

## **Hon. Susan G. Braden (Ret.)**

**Arbitrator, Mediator, Special Master, Mock Trials, Monitor, Corporate Investigations**



*Chief Judge Susan G. Braden was appointed in 2003, by President George W. Bush, to the United States Court of Federal Claims which has exclusive jurisdiction over cases against the federal government arising from: breach of contract/false claims; bid protest; patent and copyright infringement; land, water, and certain environmental disputes. On March 13, 2017, she was designated as Chief Judge. Since her retirement from the federal bench, she was appointed by the Secretary of Commerce to the United States Patent and Trademark Office (USPTO) Patent Public Advisory Committee to advise on management of patent and trademark policy, goals, performance, budget, and user fees. In that capacity she served as Chair of the Artificial Intelligence, International, and Legislative Committees. Judge Braden also was designated by the U.S. Trade*

*Representative as one of ten arbitrators to resolve disputes arising under the United States-Mexico-Canada-Agreement and served as the Jurist-In-Residence at the Antonin Scalia Law School, George Mason University, in the Center for Intellectual Property Protection. She also was appointed as a Public Member of the Administrative Conference of the United States, a Fellow of the American Bar Association, and serves on the Board of Directors of privately held companies in the software/artificial intelligence, medical/IT & logistics solutions provider, and major construction industries.*

During her tenure on the federal bench, Judge Braden issued 456 published opinions and awarded over \$3.5 billion in affirmed damages. Many of these cases were of first impression: *e.g.*, defining the scope of the Federal Acquisition Regulation “Rights in Data-General Clause;” recognizing indirect independent R&D costs in military contracts; awarding electric utility companies multi-million dollar damages for breach of nuclear waste disposal contracts and awarding four major oil companies \$99 million in CERCLA costs, under a “hold harmless” clause; awarding a major oil company damages for Department of Energy misconduct in the allocation of California oil reserves initially valued at \$437 billion. She also adjudicated patent infringement cases concerning night vision goggle and drone retrieval technologies that resulted in a multi-million settlements She defined the parameters of a “willful” violation of Foreign Financial Transactions



Act. And, Judge Braden handled such cutting-edge bid protests, as: the first federal contract for cloud computing services worth \$60 million; blocking the continued purchase of Russian-made rocket engines used to boost military satellite launches and oversaw the renegotiation of “block buy” contracts to authorize Space X to launch national security payloads that resulted in \$40 billion savings to the Air Force, according to the *Washington Post*.

In 2018, the Howard University Law School recognized Judge Braden for “The Advancement of Intellectual Property Law.” In 2017, she was appointed to the U.S. Administrative Conference’s Judicial Review-Agency Guidance Project. Judge Braden was one of ten members of the Judicial Advisory Board that reviewed and edited the Federal Judicial Center’s Patent Case Management Judicial Guide, 3rd ed. (2016). In 2015, the American Law Institute named her as one of seven Judicial Advisors to the proposed RESTATEMENT OF THE LAW ON COPYRIGHT. In 2013, Judge Braden was named to the American Intellectual Property Law Association’s Judge’s Special Committee and Chair of the Court’s Advisory Council’s Intellectual Property Committee to draft the Court’s new Patent Rules. In 2012, she received the Linn Inn Alliance Distinguished Service Medal at the NY Intellectual Property Lawyers Association Annual Dinner. In 2012, she was named Chair of the ABA’s Section of Intellectual Property Law Task Force on Small Patent Claims. During 2010-11, Judge Braden served as President of the Giles S. Rich American Inn of Court, affiliated with the Federal Circuit. From 2009-12, she served on the ABA’s Judges’ Standing Committee on Ethics and Professional Responsibility. In 2007, she was elected as a Member of the American Law Institute and worked on the RESTATEMENT OF LAW THIRD, RESTITUTION AND UNJUST ENRICHMENT and, in 2004, was recognized as a Senior Fellow of the ABA’s Administrative Law and Regulatory Section.

Judge Braden began her legal career in the Honor Law Program of the Department of Justice’s Antitrust Section, where she served as a Senior Trial Counsel in the Energy Section and led the investigation of the merger of two leading domestic oil companies requiring the divestiture of a major oil refinery in California. In addition, she headed litigation that conditioned the operating licenses of two nuclear power plants in Texas. She was also assigned to represent the Antitrust Division at exercises conducted under the auspices of the Organization for Economic Co-Operations and Development (OECD) in Paris and Dusseldorf to prepare for international oil supply shortages. She also led grand juries and litigated criminal price-fixing and merger cases. In 1981, she joined the Reagan Administration, serving as Counsel to two Chairmen of the Federal Trade Commission providing legal and strategic advice on major mergers.

In 1984, she entered private practice, representing clients in litigating statutory, administrative, and constitutional cases before federal and state trial and appellate courts. In particular, her work litigating transformational copyright and trade secret cases concerning computer software in the United States and France received favorable notice in the *Wall Street Journal*, *New York Times*,



and *National Law Journal*. She also represented small and mid-sized manufacturing firms before almost every federal agency, testified before Congress, and was a principal lobbyist for the Emergency Oil and Steel Loan Guarantee Act of 1999, that established a \$1 billion federal loan guarantee program to assist bankrupt and troubled steel mills and small oil companies. She also helped create and served as General Counsel to an integrated steel company in Alabama that employed over 1, 800 Union workers. During that time, she worked closely with Southern's Executive Vice President and General Counsel on projects of mutual interest, including blocking the entry of a competitor to be serviced by the Tennessee Valley Authority and converting the plant to an electric mill manufactured in Switzerland.

Since her retirement from the federal bench in May 2019, Judge Braden has served as an arbitrator, mediator, and mock trial judge including as a U.S. District Court appointed mediator in a dispute between industrial customers of the largest electric utility company in a mid-west state. In 2022, she was invited to serve on the Academy of Court-Appointed Neutrals.

Judge Braden received a B.A. degree (1970) and J.D. degree (1973) from Case Western Reserve University. She also attended post graduate courses at the Harvard Law School in the summer of 1978 and completed Harvard Law School's Program on Negotiation in 2020. She also received a Certificate in Business Administration from Georgetown University in 2020.

## **Areas of Expertise:**

- ANTITRUST & COMPETITION
- BUSINESS & COMMERCIAL DISPUTES
- COMPLEX & MASS LITIGATION
- CONSTRUCTION
- CONTRACTS
- ELECTRONIC DISCOVERY
- ENERGY, OIL, GAS & WATER
- ENVIRONMENTAL / CERCLA
- FINANCIAL SERVICES
- INTELLECTUAL PROPERTY /TECHNOLOGY
- LICENSING (SOFTWARE & TECHNOLOGY)
- PATENT
- PRODUCT LIABILITY
- REGULATORY AND COMPLIANCE
- SPECIAL MASTER
- STANDARD ESSENTIAL PATENTS (SEP)
- TRADE SECRET
- TRADEMARK & COPYRIGHT

## **SELECTED JUDICIAL OPINIONS (2003-2018):**

### **CONSTRUCTION AND COMMERCIAL CONTRACTS:**

- Anthem Builders v United States, 121 Fed. Cl. Fed. Cl. 15 (2015) – jurisdiction, acceptability of bid bonds by individual surety, performance, and payment bonds.
- American Capital Corp. v. United States, 58 Fed Cl. 398 (2003); 59 Fed. Cl. 563 (2004); 60 Fed. Cl. 294 (2004) 65 Fed. Cl. 241(2005); 66 Fed. Cl. 315(2005) – series of opinions concerning jurisdiction, Financial Institution Reform Recovery & Enforcement Act, breach of contract, awarding \$41 million damages.
- ATK Thiokol, Inc., v. United States, 68 Fed. Cl. 612 (2005); 72 Fed. Cl. 306 (2006); 76 Fed. Cl. 654 (2007)- series of opinions concerning jurisdiction, defining scope of the Federal Acquisition Regulation “Rights in Data-General Clause;” first recognition of indirect independent R&D costs in military contracts (launch vehicles).
- AT&T Corp. and Lucent Technologies v. United States, 69 Fed Cl. 547 (2006); 69 Fed Cl. 675 (2006); 76 Fed. Cl. 297 (2007)- series of opinions determining that whether the sale of some, but not all, of the assets of a business unit was a “segment closing” under the Amended Cost Accounting Standard 413 required a fact-based inquiry.
- Google, Inc. and Onix Networking Corp. v. United States, 95 Fed Cl. 661 (2011) – enjoining Department of Interior’s \$60 million award of first cloud computing contract for violating the Competition In Contracting Act and restricting competition by imposing an “organized lock-in” on the agency.
- Hamilton Securities Advisory Services, Inc. v. United States, 60 Fed. Cl. 144 (2004); 60 Fed. Cl. 161(2004); 60 Fed. Cl. 296 (2004) – series of opinions concerning jurisdiction, contract for financial advisory services with HUD did not require contractor to design and run an optimization model creating a “bid floor” to achieve maximum proceeds in the auction of mortgage notes.
- Housing Authority of the County of Santa Clara v. United States, 125 Fed. Cl. 557 (2011), 126 Fed. Cl. 450 (2016) – granting plaintiff summary judgment and \$ 110.2 million damages in breach of contract/ Omnibus Appropriations Act of 2009.
- Maryland Enter. LLC v. United States, 116 Fed. Cl. 68 (2014) – breach of contract case, Anti-Assignments Act, anticipatory repudiation, cardinal change.
- Space Expl. Techs. Corp. v. United States, 116 Fed. Cl. 385 (2014), 2015 WL 176629 – enjoined purchase of Russian- made rocket engines used by the Air Force to boost Evolved

Expendable Launch Vehicles in violation of Executive Order 13,661 (imposing sanctions on certain Russian individuals) and oversaw the renegotiation of \$70 billion “block buy” contracts, resulting in \$40 billion savings to DOD, according to the Washington Post.

- Walsh Construction v. United States, 140 Fed. Cl. 385 (2018) – summary judgment for Government in differing site condition and breach of good faith and fair dealing claims.

#### **ENERGY AND OIL:**

- Chevron U.S.A. v United States, 71 Fed. 236 (2006); 72 Fed. Cl. 817 (2006); 76 Fed. Cl. 442 (2007); 80 Fed. Cl. 340 (2008); 83 Fed Cl 209 (2008); 83 Fed Cl. 209 (2008); 83 Fed Cl. 313 (2008); 110 Fed. Cl. 747 (2013); 116 Fed. Cl. 202 (2014) – series of opinions concerning jurisdiction, attorney-client, work product, and crime-fraud privileges, breach of contract arising from misconduct by the Department of Energy in the allocation of oil reserves in California, awarding damages and plaintiff attorney fees, as a sanction for the Government’s conduct concerning the assertion of privilege.
- Pacific Gas and Electric Co., Southern California Edison Company, San Diego Gas & Electric Company, and the People of California, 114 Fed Cl. 146 (2013); 122 Fed. Cl. 315 (2015); 121 Fed. Cl. 281 (2015) – series of opinions on jurisdiction, denying private utilities standing, because of no privity of contract with two federal power authorities involved in the sale of wholesale electric
- Shell Oil Co., et al. United States, 123 Fed Cl. 707 (2015); 130 Fed. Cl. 8 (2017) – series of cases concerning jurisdiction, breach of contract and awarding \$99.5 million damages and interest, arising from CERCLA costs incurred in operating refinery facilities.
- Systems Fuels v. United States, 66 Fed. Cl. 722 (2005); 73 Fed. Cl. 206 (2006); 78 Fed. Cl. 769 (2007); 79 Fed. Cl. 37 (2007) 79 Fed. Cl. 182 (2007); 92 Fed. Cl. 101 (2010); 111 Fed. Cl. 381 (2013); 120 Fed. Cl. 737 (2015) – representative of numerous breach of contract cases arising under the Nuclear Waste Policy Act with opinions concerning jurisdiction, liability, awarding multi-million dollar damages.

#### **PATENT:**

- Advanced Aerospace Technologies v. United States and Boeing, 122 Fed. Cl. 281 (2015), 124 Fed. Cl. 282 (2015) 125 Fed. Cl. 581 (2016) – series of opinions re construction of patent claims concerning launch and recovery system for unmanned aerial vehicle (drone) system used on Navy ships, infringement, attorney-client privilege.
- Beacon Adhesives, Inc. v. United States, 134 Fed. Cl. 26 (2017) – construction of patents claims concerning method of manufacturing Ammunition Articles Comprising Light-Curable Moisture Preventative Sealant.

- Honeywell International, Inc. v. United States, 65 Fed. Cl. 809(2005); 66 Fed. Cl. 400(2005); 70 Fed. Cl. 424 (2006); 71 Fed. Cl. 759 (2006); 81 Fed. Cl.224 (2008); 81 Fed. Cl. 514 (2008); 107 Fed Cl. 659(2012) – series of opinions re. construction of patent claims concerning night vision goggle technology, infringement, and 4.2% royalty damages (arising in standard setting) and delay compensation, Secrecy Act claims.
- Mynette Technologies, Inc. v. United States, 139 Fed. Cl. 336 (2018) – construction of patent means plus function claims concerning switchable e-passports, including shielding, radio frequency shielding, and Electronically switchable RFID Tags.
- USHIP v. United States and IBM Corp., 98 Fed. Cl. 396 (2011); 102 Fed. Cl. 326 (2011) – construction of patent claims concerning system for maintaining collected items/automatic package shipping machine and infringement claims.

#### **WATER AND LAND DISPUTES:**

- In Re Addicks and Barker Flood-Control Reservoirs v. United States, Civil Sub-Master Docket No.17-9002 – Downstream Cases- Managed potential class action pre-trial proceedings and appointment of lead counsel in Takings Clause claims. May 2019 trial date was delayed, because of Government shutdown.
- Davis Wetlands Bank, LLC v. United States, 114 Fed. Cl. 113 (2013) – Army Corps’ refusal to issue wetland credits to mitigation bank, as authorized by the Clean Water Act, was not a breach of contract.
- Sacramento Grazing Assn. v. United States, 66 Fed. Cl. 211 (2005); 96 Fed. Cl. 175; 2017 WL 5029063 (2017) – series of opinions concerning grazing and water rights in the State of New Mexico and impact of the Endangered Species Act on private property rights.
- Vane Minerals (US) LLC. v. United States, 111 Fed. Cl. 253 (2013) – granted motion to dismiss surface coal mining claims filed under Federal Land Policy and Mining Act of 1877, because of intervention in related federal cases.
- Waverly View Investors v. United States, 135 Fed. Cl. 750,136 Fed. Cl. 593(2018) – Takings Clause claim regarding potential CERCLA and Clean Water Act violations.

#### **OTHER:**

- Altair Global Credit Opportunities Fund (A) LLC et al v. United States, 138 Fed. Cl. 742 (2018) – determining that the members of an Oversight Board, established by the Puerto Rico Oversight, Management, and Economic Stability Act of 2016, were “Officers of the United States,” so that the Court had jurisdiction over Takings Clause claims concerning \$3.15 billion Puerto Rico bonds, secured by employer contributions to the Puerto Rico

Employee Retirement System, but stayed the case until a final decision issued in bankruptcy proceedings. Judge Braden also suggested the Oversight Board members were appointed in violation of the separation of powers. Subsequently, the United States Court of Appeals for the Second Circuit in *Aurelius Investment, LLC v. Commonwealth of Puerto Rico* (Nos. 18-18-1671, 18-1746, 18-1787) (Feb. 15, 2018) also held that the Oversight Board members were “Officers of the United States” and the appointment of the Board members violated the Appointment Clause of the Constitution.

- *American Airlines v. United States*, 68 Fed.Cl.723 (2005); 71 Fed Cl. 744 (2006); 75 Fed. Cl. 2237 (2006); 77 Fed. Cl. 672 (2007) – Government did not have authority to impose uncollected user fees on airline, either under the Immigration User Fee or Agriculture Inspection Fee Acts.
- *American Bankers Assn. Inc. v United States*, 135 Fed. Cl. 136 (2017) – trade association failed to allege individual monetary injury, nor did any member assign a right to recover, and neither the Federal Reserve Act nor Omnibus Budget Reconciliation Act of 1993 guaranteed a bank the right to receive a dividend rate at a rate certain or at the historical 6% rate.
- *Veterans Tech., LLC v United States*, 138 Fed. Cl. 121 (2018), 133 Fed. Cl. 146 (2017) – Small Business Administration Determination on Standards and Size Determination, denying a small defense contractor a contract awarded by the Ballistic Missile Defense System, was arbitrary, capricious, and not supported by the Administrative Record.
- Washington Legal Foundation- Legal Policy Advisory Board- The Nation’s Most Preeminent Non-Profit Law Firm Devoted Exclusively To Promoting, Protecting, And Preserving America’s Free-Enterprise System Though Litigation, Publication, And Communication.

## **BAR ADMISSIONS**

State of Ohio (inactive), District of Columbia, U.S. District Courts: District of D.C., Northern District of Ohio, Southern District of Michigan, Northern District of Alabama, Eastern District of New York; U.S. Court of Appeals: Second Circuit, D.C. Circuit, Federal Circuit; Supreme Court of the United States.

## **SELECTED PUBLICATIONS**

January 26, 2026- Author, “*Quo Vadis—Federal Trade Commission?*” C. Boyden Gray Center, for the Study of Administrative Law, Antonin Scalia School of Law, George Mason University, to be published in *Journal of Law, Economics, and Policy* (Spring 2026)<sup>9</sup> concerning *Trump v. Slaughter*, No. 25-5261 (U.S. argued December 8, 2025) and effect on pending congressional bills proposing to merge the FTC into the Department of Justice.



August 19, 2024-Author, “An Odor of Mendacity: The Campaign to Finalize NIST’s ‘March-In’ Rights, Legal Backgrounder, Washington Legal Foundation, available at <https://www.wlf.org/2024/08/19/publishing/an-odor-of-mendacity-the-campaign-to-finalize-nists-patent-march-in-rights-guidance>.

July 17, 2024- Author, “A Way Forward For The US Steel-Nippon Deal And Union Jobs,” Published in LAW 360, available at <https://doc-10-30-apps-viewer.googleusercontent.com/viewer/secure/pdf/d7um0cl4rsijqp0gdt85j7gfsken87pf/88dham645iu5aj03egn8e30bebhhhpnb/1724956650000/gmail/07591060516485944318/ACFrOgAy1Me3QcrrUmlGntZHxT06uZTPySDOpm1gl>.

August 1, 2023 – Author, “The New DOJ-FTC Merger Guidelines Should Provide for the Appointment of Competition Trustees,” Published in LAW 360, available at <https://www.wlf.org/2023/08/08/wlf-legal-pulse/wlf-advisory-board-member-suggests-unique-addition-to-proposed-merger-guidelines>.

July 11, 2023 – Cited in Council For Innovation Promotion, “Reaffirm and Refine A Government Agenda for Intellectual Property: The Biden Administration should continue rejecting efforts to misuse the Bayh-Dole Act and Section 1498,” available at <https://c4ip.org/wp-content/uploads/2023/07/Reaffirm-and-Refine-A-Government-Agenda-for-Intellectual-Property-July-2023.pdf>.

March 23, 2023 - Commentor and Consultative Member: “Patent Small Claims: Report to the USPTO,” Administrative Conference of the United States, available at <https://www.acus.gov/sites/default/files/documents/ACUS%20Report%20on%20Patent%20Small%20Claims%202023.pdf>.

March 20, 2023 - Co-Author with Professor Adam Mossoff, “U.S. Taxpayers Should Not Be Paying For Private Patent Infringement,” IPWATCHDOG, available at <https://ipwatchdog.com/2023/03/20/us-taxpayers-not-paying-private-patent-infringement/id=158073/>.

Fall 2022- Principal Author: “Section 1498(a): No RX For Lowering Pharma Prices,” 77 FOOD AND DRUG LAW JOURNAL 274 (2022).

### **SELECTED LECTURES & PRESENTATIONS**

Judge Braden is frequently invited to speak at legal and alternative dispute resolution conferences, seminars, and programs on domestic and international arbitration and mediation, patent and other intellectual property, antitrust and competition, and administrative law and policy. A complete list of her numerous appearances is available on request.



## **SELECTED PROFESSIONAL AND OTHER AFFILIATIONS**

American Law Institute, Supreme Court Historical Society, Washington Legal Foundation (Legal Policy Board); New Civil Liberties Alliance (Board of Advisors); U.S. Chamber of Commerce's Global Innovative Policy IP Alliance; Distinguished Scholar, Center for the Protection of Intellectual Property; Federalist Society (Madison Club); Washington National Opera (Inner Circle; University Club of Washington D.C.