

**A Patent With Two Lives
How Microsoft Lost \$521 Million**

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The Write Stuff

These ten prosecutors win clients, woo examiners, and develop strategy. They also draft a mean patent.

Fish & Richardson's
Scott Harris



MARSHALL WILLIAMS

Writing Rain

Scott Harris prosecutes patents that bring in clients and cash.

him further, and you'll learn—eventually—that Harris landed the firm's two biggest clients, Intel Corporation and AOL Time Warner Inc., which together account for more than a third of Fish's annual revenue. Ask about the patents Harris has worked on, and he'll rave about a technique to simulate sand-blasted designs on jeans, casually throwing in that he's worked, too, on revolutionary fuel cells and impossibly small devices that may, one day, literally cut cancer out of the body.

Harris, who works out of the firm's San Diego office, is equally modest about his own goals. Right now, he's "really shooting for a ten-hour day." Wish him luck. While Harris still drafts between 60 and 80 new patent applications a year, he's spending more and more time on strategy, passing some 300 to 500 other applications to lawyers in his group. "To me, strategy is the fun part of the job," Harris says, "trying to figure out

Scott Harris may be a top-notch patent prosecutor, but he'd make one lousy press agent. Ask the 45-year-old about the business he brings into his firm, Fish & Richardson, and Harris will tell you that he's "not much of a networker." Press

how you're going to screw your competitors." Harris has also built a burgeoning practice—accounting for 30 to 40 percent of his workload this year—advising the firm's clients on what he calls "new and screwy" technologies they're considering investing in. While lucrative, the work can be thankless, as "90 percent of the stuff is just garbage," Harris says, and on more than one occasion, he has been fired by a disappointed investor only to be rehired when the next new technology came along. "It's like Vegas for these guys," he says.

It's little surprise that investors have taken to Harris. An electrical engineer by training (he went to The George Washington University Law School at night while working at Comsat Corporation in Washington, D.C.), Harris has prosecuted a steady stream of potentially change-the-world patents. Foremost among these is a fuel cell patent, issued in 1997 to the California Institute of Technology, a client Harris brought with him to Fish in 1994 from Cushman, Darby & Cushman, where he'd been for ten years. Fuel cells—which create electricity from hydrogen and oxygen—have always been something of a design nightmare, requiring bulky storage containers for the hydrogen) and messy electrolytes like sulfuric acid. The Caltech patent covers a cell that runs without sulfuric acid, and uses methanol as its hydrogen source. The result is a cell small enough to fit into a laptop computer (and safe enough to talk

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on an airplane). For laptop users, the cells might provide enough power to last a full day (today's batteries provide only a few hours of power). For Caltech, it may bring vast riches. When an IP valuation firm examined the patent a year ago, it estimated its potential worth in double-digit billions Harris says, "So far, it's taken in a few million, but every Japanese laptop manufacturer has announced they will be using this."

Harris also prosecuted the patent for Caltech's cell lysis device, which uses extremely small knives to split open human cells, a boon for medical researchers. The device—known as a micromachine—is built with the same processing techniques used to make an electronics chip. Down the road, one might see similar devices that latch onto cancerous cells and cut the disease out of an organ, one cell at a time. The patent didn't come easy, though—Harris had to go before the U.S. Patent and

Trademark Office examiner three times over the course of a year to make his case. A regular visitor to the PTO—making two or three weeklong trips each year on behalf of his toughest cases—Harris still spends some 30 percent of his time "writing up arguments to convince examiners."

Harris originated \$6 million in client revenue in 2002. He landed one client in a pool-supply store, when he walked in for a pool filter and walked out with business from Chris Grace and his computer graphics company, Johnson Grace Corporation. "The guy behind the counter didn't speak English, so I helped Chris figure out what part he needed," Harris recalls. Patent assignments followed, and when Grace sold his company, the buyer kept Harris on. That buyer was AOL. If Harris is really set on that ten-hour day, he may want to have his kids do the shopping from now on. —Alan Cohen