

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Tiffany Patrice Cunningham

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.

Perkins Coie LLP
131 South Dearborn Street, Suite 1700
Chicago, Illinois 60603

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

1976; Detroit, Michigan

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.

1998 – 2001, Harvard Law School; J.D., 2001

1994 – 1998, Massachusetts Institute of Technology; S.B., 1998

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.

2014 – present
Perkins Coie LLP
131 South Dearborn Street, Suite 1700
Chicago, Illinois 60603
Partner

Member, Firmwide Executive Committee (2020 – present)

Summer 2000; 2002 – 2014
Kirkland & Ellis LLP
300 North LaSalle (current address)
Chicago, Illinois 60654
Partner (2007 – 2014)
Associate (2002 – 2007)
Summer Associate (Summer 2000)

2001 – 2002
United States Court of Appeals for the Federal Circuit
717 Madison Place, Northwest
Washington, District of Columbia 20439
Law Clerk for the Honorable Timothy B. Dyk

1999 – 2000; 2000 – 2001
Harvard Law School
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138
Board of Student Advisers – student legal research and writing instructor

Summer 1999; Summer 2000
Mayer Brown LLP
71 South Wacker Drive (current address)
Chicago, Illinois 60606
Summer Associate

Summer 1998
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, New York 10019
SEO Intern

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 was not required to register with the selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Best Lawyers in America 2021: Patent Litigation

“Leading Lawyers” list (2017 – 2021)

Illinois “Super Lawyers” list (2016 – 2021)

Chicago’s Notable Women in Law by Crain’s Chicago Business (2020)

Lawyers of Color’s Nation’s Best List (2019)

Chicago’s Notable Minority Lawyers by Crain’s Chicago Business (2018)

“Emerging Lawyers” list by Leading Lawyers (2015, 2016)

Leadership Council on Legal Diversity Fellow (2015)

Illinois “Rising Stars” list by Super Lawyers (2013 – 2015)

Third and Fourth Editions of Who’s Who in Black Chicago (2010, 2011)

Most Powerful and Influential Women in Illinois by the National Diversity Council (2010)

Phi Beta Kappa Society

Tau Beta Pi Honor Society

Honorable Mention AMITA Senior Academic Award (1998)

Academic All Conference, Tennis (1997)

National Dean’s List (1997)

Dow Chemical Company Outstanding Junior Award (1997)

OME Academic Excellence Award (1996 – 1998)

National Science Scholar (1994)

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.

Chicago Bar Association

ChIPs (Chiefs in Intellectual Property)

Federal Circuit Bar Association

National Bar Association

The Richard Linn American Inn of Court

I have not held an office with any of the above organizations.

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.

Illinois, 2002

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.

U.S. Court of Appeals for the Federal Circuit, 2002

U.S. District Court for the Central District of Illinois, 2005

U.S. District Court for the Northern District of Illinois, 2002

U.S. District Court for the Eastern District of Texas, 2016

U.S. District Court for the Western District of Wisconsin, 2004

U.S. Patent and Trademark Office, 2010

There have been no lapses in membership.

During my career, I have also appeared *pro hac vice* in various federal courts and before the International Trade Commission.

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.

Association of MIT Alumnae (AMITA) (1998 – 2003)

Black Alumni/ae of MIT (BAMIT) (approximately 1998 – present)

Chicago Black Partners Alliance (approximately 2017 – present)

East Bank Club (2008 – 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.

None of the organizations listed above invidiously discriminates on the basis of race, sex, religion, or national origin. To the best of my knowledge, I have not been a member of any organization that currently invidiously discriminates or formerly invidiously discriminated on the basis of race, sex, religion, or national origin. Where noted above, certain groups are essentially affinity groups whose membership consists of African-American law partners or alumni/ae of MIT.

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.

With Michelle M. Umberger & Danielle N. Scott, Perkins Coie LLP, PLI Patent Litigation: Course Handbook: Business Methods Patents and the Uncertain Future of *Bilski* and its Progeny (2014). Copy supplied.

With Paul R. Steadman, Kirkland & Ellis LLP Alert: Federal Circuit Decision in *Dystar v. C.H. Patrick* and the United States Supreme Court's Grant of *Certiorari* in *Teleflex v. KSR*, Oct. 2006. Copy supplied.

With William A. Streff, Jr. & Paul R. Steadman, Kirkland & Ellis LLP Alert: *Knorr-Bremse Systeme Fuer Nutzfahrzeuge GMBH v. Dana Corp.*, Nos. 01-1357, -1376, 02-1221, -1256 (Fed. Cir. Sept. 13, 2004) (en banc), Sept. 2004. 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.

None.

- 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.

None.

- 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.

I searched my presentation files, publication and presentation information maintained on my website biography, and calendar to prepare the list of public speaking engagements identified below. There may be some additional speaking engagements that I did not locate or do not recall, which are not listed below. To the extent that I located PowerPoint presentations, I supplied those where noted.

May 9, 2019: Co-chair and Speaker, PLI: Patent Fundamentals Bootcamp 2019, An Introduction to Patent Drafting, Prosecution, and Litigation - Chicago; Section 101: The Continuing Search for a Clear Rule, Practising Law Institute, Chicago, Illinois. PowerPoint supplied.

October 26, 2017: Speaker, Are the Supreme Court's Forays into Patent Litigation Helping or Hurting Companies?, Perkins Coie, Chicago, Illinois. PowerPoint supplied.

October 14, 2016: Speaker, Patent Remedies: The Aftermath of Recent Federal Circuit Decisions, Practising Law Institute, Chicago, Illinois. PowerPoint supplied.

September 23, 2016: Speaker, Women, Influence & Power in Law: IP Strategy Questions Drop & Draw – Your Pain Points, Answered, Women, Influence & Power in Law, Washington, District of Columbia. PowerPoint supplied.

October 2015: Speaker, Portrait Unveiling for the Honorable Timothy B. Dyk, U.S. Court of Appeals for the Federal Circuit, Washington, District of Columbia.

Notes supplied.

October 8, 2015: Speaker, The Patentability of Business Methods: The Continuing Search for a Clear Rule, Practising Law Institute, Chicago, Illinois. PowerPoint supplied.

September 10, 2015: Panelist, Multi-diversity: The Challenge of Inclusion and Career Development, Thomson Reuters Legal Executive Institute, San Francisco, California. As part of a panel, I spoke regarding various challenges faced by diverse attorneys and pathways for career advancement and professional growth. I have no notes, transcript, or recording. The address for the Thomson Reuters Legal Executive Institute is 747 Third Avenue, Floor 33, New York, New York 10017.

May 13, 2015: Speaker, Will *Alice* Force You To Change Your Litigation Strategy as a Defendant?, Perkins Coie, Chicago, Illinois. PowerPoint supplied.

October 6, 2014: Speaker, The Patentability of Business Methods: The Continuing Search for a Clear Rule, Practising Law Institute, Chicago, Illinois. PowerPoint supplied.

May 1, 2014: Speaker, Patent Litigation Defense: Strategies for Corporate Counsel, Perkins Coie LLP, Chicago, Illinois. PowerPoint supplied.

October 2012: Speaker, Two Years After *Bilski* — The Patentability of Business Methods, Practising Law Institute, Chicago, Illinois. PowerPoint supplied.

May 11, 2007: Speaker, Trade Secret Litigation: Strategic Considerations at the Outset of the Case, Kirkland & Ellis LLP, Chicago, Illinois. PowerPoint supplied.

May 19, 2006: Speaker, Electronic Evidence - An Overview of the New Proposed Federal Rules, Kirkland & Ellis LLP, Chicago, Illinois. PowerPoint supplied.

May 13, 2005: Speaker, Electronic Evidence - An Overview of the New Proposed Federal Rules, Kirkland & Ellis LLP, Chicago, Illinois. PowerPoint supplied.

- 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.

2018: I was interviewed regarding my practice at Perkins Coie. Available at <https://www.vault.com/company-profiles/law/perkins-coie-llp/questions/2018->

intellectual-property.

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

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
- i. Of these cases, approximately what percent were:
- jury trials: _____ %
bench trials: _____ % [total 100%]
- ii. Of these cases, approximately what percent were:
- 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 of 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 (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

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

I have not held public office, and I have not been an unsuccessful candidate for public 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 never held an office or rendered services to any political party or election committee.

16. **Legal Career:** Answer each part separately.

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

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

From 2001 to 2002, I served as a law clerk to the Honorable Timothy B. Dyk, Circuit Judge of the United States Court of Appeals for the Federal Circuit.

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

I have never practiced alone.

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

2002 – 2014
Kirkland & Ellis LLP
300 North LaSalle (current address)
Chicago, Illinois 60654
Partner (2007 – 2014)
Associate (2002 – 2007)

2014 – present
Perkins Coie LLP
131 South Dearborn Street, Suite 1700
Chicago, Illinois 60603
Partner
Member, Firmwide Executive Committee (2020 – present)

- 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 not served as a mediator or arbitrator 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.

Since the beginning of my career, I have practiced intellectual property litigation with a special emphasis on patent litigation. I have represented parties in various federal district courts, before the ITC, and in appeals before the Federal Circuit. I have worked on cases from their inception through fact and expert discovery, trial, and appeal. I have tried cases, argued motions, taken and defended depositions, and written briefs to the trial and appellate courts.

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

Since 2002, I have worked with many different clients across various fields. Those fields include the chemical and pharmaceutical disciplines, biotechnology, computer science, automotive, and mechanical engineering. During my career, I have represented both defendants and plaintiffs, including Fortune 500 and high-technology companies. Early in my career, I had a slightly broader practice scope, including trade secrets litigation and copyright counseling. For more than 10 years, I have primarily focused on patent litigation and related issues.

- 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.

Over 95% of my practice focuses on intellectual property litigation. Over the years, I have appeared in more than 40 cases in district court. As part of my district court work, I have appeared on behalf of my clients at summary judgment hearings, claim construction hearings, discovery hearings, pre-trial hearings, and trial. I have also appeared in cases eight times before the Federal Circuit.

I occasionally appear in cases in either state court or before the ITC.

- i. Indicate the percentage of your practice in:
 1. federal courts: > 90%
 2. state courts of record: < 5%
 3. other courts: 0%
 4. administrative agencies: 5%
- ii. Indicate the percentage of your practice in:
 1. civil proceedings: 100%
 2. criminal proceedings: 0%

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

I have tried four cases to verdict, judgment, or final decision. In those four cases, I was associate counsel.

- i. What percentage of these trials were:
- | | |
|--------------|-----|
| 1. jury: | 75% |
| 2. non-jury: | 25% |

- 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.

Although I have never appeared before the Supreme Court, I helped prepare a brief successfully opposing certiorari. *Caterpillar Inc. v. Sturman Indus., Inc.*, 545 U.S. 1114 (2005). Brief in Opposition is available at 2005 WL 1113633.

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

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Sanyo Electric Co., Ltd. v. Intel Corporation*, No. 2018-0723-MTZ (Del. Ch. Ct.)

This case involves a dispute between the parties regarding both the scope and the parties' rights under a patent cross license. I represent Intel Corporation and am responsible for the day-to-day management of the case. After completing fact and expert discovery, the parties cross-moved for summary judgment on the issues of contract interpretation and breach of contract. Additionally, Intel moved for summary judgment that Sanyo's reformation claim is barred by the patent cross license's integration clause. The court granted Intel's motion for summary

judgment regarding contract interpretation and denied Sanyo's motion for summary judgment regarding contract interpretation. The court also denied Intel's motion for summary judgment with respect to the integration clause precluding Sanyo's reformation claim. The remaining summary judgment motions relating to reformation and breach of contract remain pending.

Dates of Representation: 2018 – present
Presiding Judge: Vice Chancellor Zurn

Co-Counsel:

Chad S. Campbell
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Phoenix, AZ 85012-2788
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Mark Eberhard
Erik Janitens
Jaime Stark
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1301 McKinney, Suite 5100
Houston, TX 77010-3095
(713) 651-5151

2. *Kutt v. Apple Inc.*, No. 2:19-CV-00316-RWS (E.D. Tex.); *Kutt v. Apple Inc.*, No. 20-1757 (Fed. Cir. 2020)

Mr. Kutt filed a complaint alleging patent infringement against 45 corporate and individual defendants, including Intel. I represented Intel and its then-CEO and served as lead counsel. Intel moved to dismiss Mr. Kutt's complaint and amended complaint with prejudice because his claims were time-barred due to patent expiration and procedural problems, including defects in service, improper venue, and misjoinder of parties. Mr. Kutt's patent infringement claims were dismissed with prejudice against Intel and the other defendants due to patent expiration. Mr. Kutt appealed the judgment. His appeal was dismissed for failure to prosecute.

Dates of Representation: 2019 – 2021
Presiding Judge: District Judge Robert W. Schroeder III

Co-Counsel:

Sarah Elizabeth Fowler
Perkins Coie LLP
3150 Porter Drive
Palo Alto, CA 94304
(650) 838-4489

David Folsom

Jackson Walker LLP
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Texarkana, TX 75503
(903) 255-3251

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Counsel for Apple:

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Counsel for IBM:

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110 North College Avenue, Suite 500
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Counsel for ARM Holding PLC and ARM Limited:

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Counsel for nVidia Corporation:

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Claire J. Krebs
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James Mark Mann
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Counsel for Hewlett Packard Company:

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Counsel for Lenovo Group Limited:

Eric Hugh Findlay
Findlay Craft PC
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Tyler, TX 75702

(903) 534-1100

Counsel for Dell Inc.:

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The Dacus Firm, PC
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David Folsom
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Counsel for Verizon Communications Inc.:

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Counsel for AT&T Corp.:

Scott Wayne Breedlove
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Campbell Centre II
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Counsel for T-Mobile USA Inc.:

Martin E. Gilmore
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Counsel for BlackBerry Ltd.:

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Counsel for Best Buy Co. Inc.:

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Findlay Craft PC
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Marshall, TX 75670
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Counsel for Scotiabank:

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Matthew W. Moran
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Counsel for JP Morgan Chase & Co.:

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New York, NY 10166
(212) 801-6930

Rose Cordero Prey

Greenberg Traurig, LLP - NY
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New York, NY 10166
(212) 801-6473

Counsel for Jones Day:

Richard J. Johnson
Jones Day - Dallas
2727 North Harwood Street, Suite 600
Dallas, TX 75201-1515
(214) 969-3788

Michael Allan Erdmann
Jones Day - Dallas
2727 North Harwood Street
Dallas, TX 75201-1515
(214) 969-4505

Counsel for Travelers Companies Inc.:

Matthew Dean Walker
Litchfield Cavo LLP - Houston
One Riverway, Suite 1000
Houston, TX 77056
(713) 418-2004

Lindsey M. Vanorny
Litchfield Cavo LLP - Houston
One Riverway, Suite 1000
Houston, TX 77056
(713) 418-2028

Counsel for Banking & Trust Company:

Matias Ferrario
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Winston-Salem, NC 27101
(336) 607-7475

Samuel W. Butler
Kilpatrick Townsend & Stockton LLP - Dallas
2001 Ross Avenue, Suite 4400
Dallas, TX 75201
(214) 922-7100

Plaintiff was represented pro se.

3. *In Re Koninklijke Philips Patent Litigation*, No. 4:18-cv-01885-HSG (N.D. Cal.)

Philips sued Microsoft's customers in a multi-patent suit related to accused features in tablets or smartphones. I represented Microsoft as it intervened in the customer suits. After substantial fact and expert discovery, both parties moved for summary judgment. Defendants moved for summary judgment of non-infringement and invalidity, and Plaintiffs moved for summary judgment on Defendants' anticipation and obviousness invalidity defenses. I was lead attorney for the damages portion of the case, including taking and defending depositions of fact and expert witnesses, arguing a summary judgment motion, and briefing a *Daubert* motion relating to Plaintiffs' damages expert. After the summary judgment hearing, but before trial, Microsoft and the Plaintiffs settled on confidential terms. The case continued for one remaining defendant, Asus, after the settlement. The court later granted the remaining Defendant's motion for summary judgment of non-infringement for two patents and denied Plaintiffs' motion for partial summary judgment. Among other *Daubert* rulings, the Court also granted in part the motion to exclude opinions of the Plaintiffs' damages expert. Prior to trial, the case as to the remaining Defendant also settled and was later dismissed.

Dates of Representation: 2017 – 2019

Presiding Judge: District Judge Haywood S. Gilliam, Jr.

Co-Counsel:

Steven J. Balick
Ashby & Geddes
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, DE 19899
(302) 654-1888

Andrew Colin Mayo
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1201 North Market Street
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4. *SecurityProfiling, LLC v. Intel Corporation and McAfee, Inc.*, No. 6:16-cv-01016-RWS-JDL (E.D. Tex.)

I defended Intel and McAfee in this six-patent case relating to computer network security technology. Specifically, SecurityProfiling alleged that defendants directly infringed the asserted claims and induced infringement by third-party customers and users of the Intel computer network security technology. Defendants denied any infringement and asserted invalidity of all six patents. In addition to managing day-to-day responsibilities, I was in charge of the invalidity case for all of the asserted patents. Approximately one month after service of the invalidity contentions, the case settled on confidential terms.

Dates of Representation: 2016 – 2017
Presiding Judge: District Judge Robert W. Schroeder III

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5. *Nonend Inventions, N.V. v. Apple Inc.*, No. 2:15-cv-00466-JRG-RSP (E.D. Tex.)

I defended Microsoft Corporation, HTC America, Inc., Amazon.com, Inc., Amazon.com, LLC, Panasonic Corporation, and Panasonic Corporation of North America against Nonend's patent infringement allegations related to streaming technology. I managed day-to-day responsibilities for Microsoft, including managing complex discovery issues and case strategy and coordination with numerous co-counsel for other defendants. After exchange of infringement and invalidity contentions, as well as proposed claim terms and proposed claim constructions, Microsoft and Nonend settled on confidential terms. As a result of the settlement between Microsoft and Nonend, Nonend dismissed its claims against Microsoft, Panasonic Corporation, and Panasonic Corporation of North America, among other defendants. Subsequently, Nonend and RPX reached a settlement agreement, resolving the action as to Amazon.com, Inc., Amazon.com, LLC, and HTC America, Inc., among other defendants. The case in its entirety was terminated in June 2016 after a successful mediation between Nonend and the remaining defendant Motorola Mobility LLC.

Dates of Representation: 2015 – 2016
Presiding Judge: District Judge Rodney Gilstrap

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6. *Ameritox, Ltd. & Marshfield Clinic, Inc. v. Millennium Health, LLC*, No. 13-cv-832 (W.D. Wis.), 2015 WL 1272280; *Ameritox, Ltd. v. Millennium Health, LLC*, Nos. 15-1690, 15-1875 (Fed. Cir. 2015)

Ameritox and Marshfield Clinic asserted two patents relating to a method for drug screening and compliance protocols for urine samples. I represented Ameritox and served as pre-trial, trial, and appellate counsel. The court granted Millennium's summary judgment motion of invalidity under 35 U.S.C. §101 for one of the two patents but denied Millennium's summary judgment motion on the same grounds for the other patent. I led the technical team efforts, including participating in fact and expert deposition discovery. I drafted the summary judgment opposition brief to Millennium's section 101 motion. The court also granted summary judgment of infringement. At trial, I argued motions and jury instructions and examined witnesses. In 2015, the jury refused to invalidate the remaining patent and awarded damages. The court also awarded prejudgment interest. Millennium appealed the adverse judgment. The case settled shortly after the appeal was docketed.

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7. *ViiV Healthcare UK Ltd. & ViiV Healthcare Co. v. Lupin Ltd. & Lupin Pharms., Inc., Teva Pharms, Inc.*, C.A. 11-576-RGA (D. Del.), 6. F. Supp. 3d 461 (D. Del. 2013), *aff'd*, 594 Fed. App'x 686 (Fed. Cir. 2015)

This case was an abbreviated new drug application (ANDA) case involving ViiV Healthcare UK Ltd. and ViiV Healthcare Co. (collectively, "ViiV") asserting a patent claiming formulations and methods of treating HIV infection against Teva and Lupin. Both Teva and Lupin sought FDA approval to market generic versions of drugs that were covered by ViiV's patents. During discovery, Teva stipulated to infringement. I served as both pre-trial and trial counsel for ViiV, including taking and defending numerous fact and expert depositions, arguing discovery motions and claim construction and examining three expert witnesses at trial. After a 5-day bench trial, the Court concluded that the defendants failed to

prove any of their invalidity defenses by clear and convincing evidence and that ViiV failed to prove that Lupin's generic drug product infringed the asserted patent claims. Lupin and Teva appealed the judgment in February 2014. The Federal Circuit summarily affirmed the district court's judgment pursuant to Federal Circuit Rule 36.

Dates of Representation: 2012 – 2014

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8. *Mformation Techs., Inc. v. Research In Motion Ltd., et al.*, No. 3:08-cv-04990 (N.D. Cal.), 2012 WL 3222237 (N.D. Cal. Aug. 8, 2012), *aff'd*, 764 F.3d 1392 (Fed. Cir. 2014)

Mformation sued Research in Motion (or “RIM” now known as BlackBerry) on a patent relating to remote control and management of wireless devices. I represented RIM and participated in both written and deposition discovery during the fact and expert discovery phases. I also drafted numerous briefs and led the damages case. The jury returned a verdict finding RIM liable for infringement and awarding damages. I was in charge of the judgment as a matter of law briefing during the post-trial phase. After trial, the court granted RIM’s renewed motion for judgment as a matter of law, finding that RIM did not infringe the asserted patent in light of the evidence regarding the accused products. The court further vacated the jury’s finding as to damages. The court also conditionally granted RIM’s motion for a new trial in the event that the court’s ruling as to RIM’s renewed motion for judgment as a matter of law were reversed. Mformation appealed the judgment to the Federal Circuit. The Federal Circuit affirmed the district court’s judgment of non-infringement because there was no legally sufficient basis on which a reasonable jury could have found that BlackBerry infringed the asserted claims.

Dates of Representation: 2011 – 2013

Presiding Judge: District Judge James Ware (ret.); District Judge Edward M. Chen

Panel: Chief Judge Prost, Circuit Judges Schall and Hughes

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9. *Fernandez Innovative Techs., LLC v. General Motors Corp., OnStar Corp., Toyota Motor Sales, U.S.A., Inc.*, No. 07-CV-1397 (N.D. Ill.), 2008 WL 2168843, *aff'd*, 325 Fed. App'x 908 (Fed. Cir. 2009)

This case addressed a claim construction dispute where the district court's claim construction resulted in a joint stipulation and judgment of non-infringement pursuant to Federal Rule of Civil Procedure 54(b). I represented the defendants in this vehicle telematics case, arguing motions, briefing issues and leading discovery, including defending depositions. In light of the district court's construction of two of the claim terms, the parties jointly agreed that the defendants did not infringe any of the asserted claims either literally or under the doctrine of equivalents. The district court entered judgment of non-infringement pursuant to Rule 54(b). Fernandez appealed that judgment, challenging the district court's claim constructions. I co-authored the appellate brief. The Federal Circuit summarily affirmed the district court's judgment pursuant to Federal Circuit Rule 36.

Dates of Representation: 2007 – 2009 (estimated)
Presiding Judge: District Judge Virginia M. Kendall
Panel: Circuit Judges Newman, Lourie, Rader, Gajarsa, and Moore

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10. *Caterpillar Inc. v. Sturman Indus., Inc.*, 387 F.3d 1358 (Fed. Cir. 2004), *cert. denied*, 545 U.S. 1114 (2005), Case No. 1:99-CV-01201 (C.D. Ill.)

This case addressed whether the spouse of a party's employee was biased as a matter of law. I served as appellate and re-trial counsel for Sturman Industries, Inc., Mr. Sturman, and Ms. Sturman (collectively, "the Sturmans"). The Sturmans were formerly partners with Caterpillar under a joint development agreement to develop fuel injectors. In the original case, the jury found in favor of Caterpillar on breach of contract, trade secret, and conversion claims. Among other issues, the Sturmans appealed the district court's decision to allow the spouse of a Caterpillar employee to sit on the jury. I was the principal architect of the appellate arguments relating to the juror issue. The Federal Circuit ultimately held that juror was biased as a matter of law and vacated the jury's verdict in favor of Caterpillar on breach of contract, trade secret, and conversion claims and the resultant remedies, ordering a new trial. Caterpillar petitioned for rehearing, rehearing en banc, and for certiorari to the Supreme Court. All those petitions were denied. In preparation for the retrial, I wrote various briefs, prepared witnesses for trial, drafted the pre-trial order and prepared and argued at the jury instructions conference. At the retrial, the Sturmans obtained judgment in their favor on the trade secret and conversion claims. However, the jury found that the Sturmans breached the contract and awarded \$1.00 in damages. The court also ordered specific performance of the contract. The case settled after the retrial on confidential terms.

Dates of Representation: 2002 – 2006 (estimated)

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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.)

In addition to my practice, I have been significantly involved in firm management. Since 2020, I have been a member of the Firmwide Executive Committee, which is the overall governing body of the firm. Over the years, I have served on numerous other firm committees, including chairing my local diversity and inclusion committee and serving as a member of the lateral partner committee and the committee responsible for evaluating associates.

I have not performed any lobbying activities.

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

During law school, I was a legal writing instructor as a member of the Board of Student Advisers. I taught during the 1999 to 2000 and 2000 to 2001 school years. The course was entitled "Legal Reasoning and Argument" and focused on teaching 1Ls legal writing and research.

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.

If I resign from Perkins Coie LLP, any capital paid into the firm or other money owed will be paid to me in accordance with the Perkins Coie LLP Amended and Restated Partnership Agreement. Additionally, through my former role as a partner at Kirkland & Ellis LLP, I am a participant in two firm-sponsored investment funds: Randolph Street

Investment Partners, L.P. - 2007 PEF and Randolph Street Investment Partners, L.P. - 2008 PEF. My ownership interest in these funds would continue until all the underlying investments have been disposed of, unless I assign away my interests.

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.

If confirmed, I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during service with the 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).

When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that 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.

If confirmed, I would recuse myself in any case presenting a conflict of interest. I would recuse myself in any case that I litigated. I would also carefully evaluate any case where there is a potential conflict of interest. For example, if confirmed, I would initially recuse myself from any cases where my current law firm, Perkins Coie LLP, appeared. I would also recuse myself from any cases involving immediate family or the employer of my immediate family.

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

If confirmed, I would carefully apply the Code of Conduct for United States Judges when evaluating any actual or potential conflicts of interest. Additionally, I would review relevant precedent and consult other judges where appropriate. I would seek to recuse myself on any matters where my impartiality might

reasonably be questioned.

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 represented pro bono clients. From 2003 to 2004, I represented the plaintiff in *Kidd v. Triangle Package Machinery Co.*, Case No. 1:03-cv-6663 (N.D. Ill. 2003). Mr. Kidd, an African-American former employee of Triangle Package, asserted claims of racial harassment, retaliation, and discrimination. I worked on the case for approximately 800 hours and prepared the pleadings and conducted most of the written and deposition discovery. The case settled as a result of a court settlement conference, and I and some other attorneys presented at the settlement conference on behalf of our client.

Additionally, in 2015, I consulted with a pro bono client regarding copyright and contract advice for a potential book distribution deal. As part of pro bono workshops, I also worked on a DACA application in 2014 with one pro bono client and a will for another pro bono client. With the exception of the *Triangle Package* matter, the remaining pro bono matters were more short-term or periodic with work occurring over a few days or a few weeks. I have also donated to the Chicago Bar Foundation, which seeks to ensure equal access to our justice system.

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.

I was first contacted by an official from the White House Counsel's Office on March 8, 2021, and the following day I interviewed with attorneys from the White House Counsel's Office. Since March 9, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 26, 2021, I interviewed with President Biden and White House Counsel Dana Remus. On March 30, 2021, the President announced his intent to nominate me.

- 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.