



# Using High-Tech Trial Exhibits

by Susan Kuchinskas

**L**awyers for Trading Technologies (TT), a Chicago company that provides electronic tools for stock traders, recently pursued claims that competitor CQG Inc. had infringed on its patents. Before making their case to the jury, the attorneys with McDonnell Boehnen Hulbert & Berghoff in Chicago representing TT faced a complex challenge: They needed to explain what electronic trading is and how TT's software works.

They turned to Scott Hilton, managing partner of The Focal Point, a litigation strategy and graphics business in Oakland. The lawyers couldn't simply show the software in action, Hilton says, because the interface is a confusing array of columns with numbers that constantly shift. So The Focal Point re-created the software in Adobe Flash, allowing attorneys to slow it down and freeze it to illustrate key points.

"We left out certain details to simplify, and because they weren't part of the case," Hilton says. His company also produced a one-minute loop—instead of a minutes-long animation—that played continuously while the expert witness testified. The Focal Point

also used created graphics and animations of specific aspects of the software and trading.

## Rising Expectations

Engaging the jury means "being the teacher of the technology in the courtroom," says Hilton. In a world saturated with digital media, jurors expect multimedia presentations, and animations and video re-creations certainly can be extremely useful for making sense of complex concepts. Particularly when a client's brand is well known in consumer electronics, jurors expect the same kind of sophisticated presentations they see in TV commercials or during demonstrations at tech-product launches.

"Everyone talks about the *CSI* effect in criminal cases, but it has a similar effect in patent cases," says Nate Hatch, a principal at Five Corners Group, a trial-presentation company in San Francisco.

That's not to say every case needs 3-D animations, videos with product fly-throughs, or even simple animations. Sometimes, an old-fashioned giant pad of paper can be more compelling, says Craig Veconi, also a principal with Five Corners Group.

“Our intention isn’t to push technology. It’s to give clients the stuff that works for them in the courtroom and makes them the most comfortable when they’re using it,” Veconi says. “We’re not starting with, ‘What’s the technology we’re going to use?’ It’s, ‘What are we trying to show?’ ”

### Team Effort

Presentations that both inform and persuade require a team effort, says Karen Vogel Weil, a partner with Knobbe, Martens, Olson & Bear in Los Angeles. When her firm first hires a vendor to help create high-tech exhibits, lawyers meet with the vendor’s staffers to explain the dispute and the parties and technology involved. “The more they understand,” she says, “the better able they are to convert ideas into visual images.”

Some attorneys supervise every aspect of developing a digital presentation, a task that’s been made easier by the simple, point-and-swipe interface of the iPad. Others assign a paralegal to supervise some aspects.

During trial, Knobbe employs a technician to run presentations, says Weil. That person can, for example, sync a clip from a videotaped deposition with the transcript inside of trial-presentation software to help a lawyer impeach a witness in court.


“A video of someone saying something different from what they’re saying on the stand is incredibly persuasive,” says Caitlin

Stevens, a trial-presentation consultant at Persuasive Presentations, which has offices in San Francisco, Los Angeles, and San Diego. “Everything that witness says from there on out comes into question.”

Stevens also notes that providing information in a variety of formats—audio, video, diagrams, and text—ensures that jurors with different learning styles can grasp it.

Ashok Ramani, a partner with Kecker & Van Nest in San Francisco, offers the example of an intellectual property case he recently presented in federal court, in which claim-construction arguments were allotted a whole afternoon. Other matters ate up much of that time, and the attorneys for both parties had only 40 minutes. Ramani says his opposing counsel nonetheless decided to stick with his planned 150-slide presentation.

“He went through it like Sherman marching to the sea,” Ramani says. “It was really difficult to follow; I thought it was incoherent.”

The incident serves as a caveat not to get wedded to technology, notes Ramani, who says he benefited from following his opponent. “I junked most of my slides and just went with a few high points.” 

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