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## PIERCE LAW AGAIN RANKS AMONG TOP 5 SCHOOLS IN THE NATION FOR THE STUDY OF IP LAW IN U.S. NEWS & WORLD REPORT

FOR THE NINTH TIME IN THE PAST 10 YEARS, Franklin Pierce Law Center was ranked among the nation's top 5 law schools for the study of IP law by *U.S. News & World Report*. Pierce Law is joined in the 2009 edition of *America's Best Graduate Schools* by the University of California-Berkeley, Stanford University, George Washington University, and Columbia University.

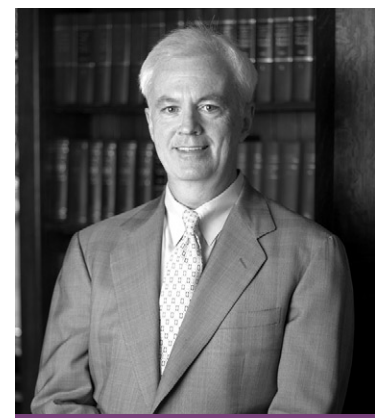
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## PORTRAIT: STEVEN McCANN (JD '91)

BY CYRIL K. CHAN (JD '10)

WITH CHILDHOOD MEMORIES of spending time in electric power plants and courthouse hallways, Steven McCann comes from a background built for a great career in intellectual property. Although McCann cannot remember the exact moment intellectual property became the focus of his legal career, his strong interest in it came to him naturally: "From a young age, literally on the order of when I was ten years old, it was in my head to pursue engineering and law. I never wavered from this ultimate objective. Perhaps it stemmed from my father working for a technology company and my mother being in the legal profession—it just seemed like a perfect marriage (in both senses)." Following this objective, McCann has been an engineer in the commercial nuclear industry, a law clerk at the U.S. Court of Appeals for the Federal Circuit (CAFC), an attorney at a major intellectual property law firm, and chief patent counsel at MCI, Inc. (now Verizon Business). At Eindhoven, The Netherlands, McCann is now the Senior Vice President, Intellectual Property & Licensing, at NXP Semiconductors, one of the top semiconductor companies in the world.

McCann's multidisciplinary education at Rutgers University was one of the factors that guided him towards intellectual property and eventually to Pierce Law. His pursuit of a B.S. in mechanical engineering and a B.A. in economics "truly began the process of synthesizing disparate fields into what has become my career." His ability to study both disciplines at the same time was unique and impressive, particularly when such multidisciplinary education was very uncommon. Specifically, he did not initially plan on pursuing concurrent degrees. Before college, he worked as an



**STEVEN McCANN**

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electronic technician in the commercial radiation industry, developing radiation monitor and safety systems. Accordingly, it was no surprise that he began his studies in engineering. However, his interests in business and economics led him to take many elective courses in those respective subjects and he eventually found himself only a few credits away from earning an economics degree as well. The biggest challenge was figuring out where this would all lead. “Family and friends did not understand; they just thought I was a perpetual student,” McCann said. “The world in the late 70s and early 80s was not like the world today—combining disciplines and molding one’s education was not as common. There was no Federal Circuit, no broad understanding of the importance of intellectual property. Looking back, the choices were clear, but everything is easy in retrospect. I am thankful I followed my gut and never doubted it.”

McCann continued working in the commercial nuclear industry and gaining technical experience as a consulting engineer before beginning his studies at Pierce Law. As a result of the Three Mile Island Accident on March 28, 1979, the U.S. Nuclear Regulatory Commission (NRC) promulgated new regulations with the purpose of improving the safety of nuclear power plants. Notably, McCann became one of the few national experts on post-accident systems. He spent several years testing and performing radiological calibrations on nuclear reactors that were in their last months of construction. This work was paramount to the safety of the world because the nuclear reactors were responsible for isolating the outside world from radioactive materials released in the event of an accident. He worked with top scientists from Westinghouse to ensure that the systems met NRC specifications. Despite his success in the commercial nuclear industry, McCann enrolled at Pierce Law in 1988 to further his desired objective of combining engineering with law.

Pierce Law naturally attracted McCann’s attention when he was researching law

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## EUROPEAN INTEROPERABILITY PATENTS—A POSSIBILITY?

BY PRITI DESHPANDE (LLM '08)

**I**N JULY 2007, IBM PROPOSED THE CREATION of a European right called the European Interoperability Patent (EIOP). The EIOP is proposed to be a patent right to be granted within the European Union (EU) by the European Patent Office (EPO). The EIOP would allow any person or entity to obtain a license of right to use a patented technology as long as an appropriate licensing fee is paid to the patentee.

### LICENSES OF RIGHT

The EIOP is similar to the collective licensing schemes which are well-known in modern copyright regimes. In some European countries, like the United Kingdom (UK), this concept is already prevalent and is called the “licenses of right.” Under licenses of right, at any time after the grant of a patent, the registered proprietor can apply to the comptroller of patents to the effect that licenses under the patent are to be made available as of right. Such an application is granted after ensuring that the proprietor is not precluded by contract from granting licenses under the patent (e.g. as in the case of a prior grant of exclusive license). UK Patents Act, § 46(2) (1977). Thereupon, any person seeking a license to the patented invention is entitled, as of right, to a license under the patent for a licensing fee or royalty. § 46(3)(a). Additionally, the renewal fee payable in respect of the patent is reduced to half the normal fees when a license of right is granted. § 46(3)(d).

Similarly, the EIOP concept envisages the grant of license by the patentee to anyone who wants to use the patented invention, provided an appropriate and reasonable licensing fee or royalty is paid. If a fee cannot be agreed upon, then it is proposed to take the matter to court, which will adjudicate on what amount will be reasonable. However, unlike the licenses of right under the UK law, where the licensee has the option to undertake infringement proceedings as per the agreement negotiated between the licensee and the licensor, neither the licensors nor licensees under an EIOP license may receive injunctive relief in cases of infringement of an EIOP right, as a license will always be available to the infringer.

### DISTINCTIONS FROM COMMUNITY PATENTS

Community patents, which have been contemplated in the EU for some time, are distinguishable from the EIOP in several ways. The creation of a community patent system in Europe was intended under the Luxembourg Convention, which established the 1975 Community Patent Convention (CPC). The CPC proposed a community patent that allowed individuals and companies to obtain a European patent for the common market of the EU, which was of a unitary and autonomous character and governed by a common system of law. Guy Tritton, Richard Davis, Michael Edenborough, James Graham, Simon Malynicz & Ashley Roughton, *Intellectual Property In Europe* 194 (3rd ed. 2008).

Unlike European patents granted under the European Patent Convention, which are actually a bundle of nationally enforceable rights within the sovereign states of the EU, community patents are envisaged to be enforceable throughout the EU. Often, patentees who have obtained a patent on an invention in more than one country of the EU find it expensive to enforce the patent through national courts in individual countries. The community patent is intended to solve this problem by providing for judicial harmonization of European patent law to bring into conformity the differences in the national patent regimes of the EU members and provide for a patent right that is consistent across the EU. Community patents would provide for adjudication of infringement and validity issues by centralized community tribunals within the framework of the European Court of Justice. *Id.* at 196.

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schools and felt that it was the premier intellectual property school in the nation. The breadth of the IP curriculum at Pierce Law was very attractive. McCann noted the patent practice and procedure courses as particularly valuable and unique because of the practical skills they fostered. McCann enjoyed his time at Pierce Law, describing the environment as “relaxed, congenial, and fun,” an environment that is uncommon in law schools and that should be “cherished.” In addition to participating in the Giles S. Rich Moot Court Competition, McCann was a teaching assistant for Contracts, Constitutional Law, and Wealth Transmissions.

After graduating from Pierce Law in 1991, McCann worked as an associate in a law firm in New Jersey for a few years before becoming a law clerk to Judge Pauline Newman of the Federal Circuit. His two and a half years as a law clerk at the Federal Circuit was the most rewarding experience of his legal career, particularly because he was there during a historic period in time. McCann started at the court just after the *In re Alappat en banc* decision and was there through significant cases like *Hilton Davis* and *Markman* (Judge Newman assigned him to work on her dissenting opinion in *Markman*). Clerking at the Federal Circuit gave him the opportunity to participate in the Giles S. Rich American Inn of Court and to meet the best legal minds in the field of intellectual property. He also spent weeks in the rare book rooms of the U.S. Supreme Court and the Library of Congress, which he described as “an amazing and historic” experience. He read practically every reported English case, dating back to the Statute of Monopolies adopted in 1623. McCann also took night classes at Georgetown Law School and received an L.L.M. in International and Comparative Law in 1995. His decision to pursue the L.L.M. was especially timely because he was studying intellectual property and international law just as negotiations for NAFTA, WTO and TRIPS were culminating. McCann saw international law as the “fourth leg of the stool,” the final piece of his “academic roadmap” that allowed him to weave business and technology not only in a legal

framework but also in a global context.

Before becoming an in-house counsel at MCI, McCann focused on patent litigation as an associate at Finnegan Henderson and had the privilege of working on significant cases involving charged coupled devices (CCDs), fluoxetine hydrochloride (Prozac), and magnetic resonance imaging (MRI). McCann was particularly excited to meet the inventors of such pioneering and revolutionary works and to have his hands on their laboratory books and original work. In 1999, McCann decided to go in-house because he wanted to “work in an environment where you get inside the business and strategic head.” At MCI, McCann’s key responsibilities included: defining and implementing a global intellectual property strategy, IP due diligence and negotiations for corporate mergers and acquisitions and divestiture transactions, and overseeing patent litigation activities. Working as an in-house counsel gave him “a much larger strategic business context and backdrop” to his work and allowed him to make a “real business impact.”

When asked about his opinion on the current patent system and recent patent reform, McCann believes that the patent system is in an obvious state of flux with reform efforts focused primarily on procedural issues. He feels skeptical about whether current legislative efforts will translate into meaningful patent reform: “I believe many legislators truly want(ed) significant reform, but their efforts seem hampered by strong lobbies, particularly on the Senate side, that strive for status quo. Indeed, there have been a number of issues that meaningful patent reform could have tackled; but they hit roadblocks, and they have since been resolved by the Supreme Court.” Nevertheless, McCann hopes to see future patent reform efforts on more substantive issues, such as damages and inequitable conduct.

Now at NXP Semiconductors, a company with nearly 25,000 patents/pending rights, McCann continues to build on his distinguished career in intellectual property. His global operations, responsible for all aspects of corporate activity involving

intellectual property, currently have 65 people, with offices in Eindhoven, Vienna, Redhill, Paris, Hamburg, San Jose, and soon in Shanghai.

In many ways, McCann never wavered and has succeeded in his objective of pursuing a career in engineering and law. Indeed, he has done so much more by focusing on the business and international aspects of intellectual property. When asked what advice or comments he had for Pierce Law students heading into the IP field, McCann had this to offer: “You come from one of the finest IP institutions in the world. Keep this in mind—you have had a world-class education, likely knowing much more about IP than many of your contemporaries in the world, and will leave with significant practical experience. I hope your knowing this will help you go confidently into your new and exciting journey.” ■

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University of Illinois at Urbana-Champaign. Upon graduation, he plans to practice IP law, focusing on patents.