

**David D. Cross**Partner
dcross@crowell.com**Washington**1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595
Phone: 202.624.2774
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- E-Discovery & Information Management
- Litigation
- Complex Litigation
- Intellectual Property
- Trial Practice
- Antitrust

David D. Cross is a partner in the Litigation Group and E-Discovery & Information Management Group in the firm's Washington, D.C. office. David's practice includes antitrust, intellectual property, health care, securities, and general commercial litigation, representing both plaintiffs and defendants in federal and state courts as well as arbitration. His patent litigation experience includes representing complainants and respondents in fast-paced Section 337 actions before the United States International Trade Commission.

David recently served as lead trial counsel for DuPont against monopolization counterclaims brought by Kolon Industries. In April 2012, on the eve of trial, the Eastern District of Virginia granted summary judgment for DuPont and dismissed the claims with prejudice. This was the second major win in Crowell & Moring's work for DuPont stemming from trade secrets litigation against Kolon. The first was a jury award of \$919.9 million for DuPont for theft of trade secrets related to DuPont's Kevlar® business and technology.

David also has extensive experience advising clients on matters regarding electronically stored information (ESI), including developing comprehensive discovery guidelines and protocols for Fortune 500 companies. He is Co-Chair of the American Bar Association's E-Discovery Subcommittee for the Section of Litigation and a member of the Sedona Conference, Working Group 1, which develops principles and best practice recommendations for electronic document retention and production in civil litigation. David was one of the lead attorneys responsible for the litigation that produced the groundbreaking e-discovery decision *Hopson v. City of Baltimore*, 232 F.R.D. 228 (D. Md. 2005), which gave rise to Fed. R. Evid. 502. His experience includes developing and negotiating comprehensive discovery plans; designing and implementing complex electronic search protocols; preserving and producing data within dynamic databases; developing and managing all aspects of preservation, collection, processing, review and production protocols involving massive amounts of ESI stored within sophisticated systems; preparing, defending and examining corporate and percipient witnesses on document

retention and discovery efforts; and prosecuting and defending spoliation claims. David recently successfully defended a Fortune 100 company against a spoliation motion seeking broad, dispositive sanctions for alleged preservation failures brought on the eve of trial in the *In re DRAM Antitrust Litigation* in the Northern District of California.

David has a robust *pro bono* practice. He regularly represents parents and serves as *Guardian ad Litem* in child custody cases. He also has represented, among others, indigent families facing eviction proceedings as well as the government in cases to terminate parental rights for neglect or abuse. He previously represented a putative class of African-American police officers in the *Hopson* matter alleging race discrimination by the Baltimore City Police Department, and the case succeeded in obtaining much-needed relief for the aggrieved officers.

Representative Matters

- Representation as special discovery counsel for a Fortune 500 company involving civil fraud claims.
- Representation of a Fortune 100 company -- one of the oldest and leading scientific innovators -- as a counterclaim-defendant in a case alleging monopolization involving para-aramid products. The court granted summary judgment for the client on all claims.
- Representation of a Class I railroad in defense of multi-district class action litigation alleging conspiracy to fix fuel surcharge prices.
- Representation of Fortune 500 technology company and other large commercial purchasers of dynamic random access memory (DRAM) as opt-outs in multi-district class action litigation to recover damages resulting from price-fixing cartel among certain DRAM suppliers. The litigation obtained favorable settlements up to the eve of trial.
- Representation of Enron Creditors Recovery Corporation (ECRC) in bankruptcy litigation against two international financial institutions arising from the collapse of Enron Corporation in 2001. The litigation settled on the eve of trial, with settlements for ECRC valued at nearly \$6 billion.
- Representation of Fortune 500 imaging company in patent infringement action involving process for virtual proofing of digital print jobs. The case settled on confidential terms.
- Representation of large international biotechnology company in dispute pertaining to the licensing of proprietary human genome data and technology. The case settled on confidential terms after trial began.
- Representation of leading disc-drive maker in patent infringement action as respondent before the U.S. I.T.C. and as defendant in parallel action in federal district court. The cases settled on confidential terms on the eve of trial.

- Representation of international licensing companies as complainants in patent infringement action before the I.T.C. regarding color televisions and display monitors. The case settled on confidential terms after the close of trial.
- Representation of Fortune 100 communications company in software licensing dispute. The case settled on confidential terms on the eve of trial.
- Representation of one of the largest U.S. franchise lenders as a defendant in a multi-district litigation against claims for securities fraud arising from alleged misrepresentations in the company's private placement offerings for securitized loans. The case settled on confidential terms before trial.
- Representation of a litigation trust established on behalf of the former bondholders of a bankrupt company in an action against the former controlling shareholder and certain former officers and directors for breaches of fiduciary duty and theft of trade secrets. The litigation trust recovered \$400 million in a settlement shortly before trial.

Clerkship Experience

David clerked for the Honorable Michael B. Mukasey, former Chief Judge of the Southern District of New York and United States Attorney General.

Other Experience

David joined Crowell & Moring after working in the New York and Washington, D.C. offices of Weil Gotshal & Manges LLP.

While in law school, David served as an articles editor for the Journal of Law & Social Problems, a Moot Court Editor, and a Teaching Fellow for courses in Trial Practice and Negotiations.

Education

- Furman University, B.A. Philosophy *Phi Beta Kappa*
- Columbia Law School, J.D.

Affiliations

Admitted to practice: District of Columbia, New York, U.S. District Court for the District of Maryland

Other Affiliations

David serves as a member of the Board of Directors of the American Mock Trial Association (AMTA), which is a nonprofit organization that organizes intercollegiate mock trial competitions around the country. He also serves on the Board of Directors for the Washington, D.C. Chapter of the Columbia Law School Alumni Association. David is a member of the American Bar Association's Section of Litigation and committees for Alternative Dispute Resolution, Commercial and Business Litigation, and Trial Practice.

Publications

- "Using Electronic Search Tools and Search-Methodology Experts in E-Discovery: A Discussion of Recent Case Law and Other Authorities," *Managing E-Discovery and ESI: From Pre-Litigation through Trial*. Eds. Michael D. Berman, Courtney Ingrassia Barton, and Paul W. Grimm. (ABA, 2011). Co-Authors: David D. Cross and Sanya S. Kerksiek.
- "Protection from ESI Waiver under FRE 502," *Managing E-Discovery and ESI: From Pre-Litigation through Trial*. Eds. Michael D. Berman, Courtney Ingrassia Barton, and Paul W. Grimm. (ABA, 2011). Co-Authors: David D. Cross, Jared S. Hosid, and Courtney I. Barton.
- "Attacking the Cloud: Offensive Discovery of Cloud-Based Data," *E-Discovery: Practical Solutions for Dealing with ESI*, ABA Section of Litigation and ABA Section of Science & Technology Law (May 19, 2011). Co-Authors: David D. Cross and Karen Morgan.
- "E-Discovery and Cloud Computing: Control of ESI in the Cloud," *EDDE Journal*, a publication of the E-Discovery and Digital Evidence Committee, ABA Section of Science & Technology Law, Vol. 1, Issue 2 (Spring 2010). Co-Authors: David D. Cross and Emily T. Kuwahara.
- "*Rimkus v. Cammarata: Zubulake* Revisited Again," *Digital Discovery & E-Evidence*, BNA, Inc., Vol. 10, No. 3 (March 1, 2010). Co-Authors: David D. Cross and Jared S. Hosid.
- "Reducing the costs of privilege reviews and logs," *The National Law Journal*, In Focus: E-Discovery (March 23, 2009). Co-Authors: Jeane A. Thomas, David D. Cross and Courtney Ingrassia Barton.
- "Using Electronic Search Tools and Experts in E-Discovery: A Discussion of Recent Federal Decisions," *ABA Section of Litigation & Center for Continuing Legal Education* (February 2009). Co-Authors: David D. Cross and Sanya Sarich Kerksiek.
- "Protecting the Privilege: New Federal Rule of Evidence 502," *ABA In-House Litigator*, Vol. 23, No. 2 (Winter 2009). Co-Authors: Courtney Ingrassia Barton and David D. Cross.

- "Ethics and E-Discovery: 'Reasonable Inquiry' in The Wake of *Qualcomm v. Broadcom: Part II*," *Digital Discovery & E-Evidence*, BNA, Inc. (December 24, 2008). Co-Authors: David D. Cross and Ty Carson.
- "Ethics and E-Discovery—'Reasonable Inquiry' in The Wake of *Qualcomm v. Broadcom: Part I of II*," *Digital Discovery & E-Evidence*, BNA, Inc., Vol. 8, No. 12 (December 1, 2008). Co-Authors: David D. Cross and Ty Carson.
- "10 Steps for Conducting E-Discovery Involving Dynamic Databases," *Commercial & Business Litigation*, ABA Section of Litigation, Vol. 9, No. 3 (Spring 2008). Author: David D. Cross.
- "Open Health Care Fraud Investigation and Prosecution in South Carolina," *NAAG Health Care Fraud Rep.* 6 (August 1996). Author: David D. Cross.

Alerts & Newsletters

- "Spoliation Sanctions: A Tale of Two Courts," *Electronic Discovery & Information Management Alert* (March 16, 2010). Contacts: Jeane A. Thomas, David D. Cross.
- "Congress Passes New Federal Rule of Evidence to Address Privilege Issues," *Electronic Discovery & Information Management Alert* (September 9, 2008). Contacts: Jeane A. Thomas, Andrew H. Marks, David D. Cross.

Speaking Engagements

- "E-Discovery Ain't Just About Email: Hot Topics in Preservation and Production," The Fifth Annual National Institute on E-Discovery: Practical Solutions for Dealing with ESI, ABA Section of Litigation and Center for CLE, Washington, D.C. (May 19, 2011). Organizer and moderator: David D. Cross; with panelists: Hon. John M. Facciola, Richard Finkelman, Lisa Balter, and Matthew Hagarty.
- "Rimkus Consulting Group v. Cammarata and Pension Committee v. Banc of America Securities LLC: When Is the Loss of ESI Sufficient for Severe Sanctions and What Can Parties Do to Avoid Sanctions?" ABA Section of Litigation and Center for CLE Teleconference and Live Audio Webcast (June 15, 2010). Moderator: David D. Cross; with panelists Chief Magistrate Judge Paul W. Grimm (D. Md.) and J. R. Nunn.
- "E-Discovery and Web 2.0," The Fifth Annual National Institute on E-Discovery: Practical Solutions for Dealing with ESI, ABA Section of Litigation and Center for CLE, Washington, D.C. (May 27, 2010). Organizer and moderator: David D. Cross; with panelists: Courtney Ingraffia Barton, Jerone J. English, Richard Finkelman, and David Yerich.

- "E-Discovery in IP Litigation: Cost-Saving Strategies for Preserving, Obtaining and Protecting Electronically Stored Information," Stafford Legal Teleconference (September 16, 2009). Faculty Member: David D. Cross.
- "Working with Rule 502: Perils and Promises," BNA Audioconference (June 17, 2009). Panelists: David D. Cross and Judge Peter Flynn; Moderator: Ron Hedges.
- "Will the Cost of E-Discovery End Litigation as We Know It Today," The Third Annual National Institute on E-Discovery: Practical Solutions for Dealing with ESI, ABA Section of Litigation and Center for CLE, Chicago, Illinois (May 22, 2009). Organizer and moderator: David D. Cross; with panelists: Alexandra Buck, Adam Cohen, Loren Kieve, and Marie Lona.
- "E-Discovery & Web 2.0," The Fourth Annual National Institute on E-Discovery, ABA Section of Litigation and Center for CLE, Washington, D.C. (May 2009). Conference organizer, host and moderator: David D. Cross; with panelists: Courtney Barton, Jerone English, David Yerich and Rich Finkelman.
- "Case Law Spotlight," E-Discovery Best Practices for Complex Matters, Applied Discovery Regional CLE: Washington, D.C. (April 30, 2009). Panelists: Courtney I. Barton and David D. Cross.
- "The Use of Electronic Search Tools and Experts in Discovery," ABA Section of Litigation and Center for CLE Teleconference and Live Audio Webcast (December 9, 2008). Panelists: David D. Cross, with Magistrate Judge John M. Facciola (D.D.C.) and Adam Cohen (moderator: Aron Raskas).
- "Ethics & E-discovery: 'Reasonable Inquiry' in the Wake of *Qualcomm v. Broadcom*," ABA Section of Litigation and Center for CLE Teleconference and Live Audio Webcast (September 30, 2008). Moderator: David Cross; with panelists Chief Magistrate Judge Paul W. Grimm (D. Md.), William Butterfield and Stacey Slaughter.
- "E-Discovery 'Best Practices'," Counsel to Counsel: Managing Discovery in the Digital Age, Philadelphia, PA (September 27, 2006). Author: David D. Cross.
- "Dynamic Databases and E-Discovery," 2nd E-Discovery Conference, New York, NY (September 20, 2006). Authors: David D. Cross and Eric M. Matrejek (FTI Consulting).