

# SUSAN G. BRADEN

Judge  
United States Court of Federal Claims  
717 Madison Place, N.W.  
Washington, D.C. 20005



Judge Braden was appointed a Judge of the United States Court of Federal Claims on July 14, 2003, by President George W. Bush, after being confirmed by unanimous consent of the United States Senate.

Judge Braden received a B.A. degree (1970) and J.D. degree (1973) from Case Western Reserve University in Cleveland, Ohio. She also attended post graduate courses at the Harvard Law School in the summer of 1978.

Prior to joining the bench, Judge Braden litigated complex federal and administrative law cases in private practice in trial and appellate courts. In particular, her work in the intellectual property area has received favorable comment in the *Wall Street Journal*, *New York Times*, *National Law Journal*, *Journal of the American Bar Association*, and *Interfaces on Trial: Intellectual Property and Interoperability In The Global Software Industry* (Westview Press 1995). For example, during the Supreme Court's 2001-2002 term, Judge Braden filed an amicus in *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki*, on behalf of many of the nation's leading research universities, including Wisconsin Alumni Research Foundation, University of California, Massachusetts Institute of Technology, University of Pennsylvania, Stanford University, University of Vermont, and University of Utah, and such prominent non-profit research institutions as M. D. Anderson Cancer Center, arguing to maintain the viability of the doctrine of equivalents to protect pioneer patents or "first-in-the-field inventions" from non-literal infringement. On May 28, 2002, the Supreme Court, in a unanimous decision, reversed and remanded the Federal Circuit's *en banc* ruling, in a complete victory for her clients. That same year, Judge Braden also was lead counsel in a patent infringement case before the U.S. International Trade Commission and served as an advisor regarding appeal of a patent case in the Federal Circuit that involved a tandem investigation by the Federal Trade Commission concerning standard setting activity in the semi-conductor industry.

In 1996, Judge Braden was honored by the Computer Law Association for winning multiple decisions in the Eastern District of New York, the Eastern District of Texas, the Second Circuit, and a certified question to the Supreme Court of Texas in *Computer Assocs. Int'l, Inc. v. Altai, Inc.*, a landmark case that changed the application of copyright law to computer software. In 1998, she also won a companion copyright case brought in France that favorably was resolved by the Cour de Appel de Paris. In 1995, she filed an amicus in the Supreme Court in *Lotus Development Corp. v. Borland* suggesting that district courts first determine the copyrightability of computer programs in infringement cases before allowing discovery, to prevent discovery misuse when trade secret claims also are filed. In 1993, she appeared in the Second Circuit on behalf of the American Library Association in *American Geophysical Union v. Texaco*, a test case concerning the scope of the fair use doctrine.

In addition, Judge Braden has been lead counsel in a number of cutting edge cases. In 1995, she was lead counsel in a constitutional and state income tax case that challenged the industrial incentive law of the State of Alabama and received favorable mention in the *Wall Street Journal*, *Business Week*, and *State Income Tax Alert*, where it was described as “the case to watch.” In 1991, she was lead counsel in a case noted in the *Wall Street Journal* where the federal district court awarded her client indemnification of environmental liabilities required to be assumed under an antitrust divestiture. In 1990, she was appointed by the Governor of the State of Alabama as a Special Assistant Attorney General to handle an antitrust divestiture required by the Federal Trade Commission.

Judge Braden was lead counsel in a test case before the Federal Circuit, where she represented over 7,000 taxpayers seeking interest on Harbor Maintenance Tax refunds under the Just Compensation Clause, occasioned by a unanimous 1998 Supreme Court decision holding that the imposition of the HMT tax was unconstitutional.

In private practice, Judge Braden also represented a wide variety of client interests before almost every major department and federal agency, including: the Department of Justice; the Department of Commerce; the Department of Energy; the Department of Defense (DARPA); the Department of Transportation; the Department of Health and Human Services; the Department of Agriculture; the Department of Interior; the Federal Trade Commission; the Consumer Product Safety Commission; the International Trade Commission; and the Nuclear Regulatory Commission. In addition, Judge Braden has appeared and testified before the United States Congress on a variety of matters and was a principal advocate of the Emergency Oil and Steel Loan Guarantee Act of 1999, which established a \$1 billion federal loan guarantee program to assist bankrupt and troubled steel mills and small oil companies.

Prior to entering private practice, Judge Braden served as Senior Counsel to the Chairman of the Federal Trade Commission and his predecessor, who was Acting Chairman and a Commissioner (1980-1985). In both positions she was responsible for advising on antitrust and consumer enforcement actions and handling congressional relations. From 1973-1980, Judge Braden was a Senior Trial Attorney in the Antitrust Division of the Department of Justice. She joined the Department under its Honor Law Program and initially was assigned to the Cleveland Regional Office, where she assisted in the trial of the first antitrust felony case and served as lead counsel in numerous criminal bid rigging cases and major merger investigations. In 1978, she was assigned to the newly formed Energy Section as lead counsel in a proceeding that conditioned the nuclear licenses of several electric utilities, bringing Texas into the national power grid. In addition, from 1978–1980, Judge Braden also represented the Department of Justice at OECD meetings in Paris, London, and Dusseldorf. During her tenure in government, Judge Braden received numerous Superior and Outstanding Performance Merit awards and in 1984, she received the Federal Bar Association’s Distinguished Service Award.

Judge Braden is admitted to the Bars of the United States Supreme Court, the United States Court of Appeals for the Federal Circuit, the United States Court of Appeals for the District of Columbia Circuit, the United States Court of Appeals for the Second Circuit, the District of Columbia, and the Supreme Court of Ohio.

Judge Braden is married to Thomas M. Susman, a partner in the law firm of Ropes and Gray. Their daughter is a senior at Yale University. Judge Braden is an avid gardener and passionate supporter of the Washington Opera and Shakespeare Theatre.