



## Oleg Elkhunovich

### Partner

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## Overview

Oleg Elkhunovich, a partner in the Los Angeles office, has a broad practice in high-stakes commercial litigation, representing both plaintiffs and defendants in a variety of legal practice areas including intellectual property, antitrust, and class actions. With a strong background in Computer Science and Engineering, Elkhunovich often litigates cases involving complex technology issues, including in the areas of patent, trade secrets, and consumer protection.

Elkhunovich is a trusted trial lawyer with significant courtroom experience. He has tried two cases in two consecutive years at the International Trade Commission, which hears only a limited amount of complex intellectual property matters on extremely expedited schedule. In these matters, involving television silicon tuner chips and wearable activity trackers, Elkhunovich handled the cross examination of technical and economic experts and fact witnesses, as well as presentation of key company witnesses.

Elkhunovich has also argued case dispositive motions in state and federal courts. On behalf of former owner of an NHL hockey team, Jerry Moyes, Elkhunovich argued a series of motions for summary judgment and subsequent appeals, which resulted in slashing by over 90 percent the damages of over \$145 million sought by the NHL ([Jerry Moyes wins legal fight with NHL over Coyotes losses, NHL Loses Arizona Coyotes Bankruptcy Decision](#)). On behalf of national online real estate marketplace, Zillow, Elkhunovich argued a motion to dismiss, which resulted in dismissal of most of plaintiff's claims ([Zillow Hobbles Real Estate Rival's Trade Secrets Suit](#)).

In addition to trial work, Elkhunovich has also handled a number of appeals in both federal and state courts, and argued before the California Court of Appeals.

In 2014, Elkhunovich was one of the lawyers nominated for Public Justice's [Trial Lawyer of the Year Award](#) for his work on behalf of the economic loss class action plaintiffs in multi-district litigation against Toyota, which culminated in a \$1.6 billion settlement benefiting approximately 22 million class members—the largest settlement involving defective automobiles at that time.

Elkhunovich is an active member of a number of bar groups and associations, including the Judge Paul R. Michel Intellectual Property American Inn of Court, for which he has served as team captain in three terms. Elkhunovich also serves on the Planning Committee for the USC Intellectual Property Institute.

Elkhunovich earned a Bachelor of Science in Computer Science and Economics and a Masters of Science in Computer Science degrees from Yale University, and graduated cum laude from the University of Pennsylvania Law School. Before joining Susman Godfrey, Elkhunovich clerked for then-Chief Judge Anthony J. Scirica on the United States Court of Appeals for the Third Circuit.

## Education

- Yale University (B.S., Computer Science and Economics, 2001)
- Yale University (M.S., Computer Science, 2002)
- University of Pennsylvania Law School (J.D., *cum laude*, 2009)

## Clerkship

Law Clerk to the Honorable Anthony J. Scirica, U.S. Court of Appeals for the Third Circuit (2009-2010)

## Notable Representations

### **INTELLECTUAL PROPERTY**

*Finjan, Inc. v. Bitdefender, Inc., et al.* (N.D. Cal.)

Elkhunovich is defending Bitdefender, a Romanian cybersecurity and anti-virus company, against claims of patent infringement by Finjan.

*Uniloc U.S.A., et al. v. Bitdefender Inc.* (E.D. Tex.)

Elkhunovich is defending Bitdefender, a Romanian cybersecurity and anti-virus company, against claims of patent infringement by Uniloc. In December 2017, the district court dismissed all claims against Bitdefender, having found the two asserted patents invalid as drawn to ineligible subject matter.

*Jawbone v. Fitbit (Certain Activity Tracking Devices, Systems and Components Thereof)* (International Trade Commission)

Elkhunovich represented a pioneer in wearable fitness tracking technology, Jawbone, in two separate, and widely covered, ITC Investigations and a series of lawsuits in federal courts in California and Delaware dubbed “activity tracker wars” by the media. Following a successful motion for summary determination of ineligibility of Fitbit’s patents, Fitbit terminated the ITC investigation it initiated against Jawbone. In Jawbone’s ITC action against Fitbit, Elkhunovich was responsible for all aspects of the patent infringement claims, arguing at the claim construction hearing and working with technical experts on infringement and validity issues. At the ITC hearing in May 2016, Elkhunovich presented and cross-examined a number of fact and expert witnesses, including Fitbit’s economic and technical experts.

*Certain Television Sets, Television Receivers, Television Tuners, and Components Thereof* (International Trade Commission)

As the lead associate representing a patent-holder before the International Trade Commission, Elkhunovich had a broad range of responsibilities from pre-filing investigation to post-hearing briefing, including overall formulation and execution of the case strategy on issues of patent infringement and validity. During discovery, Elkhunovich took a number of technical fact witness depositions and the key technical expert deposition. Elkhunovich then cross-examined the same witnesses during the hearing, in addition to presenting oral argument on a variety of motions.

*Top Agent Network v. Zillow, Inc.* (N.D. Cal.)

Elkhunovich successfully defended Zillow against a barrage of claims by Top Agent Network, Inc (TAN). Elkhunovich briefed and argued motions to dismiss, which led to ultimate dismissal of 11 out of 13 of TAN’s claims. Click [here](#) or [here](#) for more. The case settled on favorable terms following Mr. Elkhunovich taking depositions of TAN’s CEO and CTO.

## CLASS ACTION

*In re Qualcomm Antitrust Litigation* (N.D. Cal.)

Elkhunovich is working with a team of Susman Godfrey attorneys and co-counsel as Court-appointed co-lead counsel for class action plaintiffs in the multi-district litigation involving claims that Qualcomm's intellectual property licensing and other business practices in the market of baseband processors for cellular communications violate federal and state antitrust laws.

*Patane et al. v. Nestle Waters North America, Inc.* (D. Conn.)

Elkhunovich, with a team of Susman Godfrey attorneys and co-counsel, is representing consumer plaintiffs in a putative class action against Nestle involving claims that Nestle's "Poland Spring" brand drinking water is not "spring water" as advertised.

*Toyota Motor Corp. Unintended Acceleration Litigation* (C.D. Cal.)

With the Managing Partner of Susman Godfrey's Los Angeles office Marc Seltzer, Elkhunovich worked on behalf of the economic loss class action plaintiffs in multi-district litigation against Toyota. After three years of hard fought litigation, a historic settlement was reached valued by the Court at approximately \$1.6 billion, with the class receiving net benefits valued at approximately \$1.4 billion. Elkhunovich was one of the attorneys working on the *Toyota Unintended Acceleration* litigation nominated for the [2014 Trial Lawyer of the Year award by Public Justice](#).

## COMMERCIAL LITIGATION

*Peak Web LLC v. Machine Zone, Inc.* (Cal. Super. Ct for Santa Clara County)

Elkhunovich represented Peak Web, in its \$100+ million lawsuit against online gaming company Machine Zone for breach of contract, fraud, and trade secret misappropriation. Elkhunovich successfully moved to have the case remanded to California state court after Machine Zone attempted to delay the trial date by removing it to federal bankruptcy court. Elkhunovich later successfully argued in the United States Bankruptcy Court for the District of Oregon that a bulk of Machine Zone's affirmative claims against Peak Web were precluded by the bankruptcy bar date. The matter was settled on confidential terms in late 2017.

*Pauliewood v. Nerium International LLC* (Cal. Super. Ct. for Los Angeles County)

Elkhunovich is representing an individual distributor against Nerium, a multi-level marketing company, challenging the enforceability of non-compete clauses in Nerium's contracts with its distributors.

*National Hockey League v. Jerry Moyes, et al.* (Bankr. D. Az.)

Elkhunovich defended former Coyotes hockey team owner, Jerry Moyes, and his family against National Hockey League's breach of contract and other claims for over \$145 million in a long-lasting dispute that was initiated in New York State Court, but subsequently removed and transferred to the Arizona Bankruptcy Court. The case was resolved in 2016 on favorable terms after Moyes prevailed in having most of the NHL's claims dismissed on motions for summary judgment, which Elkhunovich drafted and argued with Susman Godfrey's founding partner, Steve Susman.

*Special Value Continuation Partners, et al. v. Bachmann, et al.* (Tex. Dist. Ct. for Harris County)

Elkhunovich defended former General Counsel and President of Trico Marine Services in a \$25 million fraud claim against him and the company's other officers and directors, brought by a leading multi-strategy alternative investment management firm that loaned money to the company prior to its bankruptcy filing.

## Honors and Distinctions

- Named a [Plaintiffs' Lawyer Trailblazer](#) by the *National Law Journal* (ALM, 2020)

- Finalist, Public Justice Trial Lawyer of the Year Award (with Marc M. Seltzer, Robert S. Safi, and co-counsel)
- Southern California Super Lawyers Rising Star, (Thomson Reuters 2013-2017)
- Senior Editor, University of Pennsylvania Law Review
- Certificate in Business and Public Policy, The Wharton School of the University of Pennsylvania
- Select Program in Engineering, Yale University

## Articles

“The Supreme Court Holds the Federal Arbitration Act Trumps State-Law Public Policy,” Century City Lawyer, June 2011

## Professional Associations and Memberships

- State Bar of California
- United States District Court for the Central District of California
- United States Court of Appeals for the Third Circuit
- American Bar Association
- The Judge Paul R. Michel Intellectual Property American Inn of Court

## Language

Russian