

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Thomas Lee Halkowski

2. **Position**: State the position for which you have been nominated.

Judge, United States Court of Federal Claims

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Fish & Richardson
222 Delaware Avenue
Wilmington, DE 19899

I reside in Kennett Square, Pennsylvania.

4. **Birthplace**: State year and place of birth.

1962; Milwaukee, Wisconsin

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1987 – 1989, University of Wisconsin Law School; J.D. (*cum laude*), 1989
1986 – 1987, Marquette University Law School; no degree
1985 – 1986, University of Florida; M.S. in engineering, 1986
1981 – 1985, Marquette University; B.S. (*cum laude*), 1985
1980 – 1981, Carroll College; no degree

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2000 – Present
Fish & Richardson P.C.
222 Delaware Avenue
Wilmington, DE 19899
Principal

1992 – 2000
United States Department of Justice
Environment & Natural Resources Division, General Litigation Section
601 D Street, NW
Washington, D.C. 20049
Trial Attorney

1990 – 1992
The Honorable Helen W. Nies, Chief Judge (now deceased)
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington D.C. 20439
Law Clerk

1989 – 1990
The Honorable Roger B. Andewelt (now deceased)
United States Court of Federal Claims
717 Madison Place, NW
Washington, D.C. 20439
Law Clerk

Spring Semester 1989
Wisconsin Department of Agriculture, Trade & Consumer Protection
801 West Badger Road
Madison, WI 53708
Legal Research Consultant

Fall Semester 1988
The Honorable Donald W. Steinmetz
Wisconsin Supreme Court
Two East Main Street
Madison, WI 53702
Judicial Intern

Summer 1988
Faegre & Benson (now Faegre Baker Daniels)
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Summer Associate

Spring Semester 1988
Professor Emeritus Frank Tuerkheimer
University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706
Editorial Assistant

Summer 1987
Jenswold, Studt, Hanson, Clark & Kaufmann
16 North Carroll Street, Suite 900
Madison, WI 53703
Law Clerk

Spring Semester 1987
Assistant Professor Jean Thompson
Marquette University Law School
1215 West Michigan Street
Milwaukee, WI 53233
Research Assistant

1985 – 1986
University of Florida, School of Engineering
237 Mechanical Engineering Building
Gainesville, FL 32611
Teaching Assistant (Graduate Advisor: Professor H.A. Ingley)

Other Affiliations (uncompensated):

2006 – 2009
Greenwoods Club
Nine Maple Lane
Chadds Ford, PA 19317
Board of Directors (2006 – 2009)
 Director of Pool & Grounds (2006 – 2007)
 Vice-President (2008 – 2009)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I have timely registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other

special recognition for outstanding service or achievement.

Certificate of Appreciation for pro bono activities from the Federal Circuit Bar Association (2011)

Order of the Coif, University of Wisconsin Law School (1989)

West Hornbook & Duane Mowry Award (Highest Second Year Average), University of Wisconsin Law School (1988)

Am Jur Awards (Antitrust, Administrative Law), University of Wisconsin Law School (1988)

Entering Law Student Merit Scholarship, Marquette University Law School (1986)

Woolsack Merit Law Scholar, Marquette University Law School (1986)

Thomas Moore Scholarship, Marquette University Law School (1986)

Scholastic Honors Award in Energy Engineering, Marquette University (1985)

Polanki College Achievement Award, Polish Women's Cultural Club (1983)

Pi Tau Sigma (Engineering Honorary), Marquette University (1982)

Phi Eta Sigma (Frosh Honorary), Carroll College (1981)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Delaware State Bar Association

Secretary of IP Section (2005 – 2007)

Vice Chair IP Section (2008 – 2010)

District of Columbia Court of Appeals Bar Association

Federal Bar Association

Federal Circuit Bar Association

Co-Chair, Environment & Natural Resources Committee (1994 – 1996)

Pennsylvania State Bar Association

United States Patent & Trademark Office

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Delaware, 2001
District of Columbia, 2001
Pennsylvania, 2002
Wisconsin, 1989

I no longer litigate matters in the District of Columbia, Pennsylvania, or Wisconsin; and my bar membership for each of those jurisdictions has lapsed due to nonpayment of dues and/or lack of reporting continuing legal education credits.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States District Court for the Eastern District of Wisconsin, 2010
United States District Court for Eastern District of Pennsylvania, 2004
Pennsylvania Supreme Court, 2002
United States Patent and Trademark Office, 2001
Delaware Supreme Court, 2001
United States Bankruptcy Court District of Delaware, 2001
United States District Court for the District of Delaware, 2001
United States Court of Appeals for the Federal Circuit, 1992
United States Court of Federal Claims, 1990
Wisconsin Supreme Court, 1989

I no longer practice in any court in either Pennsylvania or Wisconsin and, with the exception of the U.S. District Court for the Eastern District of Wisconsin (where I was admitted to practice in 2010 based upon, *inter alia*, my membership and good standing in the Delaware bar), I am no longer admitted to practice in courts in those two states due to the lapse of my membership in the bars for those states.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Greenwood Pool Club (2002 – present)
Board of Directors (2006 – 2009)
Director of Pool & Grounds (2006 – 2007)
Vice-President (2008 – 2009)

Knights of Columbus (1998 – 2000)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Knights of Columbus is a Catholic fraternal service organization. From approximately 1998 to 2000, I was a member of the organization in Arlington, Virginia, which operated a pool and swim team where my family and I were members. I am aware of at least two sister organizations to the Knights of Columbus, known as the Catholic Daughters of the Americas and the Columbiettes. To my knowledge, none of the other organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

“Can You Keep a Secret?,” Technology Times, published by the Eastern Technology Council (co-authored with Tara Elliot), October 2006. Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

To the best of my knowledge, I have not prepared or contributed to the

preparation of any such publicly available reports, memoranda, or policy statements.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

To the best of my knowledge, I have not issued or provided any such testimony, official statements, or other communications.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

To answer this question, I have searched my files and papers and conducted an Internet search for responsive materials and information. I have tried to compile a complete a list as possible, but it is possible that there were speaking engagements and conferences in which I participated but for which I have not retained any records and I am not able to remember or identify.

June 3, 2010: I discussed trade secret issues at the Thomson Reuters webcast, "Trade Secret Litigation in Delaware," in Wilmington, DE. PowerPoint supplied.

May 20, 2010: I discussed writing appellate briefs at the National Business Institute, "Successfully Navigating the Appeals Process," in Newark, DE. PowerPoint supplied.

December 10, 2009: I discussed various issues concerning depositions as well as ethical considerations in litigation at the National Business Institute seminar, "The Art of Depositions: Powerful Techniques to Maximize Your Success," in Newark, DE. They were entitled, "Looking Ahead – How to Use Deposition Testimony in the Case" and "Ethical Considerations." Audio recording supplied.

2007 – 2008: I was a volunteer judge for the Delaware High School Mock Trial Competition in Wilmington, DE. I have no notes, transcript or recording. The address of the Delaware Law Related Education Center, Inc. is 405 North King Street, Suite 100C, Wilmington DE 19801.

June 22, 2007: I discussed discovery procedures at the National Business

Institute seminar, "Effective Federal Pre-Trial Practice," in Wilmington, DE. Notes supplied.

May 25, 2006: I discussed rules of procedure at the National Business Institute seminar, "Rules and Procedures for Federal Court Success," in Wilmington, DE. Notes supplied.

December 7, 2005: I discussed expert witnesses at the Law Seminars International program, "Pre and Early Stage Patent Litigation," in Philadelphia, PA. PowerPoint supplied.

November 15, 2005: I served as a panelist discussing intellectual property issues related to operating a business at a breakfast seminar sponsored by the Greater Philadelphia Chamber of Commerce in Wilmington, DE. Summary of panel questions supplied.

September 8, 2004: I discussed trademarks and copyrights at a Delaware Biotech Institute seminar, "Commercializing Innovation," in Wilmington, DE. PowerPoint supplied.

August 26, 2004: I spoke at the National Business Institute seminar, "Effective Federal Pre Trial Practice for Attorneys," in Philadelphia, PA. Notes supplied.

October 1, 2003: I spoke at the Regional Business and Financial Resources for Technology Companies, sponsored by the Northeastern Maryland Technology Council Hartford County Office of Economic Development Small Business Development Center of Hartford County near Aberdeen, MD. PowerPoint supplied.

February 11, 2003: I spoke at the National Business Institute seminar, "Effective Federal Pre Trial Practice for Attorneys," in Philadelphia, PA. I gave two presentations, entitled "Discovery Techniques and Strategies" and "Ethical Considerations." I discussed various issues concerning discovery in federal cases, including ethical considerations. I have no notes, transcript or recording. The address for the National Business Institute is P.O. Box 3067, Eau Claire, WI 54702.

October 28-29, 1999: I discussed takings issues at the Second Annual Conference on Litigating Regulatory Takings Claims, at Georgetown University Law Center in Washington, D.C. I discussed legal issues regarding takings claims under the Fifth Amendment of the U.S. Constitution. I have no notes, transcript or recording. The address for the Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, D.C. 20001.

April 9-10, 1996: I discussed takings issues at the Federal Circuit Bar Association Conference in Boston, MA. During my presentation, I discussed

developments in the law of takings claims under the Fifth Amendment of the U.S. Constitution. I have no notes, transcript or recording. The address for the Federal Circuit Bar Association is 1620 I Street, NW, Suite 801, Washington, D.C. 20006.

1995 and 1996: I introduced speakers as Program Chair for Environment & Natural Resources Sessions of the Federal Circuit Bar Association's Tenth and Eleventh Annual Meetings and CLE Programs, in Washington, D.C. I have no notes, transcript or recording. The address for the Federal Circuit Bar Association is 1620 I Street, NW, Suite 801, Washington, D.C. 20006.

In the 1990s, I was a volunteer judge in the Giles Rich Moot Court competition in Washington, D.C. sponsored by the American Intellectual Property Law Association (AIPLA). I have no notes, transcript or recording. The address of the AIPLA is 241 18th Street South, Suite 700, Arlington, VA 22202.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

April 23, 2009: Press Release, "Fish and the U.S. Department of Justice Settle Medicaid Fraud and Abuse Case at Southwood Psychiatric Hospital in Pennsylvania," Fish & Richardson P.C. Copy supplied.

February 28, 2008: Don Beideman, "Medals in the Mail," Philly.com (included as part of an article titled, "Malvern Duo Has High Hopes for State Indoor Meet"). Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

- i. Of these, approximately what percent were:

jury trials:	_____%
bench trials:	_____% [total 100%]
civil proceedings:	_____%
criminal proceedings:	_____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
 - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - e. Provide a list of all cases in which certiorari was requested or granted.
 - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have never served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;

- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

In 1983, while I was an undergraduate engineering student at Marquette University, I was unsuccessful in my candidacy to win the public election for a seat on the St. Francis School Board for the St. Francis, Wisconsin school district.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held a position in, or rendered services to, a political party or election committee. Other than my campaign for election to the St. Francis School Board in 1983, I have not held a position or played a role in a political campaign.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1989 to 1990, I served as law clerk to the Honorable Roger B. Andewelt, United States Court of Federal Claims.

From 1990 to 1992, I served as law clerk to the Honorable Helen W. Nies, Chief Judge of the United States Court of Appeals for the Federal Circuit.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1992 – 2000

U.S. Department of Justice
Environment & Natural Resources Division
General Litigation Section
601 D Street, NW
Washington, D.C. 20049
Trial Attorney

2000 – present

Fish & Richardson, P.C.
222 Delaware Avenue
Wilmington, DE 19899
Principal

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I served as an arbitrator in *Daniel Shaw v Nationwide Insurance et al.*, Del. CCP – C.A. No. 2007-09-609 during 2008 to 2009. I briefly worked with the parties in an effort to resolve their dispute concerning insurance coverage. I understand that this matter was referred to me as part of the Delaware State Bar program of having more senior members of the bar serve as arbitrators on randomly selected matters.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

After completing two clerkships for federal judges, I began my law practice in 1992 as a trial attorney at the U.S. Department of Justice. While at the Justice Department I was a trial attorney for numerous cases litigated in the United States Court of Federal Claims, including many cases where plaintiffs sought compensation under the Fifth Amendment for the alleged uncompensated taking of property. I managed my cases from filing through judgment, including developing strategy, conducting discovery, as well as presenting evidence and argument at trial.

In 2000, I accepted a position as a principal at Fish & Richardson. Since that time, I have primarily worked on patent litigation regarding a variety

of technologies. I have managed cases on the offensive and defensive sides from filing through judgment, including working with a team of attorneys to present evidence and argument at multiple jury trials.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

During my work at the Justice Department, my client was the United States. I worked with a number of government agencies, including the U.S. Army Corps of Engineers and the U.S. Department of the Interior. The vast majority of my cases were litigated in the U.S. Court of Federal Claims.

During my work at Fish & Richardson P.C., my clients have typically been companies who develop cutting-edge technology in a variety of areas, including biomedical devices, smart phones, software, and computer chips (*e.g.*, Kyphon, Cypress Semiconductor, Acronis, Callaway Golf and LG). I have litigated cases in a variety of federal district courts, including Delaware, Massachusetts, Tennessee, California, and Alabama. The vast majority of my cases have concerned patent litigation.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Approximately 90% of my practice has been litigating matters. The remainder has concerned client consultation regarding a variety of legal issues, including licensing issues and appearing on behalf of clients in the U.S. Patent and Trademark Office. As part my litigation experience, I have appeared in court on a regular basis throughout my career.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 90% |
| 2. state courts of record: | 1% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 9% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|------|
| 1. civil proceedings: | 100% |
| 2. criminal proceedings: | 0% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

While with the Justice Department, I worked on nearly 40 cases. The vast majority of these cases were the subject of significant litigation, typically years of work. At least four of these cases were litigated all the way through to a trial on the merits; many others were resolved on motions to dismiss or for summary judgment and at least one included an extensive hearing on a motion for injunctive relief. With one or two exceptions, I was lead counsel for each of these cases.

While with Fish & Richardson P.C., I have worked on nearly 100 cases. The majority of these cases were the subject of significant litigation. My litigation of these cases has included over a dozen trials and extensive evidentiary hearings regarding motions for preliminary injunctive relief. Many other matters were resolved after rulings on a variety of dispositive motions. I was responsible for day-to-day management of the cases and/or assisting with strategic development of the case. At trial, I typically worked as part of a team of attorneys and lead counsel to present the cases to a jury.

i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 67 % |
| 2. non-jury: | 33 % |

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

Callaway Golf v. Acushnet, 576 F.3d 1331 (Fed. Cir. 2009), *cert. denied* 559 U.S. 939 (2010) (opposition to petition for certiorari, 2010 WL 271318)

Plantation Landing Resort, Inc. v. United States, 30 Fed. Cl. 63 (1993), *aff'd*, 39 F.3d 1197 (Fed. Cir. 1994), *cert. denied*, 514 U.S. 1095 (1995) (opposition to petition for certiorari, 1995 WL 17048945)

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and

- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
- 1. *Plantation Landing Resort, Inc. v. United States*, 30 Fed. Cl. 63 (1993), *aff'd*, 39 F.3d 1197 (Fed. Cir. 1994), *cert. denied*, 514 U.S. 1095 (1995).

This case concerned the alleged taking of property in Louisiana due to the existence of certain regulations and agency decisions regarding development of wetlands. This was one of my first cases when I arrived at the Justice Department. I was the lead attorney and, among other things, developed the evidentiary record, assessed strategy, and worked with the Army Corps of Engineers. I proceeded to draft, file and present argument in support of our motion for summary judgment that ultimately disposed of this matter. Judge Tidwell granted summary judgment in favor of the United States, concluding that the denial of a permit to fill certain wetland areas did not constitute a taking of property without payment of just compensation.

Opposing counsel was Lawrence Wiedemann (Wiedemann Law Firm, 1100 Veterans Boulevard, Suite 444, New Orleans, LA 70113; 504-581-6180).

- 2. *Kelly, et al. v. United States*, No. 1:93-CV-128 (Fed. Cl. June 18, 1998).

This case concerned the alleged taking of property in West Virginia due to the existence of certain regulations and agency decisions regarding the mining of coal. I handled this case as lead attorney from the outset of its filing in 1993 through trial on the merits in June of 1998 in West Virginia, including conducting discovery, presenting argument to the court, and presenting our witnesses and cross-examining the opposition's witnesses at trial. This case presented a variety of challenges in discovering and presenting the history of coal-mining over the course of many decades in West Virginia. After presiding over a trial in West Virginia, Judge Harkins granted judgment in favor of the United States and dismissed the case.

Opposing counsel was George A. Barton (Law Offices of George A. Barton PC, 4435 Main Street, Suite 920, One Main Plaza, Kansas City, MO 64111; 816-300-6250).

- 3. *Heck v. United States*, 37 Fed. Cl. 245 (Fed. Cl. 1997), *aff'd*, 134 F.3d 1468 (Fed. Cir. 1998).

This case concerned the alleged taking of property in New Jersey due to the existence of certain regulations and agency decisions regarding development of wetlands. I was the lead attorney responsible for this case from the outset, including working with the client agency, drafting the briefing, and arguing the motion to dismiss at the trial court level. Judge Wiese granted the United States' motion for lack of jurisdiction, finding that the matter was not ripe for

adjudication. I also handled the case on appeal. The Federal Circuit Court of Appeals, after argument, affirmed the trial court's decision in an opinion authored by Judge Michel. Together, the district court and appellate court decisions provided additional clarity in this important area of the law.

Co-Counsel at the U.S. Army Corps of Engineers (Philadelphia District) was Barry Gale (now retired) (P.O. Box 56, Poyntelle, PA 18454; 570-448-2300).

Opposing counsel was Kevin Coakley (Connell Foley LLP, 85 Livingston Avenue, Roseland, NJ 07068; 973-535-0500).

4. *Walcek v. United States*, 49 Fed. Cl. 248 (Fed. Cl. 2001), *aff'd*, 303 F.3d 1349 (Fed. Cir. 2002) (rehearing and rehearing en banc denied December 9, 2002).

This case concerned the alleged taking of property in Delaware due to the existence of certain regulations and agency decisions regarding development of wetlands. I took over as lead attorney and completed discovery as well as prepared the case for trial – including presenting our witnesses and cross-examining the witnesses from the opposition at trial in Delaware. Ultimately, Judge Allegra granted judgment in favor of the United States and dismissed the complaint along with all its claims. This case provided additional guidance as to when a diminution in value crosses the line and becomes a taking of property without payment of just compensation.

Co-Counsel at the U.S. Army Corps of Engineers (Philadelphia District) was Barry Gale (now retired) (P.O. Box 56, Poyntelle, PA 18454; 570-448-2300).

Opposing counsel was Stanley Walcek (P.O. Box 557, Bethany Beach, DE 19930-0557; 302-539-3259).

5. *ADE Corp. v. KLA-Tencor Corp.*, 220 F.Supp. 2d 303 (D. Del. 2002), *vacated in part*, No. Civ.A.00-892 (MPT), 2002 WL 31933046 (D. Del. Dec. 10, 2002); 252 F.Supp. 2d 40 (D. Del. 2003); 288 F.Supp. 2d 590 (D. Del. 2003), *appeal dismissed*, 122 Fed.Appx. 518 (Fed. Cir. 2005).

This case concerned two competitors who each asserted patent infringement claims against one another that related to semiconductor manufacturing processes and equipment. We represented ADE Corporation (ADE). Initially I joined this case to work on a few issues, including assertions that attorneys at Fish & Richardson had allegedly committed inequitable conduct while seeking issuance of patents for ADE. After marshaling the evidence and law, I drafted and argued a summary judgment motion that was granted by Judge McKelvie disposing of these issues. Later I became responsible for managing the case. Over the course of this matter, multiple decisions were issued by Judge McKelvie, Magistrate Judge Thyng, and Judge Jordan, *inter alia*, dismissing certain claims but leaving others for trial. I assisted in developing strategy and presenting evidence and

argument at trial along with our team and lead counsel. We received a verdict from the jury in our favor that fully disposed of the claims asserted at trial against our client ADE.

Co-counsel included Howard Pollack (Fish & Richardson P.C., 500 Arguello Street, Suite 500, Redwood City, CA 94063; 650-839-5007) and Robert Hillman (Fish & Richardson P.C., One Marina Park Drive, Boston, MA 02210-1878; 617-521-7816); and lead counsel was Juanita Brooks (Fish & Richardson P.C., 12390 El Camino Real, San Diego, CA 92130; 858-678-4377).

Opposing counsel included Patricia Smink Rogowski (Novak Druce Connolly Bove + Quigg, 1007 North Orange Street, Ninth Floor, Wilmington, DE 19801; 302-888-6201) and David C. Bohrer (Confluence Law Partners, 60 South Market Street, Suite 1400, San Jose, CA 95113; 408-938-3883).

6. *Sandhu v. Medtronic Sofamar Danek, Inc.*, No. 2:05-CV-02863 (W.D. Tenn.) (filed Nov. 9, 2007).

This case primarily concerned assertions by our client, Kyphon, that competitors were infringing on its patents that covered devices and methods for treating vertebral compression fractures that can lead to a debilitating condition known as kyphosis of the spine. I was responsible for managing this case, including supervising fact and expert discovery, as well as working with our team and lead counsel for this matter to present argument and evidence at a preliminary injunction hearing in the case against Medtronic. Decisions were rendered in this case on a variety of issues by Magistrate Judge Vescovo and Judge McCalla. After an extensive evidentiary hearing on our motion for a preliminary injunction, the case against Medtronic was ultimately resolved via Medtronic's acquisition of Kyphon. Prior to the case against Medtronic, I managed a related case involving assertion of the Kyphon patents against another company that was resolved by a jury verdict in favor of our client, Kyphon. *See Kyphon, Inc. v. Disc-O-Tech Med. Techs. Ltd.*, No. Civ.A.04-204 JJF, 2004 WL 2898064 (D. Del. Dec. 10, 2005); 2005 WL 6225191 (D. Del. May 16, 2005).

Our lead counsel was Frank E. Scherkenbach (Fish & Richardson P.C., One Marina Park Drive, Boston, MA 02210-1878; 617-521-7883).

Kyphon's general counsel was, during the relevant time period: David M. Shaw (P.O. Box 370043, Montara, CA, 94037; 408-390-8329).

Opposing counsel included: Fred I. Williams (Akin Gump, 300 West 6th Street, Suite 1900, Austin, TX 78701-3911; 512-499-6218).

7. *Honeywell Int'l, Inc. v. Universal Avionics Sys. Corp. and Sandel Avionics, Inc.*, 288 F.Supp. 2d 638 (D. Del. 2003); 289 F.Supp. 2d 493 (D. Del. 2003); 343 F.Supp. 2d 272 (D. Del. 2004), *aff'd*, 488 F.3d 982 (Fed. Cir. 2007), *on remand*,

585 F.Supp. 2d 623 (D. Del. 2008); 347 F.Supp. 2d 81 (D. Del. 2004) (construing US Patent 4,914,436), *ruling infringed* 426 F.Supp. 2d 211 (D. Del. 2006), *aff'd*, 493 F.3d 1358 (Fed. Cir. 2007); 347 F.Supp. 2d 114, 121, 124, 129 (D. Del. 2004); 398 F.Supp. 2d 305 (D. Del. 2005).

This dispute concerned assertions that our client, a small developer and manufacturer of avionics instruments, Sandel, infringed multiple patents of Honeywell. Sandel had developed an innovative terrain awareness and warning system. I assisted in development of case strategy with lead counsel, worked with our team on various discovery efforts, as well as assisted in the presentation of argument and evidence at multiple hearings and trials in this matter. The parties stipulated to this matter being assigned to Magistrate Judge Thyng who issued multiple written decisions on a variety of issues in this case. After numerous motions, arguments, a bench trial, and two jury trials, our client Sandel's positions were vindicated and ultimately all claims against Sandel were rejected via a variety of decisions – including favorable jury verdicts.

Lead counsel for our client Sandel were Frank E. Scherkenbach (Fish & Richardson P.C., One Marina Park Drive, Boston, MA 02210-1878; 617-521-7883) and Howard Pollack (Fish & Richardson P.C., 500 Arguello Street, Suite 500, Redwood City, CA 94063; 650-839-5007).

Opposing counsel included Steven D. McCormick (Kirkland & Ellis, 300 North LaSalle, Chicago, IL 60654; 312-862-2246).

8. *iRobot Corp. v. Ahed*, No. 1:07-CV-11611 (D. Mass. Nov. 2, 2007); *iRobot Corp. v. Robotic FX, Inc.*, No. 2:07-CV-01511 (N.D. Ala. Sept. 10, 2007).

This dispute concerned assertions by our client, iRobot, that its intellectual property had been unlawfully taken by Mr. Ahed (a former employee of iRobot) and Mr. Ahed's company, Robotic Fx. iRobot has developed a number of innovative products, including its PackBot which performs bomb disposal and other dangerous missions for military troops and first responders. iRobot filed suit in Massachusetts seeking a preliminary injunction for the unlawful taking of certain trade secrets by Mr. Ahed, and then filed suit in Alabama seeking damages for infringement of certain patent claims by Mr. Ahed's company, Robotic Fx. I was responsible for managing these cases, including supervising all aspects of discovery, as well as working with our team and lead counsel for this matter to present argument and evidence at various hearings – including a preliminary injunction hearing conducted in the federal court in Massachusetts. Judge Armstrong and Judge Clemon in Alabama, and Judge Gertner in Massachusetts addressed a variety of issues regarding these cases. After we secured issuance of a preliminary injunction, the dispute was resolved via a settlement.

Lead counsel for our client, iRobot, was Ruffin Cordell (1425 K Street, NW, 11th Floor, Washington, D.C. 20005; 202-626-6449).

Opposing counsel included Patricia Kane Schmidt (Corporate Technology at Siemens Corporation (Lead Counsel), 755 College Road East, Princeton, NJ 08540-6632; 609-734-3663).

9. *Commonwealth Research Grp. LLC v. Lattice Semiconductor Corp.*, Civil Action No. 11-655-RGA, 2012 WL 2501107 (D. Del. June 28, 2012).

This case concerned claims by Commonwealth Research Group (CRG) that our client, Cypress, allegedly infringed certain claims of a patent concerning approaches for conserving energy among electrical components. Cypress manufactures a variety of semiconductor chips, including certain Programmable System-on-Chips (PSoCs) that were accused of infringing CRG's patent. I was principally responsible for handling this case from the outset. After we had presented our arguments to the Court as to why the asserted patent, when properly interpreted, was invalid, CRG dropped its claims against our client Cypress.

Co-Counsel in the case was Thomas Manuel (Fish & Richardson P.C., 500 Arguello Street, Suite 500, Redwood City, CA 94063; 650-839-5070).

Cypress's general counsel is Victoria Valenzuela (Cypress Semiconductor Corporation, 198 Champion Court, San Jose, CA 95134; 408-943-2979).

Opposing counsel included Daniel Kotchen (Kotchen & Low LLP, 1745 Kalorama Road NW, Suite 101, Washington, D.C. 20009; 202-468-4014).

10. *SRI Int'l Inc. v. Internet Security Sys., Inc. and Symantec Corp.*, 572 F.Supp. 2d 511 (D. Del. 2008), *on remand from* 511 F.3d 1186 (Fed. Cir. 2008); 647 F.Supp. 2d 323 (D. Del. 2009) (ruling not infringed), *aff'd*, 401 Fed.Appx. 530 (Fed. Cir. 2010); 817 F.Supp. 2d 418 (D. Del. 2011); 852 F.Supp. 2d 529 (D. Del. 2012).

This case concerned assertions by our client, SRI, that Symantec and others were infringing on its patents relating to monitoring and surveillance of computer networks for intrusion detection. I assisted in development of case strategy with lead counsel and our team, worked on various discovery efforts and assisted with two successful appeals of various issues to the U.S. Court of Appeals for the Federal Circuit, and assisted in the presentation of argument and evidence at multiple hearings and a jury trial in this matter. Judge Robinson as well as Judge Dyk (as authoring judge on the panel that adjudicated an appeal), addressed a variety of issues during the litigation of this matter concerning the alleged infringement of SRI's patents. Ultimately, after we obtained a favorable jury verdict on the merits against Symantec, a settlement was reached to finally resolve this matter.

Our lead counsel was Frank E. Scherkenbach (Fish & Richardson P.C., One Marina Park Drive, Boston, MA 02210-1878; 617-521-7883) and co-counsel

included Howard Pollack (Fish & Richardson P.C., 500 Arguello Street, Suite 500, Redwood City, CA 94063; 650-839-5007).

Opposing counsel included Geoff Godfrey (Wilmer Cutler Pickering Hale & Dorr LLP, 950 Page Mill Road, Palo Alto, CA 94304; 650-858-6082) and Robert Galvin (Wilmer Cutler Pickering Hale & Dorr LLP, 950 Page Mill Road, Palo Alto, CA 94304; 650-858-6017).

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The vast majority of my work at the Justice Department and Fish & Richardson P.C. has been concerned with litigating matters in federal court or representing clients at administrative agencies. While at Fish & Richardson P.C., I have occasionally provided confidential consultation regarding licensing issues with a variety of clients. I have not performed lobbying activities.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am not aware of any such deferred income or future benefits.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have any such plans, commitments, or agreements.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries,

fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Financial Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If I am confirmed to the United States Court of Federal Claims, it is possible specific matters on which I worked could come before the Court. If this were to occur, I would recuse myself from such cases.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I will conduct myself in a manner that will avoid situations in which my impartiality might be questioned. I will recuse myself from sitting on any cases in which my personal, financial, or fiduciary matters might cause others to question my impartiality. In any case where I would have a question of whether a conflict, real or apparent, exists, I would conduct myself in accordance with the relevant standards of judicial conduct, including the Code of Conduct for United States Judges. If necessary, I would consult with my colleagues, with counsel for the Court, and/or with the Committee on Codes of Conduct of the Administrative Office of the U.S. Courts.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

From approximately 2003 to 2007, I served as the pro bono liaison for Fish & Richardson's Delaware office and was responsible for encouraging pro bono work by attorneys in that office. I also have participated in the Federal Circuit Bar Association's Veteran's Pro Bono program, which involved review of case materials in order to provide a preliminary opinion regarding the merits of a possible claim and for which I received a

Certification of Appreciation from the Federal Circuit Bar Association on June 24, 2011.

In addition to participating in pro bono legal services, I also have served the community in other ways. During the early 1990s, I was a Keyworker for the Combined Federal Campaign. During the 1990s, I also was a volunteer waiter at Knights of Columbus' functions that raised money used for a variety of charitable purposes. From 2006 to 2009, I served as a volunteer member of the board of directors for Greenwoods Club, a local swimming pool. I have served as a volunteer judge in moot court competitions in the early 1990s and in 2007 and 2008.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In March 2013, I wrote a letter to an official in the White House Counsel's Office, expressing my interest in serving on the U.S. Court of Federal Claims. In early September 2013, I further discussed my interest with an official from the White House Counsel's Office. Since September 6, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 8, 2013, I met with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On April 10, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

STATE OF DELAWARE
COUNTY OF NEW CASTLE

AFFIDAVIT

I, Thomas L. Halkowski, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

4/11/14
(DATE)

Thomas L. Halkowski
(NAME)

(NOTARY)
Patricia H. BLAZER, Notary Public State of Delaware

PATRICIA H. BLAZER
NOTARY PUBLIC
STATE OF DELAWARE
My commission expires April 11, 2014

