



Jenny L. Colgate

MEMBER

Washington, D.C.

T +1 202 783 6040

jcolgate@rothwellfigg.com

"I could not think of anyone more efficient, reliable, thorough, and well-spoken than Jenny Colgate. She is capable of synthesizing and explaining complex legal issues in a few sentences and providing excellent legal memos, always in record time. Working with Jenny is a real pleasure and I'd recommend her to anyone looking for trustworthy legal advice."

-Client Testimonial

OVERVIEW

Jenny L. Colgate is an experienced litigator, a creative strategist, a trusted advisor, a thought leader, and an extremely hard worker. She is also a mom, an accomplished equestrian, a former marathoner, and an animal lover.

Jenny's practice is largely focused on litigation for a clientele that includes manufacturing, technology, and publishing companies. While the majority of Jenny's cases involve patents, her litigation experience extends into all facets of intellectual property and technology-related tort and contract matters, including trade secret, unfair competition, trademark, copyright, breach of contract, and fraud-related claims. She also consults with clients regularly on IP strategy, contracts and licensing negotiations, privacy, and defamation/libel reviews.

Competitive and strategic, Jenny is known for her thoughtful, results-oriented approach to her cases. Although she thrives on the challenges and day-to-day surprises of litigation, she is also a precise and careful practitioner, and focuses her attention on crafting tailored, cost-effective strategies that have maximum

Practices

Alternative Dispute Resolution

Appellate Litigation

Copyright Litigation

Cybersecurity and Privacy Litigation

False Advertising and Unfair Competition Litigation

Industrial Designs, Patents, and Trade Dress Infringement

Inter Partes Review (IPR) and Post Grant Review (PGR)

International Trade Commission (ITC) Litigation

Licensing and Transactions Litigation

Media and Constitutional Law

Opinions, Freedom to Operate, and Patentability Analysis

impact while avoiding unnecessary effort and cost, particularly in discovery.

Throughout a case, Jenny works to “plan smart and early.” This can include early engagement of experts to ensure a seamless case with no gaps; an early damages analysis to ensure the effort is tailored to the amount at issue; and a customized discovery plan that fits the needs of the case. She is also an excellent communicator both in and out of the courtroom. Jenny routinely takes and defends depositions, drafts motions and briefs, and argues hearings related to motion practice, claim construction, and discovery disputes.

In addition to litigation, Jenny regularly handles a wide range of other legal matters for clients. She’s skilled at pre-litigation risk evaluation and strategy, and counsels clients on IP protection and enforcement as well as privacy law compliance and best practices. She provides opinions on privacy and security-related topics, as well as patent subjects such as freedom to operate, invalidity, and noninfringement. She advises clients in contract and licensing matters, such as negotiation, drafting, IP and privacy issues, and dispute resolution. Finally, she’s a recognized thought leader, authoring expert analyses, speaking on panels and webinars on topics as diverse as developing IP issues, litigation strategy, damages and remedies, and privacy.

Ultimately, Jenny is an exceptional litigator because she loves the challenge – and she loves to win. A versatile, aggressive, and articulate advocate, Jenny excels at applying the tactics, strategies, and know-how that years of experience have taught her. The result is an approach to litigation that takes advantage of every edge she can find, that is careful and thoughtful, that makes the absolute most of a client’s resources while aggressively working to achieve their goals, that represents them effectively, and that almost always delivers superior results.

EXPERIENCE

Representative Cases Before District Courts and Courts of Appeal

Finite State Machine Labs, Inc. v. Spectracom Corp., Orolia USA, Inc., and Orolia S.A., Civil Action No. 17-cv-1040-SS (W.D. Tex.)

- Represented plaintiff and counterclaim defendant, FSMLabs, Inc.

Patent Litigation

Patent Strategy and Counseling

Privacy, Data Protection, and Cybersecurity

Trade Secret Litigation

Trademark Litigation

Trademark Oppositions and Cancellations

Education

J.D., University of New Hampshire
Franklin Pierce Law Center (*magna cum laude*)

L.L.M., Intellectual Property,
University of New Hampshire
Franklin Pierce Law Center (*magna cum laude*)

B.A., University of Pennsylvania
(*summa cum laude*, with honors)

Bar Admissions

District of Columbia

California

Court Admissions

U.S. Court of Appeals for the
Federal Circuit

U.S. Court of Appeals for the
District of Columbia

- Claims:
 - Trade secret infringement
 - Unfair competition by misappropriation and unfair competition by breach of confidence
 - Breach of contract under NY, TX, and DE law
 - False designation of origin under 15 USC 1125(A)
 - Fraudulent inducement
- Counterclaim: Tortious interference with business relations
- Won contested motion to amend complaint to add, *inter alia*, fraudulent inducement claim
- Case settled during pendency of summary judgment and *Daubert* motions

Nichia Corporation v. Feit Electric Company, Inc., Civil Action No. 20-cv-359 (C.D. Cal.)

- Represented plaintiff, Nichia Corporation
- Patent Infringement (U.S. Patent No. 9,752,734)
- Concerning filament-style LED lightbulbs
- Defeated Feit's motion to dismiss
- Favorable claim construction ruling on all disputed terms, and won all indefiniteness challenges at the claim construction phase.
- Case is pending

Maritz Holdings Inc. v. Connexions Loyalty, Inc., Civil Action No. 18-cv-967 (D. Del.)

- Represented defendant, Connexions Loyalty, Inc. (renamed cxLoyalty)
- Patent Infringement (U.S. 7,134,087)
- Concerning loyalty programs
- Filed petition for CBM review; CBM review was instituted; FWD determined all challenged claims to be unpatentable under 35 U.S.C. § 101. Federal Circuit appeal is pending.
- Won opposed motion to stay litigation pending CBM review proceeding
- Case is pending

Unverferth Mfg. Co., Inc. v. Meridian Mfg., Inc., Civil Action No. 19-cv-4005 (N.D. Iowa)

- Represented plaintiff and counterclaim defendant, Unverferth Mfg. Co., Inc.
- Patent Infringement (U.S. Patent Nos. 8,221,047, 8,967,940, 9,745,123, 8,292,065, and 6,964,551)
- Trademark Infringement
- Concerning self-fill seed tenders, box seed tenders, and conveyor belts (farming equipment)
- Won claim construction in favor of Unverferth for 11 of 16 disputed terms, and 4 of the 5 patents at issue

- Case is pending

Unverferth Mfg. Co., Inc. v. Norwood Sales Inc., Civil Action No. 18-cv-00053 (District of North Dakota)

- Represented plaintiff, Unverferth Mfg. Co., Inc.
- Patent Infringement (U.S. Patent Nos. 8,221,047, 8,967,940, and 9,745,123)
- Concerning self-fill seed tenders (farming equipment)
- Obtained favorable settlement

Nichia Corp. v. Feit Electric Company, Inc., Civil Action No. 18-cv-01390 (C.D. Cal.)

- Patent Infringement (U.S. Patent Nos. 8,530,250, 9,490,411, and 9,537,071)
- Concerning LED packages and a simple and low-cost method of manufacturing multiple LED packages in a short time
- Won numerous motions to compel discovery against Feit Electric Company and third party defendants
- Defeated Feit's motion for judgment on the pleadings
- Case stayed pursuant to joint motion

Nichia Corp. v. VIZIO, Inc., Civil Action No. 18-cv-00362 (C.D. Cal.)

- Patent Infringement (U.S. Patent Nos. 8,530,250, 9,490,411, and 9,537,071)
- Concerning LED packages and a simple and low-cost method of manufacturing multiple LED packages in a short time
- Case settled

Nichia Corp. v. Mary Elle Fashions, Inc. D/B/A Meridian Electric, Civil Action No. 16-cv-615 (E.D. Texas) (lead case, numerous cases consolidated)

- Represented plaintiff, Nichia Corp., against defendants Meridian Electric, Feit Electric, Lowes, TCL, and VIZIO
- Patent Infringement (U.S. Patent Nos. 8,530,250, 9,490,411, and 9,537,071)
- Concerning LED packages and a simple and low-cost method of manufacturing multiple LED packages in a short time
- Obtained settlements with respect to several of defendants; other cases were transferred to C.D. California following Supreme Court's decision in TC Heartland.

Donald P. Borchers v. Amazon.com, Inc., et al., Civil Action No. 18-cv-61537 (S.D. Fla.)

- Represented defendant, Trans World Entertainment
- Copyright infringement concerning film rights related to the Children of the Corn franchise
- Defendants won motion to dismiss for lack of personal jurisdiction because Lantern Entertainment ("Lantern") was a necessary party, and the S.D. Fla. Lacked personal jurisdiction over Lantern.

- Defendants also won motion to dismiss on grounds that plaintiff's complaint was an impermissible "shotgun pleading."

Unverferth Mfg. Co., Inc. v. J&M Mfg. Co., Inc., Civil Action No. 16-cv-2282 (N.D. Ohio)

- Represented plaintiff, Unverferth Mfg. Co., Inc.
- Patent Infringement (U.S. Patent Nos. 8,221,047 and 8,967,940)
- Concerning self-fill seed tenders (farming equipment)
- Obtained favorable settlement
- Won claim construction on all disputed terms
- Won motion to compel concerning waiver of privilege/advice of counsel issues

EquiFit, Inc. v. Devon-Aire, Inc., Civil Action No. 18-cv-00056 (M.D. Fla.)

- Represented plaintiff, EquiFit, Inc.
- Trademark Infringement (unauthorized sale and offer for sale of equestrian jackets bearing the word EQUIFIT)
- Obtained favorable settlement

Unverferth Mfg. Co., Inc. v. J&M Mfg. Co., Inc., Civil Action No. 15-cv-1045 (N.D. Ohio)

- Represented plaintiff, Unverferth Mfg. Co., Inc.
- Patent Infringement (U.S. Patent No. 9,039,340)
- Concerning extended reach grain carts (farming equipment)
- Obtained favorable settlement
- Won motion to enforce settlement agreement

Unverferth Mfg. Co., Inc. v. J&M Manufacturing Inc., Civil Action No. 14-cv-3062 (N.D. Iowa)

- Represented plaintiff, Unverferth Mfg. Co., Inc.
- Patent Infringement (U.S. Patent No. 6,176,504)
- Concerning gravity wagons (farming equipment)
- Obtained favorable settlement

Jersey Prods., Inc. et al. v. TGG Direct, LLC, et al., Civil Action No. 16-cv-6213 (S.D.N.Y.)

- Represented defendant, Trans World Entertainment ("TWE")
- Copyright infringement, involving, inter alia, Three Stooges compilation works, Larry Fine interview work, Elvis compilation work, and McLintock! Version
- Case settled

Driessen, James L. and Marguerite A. v. Sony Music Entertainment, et al., Civil Action No. 09-cv-140 (D. Utah)

- Represented defendant, FYE (a.k.a. Trans World Entertainment)
- Patent Infringement (U.S. Patent Nos. 7,003,500, 7,636,695, and 7,742,993)
- Concerning digital music card
- Won multiple rounds of motions to dismiss
- Won two motions for summary judgment (indefiniteness and written description)
- Won motion for reconsideration
- Affirmed by the Federal Circuit Court of Appeals (Case No. 2015-2050)

In re: Amgen Inc. Securities Litigation, representation of Paul B. Goldberg (The Cancer Letter, Inc.), Civil Action No. 15-00825 (D.D.C.)

- Represented Paul B. Goldberg, journalist for The Cancer Letter, Inc.
- First Amendment
- Won motion to quash subpoena filed by Amgen, Inc. on grounds the information was protected by reporter's privilege

Surpass Tech. Innovation LLC v. LG Display Co. Ltd. et al., Civil Action No. 14-cv-00336 (D. Del.)

- Represented defendant, LG Display Co. Ltd. et al.
- Patent Infringement
- Case dismissed

Cypress Semiconductor Corp. v. LG Electronics Inc. et al., Civil Action No. 13-cv-04034 (N.D. Cal.)

- Represented defendant, LG Electronics Inc. et al.
- Patent Infringement (U.S. Patent Nos. 6,012,103; 6,249,825; 6,493,770; 8,004,497; 8,059,015; 8,519,973)
- Concerning USB technology and touchscreen technology
- LG filed IPRs, which were instituted on each of the six patents-in-suit
- Case settled with agreement that IPRs be terminated. Cypress's claims were dismissed with prejudice, and LG's counterclaims were dismissed without prejudice.

LG Electronics Inc. et al. v. Toshiba Samsung Storage Technology Korea Corp., Civil Action No. 12-cv-01063 (D. Del.)

- Represented plaintiffs, LG Electronics Inc. et al.
- Patent Infringement (U.S. Patent Nos. 6,101,162; 7,380,159; 7,380,178; 6,477,126)

- Concerning optical disc drive technology (initializing, recording, playback)
- Defeated TSST-K's motion to dismiss and successfully argued that Defendants' counterclaims were permissive and should be brought as separate suit
- Case stayed in view of IPR proceedings and In re Toshiba Samsung Storage Technology Korea Corporation (Case No. 16-11602) in the United States Bankruptcy Court for the District of Delaware, and then dismissed without prejudice

E-Contact Technologies LLC v. Acer America Corp. et al., Civil Action No. 12-cv-00352 (E.D. Tex.)

- Represented defendant, LG Electronics Mobilecomm
- Patent Infringement (U.S. Patent No. 5,347,579)
- Concerning a computer system for archiving data blocks
- Obtained favorable settlement after filing motion to dismiss

Bluebonnet Telecommunications, LLC v. LG Electronics, Civil Action No. 13-cv-502 (E.D. Tex.)

- Represented defendant, LG Electronics Mobilecomm U.S.A., Inc.
- Patent Infringement (U.S. Patent No. 5,485,511)
- Concerning telephone networks
- Dismissal with prejudice

SimpleAir v. Microsoft Corp. et al., Civil Action No. 11-cv-416 (E.D. Tex.)

- Represented defendant, LG Electronics Mobilecomm U.S.A., Inc.
- Patent Infringement (U.S. Patent No. 7,035,914)
- Concerning Google's Cloud Messenger (GCM) and Cloud to Device Messenger (C2DM)
- Obtained favorable settlement for client after filing motion to dismiss and motion for summary judgment of non-infringement

The JM Smucker Co. v. Lodsys LLC, Civil Action No. 12-cv-00012 (E.D. Wis.)

- Represented declaratory judgment plaintiff, The JM Smucker Co.
- Patent Infringement (U.S. Patent Nos. 7,222,078; 5,999,908; 7,133,834; 7,620,565)
- Concerning features of The JM Smucker Co.'s website
- Obtained favorable settlement for client after filing motion for summary judgment of non-infringement

Martha Stewart Living Omnimedia Inc. v. Lodsys Group LLC, Civil Action No. 13-cv-1074 (E.D. Wis.)

- Represented declaratory judgment plaintiff, Martha Stewart Living Omnimedia
- Patent Infringement (U.S. Patent Nos. 7,222,078; 5,999,908; 7,133,834; 7,620,565)

- Concerning features of the Martha Stewart Living Omnimedia Inc. website
- Obtained favorable settlement for client

Investment Technology Group, Inc. v. Liquidnet Holdings, Inc. v. Pulse Trading, Inc., Civil Action No. 07-cv-510 and 07-cv-6886 (S.D.N.Y.)

- Represented declaratory judgment plaintiff, Investment Technology Group, Inc.
- Patent Infringement (U.S. Patent No. 7,136,834)
- Concerning ITG's "Channel" and "POSIT Alert" financial trading products
- Won motion for summary judgment of no literal infringement and no willful infringement

Sun Life Assurance Company of Canada v. Lincoln National Life Insurance Co., Civil Action No. 09-cv-10245 (D. Mass.)

- Represented declaratory judgment plaintiff, Sun Life Assurance Company of Canada
- Patent Infringement (U.S. Patent Nos. 6,611,815; 7,089,201; 7,376,608)
- Concerning annuity products
- Obtained favorable settlement for client

Americans for Fair Patent Use, LLC v. Sprint Spectrum L.P., et al., Civil Action No. 10-cv-00237 (E.D. Tex.)

- Represented defendant, LG Electronics Mobilecomm U.S.A., Inc.
- Patent Infringement
- Obtained favorable settlement for client

Consumers Protecting Consumers, LLC v. Samsung Electronics Co., Civil Action No. 11-ccv-01263 (E.D. Pa.)

- Represented defendant, LG Electronics Mobilecomm U.S.A., Inc.
- Patent Infringement
- Case was voluntarily dismissed

VA Filtration USA LLC v. Mavrik North America, Civil Action No. 11-cv-00134 (N.D. Cal.)

- Represented plaintiff, VA Filtration USA LLC
- Patent Infringement (U.S. Patent Nos. 7,651,616 and 7,829,977)
- Concerning wine taint removal
- Case settled

Vinovation, Inc. and Oenovation International LLC v. VA Filtration, Civil Action No. 06-cv-02026 (N.D. Cal.)

- Represented defendant, VA Filtration
- Patent Infringement (U.S. Patent No. 5,480,665)
- Concerning wine filtration technology
- Case settled

The New York Times Company v. Lodsys, LLC, Civil Action No. 11-cv-04004 (E.D. Ill.)

- Represented declaratory judgment plaintiff, The New York Times Company
- Patent Infringement
- Concerning features of The New York Times website
- Obtained favorable settlement for client

Globespan Virata, Inc. v. Texas Instruments, et al., Civil Action No. 03-cv-02854 (D.N.J.)

- Represented declaratory judgment defendant, Texas Instruments
- Patent Infringement
- Concerning DSL modems
- Obtained verdict for \$112,000,000

Representative Section 337 Cases

- Certain Laser Imageable Lithographic Printing Plates (Inv. No. 337-TA-636)
- Certain Hard Disk Drives, Components Thereof, and Products Containing the Same (337-TA-616)
- Certain Switches and Products Containing the Same (Inv. No. 337-TA-589)

Representative PTAB Cases

CBM2018-00037 (U.S. Patent No. 7,134,087)

- Represented cxLoyalty, petitioner
- Original claims 1-15 determined to be unpatentable under 35 U.S.C. § 101
- Substitute claims 16-23 determined to be patentable under 35 U.S.C. § 101
- Concerning loyalty program and the abstract idea of brokering an exchange between participants using different forms of value
- Appeal to United States Court of Appeals for the Federal Circuit is pending

IPR2017-01623 (U.S. Patent No. 8,530,250)

- Represented Nichia Corp., patent owner
- Claims 1, 7, 17, 19, and 21 upheld
- Concerning a simple and low-cost method for manufacturing multiple light emitting devices (LEDs) in a short time
- Managed “swear behind” team leading to successful result. Nichia successfully swore behind the prior art at issue (Koung) by showing conception of the invention claimed in the “250 patent before the filing date of Koung, combined with diligence in reduction to prior art.

Representative TTAB Cases*Valentino USA, Inc. v. Florence Fashions (Jersey), Ltd., Opposition Nos. 91094961, 91095203; Cancellation Nos. 92029390, 92029476*

- Represented Valentino USA, Inc., opposer
- Oppositions were sustained and both petitions to cancel were granted.

Valentino S.p.A. v. Matsuda & Co., Opposition Nos. 91174169, 91174171, 91174183, 91174195, 91174315, and 91179386

- Represented Valentino S.p.A., opposer
- Oppositions were sustained.

Fiat Group Automobiles S.p.A. v. ISM, Inc., Opposition No. 91190607

- Represented Fiat Group Automobiles S.p.A., opposer

Representative Other Matters

- Representation of clients against numerous NPEs, including Sound View, Sisvel, Driessen, Lodsys LLC, Webvention, Boadin Technologies, SimpleAir, Flatworld Interactives, Rosetta-Wireless Corp., Packet Tread LLC, Cypress Lake Software, LoneStar, Bell Semiconductor, and others
- Representation of clients in arbitration proceedings, including AAA
- Counselling of clients with respect to privacy issues
- Counselling and contract work regarding technology-related contracts (e.g., licenses, assignments, joint development agreements, reseller agreements, non-disclosure agreements)
- Legal reads of manuscripts
- Pre-litigation representation, threatened litigations, settlement negotiations
- Opinion work (e.g., non-infringement, validity, essentiality, freedom to operate)
- Counselling in Proposition 65 matters

Representative *Pro Bono* Work

- Bethesda African Cemetery Coalition et al. v. Housing Opportunities Commission of Montgomery County (C.A. No. 486734V), Montgomery County Circuit Court.
 - Represented Plaintiffs, Bethesda African Cemetery Coalition, Reverend Olusegun Adebayo, and three descendants of individuals buried in Moses African Cemetery in lawsuit to stop the sale of parking lot built atop the Moses African Cemetery, and to force HOC of Montgomery County to comply with statutes requiring the bringing of a court action in order to sell a former burial ground for a non-burial purpose.
 - Won temporary restraining order preventing HOC of Montgomery County's sale of land to Charger Ventures.
 - Won preliminary injunction preventing HOC of Montgomery County's sale of land to Charger Ventures.
- Representation of numerous detainees in Guantanamo Bay, Cuba in *habeas corpus* proceedings.
- Innocence project.

HONORS & RECOGNITIONS

Washington, D.C. Super Lawyers (2022)

Washington, D.C. Super Lawyers "Rising Star" (2013-2020)