UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Richard Gary Taranto

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

   United States Circuit Judge for the Federal Circuit

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.

   Farr & Taranto
   1150 18th Street, NW, Suite 1030
   Washington, DC 20036

   Residence: Bethesda, Maryland

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

   1957, New York, New York

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.

   1978 – 1981, Yale Law School; J.D., 1981
   Spring 1978, University of Wisconsin, Mathematics PhD program; no degree
   Fall 1977, Yale University, Mathematics PhD program; no degree
   1973 – 1977, Pomona College; B.A., 1977

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.

1989 – present
Farr & Taranto (under present & predecessor names)
1150 18th Street, NW
Suite 1030
Washington, DC 20036
Partner

2008 – 2009
Sidwell Friends School
3825 Wisconsin Avenue, NW
Washington, DC 20016
Substitute math teacher

1986 – 1989
Office of the Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Assistant to the Solicitor General

1984 – 1986
Onek, Klein & Farr (now Farr & Taranto)
2445 M Street, NW
Washington, DC 20037
Associate

1983 – 1984
Supreme Court of the United States
One First Street, NE
Washington, DC 20543
Law clerk to Justice Sandra Day O'Connor

1982 – 1983
United States Court of Appeals for the D.C. Circuit
333 Constitution Avenue, NW
Washington, DC 20001
Law clerk to Judge Robert Bork

1981 – 1982
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007
Law clerk to Judge Abraham Sofaer

Summer 1980
United States Department of Justice
Office of Legal Counsel
950 Pennsylvania Avenue, NW
Washington, DC 20530
Summer associate

Summer 1979
Kronish, Lieb, Shainswit, Weiner & Hellman (now Cooley LLP)
1114 Avenue of the Americas
New York, New York 10036
Summer associate

Spring 1978
University of Wisconsin Department of Mathematics
480 Lincoln Drive
Madison, Wisconsin 53706
Teaching assistant

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 did not register for selective service because men born between March 29, 1957, and December 31, 1959, were not required to register.

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.

Among top 100 lawyers in Washington, DC, *Super Lawyers* (2007 – 2011)

Among nine top lawyers in "Band 1" list of Leading Individuals, Appellate Law, *Chambers USA: America's Leading Lawyers for Business* (2010, 2011)

Among top 15 Supreme Court lawyers, *Legal 500 US 2011*; top 13, *Legal 500 US 2010*

Amicus Award, American Academy of Psychiatry and the Law (2005)

Recognized as one of two Moot Court Justices of the Term, Georgetown University Law Center Supreme Court Institute (2003)

Article & Book Review Editor, Yale Law Journal (1980 – 1981)

Summa cum laude, Pomona College (1977)

Phi Beta Kappa (1977)

Sigma Xi (honorary scientific society) (1977)

F.S. Jennings Prize in Writing, Pomona College (1977)

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.

American Bar Association (1997 – present)

Supreme Court Institute, Georgetown University Law Center
Outside Advisory Board (1999 – present)

United States Judicial Conference
Appellate Rules Advisory Committee (2009 – present)

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.

New York, 1982
District of Columbia, 1984

There have been no lapses in membership.

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.

Supreme Court of the United States, 1984
United States Court of Appeals for the D.C. Circuit, 1983
United States Court of Appeals for the Federal Circuit, 1996
United States Court of Appeals for the First Circuit, 1986
United States Court of Appeals for the Second Circuit, 1999 (inactive)
United States Court of Appeals for the Third Circuit, 2003
United States Court of Appeals for the Fourth Circuit, 1993
United States Court of Appeals for the Fifth Circuit, 1998 (inactive)
United States Court of Appeals for the Eighth Circuit, 1998
United States Court of Appeals for the Ninth Circuit, 1990
United States Court of Appeals for the Tenth Circuit, 2004
United States Court of Appeals for the Eleventh Circuit, 2002 (inactive)

There have been no lapses in membership, although my membership is inactive in the courts indicated.

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.

Edgemoor Club (1993 – present)

Mathematical Association of America (2002 – present)

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.

To the best of my knowledge, neither of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin.

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.

Illinois Tool Works v. Independent Ink: *A Lawyer's Take on Ending Special Suspicion of Patent Tying*, 2 Competition Policy International 169 (2006). Copy supplied.

With Peter Huber, *Ruth Bader Ginsburg: A Judge's Judge*, Wall St. J., June 15, 1993. Copy supplied.

The Psychiatrist-Patient Privilege and Third-Party Payers: Commonwealth v. Kobrin, 14 Law, Medicine & Health Care 25 (1986). Copy supplied.

A Process-Oriented Approach to the Contract Clause, 89 Yale L.J. 1623 (1980) (law school student note). Copy supplied.

With R.H. Elderkin, D.P. Berkowitz, F.A. Farris, C.F. Gunn, F.J. Hickernell, S.N. Kass, and F.I. Mansfield, *On the Steady State of an Age Dependent Model for Malaria*, in Non-Linear Systems And Applications: An International Conference, ed. V. Lakshmikantham (Academic Press 1977). 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.

I do not believe that I have anything that falls into this category.

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.

Joint letter to the Senate Judiciary Committee supporting the nomination of Edward DuMont to become a Judge on the Federal Circuit, March 22, 2011. Copy supplied.

Joint letter to Senate Judiciary Committee supporting the nomination of Donald Verrilli to become Solicitor General, February 10, 2011. Copy supplied.

Letter to Senate Judiciary Committee from Former Assistants to the Solicitor General and Deputy Solicitors General supporting the nomination of Elena Kagan to become Associate Justice of the Supreme Court, June 25, 2010. Copy supplied.

Joint letter to Senate Judiciary Committee supporting the nomination of Sonia Sotomayor to become Associate Justice of the Supreme Court, August 5, 2009. Copy supplied.

Letter to Senate Judiciary Committee supporting the nomination of David Ogden to become Deputy Attorney General, January 21, 2009. Copy supplied.

Joint letter to Senate Judiciary Committee supporting the nomination of Samuel A. Alito to become Associate Justice of the Supreme Court, January 4, 2006. Copy supplied.

Joint letter to Senate Judiciary Committee supporting the nomination of John G. Roberts, Jr. to become a Judge on the U.S. Court of Appeals for the District of Columbia, December 18, 2002. Copy supplied.

Since 2009, I have served on the Advisory Committee on Appellate Rules and made several suggestions and given comments about potential rules amendments. Meeting minutes supplied.

I note that I am listed as a consultant at the end of United States Department of State, *A U.S. Policy Toward South Africa: The Report of the Secretary of State's Advisory Committee on South Africa*, January 1987. My consultation role for the Committee, however, ended in summer 1986, before any work on the Report was begun, and I did not see the Report, or any draft, until the Report was officially released, and hence had no role in preparing the Report. A copy is nevertheless supplied.

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.

September 20-21, 2011: *Law at the Edge of Psychiatry*, Charles E. Steinberg Lecture in Psychiatry and the Law, University of Rochester Medical Center. Copy supplied.

January 11, 2011: Member of panel at a joint meeting of the Giles S. Rich and Edward Coke Inns of Court – one focused on patent law, the other on appellate practice – held at the Federal Circuit. The informal discussion concerned the pros and cons of having specialized appellate counsel in patent cases. I have no notes, transcript, or recording, but a post-event report from the Giles S. Rich American Inn of Court is supplied. The address of the Edward Coke Inn of Court is Tayloe House, Howard T. Markey National Courts Building, 717 Madison Place, NW, Washington, DC 20439.

October 14, 2010: Mock argument before a panel of patent judges from the United States, England, Germany, and Japan, at the Harvard-WilmerHale Intellectual Property Law Conference held at the Harvard Law School. I represented one side, Carter Phillips of Sidley Austin the other, in a mock argument designed to educate lawyers about oral argument and, more specifically, to highlight similarities and differences among the patent laws of several countries. Audio recording supplied.

May 20, 2010, and June 8, 2010: Member of panel on current patent-law developments at the Federal Circuit Judicial Conference, held in Washington, DC. My topic was the law of patent misuse as it was involved in the then-undecided case of *Princo Corp. v. International Trade Comm'n*, 616 F.3d 1318 (Fed. Cir. 2010) (en banc). I made available a written discussion of the patent-misuse issues involved in that case and its predecessors. I made the same presentation, with immaterial word changes, at an internal lawyers' conference for Intel in Santa Clara, CA. The June version of the presentation, the only one I have retained, is supplied.

October 23, 2009: Member of panel on "The Role of the Courts in Patent Law and Policy," held at Georgetown University Law Center. A webcast video of the panel is available at www.law.georgetown.edu/webcast/eventDetail.cfm?eventID=936.

April 2, 2009: Mock argument before a panel of Federal Circuit judges, sponsored by American Bar Association, Intellectual Property Law Section, held at the Federal Circuit. I represented one side, Don Dunner of Finnegan Henderson the other, in a mock argument in a case about joint inventorship, designed to educate lawyers about oral argument at the Federal Circuit. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654.

October 22, 2008: Member of panel at CLE session, concerning intellectual property law, held at the Bloomberg Building, in New York, NY. I have no notes, transcript, or recording. The organizer of the panel was Hank Gutman of Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, NY 10017.

April 1, 2008: Member of panel on "The Supreme Court Returns to the Patent Law" at the Georgetown University Law Center Conference on The Changing Patent Landscape, in Washington, DC. The general topic was the Supreme Court's newly active involvement in patent law. Audio recording supplied.

March 15, 2007: Member of panel at meeting of the Richard Linn Inn of Court, Chicago, IL. The general topic of the panel was the Federal Circuit. I have no notes, transcript, or recording. The Inn does not have a physical address.

March 1, 2006: Member of panel on "Supreme Court and Appellate Advocacy: Voices of Experience," sponsored by the Council of Appellate Lawyers, in Washington, DC. I have no notes, transcript, or recording. The Council is a division of the American Bar Association, which is located at 321 North Clark Street, Chicago, IL 60654.

October 21, 2005: Member of panel at meeting of (I believe) the Virginia Bar Association's Intellectual Property and Information Technology Law Section,

held at the Wintergreen resort in Virginia, to discuss the Supreme Court's recent decision in *Grokster*. I have no notes, transcript, or recording. The address of the Virginia Bar Association is 701 East Franklin Street, Suite 1120, Richmond, VA 23219.

July 13, 2005: Member of a panel at CLE event held at Simpson Thacher's office in New York, NY, in which I discussed the just-decided *Grokster* case. Video recording supplied.

May 4, 2004: Member of panel on "What's New in Psychiatry and the Law at the APA [American Psychiatric Association]?" at the annual meeting of the APA. I long served as amicus counsel to the APA, and in that role I participated in this panel, which discussed recent issues of interest to the APA at the Supreme Court. I have no notes, transcript, or recording. The address of the APA is 1000 Wilson Boulevard, Suite 1825, Arlington, VA 22209.

October 17, 2003: Luncheon address, at a meeting of the American Academy of Psychiatry and the Law, held in San Antonio, TX. My talk concerned amicus briefs in the Supreme Court and *Sell v. United States*, 539 U.S. 166 (2003) (involuntary psychiatric medication to restore competence to stand trial). Copy supplied.

October 2, 2003: Member of panel about the Federal Circuit at the first Harvard-Hale & Dorr Intellectual Property Law Conference, held at the Harvard Law School. I have no notes, transcript, or recording, but a news article about the panel is supplied.

April 1998: Member of panel about the Supreme Court's review of Federal Circuit cases, at a meeting of the Federal Circuit Bar Association's first Bench and Bar Conference held in Saint Thomas, U.S. Virgin Islands. I have no notes, transcript, or recording. The address of the Federal Circuit Bar Association is 1620 Eye Street, NW, Suite 900, Washington, DC 20006.

Mid-April 1996: Member of panel at a meeting of the American Intellectual Property Law Association, held in Arlington, VA. I had just filed the brief for Warner-Jenkinson in *Warner-Jenkinson Co. v. Hilton Davis Chemical Co.*, 520 U.S. 17 (1997), and I spoke about the upcoming consideration of the doctrine of equivalents in that case. I have no notes, transcript, or recording. The address of the American Intellectual Property Law Association is 241 18th Street South, Suite 700, Arlington, VA 22202.

Fall 1992: I spoke at the Houston Intellectual Property Law Association about the recently decided case, *Two Pesos v. Taco Cabana*, 505 U.S. 763 (1992), which I had argued for Taco Cabana. I have no notes, transcript, or recording. The Association does not have a physical address.

Summer 1992: Member of panel on 1991 Supreme Court Term, at a meeting of the American Bar Association, held in Orlando, FL. The panelists described some of the most prominent cases the Court had decided in the just-completed Term, but I do not recall what case(s) I was responsible for discussing. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654.

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.

Erin Fuchs, *Obama's SG Pick Draws Applause from Appellate Bar*, Law360, Feb. 8, 2011. Copy supplied.

Joan Biskupic, *High Court's Majestic Library Off Limits*, USA Today, Dec. 12, 2006. Copy supplied.

Adrianna Khoo, *Shades of Gray*, Lawdragon, Oct. 2005. Copy supplied.

Joan Biskupic, *Final Decision Puts Family First*, USA Today, July 5, 2005. Copy supplied.

Participant in group conference call interview, June 27, 2005, about the Supreme Court's decision in *Grokster*, which I had argued. Audio recording supplied. Several of my quotes were re-printed in multiple press outlets.

Tony Mauro, *Court Surfs File-Sharing, Cable Cases*, Nat'l L.J., Mar. 28, 2005 (re-printed in multiple outlets). Copy supplied.

Mark Moran, *High Court Poised to Rule on HMO Lawsuit Exemption*, 39 Psychiatric News 26 (2004). Copy supplied.

ABC News Special Report: A Nation Waits, Dec. 11, 2000. Transcript supplied.

Joint interview (other interviewee unknown), WTTG (channel 5) in Washington, DC, Dec. 12, 2000, about the previous day's oral argument in *Bush v. Gore*. I do not have a transcript or recording, and I do not recall the content of the interview.

Senate to Take up DOJ Nominations of Klein, Holder, National Journal's CongressDaily, July 11, 1997. Copy supplied.

David G. Savage, *States on a Winning Streak*, 82 A.B.A.J. 46 (June 1996). Copy supplied.

David Savage, *High Court Curbs Federal Lawsuits against the States*, L.A. Times, Mar. 28, 1996. Copy supplied.

Mary Deibel, *Supreme Court to Rule This Session on 2 Cases Involving Coors Brewery*, Denver Rocky Mountain News, Oct. 3, 1994 (quote re-printed in multiple outlets). Copy supplied.

Lyle Denniston, *Supreme Court Justices Get On-The-Bench Training*, Baltimore Sun, Oct. 2, 1994. Copy supplied.

Then There Were Two, Legal Times, June 20, 1994. Copy supplied.

Eva M. Rodriguez, *Ginsburg Takes Tiny Steps to Big Gains*, The Recorder, June 21, 1993. Copy supplied.

Barbara Franklin, *Business Is Upbeat*, New York Law Journal, June 17, 1993. Copy supplied.

Daniel Klaidman, *Gold Mine or Land Mine?*, Legal Times, May 31, 1993 (re-printed in multiple outlets). Copy supplied.

Trade-Dress Distress, Nation's Restaurant News, Nov. 9, 1992. Copy supplied.

Appearance on "The Supreme Court in American Life," discussing the Court's October Term 1991, C-SPAN, July 17, 1992. A video recording is available at http://www.c-spanvideo.org/program/Court199.

Paul M. Barrett, *Four-Man Firm Klein Farr Boasts Uncanny Success in High Court*, Wall St. J., July 3, 1992. Copy supplied.

Paul M. Barrett, *Justices Extend Trademark Shield to 'Trade Dress'*, Wall St. J., June 29, 1992. Copy supplied.

Texas Tortilla Flap Widens Trademark Law's Reach, Washington Post, June 27, 1992. Copy supplied.

Michaelle Mittelstadt, *Supreme Court Rules Taco Cabana's Appearance is Protected*, Austin American-Statesman, June 27, 1992. Copy supplied.

Ron Hutcheson, *Taco Cabana Wins Case of Look-Alikes*, Fort Worth Star-Telegram, June 27, 1992. Copy supplied.

Paul M. Barrett, *High Court Rules Debtors Cannot Shrink Mortgages to Reflect Property Value Loss*, Wall St. J., Jan. 16, 1992. Copy supplied.

David Savage, *Insane Killer's Death Sentence Set Aside*, L.A. Times, Nov. 14, 1990 (re-printed in multiple outlets). Copy supplied.

Aaron Epstein, *Young Judge Has a Short Record*, Miami Herald, Oct. 30, 1987 (quote re-printed in multiple outlets). Copy supplied.

Ruth Marcus, *Bork: Rungmaster for New Lawyers*, Washington Post, July 23, 1987. Copy supplied.

Interview for "Report on Science" (about psychotherapist-patient confidentiality), Science, Mar. 7, 1986. Copy supplied.

Nancy Blodgett, *A Duty to Warn? Therapists Fear Rush of Suits*, 72 A.B.A.J. 28 (Jan. 1986). Copy supplied.

Dudley Clendinen, *Therapy Notes at Issue in Medical Fraud Case*, N.Y. Times, Mar. 17, 1985. Copy supplied.

LJ Pendlebury, *Supreme Court Clerks Favoring Private Practice*, Legal Times, July 2, 1984. 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 any 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:

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.

I have not held any judicial office.

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.

I have held no public offices. I have not been a candidate for elective office or been nominated unsuccessfully to any appointed office.

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 not been a member of, or officeholder in, and have not rendered services to, any political party or election committee. I have not held a position or played a role in any 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;

After graduating from Yale Law School in 1981, I clerked for Judge Abraham Sofaer, of the United States District Court for the Southern District of New York, from 1981 to 1982. I then moved to Washington, DC, and clerked for Judge Robert Bork, of the United States Court of Appeals for the District of Columbia Circuit, from 1982 to 1983. I clerked for Justice Sandra Day O'Connor, of the United States Supreme Court, from 1983 to 1984.

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

I have never practiced law 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.

1984 – 1986
Onek, Klein & Farr (now Farr & Taranto)
2445 M Street, NW
Washington, DC 20037
Associate

1986 – 1989
Office of the Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Assistant to the Solicitor General

1989 – present
Farr & Taranto (under present & predecessor names)
1150 18th Street, NW
Suite 1030
Washington, DC 20036
Partner

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 have never served as an arbitrator or mediator in alternative-dispute-resolution proceedings.

b. Describe:

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

My practice throughout my career has focused overwhelmingly on appellate litigation.

In my first two years of practice, as an associate at Onek, Klein & Farr from 1984 to 1986, I mostly wrote appellate briefs but did some non-appellate work, including assisting in representing the State of Missouri in district court proceedings involving the desegregation of the Kansas City, Missouri, schools. Through my firm, I also served, for a few months in the spring of 1986, as a legal consultant to the Secretary of State's Advisory Committee on South Africa, co-chaired by former Transportation Secretary William Coleman and former IBM Chairman Frank Cary.

I joined the Solicitor General's office in the summer of 1986 and served there until September 1989. Mostly I wrote briefs and argued cases in the Supreme Court, involving a wide spectrum of issues. That job also involved the review of requests by government offices for permission to appeal from losses in the district courts or to seek en banc review of appeals court losses.

From 1989 until the late 1990s, my work in private practice was heavily focused on the Supreme Court. I wrote briefs and argued cases on a wide variety of topics in the Court, including constitutional, bankruptcy, patent, trademark, federal procedure, antitrust, and copyright issues. I did some work in courts of appeals during those years as well. I also devoted time to assisting my partner in representing the National Cable Television Association (as it was then called), often in conjunction with other parties, in district court proceedings: proceedings involving the enforcement or modification of the Bell System breakup decree, and proceedings before a three-judge district court on the First Amendment validity of the "must carry" statute (imposing certain requirements that cable operators carry broadcast television stations). Finally, as an outside attorney, I assisted the Antitrust Division of the Department of Justice on a couple of occasions, chiefly on some of the legal briefing in its litigated case against Microsoft in the late 1990s.

Starting in 1996, I began doing a substantial amount of work for what was then Bell Atlantic. In particular, I devoted considerable time in 1996 and 1997 to the antitrust and Communications Act analysis of Bell Atlantic's merger with Nynex. I have continued to represent and to advise the company, now Verizon, in a wide range of matters – patent, antitrust, and communications – including its 2000 merger with GTE and its 2006 acquisition of MCI.

Starting in 1997, after I handled the *Warner-Jenkinson* patent case in the Supreme Court, I began to handle appeals in patent cases in the Federal Circuit. That work grew steadily and eventually came to dominate my work life. In the past dozen years, I have presented 20 arguments in the Federal Circuit – for patent holders and for patent defendants, across a variety of technology areas. Clients have included Honeywell Inc.; Housey Pharmaceuticals; Lemelson Medical, Education & Research Foundation; Monsanto Co.; Rambus Inc.; Verizon Communications; and W.L. Gore & Associates. Amidst this work, I have done the occasional non-patent appeal in a court of appeals other than the Federal Circuit.

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

In my two years as an associate at Onek, Klein & Farr (1984 – 1986), I did mostly appellate work in assisting the partners; there was no regular client, or type of client, except for the American Psychiatric Association, for which Joel Klein served as General Counsel. I also spent some time assisting the partners at the trial court level representing the State of Missouri in one of the remedy phases of the Kansas City school-desegregation case, and toward the end of that period I spent some time as a legal consultant to the Secretary of State's Advisory Committee on South Africa.

From 1986 to 1989, I served in the Solicitor General's office doing appellate work on behalf of the United States.

From 1989 to the mid-2000s, upon returning as a partner to what soon became Farr & Taranto, I mostly did Supreme Court work, on behalf of an assortment of clients, most of them one-time clients who happened to have Supreme Court cases. During that period, I also helped my partner Bartow Farr on several appellate or appellate-type projects for the National Cable Television Association. I began to do work for Bell Atlantic (now Verizon) in the early 1990s, and that work, including assisting on merger approvals and other antitrust and communications-law matters as well as patent matters, became a regular part of my practice starting in 1996.

Starting in the late 1990s, after handling the *Warner-Jenkinson* patent-law case in the Supreme Court, I began to work on appeals in patent cases in the Federal Circuit, and that work came largely to crowd out my Supreme Court work by 2005. My clients in patent matters have included both patent owners and accused infringers, and the cases have involved a variety of technology areas, including communications, biotechnology, and avionics, and disputes about a variety of patent issues, including validity and infringement and unenforceability. Clients have included Honeywell Inc.; Housey Pharmaceuticals; Lemelson Medical, Education & Research Foundation; Monsanto Co.; Rambus Inc.; Verizon Communications; and W.L. Gore & Associates.

Throughout my years of practice after 1989, I have handled a few cases in courts of appeals other than the Federal Circuit, mostly for Verizon. And until 2010, I was amicus counsel for the American Psychiatric Association, in which capacity I filed a number of amicus briefs (almost all in the Supreme Court) and reviewed requests from other organizations that the APA join their amicus briefs.

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.

Almost all of my work has involved litigation, almost all of it in the federal courts of appeals or the Supreme Court. I have frequently presented arguments in the Supreme Court and in federal appellate courts, chiefly in the Federal Circuit. I have argued 19 cases in the Supreme Court – eight while in the Solicitor General's office, and 11 cases in private practice. I have presented approximately 20 arguments in the Federal Circuit and appeared on briefs in still other cases. I have also argued cases in the First, Third, Fourth, Fifth, Eighth, Ninth, and D.C. Circuits.

With three exceptions (I believe), I have not appeared in federal district courts. Two of the exceptions were for arguing legal motions – a motion to dismiss in an antitrust case for Verizon in 1997 (then Bell Atlantic) and a summary-judgment motion in a patent case for Honeywell in 1999 or 2000. And in my first two years of practice, as an associate at Onek, Klein & Farr from 1984 to 1986, I assisted in representing the State of Missouri in district court proceedings involving the desegregation of the Kansas City, Missouri, schools. I have worked extensively on additional district court matters – chiefly patent cases – without appearing in court.

A small percentage of my work, such as assisting Verizon on merger approvals, has not involved work in the courts.

i. Indicate the percentage of your practice in:
   1. federal courts: 94%
   2. state courts of record: 1%
   3. other courts: 0%
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 95%
   2. criminal proceedings: 5%

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.

I have not played an in-court role in any trial except for my role as an associate in helping to represent the State of Missouri in the Kansas City school desegregation case in 1985. (My other two district court appearances were for legal arguments on motions, before any trial.) But I have worked extensively on several patent cases at the trial level – on claim construction filings, expert reports, witness

preparation, summary judgment papers, opening and closing arguments, jury instructions, and post-trial motions. In three of those cases, I attended the jury trials in full and worked on all phases during the trial itself from behind the bar (as well as in the pretrial phases of the matters). I also attended, and worked from behind the bar on, an antitrust trial for Verizon (then Bell Atlantic) in Portland, Maine, in 1999.

i. What percentage of these trials were:
   1. jury: 90%
   2. non-jury: 10%

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.

From 1986 to 1989, in the Solicitor General's Office, I briefed and argued cases in the Supreme Court. My oral arguments were in the following eight cases. Transcripts supplied.

ICC v. Texas, 479 U.S. 450 (1987) (ICC jurisdiction)

Shearson/American Express, Inc. v. McMahon, 482 U.S. 220 (1987) (arbitration under Securities Exchange Act)

Langley v. FDIC, 484 U.S. 86 (1987) (FDIC rights under acquired loan)

FERC v. Martin Exploration Management Co., 486 U.S. 204 (1988) (FERC natural gas regulation)

Pinter v. Dahl, 486 U.S. 622 (1988) (in pari delicto defense in securities action)

Karahalios v. National Federation of Federal Employees, 489 U.S. 527 (1989) (federal employee private right of action against union for breach of duty of fair representation)

Federal Savings and Loan Insurance Corp. v. Ticktin, 490 U.S. 82 (1989) (federal court jurisdiction over suit by Federal Savings and Loan Insurance Corporation)

Sable Communications of California, Inc. v. FCC, 492 U.S. 115 (1989) (First Amendment validity of law addressing "dial-a-porn")

In private practice since 1989, I have argued 11 cases:

Dewsnup v. Timm, 502 U.S. 410 (1992) (bankruptcy)

Two Pesos, Inc. v. Taco Cabana Int'l, 505 U.S. 763 (1992) (trademarks) (transcript misidentifies counsel; I argued on behalf of the respondent)

Puerto Rico Aq. & Sewer Auth. v. Metcalf & Eddy, 506 U.S. 139 (1993) (11th Amendment)

Keene Corp. v. United States, 508 U.S. 200 (1993) (federal jurisdiction)

TICOR Title Ins. Co. v. Brown, 511 U.S. 117 (1994) (class actions)

Morgan Stanley v. Pacific Mutual Life Ins., 511 U.S. 658 (1994) (separation of powers)

Warner-Jenkinson Co. v. Hilton Davis Chem. Co., 520 U.S. 17 (1997) (patent infringement: doctrine of equivalents)

Lawyer v. U.S. Department of Justice, 521 U.S. 567 (1997) (voting rights)

Great-West Life Ins. Co. v. Knudson, 534 U.S. 204 (2002) (ERISA case) (appointed by Court)

Verizon Communications v. Law Offices of Curtis V. Trinko, 540 U.S. 398 (2004) (antitrust and telecommunications)

MGM Studios v. Grokster, 545 U.S. 913 (2005) (copyright)

Transcripts of the oral arguments I gave in all Supreme Court cases are supplied.

I have written, or participated in the writing of, briefs in many other cases argued by other attorneys. In some of those cases, the briefs have been for parties to the case, and in others they have been for amici. The briefs have included petitions for certiorari, briefs in opposition to certiorari, briefs on the merits of cases in which certiorari has been granted, and amicus briefs at the petition or merits stages. Since 1989, first as co-counsel, then as lead counsel (starting in 1994), I have submitted amicus briefs for the American Psychiatric Association in a substantial number of Supreme Court cases.

To the best of my knowledge, the following is a complete list of the Supreme Court cases in which my name appears on at least one brief. All of the briefs I was able to identify are supplied.

Allied-Bruce Terminix Cos. v. Dodson, No. 93-1001, 513 U.S. 265 (1995) (brief for petitioners)

Amerada Hess Corp. v. Director, Division of Taxation, Nos. 87-453, 87-464, 490 U.S. 66 (1989) (amicus brief)

American Express Co. v. Italian Colors Restaurant, No. 08-1473 (amicus supporting petitioners)

ANR Pipeline Co. v. Director of Property Valuation, No. 93-1995 (petition for writ of certiorari, reply brief)

AT&T v. Cincinnati Bell Tel., No. 99-1249 (brief in opposition)

Atlantic Richfield Co. v. Union Oil Co., No. 00-249 (brief in opposition)

Barnes v. Westinghouse Elec. Co., No. 92-566 (petition for writ of certiorari, reply brief)

Bell Atlantic Corp. v. FCC, No. 98-653 (petition for writ of certiorari, reply brief)

Bell Atlantic Corp. v. Twombly, No. 05-1126, 550 U.S. 544 (2007) (petition for writ of certiorari, reply brief, brief for petitioners, reply brief)

Boersma v. Karnes, No. 87-1337 (amicus brief supporting appellees)

Bolton v. Three Boys Music Corp., No. 00-689 (brief in opposition)

Bristol-Myers Squibb Co. v. Zenith Labs., No. 94-494 (petition for writ of certiorari, reply brief)

Brock v. Richland Shoe Co., No. 86-1520, 486 U.S. 128 (1988) (petition for writ of certiorari)

Burlington N. Ry. Co. v. Oklahoma Tax Comm'n, No. 86-337, 481 U.S. 454 (1987) (two amicus briefs supporting petitioner)

Cavalier Telephone v. Verizon Virginia, No. 03-271 (memorandum for respondent)

Cellco Partnership v. NextWave Personal Communications, No. 01-654 (petition for writ of certiorari)

Century-National Ins. Co. v. Quackenbush, No. 94-1120 (petition for writ of certiorari, reply brief, supplemental brief)

Cipollone v. Liggett Group Inc., No. 90-1038, 505 U.S. 504 (1992) (brief for respondents, supplemental post-argument brief)

Clark v. Arizona, No. 05-5966, 548 U.S. 735 (2006) (amicus brief supporting petitioner)

Connecticut v. New Hampshire, No. 119 Original (reply brief in support of motion to intervene; reply brief for intervenors; brief for intervenors regarding award of interest; intervenors' proposed findings of fact; brief for intervenors; exceptions and brief in support for intervenors; motion for leave to intervene, brief in support of motion to intervene; complaint of intervenors)

Continental Casualty Co. v. Fibreboard Corp., No. 91-1193 (petition for writ of certiorari reply brief, motion to grant, vacate and remand on grounds of mootness, reply brief in support of motion to grant, vacate and remand on grounds of mootness)

Daubert v. Merrell Dow Pharmaceuticals, No. 95-198, 509 U.S. 579 (1993) (brief in opposition, brief for respondent)

Department of Revenue of Oregon v. ACF Industries, Inc., No 92-74, 510 U.S. 332 (1994) (amicus brief supporting petitioners)

Desarrollos Metropolitanos v. Taber Partners I, No. 92-1958 (petition for writ of certiorari, reply brief)

Dewsnup v. Timm, No. 90-741, 502 U.S. 410 (1992) (brief in opposition, brief for respondents)

Eastman Kodak Co. v. Image Tech. Servs., No. 97-1298 (brief in opposition)

Eastman Kodak Co. v. Image Tech. Servs., No. 90-1029, 504 U.S. 451 (1992) (amicus brief supporting respondents)

City of Edmonds v. Washington State Building Code Council, No. 94-23, 514 U.S. 725 (1995) (amicus brief supporting respondents)

El Paso Natural Gas Co. v. Neztsosie, No. 98-6, 526 U.S. 473 (1999) (brief for respondents)

Eli Lilly & Co. v. Sun Pharmaceutical Indus., No. 10-972 (petition for writ of certiorari, reply brief)

Excel Communications v. AT&T Corp., No. 99-95 (petition for writ of certiorari, reply brief)

FCC v. Sable Communications of California, No. 88-525, 492 U.S. 115 (1989) (jurisdictional statement)

FERC v. Martin Exploration Mgt. Co., No. 87-363, 486 U.S. 204 (1988) (petition for writ of certiorari, brief for United States)

FSLIC v. Ticktin, No. 87-1865, 490 U.S. 82 (1989) (petition for writ of certiorari, brief for petitioner)

Finley v. United States, No. 87-1973 (brief for United States)

Ford Motor Credit Co. v. Department of Revenue, No. 88-1847 (brief for appellee)

Foster v. IBM, No. 96-1909 (brief in opposition)

Frank's Nursery & Crafts v. Dunham, No. 90-1365 (petition for writ of certiorari)

Franklin v. Gwinnett County School District, No. 90-918, 503 U.S. 60 (1992) (brief for petitioner, reply brief)

Freightliner Corp. v. Myrick, No. 94-286, 514 U.S. 280 (1995) (petition for writ of certiorari, reply brief, brief for petitioners, reply brief)

Goodyear Atomic Corp. v. Miller, No. 86-1172, 486 U.S. 174 (1988) (two amicus briefs supporting appellant)

Graham v. Florida, Nos. 08-7412, -7621, 130 S. Ct. 2011 (2010) (amicus brief supporting petitioners)

Great Western Directories v. Southwestern Bell Tel. Co., Nos. 95-1974, -1982 (petition for writ of certiorari)

Great-West Life & Annuity Ins. Co. v. Knudson, No. 99-1786, 531 U.S. 917 (2002) (brief for Court-appointed amicus)

Griffin v. Wisconsin, No. 86-5324, 483 U.S. 868 (1987) (amicus brief supporting respondent)

H.J. Inc. v. Northwestern Bell Tel. Co., No. 87-1252, 492 U.S. 229 (1989) (amicus brief supporting petitioners)

Havner v. Merrell Dow Pharmaceuticals, Inc., No. 97-1508 (brief in opposition)

Helmsley v. United States, No. 91-778 (petition for writ of certiorari, reply brief)

Holder v. Humanitarian Law Project, Nos. 08-1498, 09-89, 130 S. Ct. 2705 (2010) (opening brief, reply brief)

Honeywell Int'l v. Interfaith Community Organization, No. 04-1560 (petition for writ of certiorari)

Honeywell v. Litton Sys., No. 96-874 (application for stay pending certiorari, petition for writ of certiorari, reply brief)

Honeywell v. Minnesota Life & Health Ins. Guaranty Ass'n, No. 97-9 (petition for writ of certiorari, reply brief, petition for rehearing)

Housey Pharmaceuticals v. Merck & Co., No. 04-695 (petition for certiorari. reply brief)

Hyatt v. Boone, No. 98-856 (petition for certiorari, reply brief)

Illinois Tool Works v. Independent Ink, No. 04-1329, 547 U.S. 28 (2006) (amicus brief supporting petitioners)

Independent Life and Accident Insurance Co. v. Harrington, No. 94-2016 (brief in opposition)

Indiana v. Edwards, No. 07-208, 554 U.S. 164 (2008) (amicus brief)

Infineon Technologies AG v. Rambus, No. 03-37 (brief in opposition)

ICC v. Texas, Nos. 85-1222, 85-1267, 479 U.S. 450 (1987) (reply brief)

Iowa Mutual Ins. Co. v. LaPlante, No. 85-1589, 480 U.S. 9 (1987) (amicus brief supporting respondents)

J.E.M. AG Supply v. Pioneer Hi-Bred Int'l, No. 99-1996, 534 U.S. 124 (2001) (brief for respondent)

Jaffee v. Redmond, No. 95-266, 518 U.S. 1 (1996) (amicus brief supporting respondent)

Kansas v. Crane, No. 00-957, 534 U.S. 407 (2002) (amicus brief supporting respondent)

Kansas v. Hendricks, Nos. 95-1649, -9075, 521 U.S. 346 (1997) (amicus brief)

Karahalios v. Defense Language Institute, No. 87-636, 489 U.S. 527 (1989) (amicus brief supporting respondents)

Keene Corp. v. United States, No. 92-166, 508 U.S. 200 (1993) (brief for petitioner, reply brief)

Langley v. FDIC, No. 86-489, 484 U.S. 86 (1987) (brief for respondent)

Lawrence v. Texas, No. 02-102, 539 U.S. 558 (2003) (amicus brief supporting petitioners)

Lawyer v. United States Dep't of Justice, No. 95-2024, 521 U.S. 567 (1997) (motion to affirm of state appellees, brief for state appellees)

Lemelson Medical, Education & Research Found. v. Symbol Technologies, No. 01-1855 (petition for writ of certiorari, reply brief)

Lewis v. Continental Bank Corp., No. 87-1955, 494 U.S. 472 (1990) (amicus brief)

Lippert v. Delta Air Lines, No. 92-1643 (petition for writ of certiorari, reply brief)

Litton Systems v. Honeywell, No. 00-1617 (brief in opposition)

Long Island Care at Home v. Coke, No. 06-593, 551 U.S. 158 (2007) (petition for writ of certiorari, reply brief, brief for petitioner, reply brief)

MCI Telecommunications Corp. v. AT&T, No. 93-356, 512 U.S. 218 (1994) (reply brief)

Madison County v. Oneida Indian Nation of New York, No. 10-72 (brief in opposition)

Markman v. Westview Instruments, No. 95-26, 517 U.S. 370 (1996) (amicus brief supporting respondents)

Martin v. United States, No. 05-1221 (petition for writ of certiorari, reply brief)

Masson v. New Yorker Magazine, No. 89-1799, 501 U.S. 496 (1991) (brief for respondents)

McCarver v. North Carolina, No. 00-8727 (amicus brief supporting petitioner)

McWherter v. Rural West Tennessee African-American Affairs Council, No. 93-1108 (jurisdictional statement)

MedImmune v. Genentech, No. 05-608, 549 U.S. 118 (2007) (amicus brief supporting respondents)

Medlock v. Pledger, No. 90-38, 499 U.S. 439 (1991) (amicus brief supporting petitioners)

Metro-Goldwyn-Mayer Studios v. Grokster, No. 04-480, 545 U.S. 913 (2005) (brief for respondents)

Microsoft Corp. v. AT&T Corp., No. 05-1056, 550 U.S. 437 (2007) (amicus brief supporting respondent)

Morgan Stanley & Co. v. Pacific Mutual Life Ins. Co., No. 93-609 (brief for respondent)

Morgan Stanley Capital Group v. Public Utility Dist. No. 1, Nos. 06-1457, -1462, 554 U.S. 527 (2008) (brief for respondents)

Morrison v. Olson, No. 87-1279, 487 U.S. 654 (1988) (amicus brief supporting appellees)

Mullins Coal Co. v. Director, Office of Worker's Compensation Programs, No. 86-327, 484 U.S. 135 (1987) (brief for respondent)

National Cable Television Ass'n v. Bell Atlantic Corp., No. 94-1900 (petition for writ of certiorari, reply brief)

National Cable Television Ass'n v. FCC, No. 95-775 (petition for writ of certiorari, reply brief)

National Cable Television Ass'n v. Gulf Power Co., Nos. 00-832, -843, 534 U.S. 327 (2002) (amicus brief in support of reversal)

National Kidney Patients Ass'n v. Sullivan, No. 92-569 (petition for writ of certiorari)

Nielson v. Private Fuel Storage, No. 04-575 (petition for writ of certiorari, reply brief, supplemental brief)

City of Norfolk v. Collins, No. 89-989 (reply brief, response of petitioners to Solicitor General's amicus brief)

NYNEX Corp. v. Discon, No. 96-1570, 525 U.S. 128 (1998) (supplemental brief, brief for petitioners, reply brief)

Official Committee of Unsecured Creditors v. U.S. Bank, No. 04-183 (petition for writ of certiorari, reply brief)

Oklahoma Natural Gas Co. v. Williams Natural Gas Co., No. 89-1296 (petition for writ of certiorari, reply brief, response of petitioner to Solicitor General's amicus brief)

Old Stone Corp. v. United States, No. 06-837 (petition for writ of certiorari, reply brief)

Olmstead v. L.C. ex rel. Zimring, No. 98-536, 527 U.S. 581 (1999) (amicus brief supporting respondents)

Olympic Airways v. Husain, No. 02-1348, 540 U.S. 644 (2004) (brief for respondents)

Orthofix S.R.L. v. EBI Medical Systems, No. 99-687 (brief in opposition)

PGA Tour v. Martin, No. 00-24, 532 U.S. 661 (2001) (petition for writ of certiorari, reply brief, brief for petitioner, reply brief)

Pacific Bell Tel. Co. v. Linkline Communications, No. 07-512, 555 U.S. 438 (2009) (amicus brief supporting petitioners)

Panetti v. Quarterman, No. 06-6407, 551 U.S. 930 (2007) (amicus brief supporting petitioner)

Perry v. Louisiana, No. 89-5120, 498 U.S. 38 (1990) (amicus brief supporting petitioner)

Pinter v. Dahl, No. 86-805, 486 U.S. 622 (1988) (amicus brief)

Pizza Hut v. Papa John's Int'l, No. 00-995 (brief in opposition)

Plaut v. Spendthrift Farm, No. 93-1121, 514 U.S. 211 (1995) (motion for leave to file brief amicus curiae and amicus curiae brief supporting petitioners)

Puerto Rico Aqueduct & Sewer Authority v. Metcalf & Eddy, No. 91-1010, 506 U.S. 139 (1993) (brief for petitioner, reply brief)

Quanta Computer v. LG Electronics, No. 06-937, 553 U.S. 617 (2008) (brief in opposition, supplemental brief)

Quill Corp. v. North Dakota, No. 91-194, 504 U.S. 298 (1992) (amicus brief supporting respondent)

Read Corp. v. Powerscreen of America, No. 02-1053 (brief in opposition)

Riggins v. Nevada, No. 90-8466, 504 U.S. 127 (1992) (amicus brief supporting petitioner)

Rockwell Int'l v. Celeritas Technologies, No. 98-850 (petition for writ of certiorari, reply brief)

Romer v. Evans, No. 94-1039, 517 U.S. 620 (1996) (amicus brief supporting respondents)

Rufo v. Inmates of Suffolk County Jail, Nos. 90-954, -1004, 502 U.S. 367 (1992) (amicus brief supporting petitioners)

Rural West Tennessee African-American Affairs Council v. McWherter, No. 94-1922 (motion to dismiss or affirm for appellees)

Rush Prudential HMO v. Moran, No. 01-1021, 536 U.S. 355 (2002) (amicus brief supporting respondents)

Sable Communications of California v. FCC, Nos. 88-515, -525, 492 U.S. 115 (1989) (brief for the cross-appellants/appellees, reply brief)

Samsung Electronics Co. v. Rambus, No. 80-121 (brief in opposition)

Sell v. United States, No. 02-5664, 537 U.S. 1186 (2003) (motion for leave to file amicus curiae brief and brief supporting respondent)

Seminole Tribe of Florida v. Florida, No. 94-12, 517 U.S. 44 (1996) (amicus brief supporting respondents)

Sempra Generation v. Public Utilities Commission, Nos. 06-1454, -1457, -1462, -1468, 554 U.S. 527 (2008) (brief in opposition)

Shearson/American Express v. McMahon, No. 86-44, 482 U.S. 220 (1987) (amicus brief supporting petitioners)

Shell Oil Co. v. Director of Revenue, No. 87-609 (amicus brief supporting appellee)

City of Sherrill v. Oneida Indian Nation of New York, No. 03-855, 544 U.S. 197 (2005) (brief for respondents, petition for rehearing)

Smith v. Stratus Computer, No. 94-1416 (brief in opposition)

Sofaer v. District of Columbia Court of Appeals, No. 99-1143 (petition for writ of certiorari, reply brief)

SBC Communications v. FCC, No. 98-652 (brief for respondent supporting petitioner)

Stubblefield Construction Co. v. San Bernardino, No. 95-114 (brief in opposition)

SKF USA v. United States Customs & Border Protection, No. 09-767 (brief in opposition for private respondents)

Swidler & Berlin v. United States, No. 97-1192, 524 U.S. 399 (1998) (amicus brief supporting petitioners)

Talbert Fuel Systems Patents Co. v. Unocal Corp., No. 02-90 (brief in opposition)

Tauber v. Salomon Forex, No. 93-1314 (petition for writ of certiorari, reply brief, petition for rehearing)

3M Co. v. LePage's, No. 02-1865 (petition for writ of certiorari, reply brief, supplemental brief)

Ticor Title Ins. v. Brown, No. 92-1988, 511 U.S. 117 (1994) (petition for writ of certiorari, reply brief, brief for petitioners, reply brief)

Touby v. United States, No. 90-6282, 500 U.S. 160 (1991) (petition for writ of certiorari, brief for petitioners, reply brief)

Turner Broadcasting Sys. v. FCC, No. 95-992, 512 U.S. 622 (1994) (for petitioners), No. 95-992, 520 U.S. 180 (1997) (reply brief, jurisdictional statement, appellants' opposition to motions to affirm, brief for appellant, reply brief)

Two Pesos v. Taco Cabana, No. 91-971, 505 U.S. 763 (1993) (motion to dismiss writ as improvidently granted, reply to petitioner's response to motion to dismiss, brief for respondents)

United Mine Workers of America 1974 Benefit Plan and Trust v. LTV Steel Co., No. 91-0933 (petition for writ of certiorari)

United States v. Albertson, No. 89-52 (petition for writ of certiorari)

United States v. Chesapeake & Potomac Tel. Co., No. 94-1893, 94-1900 (brief and reply brief for private petitioner)

United States v. Georgia, Nos. 04-1209, -1236, 546 U.S. 151 (2006) (amicus brief supporting petitioners)

United States v. Munoz-Flores, No. 88-1932, 495 U.S. 385 (1990) (petition for writ of certiorari)

United States v. GWI PCS, No. 00-1621 (Motion for leave to file and brief of amici curiae supporting petitioner)

United States Postal Service v. National Ass'n of Letter Carriers, No. 87-59, 485 U.S. 680 (1988) (petition for writ of certiorari)

Upjohn Co. v. North Haven Planning & Zoning Comm'n, No. 90-1471 (petition for writ of certiorari, reply brief)

Verizon Communications v. Law Offices of Curtis V. Trinko, No. 02-682, 540 U.S. 398 (2004) (petition for writ of certiorari, reply brief, brief for petitioner, reply brief)

Wal-Mart Stores v. Samar Bros., No. 99-140, 529 U.S. 205 (2000) (amicus brief supporting respondent)

Wards Cove Packing Co. v. Atonio, No. 87-1387, 490 U.S. 642 (1989) (amicus brief supporting petitioners)

Warner Cable Communications v. Niceville, No. 90-1463 (motion for leave to file amicus curiae brief and brief supporting petitioner)

Warner-Jenkinson Co. v. Hilton Davis Chemical Co., No. 95-728, 520 U.S. 17 (1997) (petition for writ of certiorari, reply brief, brief for petitioner, reply brief)

Washington Mills Electro Minerals Corp. v. DeLong Equipment Co., No. 93-634 (petition for writ of certiorari, reply brief)

Whitfield v. Richland Shoe Co., No. 86-1520, 486 U.S. 128 (1988) (brief for the petitioner)

Wisconsin v. City of New York, Nos. 94-1614, -1631, -1985, 517 U.S. 1 (1996) (amicus brief supporting petitioners)

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.

Each of the following ten cases was particularly significant for me, whether because of the general significance of the issues or because of the significance of the case to my client or because it took a particularly significant amount of time and effort on my part.

1. *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17 (1997).

This case addressed the doctrine of equivalents for patent infringement. I represented Warner-Jenkinson, which had been held liable for infringement under the doctrine of equivalents. After the Federal Circuit had split en banc over the principles governing that doctrine, Warner-Jenkinson retained me and my firm in 1995 to seek certiorari. The Supreme Court took the case. I was the lead attorney in briefing and arguing the case. The Court narrowed the doctrine of equivalents in ways that gave Warner-Jenkinson a remand, leading to ultimate settlement of the particular case, and, more generally, to a tightening of the doctrine in patent law.

Co-counsel was Robert Chambers, Wood, Herron & Evans, 2700 Carew Tower, 441 Vine Street, Cincinnati, OH 45202 (513.241.2324). Opposing counsel was David Schmit, Frost, Brown, Todd LLC, 2200 PNC Center, 201 East Fifth Street, Cincinnati, OH 45202 (513.651.6985). The United States as amicus curiae was represented by Deputy Solicitor General Lawrence Wallace, now retired, United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530 (202.514.2203); Cornelia (Nina) Pillard, now of Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington, DC 20001 (202.662.9401).

2. *Great-West Life Ins. Co. v. Knudson*, 534 U.S. 204 (2002).

This case involved a question about the scope of one of ERISA's right-to-sue provisions. Janette Knudson, a victim of a severely disabling car accident, had medical care paid for by her ERISA health plan, which then sued her for reimbursement under ERISA after she obtained a tort settlement from the car manufacturer. After the Ninth Circuit held that the ERISA provision did not permit such a suit, the health plan petitioned for certiorari, and Knudson's counsel declined to defend that legal conclusion. The Supreme Court took the case and in spring 2001 appointed me as amicus to defend the Ninth Circuit's ruling. I filed a brief and argued the case and prevailed 5 to 4.

As appointed amicus, my sole co-counsel was my partner Bartow Farr, of Farr & Taranto, 1150 18th Street, NW, Suite 1030, Washington, DC 20036 (202.775.0184). Counsel for the health plan was James Jorden of Jorden Burt LLP, 1025 Thomas

Jefferson Street, NW, Suite 400 East, Washington, DC 20007 (202.965.8135). Counsel for the United States was then-Assistant to the Solicitor General Paul Wolfson, who is now at WilmerHale, 1875 Pennsylvania Avenue, NW, Washington, DC 20006 (202.663.6390).

3. *Verizon Communications v. Law Offices of Curtis V. Trinko*, 540 U.S. 398 (2004).

This case addressed the scope of the monopolization provision of the Sherman Act as it applied to a local telephone company accused of deficiencies in cooperating with new competitors in the wake of the Telecommunications Act of 1996. Verizon retained me in 2000 to assist other attorneys in the district court seeking dismissal of a case making a monopolization claim (among others) on that ground. After the district court dismissed the case, I played a leading role in the briefing in the Second Circuit, though Verizon Deputy General Counsel John Thorne argued the case. When the Second Circuit reinstated the monopolization claim, we obtained Supreme Court review and, ultimately, reversal. I had the lead role in briefing and argued the case in the Supreme Court.

My principal co-counsel were John Thorne, Deputy General Counsel, Verizon, 1320 North Courthouse Road, Arlington, VA 22201 (703.351.3900), and Aaron Panner and Michael Kellogg of Kellogg, Huber, Hansen, Todd, Evans & Figel, 1615 Street, NW, Suite 400, Washington, DC 20036 (202.326.7900). In the Supreme Court, my principal opposing counsel was Donald Verrilli, then of Jenner & Block, now Solicitor General of the United States, United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530 (202.514.2203).

4. *MGM Studios v. Grokster*, 545 U.S. 913 (2005).

This case addressed the copyright liability of distributors of software for sharing of electronic files, particularly music, through peer-to-peer networks, where some but not all of the users are directly infringing in sharing copyrighted works without authorization. After the Supreme Court granted the copyright owners' petition for certiorari, the two defendants – Grokster and StreamCast Networks – retained me and my firm in late 2004 to represent them. I had the lead in briefing the case and I argued it. The Supreme Court rejected the broader asserted grounds for such distributor liability but approved an inducement basis for potential liability.

Besides my partner Bartow Farr, my main co-counsel were Fred Von Lohmann, then of the Electronic Frontier Foundation and now Senior Copyright Counsel at Google, 1600 Amphitheatre Parkway, Mountain View, CA 94043 (415.488.6087); Michael Page, Durie Tangri, 217 Leidesdorff Street, San Francisco, CA 94111 (415.362.6666); and Charles Baker, Fulbright & Jaworski, 1301 McKinney Suite 5100, Houston, TX 77010 (713.651.5151). Principal opposing counsel were Donald Verrilli, then of Jenner & Block, now Solicitor General of the United States, United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530 (202.514.2203); and then-Solicitor General Paul Clement, now with Bancroft, 1919 M Street, NW, Suite 470, Washington, DC 20036 (202.234.0090).

5. *United States v. Prigmore*, 243 F.3d 1 (1st Cir. 2001) (before Judges Stahl, Selya, and Coffin).

This case involved a criminal prosecution charging three employees of a medical-device company with certain violations relating to the FDA's role in medical-device regulation. I was retained by the employees in 1997 after they were convicted on one count, with the other counts not having been tried. An initial appeal produced, at our urging, a remand to dispose of the remaining counts before there could be a final judgment for appeal. *United States v. Leichter*, 160 F.3d 33 (1st Cir. 1998) (before Judges Torruella, Campbell, and Boudin). I played a central role in the briefing and argued that appeal. Then, after proceedings on remand, the case returned to the First Circuit on appeal, where again I played a central role in the briefing and argued the case. That appeal produced a vacating of the conviction and a remand. I believe that, on remand, a plea requiring no prison time was agreed on.

My main co-counsel were Robert Keefe of what is now WilmerHale, 60 State Street, Boston, MA 02109 (617.526.6334) and Andrew Good of what is now Good & Cormier, 83 Atlantic Avenue, Boston, MA 02110 (617.523.5933). Opposing counsel in the first appeal was then-Assistant United States Attorney Stephen Higginson, now a Judge of the United States Court of Appeals for the Fifth Circuit, 600 South Maestri Place, New Orleans, LA 70130 (504.310.7700). Opposing counsel in the second appeal was David Kris, then of the Department of Justice Criminal Division, now General Counsel of Intellectual Ventures, 3150 139th Avenue SE, Building 4, Bellevue, WA 98005 (425.467.2300).

6. *Litton v. Honeywell*, 140 F.3d 1449 (Fed. Cir. 1998) (before Judges Rader, Newman, and Bryson), and 238 F.3d 1376 (Fed. Cir. 2001) (before Judges Rader, Mayer, and Bryson).

This case involved an appeal of a verdict of patent infringement under the doctrine of equivalents, and under state-law torts, against Honeywell. After Honeywell lost on appeal in 1996, it retained me and my firm to seek certiorari. The Supreme Court vacated the decision in light of *Warner-Jenkinson* and remanded to the Federal Circuit, where I played the lead role in briefing and where I argued the case, which the Federal Circuit ruled (in the 1998 ruling) should be remanded for further consideration of Honeywell's liability. In the district court, I played a lead role in the briefing, and I argued the matter, leading to a summary judgment of non-liability. On plaintiff Litton's appeal to the Federal Circuit, I played the lead role in the briefing and argued the case, producing (in the 2001 ruling) a holding of non-infringement by Honeywell, plus a remand for further proceedings on the state-law claims. The matter was settled before further proceedings.

My main co-counsel were Honeywell's then-General Counsel Ed Grayson, now retired, 210 Chapoquoit Road, Falmouth MA 02540 (508.548.5948), John Donofrio, now General Counsel of the Shaw Group, 4171 Essen Lane, Baton Rouge, LA 70809 (225.932.2500), Greg Long of Sheppard Mullin Richter & Hampton, 333 South Hope

Street, 43rd Floor, Los Angeles, CA 90071 (213.617.5443), Kent Raygor of Sheppard Mullin Richter & Hampton, 1901 Avenue of the Stars, Suite 1600, Los Angeles, CA 90067 (310.228.3730), and George Quillin of Foley & Lardner, 3000 K Street, NW, Suite 600, Washington, DC 20007 (202.672.5413). My principal opposing counsel in the first appeal was the late Leslie Misrock of Pennie & Edmonds, joined by Frederick Lorig, now of Quinn Emanuel, 865 South Figueroa Street, 10th Floor, Los Angeles, CA 90017 (213.443.3000). My principal opposing counsel in the second appeal was now-Chief Justice John Roberts, Supreme Court of the United States, 1st Street NE, Washington, DC 20543 (202.479.3000).

7. *Rambus Inc. v. Infineon Technologies*, 318 F.3d 1081 (Fed. Cir. 2003) (before Judges Rader, Bryson, and Prost).

This was the first of a series of cases in which I have represented Rambus in the Federal Circuit. In a suit brought by Rambus alleging infringement of several patents by Infineon, the district court in 2001 construed the claims narrowly and rejected infringement and also upheld in part a jury verdict that Rambus committed fraud through its participation in a standard-setting organization. Rambus retained me just after the jury verdict. I played a leading role in the briefing and I argued the case on appeal. In this 2003 ruling, the Federal Circuit reversed the claim constructions, remanding for further proceedings on infringement, and also reversed the judgment of fraud. On remand in the district court, where I did not participate, the case settled before judgment after proceedings on Infineon's charge that Rambus had improperly destroyed documents.

I represented Rambus in further appeals in related cases, arguing for Rambus on three additional occasions – the last of them a re-argument before a five-judge panel of the Federal Circuit. *Samsung Electronics v. Rambus*, 523 F.3d 1374 (Fed. Cir. 2008) (before Judges Rader, Schall, and Farnan, DJ); *Hynix Semiconductor v. Rambus*, 2011 WL 1815978 (Fed. Cir.) (initially before Chief Judge Michel and Judge Linn; on re-argument before Judges Newman, Lourie, Bryson, Gajarsa, and Linn). The latter has been remanded for further proceedings.

In the 2003 appeal, my principal co-counsel were William West, now of Pillsbury, 2300 N Street, NW, Washington, DC 20037 (202.663.8875); Michael Schaengold, of Patton Boggs, 2550 M Street, NW, Washington, DC 20037 (202.457.6523); Greg Stone and Paul Watford of Munger Tolles & Olson, 355 South Grand Avenue, 35th Floor, Los Angeles, CA 90071 (213.683.9255 and 213.683.9172). In the later appeals, co-counsel have included Carter Phillips and Eric Shumsky of Sidley Austin, 1501 K Street, NW, Washington, DC 20005 (202.736.8270 and 202.736.8496).

My principal opposing counsel in the 2003 appeal was former-Judge and -Solicitor General Kenneth Starr, who is currently the President of Baylor University, One Bear Place #97096, Waco, TX 76798 (254.710.3555), joined by John Desmarais, then of Kirkland & Ellis, now of Round Rock Research, P.O. Box 1042, Mt. Kisco, NY 10549 (888.651.0028). In the 2008 appeal, opposing counsel included David Healey, now of Fish & Richardson, 1 Houston Center, 1221 McKinney Street, Houston, TX 77010

(713.654.5310), and Brian Riopelle, McGuireWoods LLP, 901 East Cary Street, Richmond, VA 23219 (804.775.1084). In the 2011 case, my principal opposing counsel was Sri Srinivasan, now Principal Deputy Solicitor General, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530 (202.514.2203).

8. *Housey Pharmaceuticals v. Bayer*, 2005 WL 752364 (Fed. Cir.) (before Judges Rader, Clevenger, and Bryson) and 2006 WL 2233214 (Fed. Cir.) (before Judges Rader, Schall, and Bryson).

This case involved a claim of unenforceability of a patent owned by Housey Pharmaceuticals, which hired me in January 2004, just after the district court found the patent unenforceable. I played the leading role in the briefing, and I argued the case, in the Federal Circuit, which held in 2005 that the district court had clearly erred but remanded to permit the district court's further consideration of the issue. The district court found unenforceability again on remand, and I played the leading role in the briefing and I argued the case in the Federal Circuit in the subsequent appeal. In 2006, the Federal Circuit affirmed the remand ruling. (I also represented Housey Pharmaceuticals in unsuccessfully seeking Supreme Court review in *Housey Pharmaceuticals, Inc. v. Astrazeneca*, 366 F.3d 1348 (Fed. Cir. 2004).)

My co-counsel was Terrance Rader, of Rader, Fishman & Grauer, 39533 Woodward Avenue, Suite 140, Bloomfield Hills, MI 48304 (248.594.0600). My opposing counsel was Jeffrey Bove, of Connolly Bove Lodge, & Hutz, 1007 North Orange Street, Suite 900, P.O. Box 2207, Wilmington, DE 19899 (302.658.9141).

9. *Verizon Services Corp. v. Vonage Holdings Corp.*, 503 F.3d 1295 (Fed. Cir. 2007) (before Chief Judge Michel and Judges Gajarsa and Dyk).

This case involved my client Verizon's assertion of several patents against Vonage. Verizon enlisted me in 2006 to aid in the district court work, though not to have an in-court role, and I did so, assisting in all phases of the trial-level litigation, before and during the jury trial. Verizon won a jury verdict, which was followed by stay briefing and argument in the Federal Circuit, as well as merits briefing and argument, all within a couple of months. I played a leading role in the briefing and I did both arguments in the Federal Circuit, which affirmed in substantial part. The case was thereafter settled.

Co-counsel were John Thorne, Deputy General Counsel, Verizon, 1320 North Courthouse Road, Arlington, VA 22201 (703.351.3900), and several lawyers from Winston & Strawn, including Geoffrey Eaton, 1700 K Street, NW, Washington, DC 20006 (202.282.5705), and Peter McCabe and Dan Webb, 35 West Wacker Drive, Chicago, IL 60601 (312.558.5954 and 312.558.5856). My opposing counsel was Roger Warin, Steptoe & Johnson, 1330 Connecticut Avenue, NW, Washington, DC 20036 (202.429.6280), joined by Scott Doyle, now of Shearman & Sterling, 801 Pennsylvania Avenue, NW, Suite 900, Washington, DC 20004 (202.508.8170).

10. *Bard Peripheral Vascular v. W.L. Gore & Associates*, No. 2010-1510, Federal Circuit, argued May 3, 2011 (before Judges Newman, Gajarsa, and Linn).

This case involves a suit for patent infringement by Bard against Gore, based on a patent issued in 2002 after an interference involving competing applications from 1974 that twice went to the Federal Circuit. After a jury verdict in late 2007, and denials of post-trial relief in 2009, Gore retained me to assist on the eventual appeal. There were many issues litigated in the trial court, including several validity issues and unenforceability. I played a central role in the selection of appeal issues and in the briefing, and I argued the case, in the Federal Circuit. The Federal Circuit has not yet decided the case.

My co-counsel include recently retired senior counsel at Gore, Iain Campbell, 551 Paper Mill Road, Newark, DE 19711; William Maledon, Osborn Maledon, 2929 North Central Avenue # 2100, Phoenix, AZ 85012 (602.640.9000); and David Pfeffer and Harry Marcus, of Locke Lord Bissell & Liddell, 3 World Financial Center, New York, NY 10281 (212.415.8600). My principal opposing counsel is Steven Cherny, Kirkland & Ellis, 601 Lexington Avenue, New York, NY 10022 (212.446.4800), joined by, among others, Gregory Garre of Latham & Watkins, 555 Eleventh Street, NW, Washington, DC 20004 (202.637.2200).

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.)

My law practice has been overwhelmingly a litigation practice. I include in such litigation those occasions on which I participated in discussions with attorneys for the United States about what positions, if any, the United States would take as an amicus in cases that I was working on for clients, whether the client had already participated in the litigation or was planning for such participation. I have done very little work that was not part of litigation.

One area of activity that is somewhat different from ordinary litigation consists of work on several mergers involving the company that is now Verizon: the 1997 merger of Bell Atlantic and Nynex; the 2000 merger of Bell Atlantic with GTE (which formed "Verizon"); and the 2006 merger of Verizon with MCI. In each situation, my client was Bell Atlantic/Verizon, and I participated in preparation of papers for submission, and occasionally in in-person presentations, to either the Justice Department's Antitrust Division or the Federal Communications Commission as those offices were reviewing the mergers before they were completed.

In recent years, I also have spent time advising Verizon on various issues that may affect its overall involvement in litigation. That advisory work has chiefly concerned patent

law. As part of that advisory work, on approximately half a dozen occasions in 2008 and 2009 (perhaps into 2010), I accompanied at least one representative of Verizon to meet with staff of Senators or Representatives to discuss some of the issues relating to damages in patent cases when Congress was considering potential amendments to the patent statute. I also accompanied at least one representative of Verizon to meet with congressional staff on a couple of occasions when Congress was considering altering the pleading standard the Supreme Court had articulated in *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 7 (2009). I believe that that is the sole legislative lobbying activity in which I have engaged.

I also did several projects for the Antitrust Division of the Department of Justice. For several months in 1998, I was retained as an outside consultant to aid in the Division's consideration of possible antitrust issues raised by certain practices of Visa and MasterCard. My role came to an end before the Division completed its investigation and made a decision to take action. Earlier, in late 1994 to early 1995, I was retained by the Antitrust Division to assist in some of the briefing in a case involving a consent decree against Microsoft. Later, from fall 1999 to early 2001, I was retained by the Division to assist in some of the briefing for the government in its litigated antitrust case against Microsoft.

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.

    In spring 1992, I taught a seminar on "Supreme Court Practice" at Georgetown University Law Center. The course involved study of the components of practicing in the Supreme Court: petitions for certiorari; briefs in opposition to certiorari; merits briefs; amicus briefs; and oral arguments. I no longer have a syllabus for the course.

    In fall 1995, I taught "Federal Courts and the Federal System" at Georgetown University Law Center. The course involved study of the topics that are traditionally part of a "federal jurisdiction" class: standing and related doctrines; non-Article III courts; congressional control of courts' jurisdiction; federal question jurisdiction; federal common law; implied rights of action; appellate review; habeas corpus; Eleventh Amendment issues; the scope of Section 1983; and abstention doctrines. A syllabus is supplied.

    In fall 2002, I taught "Patent Law" at Harvard Law School. The course involved study of a broad range of issues in patent law: eligible subject matter; utility; disclosure and claiming requirements; novelty and other priority issues; obviousness; infringement; and some other issues. A syllabus is supplied.

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 do not have any arrangements for deferred income or future benefits from previous business relationships.

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 have no plans, commitments, or agreements to pursue outside employment during service with a court.

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 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.

       I am unaware of any individuals, family or otherwise, that are likely to present potential conflicts of interest. Such conflicts as are likely to arise seem likely to come from my representation of clients. It is possible that potential conflicts of interest may be presented with regard to current or former clients. Specifically, I am aware of several particular matters in which I have participated that either are pending in the Federal Circuit or have a potential to be in the Federal Circuit. I would not participate in those matters as a judge. My present or former clients in those matters are Fiserv, Inc.; Honeywell Inc.; Gilbert Hyatt; Rambus Inc.; Timken Co.; Verizon Communications; US Bank N.A.; and W.L. Gore & Associates.

It is unlikely that, after I left, my firm would handle matters before the Federal Circuit, but if it did, I would recuse myself for at least a period of time. I would apply the standards of 28 U.S.C. § 455 and the Code of Judicial Conduct, as well as any other pertinent principles of judicial ethics, to determine whether to recuse in other matters, including in matters that involve former clients of my firm but that are themselves unrelated to any matters that I or my firm handled.

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

I would consult rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Judicial Conduct, and based on that consultation I would compile a comprehensive list of matters and/or clients (or other persons) for easy flagging of potential conflicts of interest. In close cases I would consult other judges and any persons designated by the court or judicial organizations to provide advice on such questions as they arise.

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.

I have done essentially two kinds of legal work that are relevant to this question. First, without undertaking a representation of a client, I have given many hours in freely helping lawyers to clarify their appellate arguments, sometimes in briefing, more often in moot courts held in preparation for oral arguments. Much of this work has been through the Supreme Court Institute of the Georgetown University Law Center, which holds moot courts in most cases argued in the Supreme Court, and for which I have long done a handful of moot courts each year. Some of this work has been through the National Association of Attorneys General, for which I have done many moot courts over the years. Some of it has been for lawyers from the Public Defender Service: for example, I devoted many hours to assisting on *United States v. Dixon*, 509 U.S. 688 (1993). Some of it has been for lawyers who are representing persons suffering physical injury and suing for torts: for example, I helped the plaintiffs' attorneys prepare in *Wyeth v. Levine*, 555 U.S. 555 (2009), and *Norfolk & Western Ry. Co. v. Ayers*, 538 U.S. 135 (2003). I performed a similar role for an attorney for a discharged postal employee in *United States Postal Service v. Gregory*, 534 U.S. 1 (2001), and for various environmental plaintiffs (who may not be so uniformly disadvantaged) in cases such as *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725 (1997), *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208 (2009), *Massachusetts v. EPA*, 549 U.S. 497 (2007), *Monsanto Co. v. Geertson Seed Farms*, 130 S. Ct. 2743 (2010), and *American Electric Power Co. v. Connecticut*, 131 S. Ct. 2527 (2011). Although I have not maintained records, I have invested a substantial number of hours in this work over the years.

Second, I have undertaken representations in several cases in the Supreme Court that involved disadvantaged clients and/or were without pay or for much reduced rates. Examples include: *Touby v. United States*, 500 U.S. 160 (1991) (criminal defendants in drug case); *Dewsnup v. Timm*, 502 U.S. 410 (1992) (bankruptcy matter); *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992) (damages remedy for sexual harassment of high school student); *Great-West Life & Annuity Insurance Co. v. Knudson*, 534 U.S. 204 (2002) (victim of tort accident seeking to keep recovery against ERISA claim of insurer); and *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010) (First Amendment challenge to application of "material support" statute to certain speech and association involving designated foreign terrorist organizations). I also drafted an amicus brief, pro bono, for the State and Local Legal Center in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996). When undertaken, these and other matters have each consumed large amounts of time in a given year – sometimes a couple of months of full-time work.

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.

On January 25th or 26th, 2011, I spoke to an official in the White House Counsel's Office, who asked me whether I was interested in the possibility of serving on the Federal Circuit, and I confirmed that I would be interested. On July 6, 2011, I spoke with that official again, and was told that I was still under consideration. Since August 10, 2011, I have been in contact with officials from the Office of Legal Policy of the Department of Justice. On September 12, 2011, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On November 10, 2011, 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.

AFFIDAVIT

I, Richard Gary Taranto, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

November 10, 2011
(DATE)

Richard G. Taranto
(NAME)

(NOTARY)

Gentry Alexander
District of Columbia
My Commission Expires
June 30, 2013