twice about having a jury decide their fate once they got to court.

[Read full article »](#)

#### **Analysis**

### **Gibson Dunn Ups The Ante On Gambling After High Court Win**

Gibson Dunn, the law firm that led the fight to overturn a federal ban on sports betting, has launched a revamped practice group focused on sports betting and gambling, positioning itself to take advantage of the rapidly expanding, newly legal market.

[Read full article »](#)

### **Baker Donelson's Growth Recognized Its Roots, Ex-Chief Says**

During Ben Adams' 16 years at the helm of Baker Donelson, the firm doubled its offices and attorneys, carrying out a growth strategy that the departing chairman told Law360 bet on the firm's roots to prepare for its future.

[Read full article »](#)

#### **Q&A**

### **Q&A With 'Queen Of Torts' Sheila Birnbaum**

Dechert LLP's Sheila Birnbaum, known as the "Queen of Torts," recently discussed with Law360 the changes in product liability laws she has seen over her long career, her proudest achievement as a lawyer and the challenges of representing Purdue Pharma in the multidistrict litigation over the opioid crisis.

[Read full article »](#)

### **More Women Taking Reins Among Tech Giants' Legal Chiefs**

Women are increasingly heading up the legal departments of the largest companies in California's Silicon Valley as well as the corporations on the S&P 100, though men continue to hold the bulk of those positions, a biannual report by Fenwick & West LLP reveals.

[Read full article »](#)

### **Most 2016 Law Grads Who Took The Bar Passed, ABA Says**

About 88.6% of 2016 law school graduates who took the bar exam within two years of completing school passed the test, the American Bar Association said Friday, noting that the class of 2016's two-year success rate is about the same as that of 2015 graduates.

[Read full article »](#)

### **GC Cheat Sheet: The Hottest Corporate News Of The Week**

Google has been accused in a derivative suit of hiding workplace harassment, a Duane Morris partner said law firms are dropping the ball in addressing misconduct and employers are seeking to fortify Trump administration regulations against court attacks. These are some of the stories in legal news you may have missed in the past week.

[Read full article »](#)

## In Case You Missed It: Hottest Firms And Stories On Law360

For those who missed out, here's a look back at the law firms, stories and expert analyses that generated the most buzz on Law360 last week.

[Read full article »](#)

### Podcast

#### Law360's Pro Say: Mueller Madness

After more than two years of speculation, Special Counsel Robert Mueller's report about Russian interference with the 2016 election has been released and there are plenty of legal revelations to unpack. So we'll do just that on this week's Pro Say podcast.

[Read full article »](#)

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Carter, DeLuca, & Farrell, LLP  
Melville, New York

#### Legal Secretary

Carlson, Calladine & Peterson LLP  
San Francisco, California

#### Patent Attorney

Dority & Manning, P.A.  
Greenville, South Carolina

#### Intellectual Property Litigation and Unfair Competition Associate

Company Confidential  
Philadelphia, Pennsylvania

#### Patent Attorney (Electrical Engineer/Computer Science)

Volpe and Koenig, P.C.  
Philadelphia, Pennsylvania

#### Biotech Patent Agent or Attorney

Dentons US LLP  
Dallas, Texas

#### Capital Markets Staff Attorney

Hunton Andrews Kurth  
Richmond, Virginia

#### Personal Injury & Property Damage Associate

Hinshaw and Culbertson  
Ft Lauderdale, Florida

#### Labor & Employment Associate - (1+ yrs Exp.)

Jones Day  
San Diego, California

#### Business Associate Attorney - Junior to Mid-Level

Perkins Coie LLP  
Portland, Oregon

#### Patent Litigation Associate Attorney - Junior

Perkins Coie  
Phoenix, Arizona

#### Chemistry Patent Attorney/Agent

Klarquist Sparkman, LLP  
Portland, Oregon

#### Junior Associate (1-3 Years) Intellectual Property - Engineering

Leydig, Voit & Mayer  
Multiple Locations (Chicago, Boulder, Bay Area, D.C.), -

#### Advertising, Privacy Associate

Kelley Drye & Warren LLP  
Washington, District of Columbia

#### Technical Specialist / Scientific Advisor

Axinn  
Hartford, Connecticut

#### Associate General Counsel Commercial

Astellas  
Northbrook, Illinois

#### Banktcy Boutique Counsel/Partner

Schoen Legal Search  
NYC, New York



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