

LAWDRAGON

The Lawdragon 500 Lawyer Limelight: David Kappos

By Katrina Dewey



Photo by Laura Barisonzi

It would be tough to invent a more authoritative intellectual property lawyer than David Kappos. An engineer by training, he joined IBM – the world’s largest patent holder – directly out of University of California, Berkeley, Law School. He stayed there for over 25 years, ultimately as Assistant General Counsel and Vice President for Intellectual Property before serving as Under Secretary of Commerce and Director of the U.S. Patent and Trademark Office (2009-2013).

Kappos joined Cravath, Swaine & Moore LLP last year as a partner, where he handles complex IP matters for corporate and litigation clients when the stakes are highest.

LAWDRAGON: At the PTO, did you develop any special programs to address what may have been blind spots in terms of protecting independent innovators as well as big and medium-sized businesses?

DAVID KAPPOS: I started a very rigorous program that I kept going the whole time I was in the government. On virtually every trip I took, I had at least one meeting with independent inventors. They were typically small meetings with five, 10, maybe 20 people. I remember many of these vividly, the San Francisco public library, here in New York, Louisiana in the New Orleans

area, meetings in Florida and Maine and Massachusetts and Ohio and Wisconsin and Nevada and Texas and on and on.

LD: What would they say to you?

DK: First of all, they had great ideas. One is the accelerated, or so-called “track-one,” patent processing, which is a huge success. An independent inventor group of people said, “We get that you’ve got 750,000 unexamined applications sitting there and you can’t do them all at once.”

But, they said, “We’re willing to pay if you could create a system that enables you to take a few thousand a year and examine them immediately.” And I thought, if you pay more and FedEx can send packages overnight, we ought to be able to figure this out. I took that back to the career team who worked on the Rubik’s Cube and the next thing you know all the colors are lined up.

You start out with a concept. You get the comments. Then you institute a pilot. Then Congress picks up on it and says, “Why don’t we make that into a law so that it can be more regularized?” And how did it start? It wasn’t my big idea. It was an individual out in California, an independent inventor.

LD: Let’s spend a few minutes talking about your work at Cravath and what attracted you here.

DK: Cravath provides the world’s highest platform literally and metaphorically for intellectual property work. A key reason I decided to come here is to be able to see over the horizon. The way you do that is by getting on top of issues that are very leading-edge. We have the clients that do that.

We have the client that’s securitizing patent estates to provide liquidity to patent holders so they can do new things and then taking those estates and finding ways to extend them to put more products and services in the marketplace. That’s a good thing for consumers and also frees

up capital. To have a client like that on the billions-of-dollars scale creating an intellectual property marketplace is a huge platform to be able to work from.

We have deals like that in our securities, M&A and bank financing practices. We’re the firm that gets called on when these things get really complex, like a five-tier assignment of an intellectual property interest where our client is right in the middle and wants to somehow extract itself. These are issues you don’t normally see; there is almost never a playbook for the issues we handle for our clients around here.

LD: Are you seeing an increasing awareness of the IP component as a proportion of deal value?

DK: It’s become a lot more valued, and therefore there are a lot more points of contention. With most M&A deals, IP now winds up being one of the last things that gets decided. Almost everything will be done and we’re still negotiating the intellectual property because it’s critical.

LD: How does it work with Cravath’s model, which is to train all its lawyers as great generalists, who then go and do corporate or litigation work from a shared skill and quality base?

DK: I do corporate work. I do litigation work. I get to work with people in all parts of the firm. That I find very attractive. When you have these cycles that occur – extreme specialization, cost cutting – there is always a return to value and an appreciation of the interdisciplinary nature of what happens when complex transactions occur, which is exactly what Cravath does.

I think the level of appreciation in the industry is trending towards having a law firm that’s not trying to be the biggest firm in the world, not trying to be everything to everyone, but is just trying to be the very best at the hardest things – that’s what clients are looking for. That’s what we do at Cravath.