

## Technology on Trial: Lights Out

By John Bringardner

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Bill Sims, a senior trial lawyer in the Dallas office of Vinson & Elkins, regularly handles business disputes with millions of dollars on the line. Listed in several "top lawyer" lists in Texas, Sims met a formidable opponent last year when his team defended Lutron Electronics Co. Inc., based in Coopersburg, Pa., in a patent infringement suit brought by Genlyte Thomas Group, seeking \$218 million. The suit resulted in a trial that spanned three weeks in May 2004.

The dispute between the two lighting manufacturers originated when Genlyte alleged that eight of Lutron's Grafik Eye products — computer-based systems that control lighting in large, partitionable spaces such as convention centers and ballrooms — infringed a Genlyte patent that was issued in 1988.

*Genlyte Thomas Group v. Lutron Electronics Co. Inc. (3:02-CV-0602-K)* was heard in the U.S. District Court for the Northern District of Texas — the Dallas federal courtroom of Judge Ed Kinkeade.

This was not the first dispute handled by George McAndrews, a founding partner at Chicago intellectual property firm McAndrews, Held & Malloy. Under his helm, Genlyte had already won an \$8 million settlement in 2003. Acuity Brands, another large lighting fixture manufacturer, was sued over a plastic lighting component and agreed to pay Genlyte Thomas \$8 million in damages. Genlyte has more than 500 active patents, says Dan Fuller, the company's vice president and general counsel.

In setting its sights on Lutron, Genlyte was concerned with its U.S. patent no. 4,792,731, actually three independent inventions: a multi-room controller, an individual light control, and a lighting control system.

Genlyte's headquarters are in Louisville, but the division of the company that handles the lighting controls is in Dallas. When asked why the trial was held in the Lone Star state, Sims was quick to respond. "They wanted to get a hometown advantage," he said with a dramatic pause, "and those big Texas verdicts!"

Judge Kinkeade, in his big Texas accent, said he was impressed by the size of the verdict, but more so by the preparation and presentation of both trial teams. "In these patent cases, people pull out all the stops," he said. "There's a lot at stake. Each side had their own [tech consultants], and they were both really good."

Vinson & Elkins looked to the Houston office of FTI Consulting Inc. for the defense team's technology assistance.

Eric Pubentz, director in the FTI litigation technology group, also leads the entire company's digital video operation. He has worked extensively with Bill Sims in the past.

This case called for very detailed graphic work. "We thought the animations would breathe some life into the patent," says Pubentz. Working closely with the attorneys and expert witnesses from the Massachusetts Institute of Technology and Baylor University — as well as the inventors of Lutron's lighting systems — FTI was able to take the original two-dimensional Genlyte patent drawing and animate it in three-dimensions to show the crucial differences with the Grafik Eye system.

The Genlyte product had a central hub and Lutron's device had many "smart" components, Pubentz explains. The way the lights communicate with each other was at issue. In both systems, the intelligent lighting system for overall setup sets a scene of different lighting levels throughout an office.

"The animations were set at the system level so you see how the circuits flow," says Scott Breedlove, a Vinson & Elkins partner on the case. Though the patent itself was already nearing the end of its shelf-life — it would expire in 2008 — Breedlove says one of the themes the defense used was that this patent was already "old news" in 1988.

The defense compared the patented system's architecture to a wagon wheel. "You have a hub and spokes," Breedlove explains, "and everyone's relying on the middle." The animations showed a little signal coming out of the hub, compared to the Lutron system in which the controls are daisy-chained together.

They used color-coding and animations to contrast the two systems, as well as video depositions and text call-outs. Defense attorneys could refer to a specific section of the patent, or any other document, and FTI's Rob Ortiz, a courtroom tech consultant, would bring the document on screen and highlight the referenced text.

One of the defense team's MIT experts said in court that he was aware of the X-10 light switch when he was still in high school in the early 1980s, a device that already did what the Genlyte system patented several years later. He even had old magazines at home proving they were on sale at the time.

The defense team used graphics to show the system architecture of other products like the X-10 that existed before the Genlyte patent was filed. "We used them to establish an invalidity defense," Breedlove said.

Pubentz and FTI were on the case for an entire year before trial, with technical consultants set up in the Vinson & Elkins office in a conference room in-between Breedlove and Sims. Describing the collective atmosphere of the trial preparation, Breedlove said the

attorneys, tech consultants and experts collaborated to come up with effective graphics. "We were definitely working with ideas about how to make it more clear, accurate and persuasive," Breedlove said.

The preparation paid off. Working with a courtroom technician to establish what documents and graphics will need to be displayed helps keep delays to a minimum once in the midst of the trial.

The defense team gave Ortiz some warning of what documents they would need in cross-testimony, but they also used print-outs with numbers for the right graphics. Rather than scanning bar-codes to bring up documents on-screen, which Breedlove dismissed as outdated and too slow, FTI and the defense team used document codes to call up demonstrations. The attorneys would call out the number and Ortiz could type it into the system to bring up the display in seconds.

"With deposition excerpts, we really needed to tell them beforehand, but it was never an issue of delay," Breedlove said. The lawyers know how to ask for things by number and paragraph, Pubentz added.

However, as McAndrews litigator Dean Pelletier pointed out, the plaintiffs used barcodes to great effect. "We used electronic versions of almost all exhibits," he said. "With a bar coding system in place we could readily call up everything on a large overhead [screen]." He appreciated the fact that documents could be called up by the attorney, out of order, and still displayed within seconds by scanning the barcode.

Ortiz has done more than a dozen cases with Bill Sims in the past, so he knew what each other wanted, said Pubentz. The defense team used two dozen different graphics, and thousands of documents in electronic binders that filled 20 CDs. The documents were put through Summation, from Summation Legal Technologies Inc., for document management and coding. Then everything was run through TrialMax 6, FTI's proprietary courtroom presentation software. Using TrialMax, attorneys can collaborate over a network to build a case into a searchable database of documents and media.

The defense team also had the benefit of having previously worked on five trials in Judge Kinkeade's courtroom. With all the high-tech courtrooms in Dallas full at the time, said Kinkeade, the trial teams would have to supply their own equipment. FTI had a diagram of the courtroom and rented equipment from Dallas-based Litigation Media Inc.

One major requirement was a very bright projector, needed to keep images visible on an eight-foot screen even with the bright sun pouring in through the windows of the courthouse. The set-up also included 15-inch low profile flat-panel monitors on the witness stand, in the jury box and on counsel tables. There was a switch for each side to use the displays, and both sides split costs for the equipment.

The plaintiffs did not have any animations outside of PowerPoint slides, according to Pelletier, but they did make full use of the technology available. In addition to slides and video depositions, the McAndrews team made use of foam boards for exhibits.

"From time to time you'd use the physical exhibit, like the actual lighting system, just to vary the presentation," he said. But at other times they would combine tools. Leaving foam boards with relevant information in front of the jury, the plaintiffs would also present live testimony of a witness with an electronic presentation at the same time. It was a sophisticated approach, but Pelletier warned that it must be used sparingly. "You have to be careful not to create sensory overload," he says.

Pelletier advised that the timing of video use in the courtroom is critical too. "If you dim the lights at the end of a long day to show video, sometimes that can be a problem," he said with a chuckle.

Judge Kinkeade made space available for both teams to set up war rooms. He admits that current courtroom setups will have to be rethought around technological needs in the near future. His courtroom didn't have enough electrical outlets for everyone, so wires were taped to the ground and run into other rooms.

"It's like that guy at the Rolling Stones concert with the big sound board," he mused. "We're gonna have to find a place for that big board in the courtroom." In the mean time he gave up a large conference room of his own, and borrowed a colleague's courtroom so each trial team would have a private place nearby to prepare.

The jury found Lutron not guilty of infringement and that the Genlyte patent was invalid. The defense team used the notion that Genlyte knew of prior art when it filed its patent, and if Judge Kinkeade finds this is true, which is known as inequitable conduct, Lutron may then be able to recoup attorneys' fees.

Kinkeade, whose enthusiasm for technology in the courtroom is palpable, felt that this trial displayed the most deft use of presentation systems he had ever witnessed. The most helpful technology for the jury was the ability to pull out text and highlight it onscreen, said the judge. "I've seen others do it, but these guys both had faster computers and better technicians."

He was also impressed by the preparation both teams put in, obvious by the speed with which demonstrations were brought onscreen.

"Juries have gotten used to instantaneous things through television," Kinkeade remarked. "If it's slow, it does not work. They did a great job keeping tempo with the lawyers."

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