

Legal News is part of our ongoing commitment to providing legal insight to our IP Litigation clients and colleagues.

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## **KSR v. Teleflex: The Supreme Court Rejects the Federal Circuit's Rigid Approach to Obviousness Determinations**

Barry L. Grossman

"It requires a very unusual mind to undertake the analysis of the obvious."<sup>1</sup>

In patent law it is not always obvious, or easy, to determine an "obvious" invention. Lawyers, judges, inventors, and business executives continue to struggle with this seemingly simple issue.

On April 30, 2007, the U.S. Supreme Court gave its current guidance on the subject when it unanimously reversed the U.S. Court of Appeals for the Federal Circuit in *KSR International Co. v. Teleflex Inc.* In the wake of the Supreme Court's decision, several questions leap to mind: Does *KSR* change the law? How will it affect litigation? Will patents be harder to obtain and enforce? This is the first time the Supreme Court has considered the question of obviousness under 35 U.S.C. § 103 in the 25-year history of the Federal Circuit. It is a significant decision that will affect how we obtain and litigate patents.

The *KSR* case concerns a basic issue of whether or not a claimed invention is patentable. The invention in this case was a mechanism that combined an electronic sensor with an adjustable automobile pedal so that the pedal's position could be transmitted to a computer that controlled the throttle in the vehicle's engine.

### **Obvious Inventions Are Not Patentable**

An applicant is not entitled to a patent if the differences between the invention sought to be patented and prior patents, prior publications, or other prior information are such that the invention as a whole "would have been obvious" at the time the invention was made to a person having ordinary skill in the technology to which the invention pertains. In applying this standard, the Federal Circuit has held that even if all of the elements of an invention can be found somewhere in prior patents, publications, or other available information, the invention still is not obvious unless there is a "teaching, suggestion, or motivation" to combine the prior information to create the claimed invention, with the "teaching, suggestion, or motivation" found in some place other than the inventors' disclosure.

<sup>1</sup>Alfred North Whitehead 1861-1947, British Mathematician, Philosopher.

The Supreme Court opinion reversed what it characterized as the Federal Circuit's "rigid approach" in analyzing the question of obviousness. In so doing, the Supreme Court's opinion re-emphasized that an obviousness determination required a "broad inquiry."

## Is KSR a Substantial Change in the Law?

One of the things that makes the KSR case so challenging is the widely divergent views on its interpretation. For example, Judge Holderman, Chief Judge of the U.S. District Court for the Northern District of Illinois, stated: "I believe the Supreme Court believes that it changed the law substantially, and it meant to."<sup>2</sup> Gerald J. Mossinghoff, former Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, and former President of the Pharmaceutical Research and Manufacturers of America, however, wrote that: "[i]t seems clear to me that the KSR case will not come close to producing a sea change in U.S. patent law."<sup>3</sup>

Judge Ellis, a senior judge on the U.S. District Court for the Eastern District of Virginia, the so-called "rocket docket," stated that KSR "raises the bar" for obtaining and enforcing patents.<sup>4</sup> However, Chief Judge Michel from the Court of Appeals for the Federal Circuit stated exactly the opposite. His view is that the standard for obviousness is statutory — courts cannot "raise or lower the bar."<sup>5</sup>

Perhaps the most graphic characterization of the KSR case was from Judge Kennelly, also on the U.S. District Court for the Northern District of Illinois. Judge Kennelly stated: "If I had to boil this case down into two things, it would be, number one, the Supreme Court is saying to the Federal Circuit, 'You're not the Supreme Court of patent law. We are.'" Number two, 'You've screwed it up.' I think that is the narrow holding of KSR, frankly."<sup>6</sup>

Because of the lack of consensus on its scope and impact, KSR is an important case that all patent litigants need to factor into their litigation strategies.

## Did the Supreme Court Create a Two-Tiered Patent System?

The KSR decision does not purport to make new law. The decision reaffirms and applies principles that the Supreme Court has articulated and applied in numerous patent precedents dating back to 1851.

KSR, however, describes two kinds of patents: (1) "combination" patents and (2) non-combination patents. A combination patent is one that "unites old elements with no change in their respective functions." The Court stated that: "For over half a century, the Court has held that a patent for a combination which only unites old elements with no change in their respective functions . . . obviously withdraws what is already known into the field of its monopoly and diminishes the resources available to skillful men."

The Supreme Court provides us some guidance on what it regards as obvious and what it regards as not obvious. For "combination" patents, KSR states that "when a patent 'simply arranges old elements with each performing the same function it had been known to perform' and yields no more than one would expect from such an arrangement, the combination is *obvious*." (Emphasis added.) Conversely, if the claimed invention is more than the predictable use of prior art elements according to their established functions, then the invention likely will be found to be not obvious.

Non-combination patents are those where "the claimed subject matter may involve more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement". The Court acknowledged, however, that for non-combination patents, "[f]ollowing these principles may be more difficult."

Yet, as a practical matter, most inventions in most technologies are made of old or familiar elements. As Judge Learned Hand observed almost 50 years ago, "substantially every invention" is a "combination of old elements." *Reiner v. I. Leon Co.*, 285 F.2d 501 (2nd Cir. 1960). Former Chief Judge Markey similarly noted "[t]here is not one word in the statute concerning 'combinations of old elements,' and nowhere does the statute concern itself with whether an invention is a 'combination.'" He also stated that if a combination-of-old-elements test was used to determine a patentable invention, it "would destroy the [patent] system."<sup>7</sup> More recently, the Court of Appeals for the Federal Circuit wisely noted that inventors "must work with old elements." *Fromson v. Advance Offset Plate*, 755 F.2d 1549, 1556 n.3 (Fed. Cir. 1985).

<sup>2</sup> A Panel Discussion on Obviousness in Patent Litigation: *KSR International v. Teleflex*, 6 J. MARSHALL REV. INTELL. PROP. L. 595, 600 (2007).

<sup>3</sup> *KSR v. TELEFLEX: HIGH COURTS' "OBVIOUSNESS" RULING NO SEA CHANGE IN PATENT LAW*, Washington Legal Foundation, Legal Backgrounder, Vol. 22 No. 21, June 8, 2007.

<sup>4</sup> Remarks at BNA-ABA Conference, Patent Obviousness: The Still-Evolving Standard, or Is It Back to the Future?, Arlington, Va., Oct. 1, 2007.

<sup>5</sup> *Id.*

<sup>6</sup> 6 J. MARSHALL REV. INTELL. PROP. L. 595, 607.

<sup>7</sup> H. Markey, *Why Not The Statute*, 65 J. Pat. Off. Soc. 331, 334 (1983).

## What's the Problem?

The Supreme Court identified three errors in the Federal Circuit's obviousness analysis. First, the Supreme Court held that "any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." This is in contrast to the Federal Circuit's rule that only problems addressed by the patentee could be considered as the source of a motivation to combine references. Thus, for example, under the logic of *KSR*, a prior patent seeking to solve a problem involving turbulent flow of air over the wing of an aircraft may be used against a medical device invention seeking to solve a problem involving turbulent flow of blood over a heart valve, since both arguably relate to the same problem — turbulence — and the same field of endeavor — fluid flow.

## A Person of Ordinary Skill Is Not an Automaton: Common Sense and the "Obvious to Try" Standard

Second, the Supreme Court held that the Federal Circuit had adopted too constricted a view of the person of ordinary skill in the art. Because "[a] person of ordinary skill also is a person of ordinary creativity, not an automaton," the fact that an invention is obvious to try may suffice to establish unpatentability.

When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product is not one of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious.

## Risk of Hindsight

Third, the Supreme Court explained that the Federal Circuit had overemphasized the risk that patent examiners and courts would fall prey to hindsight bias.

The Supreme Court cited and relied on only six of its many cases on obviousness:

- *Graham v. John Deere*
- *Hotchkiss v. Greenwood*

- *A&P v. Supermarket Equipment*
- *United States v. Adams*
- *Anderson's-Black Rock v. Pavement Salvage*
- *Sakraida v. AG Pro*

A look back at these old cases may be helpful in predicting the future. Only *Adams* found the patent valid. In all of these cases, the facts were similar in that: all the elements were known in the prior art; there was generally a long-felt need; and there was commercial success. In the *A&P* case, the Court even noted that the invention was "a good idea." Still, the patents were all held invalid. Moreover, the *KSR* Court adopted and endorsed the "doctrines" from these cases. It is likely that they will receive far more prominence in future cases.

## More Summary Judgments?

In *KSR*, the district court granted summary judgment of invalidity. The Federal Circuit reversed, finding that there were genuine issues of material fact. The Supreme Court vacated, differing with the Federal Circuit on this issue as well. The Court stated that where the content of the prior art, the scope of the patent claim, and the level of ordinary skill in the art are not in material dispute, and the obviousness of the claim is apparent in light of these factors, summary judgment is appropriate. The Court noted that an expert's conclusory affidavit is not sufficient to preclude summary judgment.

Here again, there is some disagreement on the effect of the *KSR* decision. Judge Ellis stated that he expects more summary judgment decisions on validity as a result of *KSR*.<sup>8</sup> Judge Michel disagreed, stating he would be "surprised" if *KSR* results in a large number of summary judgment decisions of obviousness. He thought, however, that *KSR* might encourage courts to grant more motions for judgment as a matter of law at trial.<sup>9</sup>

## Changes to Litigation

Whether *KSR* is a substantial change, a "sea change," or no change at all in the law, it is clear that its application will have a significant effect on patent litigation. For example, model jury instructions will need to be revised. Expert reports will need to take into consideration some new factors, like "common sense"<sup>10</sup> and "ordinary creativity." Everyone interested in obtaining and litigating patents should fully understand *KSR* and the changes it suggests for patent litigation.

<sup>8</sup> Remarks at BNA-ABA Conference, Patent Obviousness: The Still-Evolving Standard, or Is It Back to the Future?, Arlington, Va., Oct. 1, 2007.

<sup>9</sup> *Id.*

<sup>10</sup> The *KSR* opinion refers to "common sense" five times.

## Summary of House Bill 1908 Patent Reform Act of 2007

Patent reform legislation continues to be one of the most controversial and significant issues affecting U.S. patent law in years. On September 7, 2007, the U.S. House of Representatives passed a bill that would make dramatic changes in the current patent system. The changes fall into three broad categories:

- Changes aimed at reforming the patent litigation process
- Changes affecting the patent issuance process
- Changes aimed at bringing U.S. patent law more into line with other countries' patent laws by adopting a modified "first-to-file" patent application process

### Patent Litigation Changes

One of the more controversial aspects of the bill is intended to provide greater court supervision of reasonable royalty damage awards, and to assure that royalties are properly computed in connection with products where the patented component is one small piece of a much larger device or system. The amended statute would require trial judges to act as "gate keepers" in determining and instructing the jury on the appropriate method and factors to use in determining damages. Courts also would be required to determine and instruct the jury explicitly whether to use the "entire market value" of the accused product in setting the royalty, or to use a smaller, court-determined amount attributable to the value that the invention added to the product as a whole, over and above what was already in the prior art.

Other changes aimed at the patent litigation process include:

- Tightening the standards for alleging willful infringement and awarding treble damages. The amendment would require that a court find a patent valid and infringed before a "willfulness" claim may be asserted. It also would require a more specific pre-litigation notice of infringement, and otherwise codify the existing court-made standards for such awards.
- Tightening venue provisions imposing limitations on the location of courts in which patent litigation may be brought, aimed at cutting down on forum-shopping by plaintiffs. With certain exceptions, newly filed cases would have to be brought where a defendant is

based or has committed significant acts of infringement and has a physical facility at which a substantial portion of the defendant's operations occur. In multi-defendant suits, however, the plaintiffs would still enjoy a broader choice of forums.

- Requiring the Federal Circuit to hear interlocutory appeals from trial courts' *Markman* claim construction rulings if the trial court certifies its ruling for appeal.
- Tightening the standards for prevailing on a claim of inequitable conduct.
- Elimination of the "best mode" requirement as a defense in patent litigation.
- Broadening the availability of the "prior user" defense.

### Changes Affecting the Patent Issuance Process

The bill would create a post-grant review procedure that could be utilized during the first 12 months after a patent issues to challenge a patent on any ground (or thereafter with the consent of the patent owner). The provision is intended to encourage competitors to challenge questionable patents.

In addition, the bill would:

- Require publication of most applications 18 months after filing, substantially narrowing the current opt-out provision
- Alter reexamination procedures to make inter partes reexamination a more attractive alternative for those seeking to challenge patents by: broadening the art that may be cited in such proceedings; permitting third parties greater rights to participate in such proceedings; requiring the proceedings to be conducted by administrative law judges rather than patent examiners; and narrowing the collateral estoppel effect of such proceedings
- Permit third parties to submit prior art to be considered during the patent examination process
- Eliminate the patentability of tax planning methods
- Give the United States Patent and Trademark Office (USPTO) some authority to limit continuation applications
- Direct the USPTO to study and report back to Congress on the effectiveness of these changes

## Adoption of Modified “First-to-File” System

The bill also would replace the current “first-to-invent” patent system with a modified “first-to-file” system, more in-line with patent systems of other countries. The system would be a modified “first-to-file” (termed a “first-inventor-to-file” system by the House Report), which would preserve the existing one-year grace period under U.S. law for inventors to file after first publication or public use, and entitle the inventor to a patent even if an intervening, non-inventor filed during that one-year grace period. However, the change is dependent upon other countries adopting a similar one-year grace period. Related changes would make it easier to file a substitute for an inventor’s oath and would expand prior-user rights (previously limited to business method patents) to all categories of patents.

## Further Action

The Senate is considering, but has not yet acted upon, a similar bill. If the Senate adopts that bill, the matter will be sent to a conference committee to reconcile any differences between the House and Senate bills. The President has not indicated definitively whether or not he would sign the proposed legislation.

## ***In re Seagate Technology, LLC: Federal Circuit Establishes New Rules for Willful Patent Infringement, Enhanced Damages, and Waiver of Privilege***

*George C. Best and Jeffrey A. Simmons*

In a landmark decision this past August, the Court of Appeals for the Federal Circuit overturned a 24-year old precedent and established new rules governing “willful” patent infringement, enhanced patent damages, and the waiver of attorney-client privilege and work-product protection. The decision in *In re Seagate Technology, LLC*, 497 F.3d 1360 (7<sup>th</sup> Cir. 2007), significantly alters the analytical framework for some of the most basic, and potentially costly, issues in patent litigation.

The *Seagate* decision addresses three important issues: (1) the standard for proving “willful” patent infringement and, by extension, when a court may award enhanced damages, (2) the extent to which asserting an advice-of-counsel defense causes a waiver of attorney-client privilege, and (3) whether that waiver extends to trial counsel’s work product.

## Willful Infringement and Enhanced Damages

First, the Federal Circuit expressly overruled *Underwater Devices, Inc. v. Morrison Knudsen*, 717 F.2d 1380, 1389-90 (Fed. Cir. 1983), a 24-year old precedent governing willful patent infringement. *Underwater Devices* established a standard that put a significant burden on alleged patent infringers. Under that standard, alleged infringers had an “affirmative duty to exercise due care to determine whether or not [they were] infringing” once they had notice of a party’s patent rights. The financial consequences for failing to meet that standard could be disastrous, as a finding of willful infringement can result in an award of treble damages against the infringer.

The *Seagate* decision eases that burden on alleged infringers and reduces the likelihood of finding willful infringement and awarding enhanced damages. Under *Seagate*, willful infringement can be found only where there is a showing of “objective recklessness” by the infringer. The Court set forth a new, two-step process for determining objective recklessness. First, the patentee must show by clear and convincing evidence that the infringer acted despite an objectively high likelihood that its actions infringed a valid patent. In making this threshold determination, the infringer’s subjective state of mind is irrelevant. Second, if the patentee can meet this threshold requirement, then the patentee must demonstrate that the objectively high risk was either known or should have been known to the infringer.

In addition, the Court noted that because it is abandoning the affirmative duty of care, “there is no affirmative obligation to obtain opinion of counsel.” Previously, many accused infringers felt compelled to obtain a formal non-infringement opinion from an attorney whenever they were confronted with the threat of a patent infringement suit.

## Waiver of Attorney-Client Privilege

Second, the Court held that, in general, asserting an advice-of-counsel defense in response to a charge of willful infringement, and disclosing opinions of patent opinion counsel, does not result in a waiver of the attorney-client privilege for communications with trial counsel. This is a significant restriction on the scope of the privilege waiver.

In a previous decision, the Federal Circuit had held that asserting the advice-of-counsel defense waived the attorney-client privilege for all

communications on the same subject matter. There was little consistency, however, among district courts regarding whether the waiver extended to opinions (whether formal or informal) by trial counsel. That uncertainty meant alleged infringers were often forced to make a difficult choice between disclosing highly sensitive communications with trial counsel or risking a finding of willful infringement and resulting enhanced damages.

## Waiver of Attorney Work-Product Protection

Finally, the Court ruled that, in general, relying on patent opinion counsel's work product in asserting an advice-of-counsel defense generally will not waive work-product immunity with regard to trial counsel. As with the attorney-client privilege, the Federal Circuit had previously held that assertion of the advice-of-counsel defense waived work-product protection on the same subject matter that was communicated to the client.

## Unanswered Questions

While the Court's decision generally is clear and provides important guidance, there are still a number of unanswered questions that will be sorted out in future cases. For example, under what circumstances is it helpful to obtain an opinion of counsel, now that the importance of such opinions is diminished for purposes of willful infringement? What sorts of evidence can be used to prove or to disprove objective recklessness? How high is the patentee's evidentiary burden with regard to proving that the infringer "knew or should have known" of the objectively high risk of infringement?

Regarding the waiver of privilege, the Court left open the possibility that there could be situations in which a party's conduct might waive privilege or work-product protection as to trial counsel, such as when, in the Court's words, "counsel engages in chicanery." Just what other circumstances might result in a waiver of privilege remains to be seen.

Finally, one unanswered question of particular interest to in-house counsel is whether the Court's new rules regarding waiver of privilege apply to them. The Court explicitly refrained from addressing how asserting the advice-of-counsel defense might affect waiver of privilege and work-product protection with regard to in-house counsel.

These and other issues raised by the *Seagate* decision undoubtedly will be addressed by courts and litigants in the near future.

## Trade Dressed for Success?: Protection of Your Web Site's "Look And Feel"

*John F. Zabriskie*

As online commerce increases, businesses are spending more time and money on enhancing their Web sites. Businesses want sites that are not only easy to use, but also easy to recognize as that particular company's site. But can a company protect its investment in a successful and distinctive Web site by preventing a competitor from launching a Web site with a nearly identical visual appearance and user experience? Until recently, the answer generally has been "no." A recent district court decision, *BlueNile, Inc. v. Ice.com, Inc.*, 478 F. Supp. 2d 1240 (W.D. Wash. 2007), however, suggests that courts may be receptive to arguments that the "look and feel" of Web sites can be protected under trade dress law.

## Background

Web sites bear an obvious similarity to the screens, or graphical user interfaces (GUIs), viewed by users of software programs. Copyright protection for GUIs, however, is limited and probably covers only certain specific elements of a GUI. Copyright protection for the look and feel of a Web site likely is no more expansive. Indeed, courts have upheld the United States Copyright Office's (Copyright Office) denial of registrations for the overall format of a Web site. Instead, the Copyright Office will issue registrations only for original authorship appearing in a Web site, such as writings or photographs.

Web sites also share some similarities with magazine covers and book jackets, both of which can be protected by the trade dress branch of trademark law. Trade dress is the total image and overall appearance of an item, and courts broadly define it to include features such as size, shape, color, color combinations, and graphics. Just as a traditional trademark uses a word to identify the source of a product, trade dress uses a visual impression to create that source association. To be protectable, trade dress must be: 1) non-functional, meaning that the feature is not essential for the item to perform its intended function or for competitors to be able to compete; 2) distinctive, either because it is inherently so or has acquired secondary meaning; and 3) unlikely to be confused by ordinary buyers with the competitor's trade dress.

Trade dress law is long established, but Web site owners and their counsel are just beginning to explore how trade dress law's focus on protecting consumers from confusion can be applied to Web sites.

## **BlueNile, Inc. v. Ice.com, Inc. and Its Implications**

Earlier this year, an Internet diamond retailer, who owns and operates the Web site bluenile.com, filed suit in federal court against a competitor, who owned and operated ice.com, claiming trade dress infringement for allegedly mimicking the look and feel of BlueNile's Web site. BlueNile also alleged copyright infringement for specific elements of bluenile.com and other state law claims. Ice moved to dismiss the trade dress claim on the grounds that it overlapped with BlueNile's copyright claim and thus was preempted by the Copyright Act of 1976. The district court, however, refused to dismiss the trade dress claim. Describing BlueNile's contention that the look and feel of its Web site should be protected trade dress as a "novel legal theory" supported only by two unreported district court cases involving pro se defendants, the court held that it was too early in the case to determine whether BlueNile's copyright claim afforded it an adequate remedy. The parties subsequently stipulated to dismissal of the case.

While this decision is not a green light to file suit whenever a competitor introduces a copycat feature to its Web site, it does indicate that courts may look favorably on an infringement claim for the look and feel of a Web site where requirements of non-functionality, distinctiveness, and confusion clearly have been met. Meeting those requirements may be difficult. For example, distinctiveness may be hard to establish for relatively unpopular or unoriginal Web sites. Nonetheless, each case will turn on its particular facts, and Web site owners should consult with counsel in deciding whether to seek trade dress protection for the look and feel of their sites.

## **Foley Launches Florida IP Initiative**

*Anat Hakim*

Florida's high-technology economy is booming, especially in the biotechnology and life sciences industries. Research centers like the Scripps Research Institute in South Florida, the Burnham Institute, the University of Central Florida (UCF) Medical School in Central Florida, the Torrey Pines Institute for Molecular Studies in Port St. Lucie, and the H. Lee Moffitt Research Institute in Tampa, among others, are rapidly transforming Florida into an important hub for biotechnology, life sciences, and other high-technology businesses.

With that new economy comes a growing need for sophisticated intellectual property (IP) legal services. In particular, Florida is seeing a growing number of IP litigation cases in its courts, especially the U.S. District Courts for the Middle and Southern Districts of Florida.

To meet these changing needs of Florida's businesses and research facilities, Foley is launching its Florida IP Initiative, which will bring Foley's top-ranked IP Litigation Practice to the Sunshine State. The Florida IP Initiative draws on the strength of more than 200 attorneys in Foley's four Florida offices, combined with more than 200 Foley IP attorneys in offices throughout the United States, Europe, and Japan.

According to Sharon R. Barner, Chair of Foley's IP Department: "We expect to see more and more IP activity in Florida as the state continues its aggressive investment in growing its life sciences and high-technology economy. In addition, Florida's federal courts have become very attractive venues for IP litigation. Given Foley's strong IP practice, and our four offices in Florida, Foley is in a great position to service the IP counseling and litigation needs of companies doing business in Florida."

The breadth and depth of the firm's IP resources and experience were on display at an August IP roundtable in Foley's Orlando office featuring Catherine Sun, Chair of Foley's Asia Practice, who spoke on "Doing Business in China." On November 7, 2007, Foley will host an additional IP roundtable in Orlando, addressing the changing IP landscape and key strategic considerations in acquiring, protecting, and enforcing IP assets. This upcoming IP roundtable will focus on updated claims and continuations rules from the U.S. Patent and Trademark Office (USPTO), recent U.S. Supreme Court cases, congressional patent reform efforts, and effective strategies for enforcement and protection of IP in light of these changes in the law. The roundtable is part of a series of informational and educational events that the firm will continue to feature across Florida.

For more information on Foley's Florida IP Initiative, please contact Sharon R. Barner at 312.832.4569 or Anat Hakim at 202.271.8881.

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## SPOTLIGHT ON: John T. Gutkoski



Foley is pleased to welcome and introduce John T. Gutkoski, who joined the Boston office in August as an IP litigator. Before joining Foley, John was a partner with Day Pitney LLP, and headed its Intellectual Property Litigation practice in Boston. He previously was a junior partner at Hale and Dorr LLP in Boston. John represents companies in national and international patent infringement and technology disputes spanning multiple disciplines. His cases have involved light optics, laser-tissue interaction, pharmaceuticals, electronic circuits, sound waves, optics, semiconductors, telecommunications, mechanical engineering, vibration control, and Internet data.

Currently, John spends much of his time representing Palomar Medical Technologies, Inc., in a patent infringement suit against Candela Corporation. The case is scheduled for trial next summer in the Eastern District of Texas.

Any free time John has is consumed by assisting his wife in taking care of their two young daughters. John is a big Red Sox fan and enjoyed watching his beloved team trounce the Colorado Rockies in the World Series.