MITCHELL | HAMLINE School of Law

Cybaris®

Volume 2 | Issue 1 Article 1

2011

Transcript: The Honorable Judge Randal R. Rader, Chief Judge of the Court of Appeals for the Federal Circuit: The Most Pressing Issues in IP Law Today

Randal R. Rader

TRANSCRIPT: THE HONORABLE JUDGE RANDALL R. RADER, CHIEF JUDGE OF THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT: THE MOST PRESSING ISSUES IN IP LAW TODAY

RANDAL R. RADER[†]

I've thought a good deal about what I wanted to communicate to you and I know what I'm going to start with but beyond that I'm not really sure. Let me tell you what is one of the great challenges of our profession, and what I think we need to do to address that challenge. Our challenge is the expense and delay of the litigation system. Now that's an enormous topic. We could each testify as to the complications we've seen in one trial after another. The difficulties we've had in getting to a resolution and particularly we could probably all talk about the vast expense of discovery and how that often operates against just outcomes. In fact I'm sure there are those of us here who can testify to the expense of the system actually becoming a blackmailing agent. Rather than pursue a just outcome, often the litigant has to settle early just to escape the cost of litigation. This is not an unusual scenario for us, but it ought to be extremely troubling to us. There isn't one of us in the bar that hasn't raised our arm at one time in the past and made a commitment to not only uphold the laws, but to do equal justice under those laws. I'm not sure we are pursuing just outcomes when we make them contingent upon economics, upon strategies of delay, upon tactics that use the system against just outcomes.

Now let me tell you a little bit about what the Federal Circuit is doing to address this and see if I can't enlist you to help me. You just heard me say and I'll say often, it's one of the common themes with me, that our Court is only as good as its bar and on this one we need you. I think this cost and delay issue is largely attributed to our discovery system. Now our discovery system has a certain majesty and we all understand its purpose, that by exchanging information early in the process we can perhaps reach a settlement and forgo the cost and difficulty of litigation, but it's operating to exactly the opposite effect when it

[†] The Honorable Chief Judge Randall Rader was appointed to the United States Claims Court (currently the U.S. Court of Federal Claims) by Ronald Reagan in 1988. He was appointed to the U.S. Court of Appeals for the Federal Circuit by George H.W. Bush in 1990. Judge Rader became Chief Judge of the Court of Appeals for the Federal Circuit (C.A.F.C.) on June 1, 2010. As well as sitting as Chief Judge on the C.A.F.C., Chief Judge Rader has worked as a professor at George Washington University School of Law, Munich Intellectual Property Law Center as well as programs in Tokyo, Taipei, Beijing and New Delhi. Chief Judge Rader is also a co-author of the patent law textbook, "Cases and Materials on Patent Law."

becomes so expensive that it defeats the purpose of finding the proper outcome in legal disputes.

The Federal Circuit has authorized its Chief Judge, and by the way, there is a little message there. The Federal Circuit works together. We discuss these things. You hear the Chief Judge talking about it and stepping up front, but only because the Court is taking this direction and the Court has asked the Chief Judge to address this discovery problem. The Chief Judge has convened the Court's Advisory Council and the Advisory Council has appointed along with the Chief Judge a select committee to address the particular cost of e-discovery. There are six leading district judges from all around the country. There are a few distinguished academicians. There are patent practitioners on both the plaintiff's and defendant's side of the bar and we are discussing this problem, but I think I wanted to give to you the speech that I gave when we first convened this committee and the President of the Federal Circuit Advisory Council introduced me. I gave this speech then and I think I want you to hear the same speech.

I said, "I believe in a little injustice." Now judges do not profess to believe in injustice, but I believe in a little injustice. Let me tell you the context in which I make that statement. You see, inevitably as we pursue some kind of limitation on the cost of discovery, it's going to mean that there will be a case in the future, somewhere, where a document will not be discovered that might have changed the outcome of that case. It will be that last document, which was at the bottom of the hundredth box and because we cut off discovery at the seventieth box or the thirtieth, they are going to not find that record and there's going to be a sense that that is an unjust result. I want to say right up front in this process that I believe that injustice is the right result. Let's let that injustice occur because it must occur to achieve a greater justice, to achieve the greater justice of efficiency in the system.

I can tell you it's the sorts of things we are thinking about and we'll need input, cooperation, work. We are thinking about a limitation on the number of record custodians that could be discovered in the electronic context. Maybe three, and in larger cases the judge would have the option to raise that number to four or five. Those custodians would be the only ones that you would deliver the whole computer database to and discover everything about their participation in this patent litigation process. Another way to perhaps achieve that end may be stated in the alternative, would be to limit the number of search terms, five, seven. Beyond those three custodians and those five search terms the discovery could proceed but it would proceed at the expense of the requester shifting the economic incentives in a different direction, and perhaps encouraging a more targeted discovery that would deliver the relevant information before you had to start paying for it yourself.

Now we're lawyers. Let us talk for just a minute about what we know will be the biggest attack on that. It's somewhat inconsistent with the Federal Rules of Evidence, which says essentially all relevant information is discoverable. All of a sudden the committee will be putting a limitation on the amount of relevant information you can get without paying for it yourself. I think that would have to be justified on the basis of the disproportionate impact of this discovery expense on patent litigation, and I have a study on that. The Federal Judicial Center did a study and it studied e-discovery across the civil litigation system. It found, of course, the expected delays and expenses, but then they had a whole paragraph talking about one area where the impact was disproportionately higher and they said at least sixty percent higher than any other area of civil litigation and that was patent litigation. Of course we can understand why: technical material, vast number of involved parties, corporate parties, patent prosecuting parties, scientists, commentators, experts. There's just unlimited potential for contributors to the electronic records here and add to it the economic significance of the patent system and you see how that disproportionate impact has occurred.

Let me spin this out for you as how I see this potentially happening. I see, potentially, the committee that we have appointed coming up with a proposed rule for the use in district courts. I see that being adopted by the Advisory Council of the Federal Circuit. I see it being published by them as advisory to the district courts, without any direct involvement by the Federal Circuit, for reasons that are very clear: because of the first district judge that implements it. Can anybody figure out why I put six district judges on the committee? I'm hoping that one of them will want to implement their own recommendation and it will come, inevitably, on appeal to the Federal Circuit and I would hope, anticipate and indeed recommend that it will go on appeal then to the Supreme Court. You have got a classic made issue.

The Federal Circuit is once again stepping away from the rules that govern the rest of the judiciary. It needs to be reviewed and actually, in each step of that process you are going to come into play. It is going to come into play as soon as the Federal Circuit Advisory Council has published in some form this recommendation. You are going to have the opportunity, dean, you and your academics, I'd hope to get some law review articles and commentaries on this: is this too far? Is it too little? Is it legally coherent? I would hope that the practitioners here would use all or parts of it in their cases. I would hope that then, as it is appealed, you would of course if it's your case, bring the case to the Federal Circuit. It would probably have to be a mandamus petition, and you would need to be encouraged to bring a mandamus, but what do you notice? The Federal Circuit has granted a lot of those recently. All the transfer motions, for example, standard wisdom, as the dean and his colleagues will tell you is that a

mandamus motion is a bad idea. It has enormously high standards of proof against it. You have to prove an abuse of discretion, but the Federal Circuit has been willing to do that, and I think we have to with our unique nature as a national court. We have difficulty in reaching those procedural issues unless they come in that form. Recognizing that, I would urge you to bring the case. It will come to the Federal Circuit, and then you are on to the Supreme Court. There you can all participate both at the Federal Circuit and the Supreme Court level with amici, amicus briefs.

Once again we are only as good as you are and if you also believe in a little injustice, I would like to have you start thinking right now. In fact you do not have to wait for the recommendations by our committee. You can start now using creative techniques to try and limit the expense of discovery. It doesn't matter whether you are on the plaintiff or defendant side. I think you have that obligation because you also raised your arm and swore to uphold justice and I think a little injustice is necessary to uphold greater justice. Well there is my primary message.

I will give you a choice from here. I can talk about, in fact we'll vote. I like democracy. We'll vote. We can talk about other areas of importance to the federal circuit. Areas where the Federal Circuit's directions are changing or challenges it faces. So we will call that "Challenging Future at the Federal Circuit." That's number one. Number two, we'll give you a second option. That is "The international Market and its Implications for Legal Practice in the United States." We'll call that "The Market Wins;" and I will give you a third option. The third option is, I hate to give this one to you because I know you are going to bite on it, "The Great Cultural Divide: The Supreme Court vs. The Federal Circuit." There you go. Three topics I forgot what I called the first one, ah the "Challenging Future of the Federal Circuit." Oh I should build this up with a little music, no? I can do "I Can't Get No Satisfaction!" I can! Number two, "The Market Wins." Number three, I forgot number three. How many for number one? The patent lawyers, you can never trust patent lawyers. Number two the market wins. Oh look at that. Number three the great cultural divide. Oh golly I'm going to have to count. No I got a better idea. This is why you have deans. Dean, please stand up. The dean is going to decide which has the most hands. How many for number one, "Directions of the Federal Circuit?" Number two, "The Market Wins?" This is the close one dean. Hold them up there the dean's looking! Number three, "The Great Cultural Divide?" Ok two! Now see the nice thing is, if you don't like it, talk to the dean. There goes your fundraising dean. You made forty enemies. Thanks, that was the topic I wanted to talk about.

Now two weeks ago I was in Sydney, Australia and I gave a commencement address at their second or third largest law school in Sydney. Couple thousand

people with all of the parents and everyone there and I gave some offhand advice. For instance I told them, "Never grow up! I still have a rock band!" They liked that but that was pandering of the audience as commencement speakers must do. You have to also, as a commencement speaker, say something intelligent and this was my attempt. I said, "Your generation has a great responsibility to correct the great failure of my generation." Now see you don't know what generation you're in. I think I'm in that young lady's generation right over there and you think I'm in yours, don't you?

Our generation failed by attempting to build vast one way walls around our country that allowed in all the benefits of international trade and the market place and competition but prevented us from the untoward implication of that competition. Of having to work a little harder on weekends than we wanted to, or having to lose jobs if we were not as productive and efficient as our foreign competitors. We wanted to bring in the benefits while insulating ourselves against any of the costs; we erected law after law with that basic underlying philosophy, and we failed. The market won.

There is international competition in every phase of our lives. I spent the afternoon trying to convince the dean's students that we're the nation that understands that the least. Again, one quick illustration: at the request of Judge Kong, the Chief Judge of the Supreme People's Court (dear friend of mine), I stopped on the way from Taipei to Beijing in Shanghai and they rushed me out to East China Technical and Political University. After the obligatory meetings with the President and his key councilors, I was shepherded into a large auditorium. There were seven hundred students there. Now, all universities in China are state owned and they have a state rule that no one can teach the students unless they are a member of the faculty. So the first act was for the President to arise and to make me a member of the East China University faculty and if you come to my office I will proudly show you my credentials.

Then for the next three hours I taught these seven hundred kids in English and I had eye contact with them as I do with all of you. Of that seven hundred there may have been fifty who weren't following and didn't understand the English. The other six hundred and fifty were in tune and beyond in tune. They were challenging me with questions and searching attempts to understand if I understood. Are we ready for that? I wish I could convey to you the intensity of their enthusiasm to learn everything they can, not about their law: they've got that down. They want to learn about our law. They want to know what the Federal Circuit is doing. They would have voted for that first topic in a heartbeat. They want to know everything about the Federal Circuit and what influences its decision making and how do I participate in Federal Circuit decisions. Do you think that about the Supreme People's Court? I think you should be, by the way.

I spent maybe an hour last night on my couch with my former clerk, who is the Chief Litigation Counsel for Intel, and she was explaining how she's worried about going to China because she was there ten years ago and they lost a case and are worried that is the inevitable outcome. I tried to convince her of two things. One, Chinese judges are incredibly sophisticated in their understanding of the law, and two, they are making great progress in implementing intellectual property reforms. If we are not invested in influencing their decision making, how can we expect them to improve?

Well, I think I started by telling you about the one-way walls we tried to build; how our generation failed and the younger generation has the responsibility to tear down those walls and recognize what the market place has already recognized. Let me tell you how the Federal Circuit is participating in that. The Federal Circuit is going to Tokyo, Japan. It was to have been there next month but the tsunami has delayed us until September or October depending upon which hotel gives us the best offer. We will hold in Tokyo a joint judicial conference with the Tokyo IP High Court. Now what are the potential benefits from that? Part of my hope here is to help the Tokyo IP High Court establish the kind of relationship we have. I get to talk to you guys. I just told you a minute ago what we are doing with e-discovery and I'm trying to challenge you to join me in a fight for greater justice here and inevitably I will get, both after this talk and throughout my time here, I'll get feedback. I got feedback from your students today and I'm going to refine and improve the work of my court from what I learn from you and you are going to refine and improve your representation from what you learn from me. That is something that is never a possibility with the Japanese judicial system. By taking the Federal Circuit there and having a judicial conference where the judges sit up and are asked questions by the bar, and I'm sure the first ten questions will come from the American members of the bar who are present. But I've already planted about a few questions with the Japanese. More will come and maybe we will have some more influence on their system but beyond that they will have an influence on our system, too. As my Court and I see the vast impact that our decisions have not just here but in the Japanese economy.

How many IP professionals are there at Panasonic? Professionals, fully devoted to IP? Eighteen hundred. Where's my friend from 3M? He was here earlier. There he is, he left. I was going to ask him how many he has but I guess I wouldn't know that. I wonder if we understand the competition we face? I wonder if we understand that the rest of the world knows that the American advantage in the marketplace is innovation and inventiveness, creativity, research, development, engineering. That's what we do best and that has always been largely due to the magnificent protection and underpinning of the patent system. I hope we understand that if we are to retain that edge we must maintain all of the

incentives that have created that edge, including the strength of the patent system. I know my friend Dave Kappos is working to that end.

By the way, just so you know all of the conspirators involved: how would Chief Judge Rader take his judges to Tokyo? How can he pay for that? The Federal Circuit budget? Ok he controls the budget but it doesn't have any money for foreign travel. Where's it coming from? Dave Kappos as part of his education fund, as part of his international relations fund, as part of his outreach is paying for my judges to go to Tokyo. Where we will learn the importance of their system and they will learn the importance of ours. And we will learn what we have to do in legal terms to keep our competitive edge in the marketplace. But that really isn't the agenda here.

The real agenda is the one beyond that: China. We will have a joint judicial conference with the Supreme People's Court in both Beijing and Shanghai. Two days in Beijing and one in Shanghai. Now you know why I stopped in Shanghai under Judge Kong's request. You also know why I'm trying to help his daughter get into George Washington University? Because this is a real important step to bring these two great economies together and help both of them understand that the legal systems underpin the success of the marketplace.

Courts have a responsibility to facilitate rather than frustrate the market. You see there's a greater agenda even than meeting with colleagues and learning from them and them learning from us and exporting the judicial conference mold and the closeness that we develop between bench and bar. Beyond that, I will speak with frankness that I seek judicial convergence. I seek awareness where judges making decisions on similar issues, maybe even with similar patents and similar parties around the world can consult, learn, and, to the extent possible, reach results that are consistent with each other. I don't think there is an international corporation with an executive that would misunderstand the value of that. You simply cannot have legal systems that require different products in different areas of the economy and the economy is global. You can't make different products for different countries and accommodate your whole systems to different legal regimes. Remember the one-way wall? Well those legal regimes have to facilitate rather than frustrate what the market is already demanding of us. Well beyond Japan, beyond China I'm already consulting with Director Kappos. He wants number three to be Korea. I want number three to be Russia. He'll win. Russia will be four. Korea will be three and I suppose Brazil fits in there somewhere and maybe we start over.

I guess I want to finish this theme by suggesting to you that you have to recognize that your success is contingent upon the success of this kind of venture. The competition around the world is not just for products but it is for services,

every kind of service. Those kids that I told you about, those seven hundred kids that speak perfect English and can raise their hand and can ask me about footnote two in my last opinion. I don't think I could even ask your professors, dean, if they know what was in footnote two of the Supreme People's Court most recent opinion. We have got to raise our vision of what the legal profession requires of us. Yes we have a little lawsuit that involves two people here, two companies here, maybe close neighbors, but the greater vision is how that lawsuit fits into the entire international jurisprudential system. I hope I'm conveying a little bit of the vision of how that will affect you and how it must affect you and how you have to raise your sights. You have to learn more about international systems. Maybe I'm advocating that you come back here and take some of the dean's international comparative law classes. Maybe that's what you need to recognize that you have a great responsibility in ways that facilitate their work worldwide not just statewide.

Well let me close by saying what I started with and that is that the Federal Circuit is really only as good as its bar, all these visions of improving the efficiency of the adjudicative system, of achieving some kind of judicial convergence that facilitates rather than frustrates the international marketplace. All that probably depends more on you than it does on the Federal Circuit and I and I hope that I might have challenged you just a little bit to think what more you can contribute in both of those areas. To addressing the most important deficiency of the American system of dispute resolution, the expense of discovery in trials, and what you can do to extend your client's influence effectively beyond the borders of the United States because that's where your client is thinking of going. You certainly should not be limiting them. With those closing words of challenge I thank you for all that you have contributed to my Court and me in the past. I urge you to continue and look forward in answering a few questions. Thank you.

Dean, do you mind if I take questions for a minute? Now of course somebody has to raise their hand. Ok good.

Audience Question: I have a suspicion that you did talk to them about their enforcement of intellectual property rights and how that's affected so many American companies whose goods are copied and dumped on the marketplace. How do they respond?

Chief Judge Rader: Excellent question. China has had a reputation of being an abuser of intellectual property rights. Copying and abusing rights with impunity and their court systems have not been the source of significant redress. Two thoughts: thought number one is kind of a humorous observation. Have you been to New York? You know that you can go on any street corner and buy you a

two dollar tie and a three dollar CD? So it isn't just a Chinese problem but I think your point is well taken that there is a greater problem in China. Although it is a world problem there's a unique aspect of it in China. My response to that is twofold. One is the Chinese judges are incredibly talented. Of the judiciaries I've associated with and that's forty or fifty and I have good friends in many of those places the Chinese judges are the most talented and prepared. They know the details. They are good.

Point number two, Premier Jiabao, two weeks ago, no two months ago, my time gets away from me, told his nation that they are to acquire five times as many patents as they did this year in the next five year period, and they will do it. I say jokingly they may have to count the same thing three or four times to get there but they will still make the numbers and they have surpassed just this last year Japan and Korea to become the second largest filer in the United States Patent and Trademark Office. Right behind U.S. filers Chinese filers are second. Remember there's a difference between the Chinese judge and me. The Chinese judge is an officer of the state commanded to carryout state policy. With that exhortation of the Premier echoing in their ears the Chinese judges know that they have a responsibility to enforce intellectual property and it was this kind of message I was telling to my Intel friend that I was talking to the other night. The winds are changing. Now the only way they are going to change is if we help them change. So we've got to work on that on behalf of our clients as well. I acknowledge there has been a history of some failure in the People's Republic but I have hopes for improvement and hope to be part of the process that makes that happen. Another question?

Q: You didn't mention visiting India on the tour. Is there any reason why that was left off your list?

Chief Judge Rader: I have been to India twelve times in the last twelve years and no it will probably be on the list at some point. India is tough to crack but I do acknowledge it needs some attention as well. Yes.

Q: In view of your ascension to the Chief's chair and there has been some turnover on your Court in recent years. Do you foresee, or is there any current move to address, a few of the aspects of law that are currently uncertain or in development perhaps en banc or on the panel level? I'm thinking of administrative law questions?

Chief Judge Rader (Jokingly): Now you didn't choose that topic that was question number one. I'm not going to answer that.

Q: Then I ask question number one.

Chief Judge Rader: Wonderful question and I think the easiest way for me to give a quick answer is [to indicate where] we are now working. If you didn't see today the court issued another order for an en banc consideration of a case. The court is going to be reconsidering the joint infringement issue that flows from the BMC/PaymenTech case and the MuniAuction case and the case we are taking en banc, Akamai, and I probably should note that McKesson is out there too. So there is that en banc case. We have pending at the moment five others, well four others if you recognize that TiVo came out yesterday. I know that's the most en bancs in any single year of any Chief Judge's tenure and there will be more. The answer is, yes the court is taking very seriously its responsibility to clarify areas of law, trying to more than any time in the past work together to achieve en banc consideration and clarification of some of those key areas.

Here is where you come in again, my bar. You need to help us identify those proper areas that need en banc clarification. Now this is whole other speech but the brief version is, the problem is: we get an en banc reconsideration request in every case. If you lose, you request en banc. How does the bar signal to us which ones really need consideration that are not just a losing complaint but a real area of confusion and ambiguity?

Crowd: Private email

Chief Judge Rader: Private email. I'm going to pretend I didn't hear that but the answer is you need to work together. If we would get on a case or cases a united group of en banc reconsideration amicus petitions from AIPLA and IPO and the ABA and every other committee out there and, dean, get your academicians going too and get them included in the whole thing. When you see that kind of concerted action then we are convinced this one needs the attention we can give it. I know that's not an easy request. It takes time to go through committees and things, but you have to speed that up so that you can work together and give me better indication of which cases you want to be on next year's en banc list which will be greater than this year's. Yes

Q: We often get requests from counsel who have been unsuccessful in front of your Court to participate in the en banc consideration process but typically the deadlines are very short and so certainly it would make our job much easier if the Court was at least on occasion amenable to extensions of time in order to give some of the potentially more important cases more organized consideration. Our senses have been, at least under prior chief judges, that perhaps because of the potential huge crush of these types of petitions in nearly every case that extensions were very rarely granted. Do you have a sense for that?

Chief Judge Rader: It's a good point. And once again maybe the answer is the same. If it is a single request for an extension from an apparently disgruntled party we are not too inclined to grant that. If once again I got requests from AIPLA, IPO, ABA and every other committee that you represent, the Minnesota IP community the New York IP community. If I got a concerted request for an extension I'm sure the Court would recognize that this is a request that ought to be granted so that you have time to finish your work. So it's a good point but again there is an important distinction there.

By the way let me tell you a secret. The secret is standing right back there, two of them, right there together, John and Dena. They are secrets because they are former Federal Circuit clerks, actually my clerks. They are the great secret of the Federal Circuit. Dena and John are examples, they are both magnificent technical experts as well as legal talents and currently I have a Ph.D in biomedical science. I have a master's degree in chemistry. I have an electrical engineer, and I have a computer programmer, a master in computer science. That gives me a great ability to deal with technical issues but now of course my four clerks do not cover every discipline. But remember, every judge has four clerks. That means there are about fifty of them out there plus a core of special technical assistants that work for the Chief Judge and the rest of the Court. That means there are probably about fifty five highly trained scientists as well as lawyers and if I can't get the answer to the scientific question from my law clerks, which I usually can. They can go down the hall and get it from somebody else who has it. It is all there under one building, under one roof. The great secret of the Federal Circuit that makes us very proficient with scientific and technical issues as well as legal and yes I try to export that to the foreign judiciaries too and tell them that you need that kind of resource. By the way the Tokyo IP High Court imported a group of senior examiners who perform that function for them. Thanks for being here guys.

Q: You also left out Europe in your list. I was wondering if you could comment on the common European patent initiative and what you think of that.

Chief Judge Rader: I love this topic and it gets another whole speech. Let me just tell you the funny version. You know what he's talking about. The nations of Europe have been trying to figure out a way to have a Federal Circuit. Why? Because they realize they are competing with us. They recognize they are competing with China and frankly the fractionated system in Europe frustrates that competition. So they want to have a Federal Circuit and their problem is language. So about ten years ago I was at a conference at Fordham in New York and there was a group of about thirty European judges there. They were discussing the language problem for their new court and a hot and heavy debate broke out as to what should be the language used in the court. By the way the

European Union has proposed the use of any language within the European Union. Can you imagine litigating a patent case in Maltese or Finish? That would alone defeat the proposition. The EPO, the European Patent Office, wants to confine it to the three languages of the European Patent Convention: English, French and German. But the debate at this particular time, and by the way that's what's scotched the most recent effort because Spain insists on being the fourth major language supported by the Italians who want to be the fifth and that can't work.

So the debate rages and the French were saying of course their language should be first. After all it is the lingua franca and it reminds me of another quick story. I was seated at a state dinner next to the ambassador of France and it came time to pick up our knives and forks and I turned to the ambassador and said, "How do you say bon appetit in French?" I thought that was quite funny. He didn't, but back to the story. The debate was raging. The French insisting upon their language being the lingua franca of judicial system they're going to create. At one point my dear friend Nick Pumphrey, God rest his soul, he's left us, turns to me with a smirk on his face and says, "Well there's one judge here who's not European and let's hear what he thinks." All the faces turn to me and I have a personality defect. That is when under pressure I resort to humor at all expenses to take the pressure off. So I looked to them all and said, "Could someone remind me who won the Battle of Waterloo?" Actually it's the right answer. Actually the reason England was able to devote its resources to colonizing the world was because they won the Battle of Waterloo and they made their language the lingua franca of the commercial marketplace. If Napoleon had won I think it would have gone the other way. We would have been speaking French on the internet, not English. So the answer is probably the right answer but diplomacy. Actually I have even told that story since at several international judge's meetings and am always apologizing to the Italians but then I point out they were on both sides of the Battle of Waterloo, which they usually were in European history—on both sides. The bottom line is, yes, at some point there will be a European central federal circuit court. Why? Because the market will drive it just as it is going to drive you whether you rise to my challenge to get ahead of it or not. They will have to, to compete with the Federal Circuit and with China, who is going to be our competition. So they will achieve that but they sure are making it tough on themselves. The politics of that is so enormously complex. It would be fun to talk it through with you, but once again thank you for inviting me. It's been a great pleasure. It's the greatest honor of my life to be able to represent one of the greatest institutions that our nation has created, the Federal Circuit. Thank you very much.