# "MAGAZINE BRIEFS"

BY PETER B. BENSINGER, JR.

BARTLIT BECK HERMAN PALENCHAR & SCOTT
peter.bensinger@bartlit-beck.com

When you have to learn something complicated, it is a lot easier if you can look at pictures. Often, the most persuasive evidence in any jury trial is the demonstrative -- the photo, the diagram, the blow up of the document with the key phrase highlighted. Yet when it comes time to persuade a judge, the traditional legal brief is just words, no pictures.

A picture is worth a thousand words. Even with a judge.

Peter B. Bensinger, Jr.
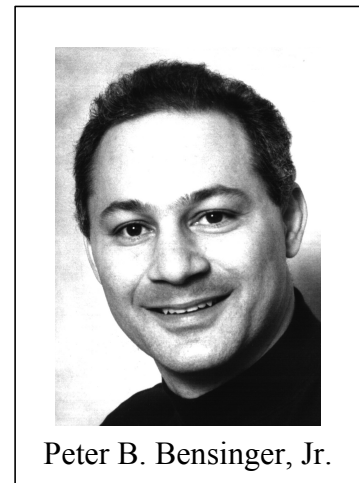
## I. SHOW, DON'T TELL

Credibility is key to advocacy. Showing why you are right, rather than just talking about it, builds credibility. The concept behind the "Magazine Brief" is to show the actual evidence, putting the graphic right next to the text of the argument. No flipping to the appendix (even though there is one). On one page, you get the juxtaposition between the textual argument and the graphic that shows your point. The graphic can be any kind of demonstrative, for example, a key document, a photograph, a colorized patent drawing, a screenshot, a timeline or chart, etc.

Several non-confidential samples of graphics from Bartlit Beck Magazine Briefs are set forth in the following section. After those examples, you will find a brief guide on how to create Magazine Briefs just using Microsoft Office.
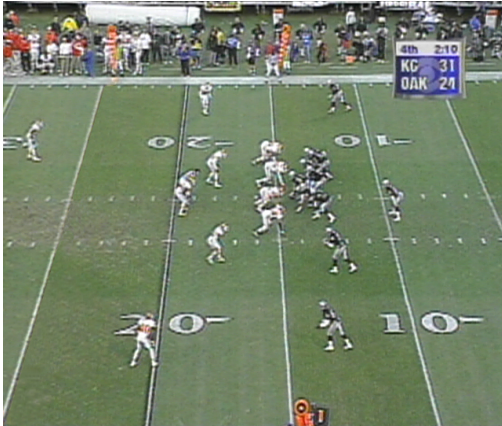
Finally, I set forth some tips based on experience.

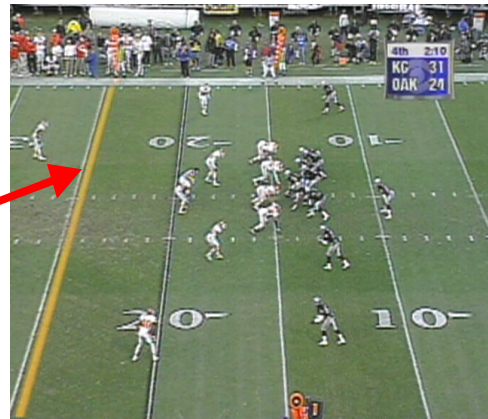## II.    NON-CONFIDENTIAL SAMPLES FROM BARTLIT BECK MAGAZINE BRIEFS

### A.    Photos

The product at issue in this case is XYZ's virtual first down marker.  The pictures below show one play in a football game, as seen at the stadium and as seen on television.
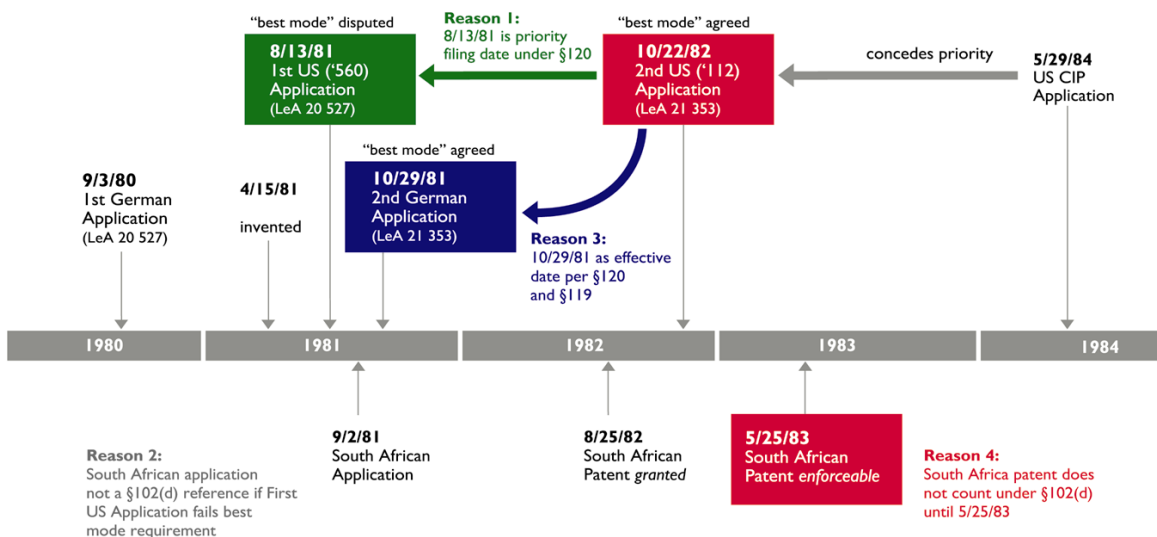
**As seen at stadium**



**As seen on television**



First down marker

### B.    Timeline

Under established case law, there are four independent reasons why ABC's patent does not invalidate the '123 patent under §102(d), as shown below in blue, red, green, and gray.
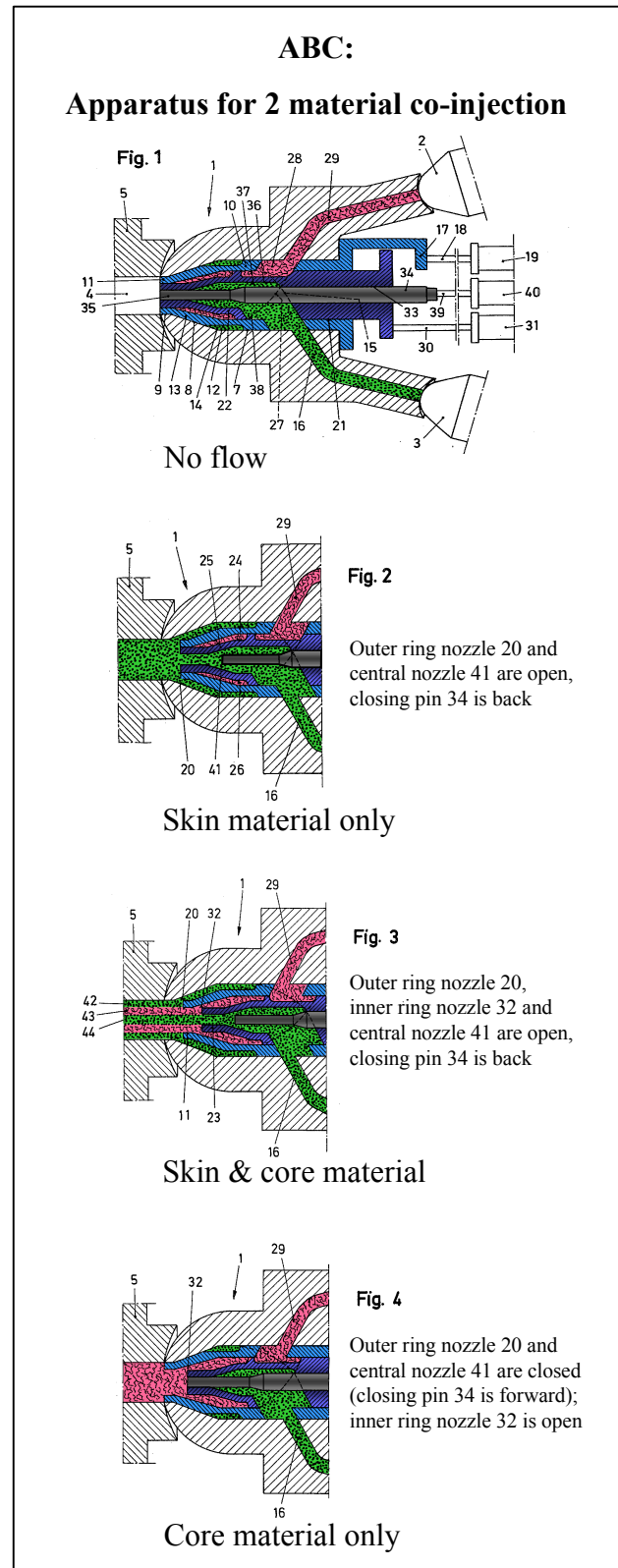
## C.    Sidebar teaching how things work

ABC expressly taught encapsulation of a

core layer using a sequential injection technique:

> In the event that there should also exist at
> the separation site of the sprue a surface of
> unfoamed plastic, then the outer sleeve 10
> or the closing pin 34 can be closed with a
> time lag, so that a small amount of
> nonfoaming plastic may still flow into the
> sprue runner 4 and there displace the
> foamed plastic. This procedure is
> particularly applicable if the side of the
> molded body which faces the sprue is
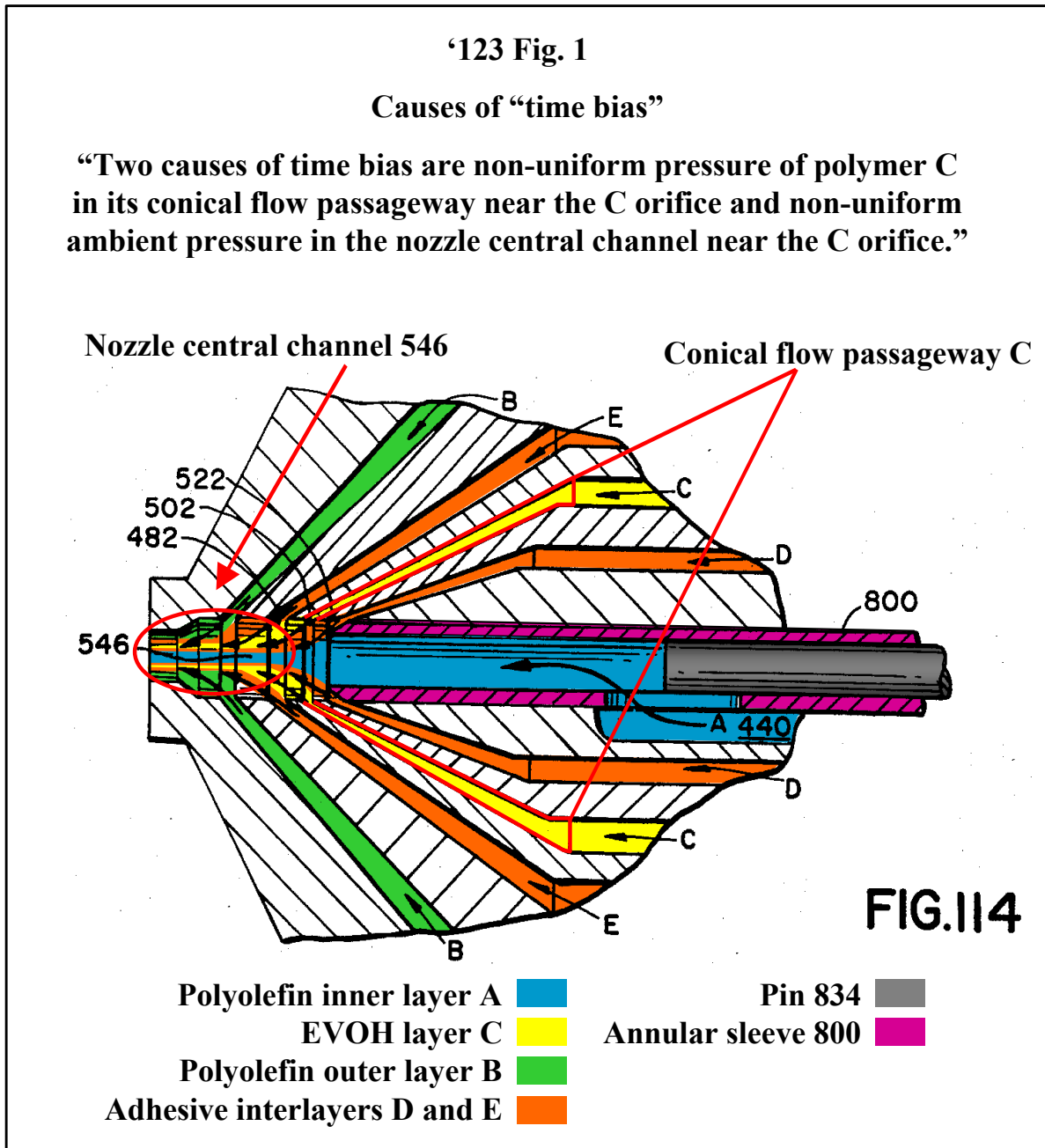> used as the so-called 'visual' side.

ABC at 5:68-6:8.  Thus, Doe did not invent how

to encapsulate a core layer.

Smith likewise taught the person of skill

in the art how to use multilayer injection molding

equipment to make a variety of structures.  In

XYZ's opening brief at 54-56, we explained that

U.S. Patent No. 1,234,567 (the "'567 patent") was

filed November 18, 1992 and is a continuation of

a series of continuation filings, all abandoned,

flowing from an original parent filed the same

day as the '123 patent:  April 13, 1983.  The '567

patent has the same specification as the '123

patent.

**ABC:**

**Apparatus for 2 material co-injection**



No flow



Fig. 2

Outer ring nozzle 20 and central nozzle 41 are open, closing pin 34 is back

Skin material only



Fig. 3

Outer ring nozzle 20, inner ring nozzle 32 and central nozzle 41 are open, closing pin 34 is back

Skin & core material



Fig. 4

Outer ring nozzle 20 and central nozzle 41 are closed (closing pin 34 is forward); inner ring nozzle 32 is open

Core material only

## D.  Color treatments

Below is a sample of a colorized patent drawing with caption, labels and color legend added.

**'123 Fig. 1**

**Causes of "time bias"**

**"Two causes of time bias are non-uniform pressure of polymer C in its conical flow passageway near the C orifice and non-uniform ambient pressure in the nozzle central channel near the C orifice."**

Nozzle central channel 546

Conical flow passageway C

FIG.114

| | | | |
|---|---|---|---|
| Polyolefin inner layer A | | Pin 834 | |
| EVOH layer C | | Annular sleeve 800 | |
| Polyolefin outer layer B | | | |
| Adhesive interlayers D and E | | | |

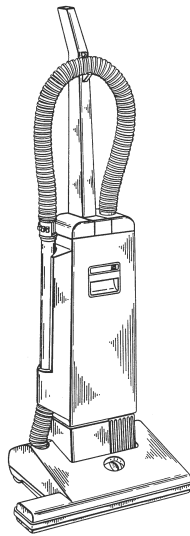## E. Treatments of Prior Art

### 1. Vacuums

The prior art designs closest to the '123 and '321 designs are the '456 patent, the '789 patent, and the XYZ product. A comparison of the patent designs and some of the closest prior art is shown below:
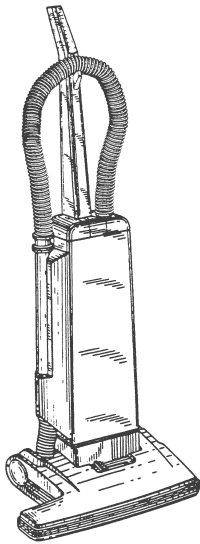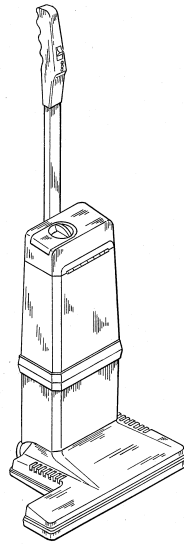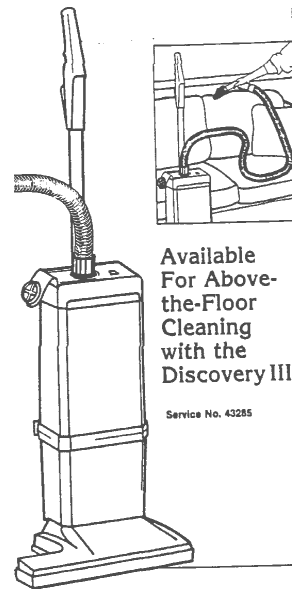
| '123 Patent | '456 Patent (Prior Art) | '789 Patent (Prior Art) | Owner's Manual (Prior Art) |
|---|---|---|---|



****

The undisputed evidence shows that the required structure includes: (1) a straight handle extension; (2) a curved graspable arm extending at a substantially right angle and approximately the length of the user's hand; and (3) a diagonal brace connecting the two. The required structure results in a generally triangular "pie" shape.

****

Printed by **Uniscribe**
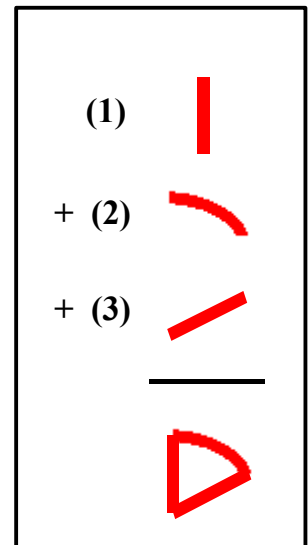
The differences are also clear from photographs of the two handles (shown below).



## 2.    Bottles

**U.S. Patent No. 1,234,567** ("'567"), "Ribbed Bottom Structure for Plastic Container," to Doe, issued August 22, 1975, states, "[b]ottle 10 is provided with an **upper neck portion 12 having any desired neck finish**, such as the threaded finish shown.  A **sidewall** 14 of any suitable form extends from the neck portion to a bottom structure, indicated generally at 16, closes the lower end of the sidewall."



Doe '567 Fig. 1

Neck finish 12
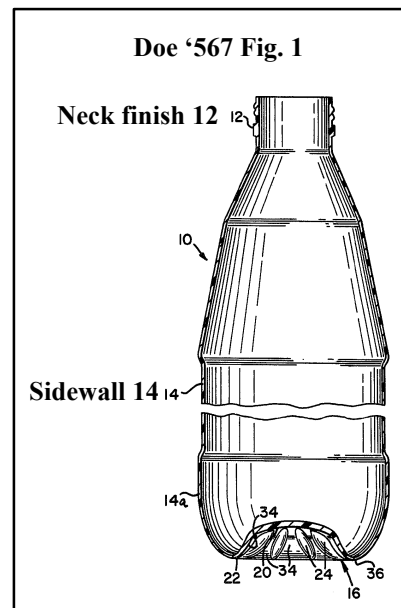
Sidewall 14

**U.S. Patent No. 7,654,321** ("'321"), "Plastic Container with Support Base and Method of Assembly," to Guest, issued April 4, 1972, states, "[t]he bottle itself includes a **finish 12**, a neck support ledge 14 adjacent the finish, and a **tubular side wall or body portion 16**."



Guest '321 Fig. 1

Finish 12

Tubular Side wall
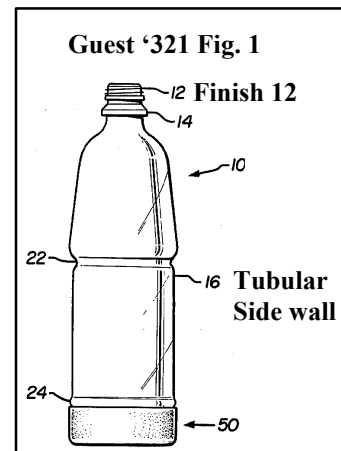
**III.** **GUIDE FOR CREATING MAGAZINE BRIEFS WITH MICROSOFT OFFICE**

My firm, like most, uses Microsoft Office. While you can buy special publishing software, I was surprised to learn how easy it is to create Magazine Briefs with Microsoft Office. Teaching the fundamentals of Word or PowerPoint's drawing tools is beyond the purpose of this short article. The skills required to build a graphic for a Magazine Brief, however, are fundamental and easily learned. Here, I hope to point in the right direction so that when the time comes, you will consider exploring the potential of the Magazine Brief.

The information below is based on my own hands-on experience. There is probably a better way to do it. My purpose is to share with you what has worked for me and to prompt you to consider the "show, don't tell" approach to briefs.

**A.** **Hardware**

**1.** **A computer with**

**a)** **a lot of ram (128 to 256) and**

**b)** **a big hard-drive (10GB plus).**

**2.** **A scanner so you can get images into PowerPoint.**

**3.** **A Zip or CDR drive to transfer files to your printing vendor.**

**4.** **A vendor with a Canon Color Laser Copier 1000 printer (or comparable color laser printer).**

**B.** **Software**

**1.** **Microsoft Office (Word and PowerPoint)**

**2.** **Adobe Acrobat 4.0 (Optional)**

**C.     Basic steps in building the Magazine Brief**

**1.     Draft your argument in Word**

**2.     Build your graphic in PowerPoint**

**3.     Group your graphic and copy it to the clipboard**

**4.     Flip to Word**

**5.     Put your cursor where you want the graphic**

**6.     Select "Edit," "Paste Special," "Picture"**

**7.     Right click on the graphic, "Format Picture"**

**8.     Click on the "Wrapping" tab**

**9.     Set how you want text to wrap around the graphic**

**10.    Position and size the graphic where you want it**

**D.     Building a graphic in PowerPoint: Basic concepts**

**1.     Capturing the image**

**a)     Scanning**

You can scan images and save them as .tif or .jpg files.  When you insert these images in PowerPoint, however, they will be opaque.  You cannot highlight behind the image.  To solve this problem, you need to make your image transparent.  I have found that you can scan the image and then use your scanning software (*e.g.*, PaperPort or HP) to select the part of the image you want to capture.  Copy the selected portion to the clipboard.  Flip to PowerPoint and paste. Your image should now be transparent so that you can add color or highlighting behind it. Having this transparent image is the key to highlighting documents and colorizing diagrams or patent drawings.  *See* highlighting and colorizing below.

### b)      Downloading from the Web

Many images or files are available on the web.  These can be downloaded as .tif or .jpg files.  Patent practitioners regularly get images from the web (*e.g.*, www.optipat.com, or Delphion at http://patent.womplex.ibm.com).  I have also found SmartPatents (www.aurigin.com) useful.  When you order a patent from SmartPatents, you can get the text of the patent with hyperlinks to the images.  The software has a function that allows you to copy and paste images at 300 dpi resolution.  When you paste into PowerPoint, the image is transparent.  This is useful because you can add color behind the image.  *See* highlighting and colorizing below.

### c)      Screen capture

Sometimes the best way to capture an image is to get something on your computer screen and then use screencapture software to capture it.  I have used Snagit and Hypersnap in this way.  You can capture the screen to your clipboard and then paste the "picture" into PowerPoint.  Crop and size accordingly.

### d)      Photographs

Using a digital camera it is easy to save out photographs as .jpg files.  Studio photographers are expensive but the resolution for detail shots is extraordinary.  I have successfully used my own Olympus DL 600 for Magazine Briefs with good results.
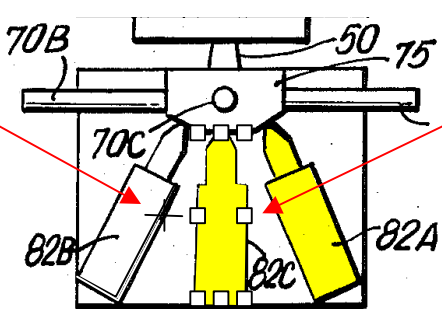
## 2. Layering/Colorizing

One of the most powerful uses of PowerPoint is colorizing a patent (or other diagram) and highlighting key documents. First, you must capture the base image as a transparent document. This was described in "scanning" above. Once you have a transparent image, you can colorize parts of it using PowerPoint's "freeform" drawing tool. This tool allows you to trace along the line of drawing that you want to fill in. Once the tracing circuit is complete, you can fill it with the color of your choice and then send it behind the diagram using the "send backward" layering tool.
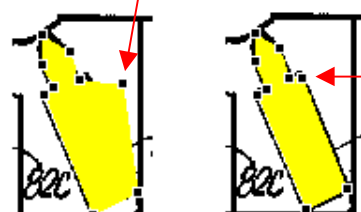
**Colorizing Transparent Images**

1

Use the freeform drawing tool ⌂ to trace the area you want to colorize. Make sure the "snap to grid" function is off. □ When you complete the circuit, select color from the fill bucket. ⬧ Make sure that the line color is set to none. ✎

2

Once color is set, click on the tracing to select it, then send it backward 🔲 , behind the transparent diagram.

3

If your tracing is not correct, right click on it to "edit points" ⬚ , adjusting the points of the tracing so that the lines of the transparent image cover them.

Grab here and adjust, so that tracing stays within the lines of the diagram

Tracing now follows the lines of the diagram. Right click to "add points" or "delete points," as needed.

## 3.    Highlighting a key document

Many cases turn on key documents, which can be scanned and inserted into the Magazine Brief next to the text of your argument.  First, create a transparent image of the document or portion of it you want to focus on.  Next, use the rectangle drawing tool and draw over the text you want to highlight.  Group the rectangles, if necessary.  Set color and no line.  Send backward.  Add caption, etc., as appropriate.

Plaintiffs now claim delay caused damages, but at the time, Plaintiffs told their Auditors that they met their original timetable.

approximately 800 wholesale and 10,000 retail outlets.  National sales and marketing programs were released in the last quarter that will increase our retail outlets to 14,000 in fiscal 1985 and to 20,000 by 1988.  Consumer directed marketing programs scheduled for release in the last half of 1985 will complement the anticipated increase in retail outlets by raising the average sales per store.  The momemtum of these programs will carry into future years providing increases in sales and profits beyond those projected for fiscal 1985.

Our original turnaround plan for SK was adhered to and accomplished. Equally important, we met our original timetable.  The turnaround is over, the.challenge is now managing rapid growth.

[Redacted]
_____
**Chief Executive Officer**

[Redacted]
_____
**Chief Operating Officer**

DTX 001 p.3 XYZ Corp.
Management Letter to Auditors

---

### Highlighting Key Documents

**1**
Use the rectangle drawing tool ▢ to select the text you want to highlight. Make sure the "snap to grid" function is off. ▢ If you have to cover multiple lines, select each of your rectangles and "group" them. 

Our original turnaround plan for SK was adhered to and accomplished. Equally important, we met our original timetable.  The turnaround is over, the.challenge is now managing rapid growth.

Equally important.     The turnaround is over, the.challenge is now managing rapid growth.

Grouped rectangles

Equally important.     The turnaround is over, the.challenge is now managing rapid growth.

Our original turnaround plan for SK was adhered to and accomplished. Equally important, we met our original timetable.  The turnaround is over, the.challenge is now managing rapid growth.

Set color 🪣 and make sure that the line color is set to "none." 

**2** Once color is set, click on the rectangle highlight group to select it, then send it backward 🔲, behind the text of the transparent image.

## 4. Grouping

Grouping allows you to select different objects so that you can treat all the objects as one "group." You can move the group around on the page and layer it backward and forward.

You can also "ungroup" to work on a portion of a group. For example, you want to change the colorization scheme. To do this you would "ungroup," select the transparent image, which is on top, and send the transparent image to the back, exposing your color tracings. You can then select the tracing you want to change. Once you have changed your color, you can "regroup" your tracings and send the grouped tracings backward so that the transparent image sits on top again.

## 5. Getting your PowerPoint graphic into Word

Once your graphic is finished in PowerPoint, delete any extraneous objects from the work page. Select all (Control + A) and "Group." Select the one object and copy it to the clipboard (Control + C).

### a) Pasting with "Paste Special," "Picture"

Flip to Word and place your cursor where you want to insert the graphic.

To paste the graphic, select **"Edit," "Paste Special," "Picture." This is very important.** I don't know why, but it is always easier to manipulate the graphic if you paste it using "Paste Special," "Picture."
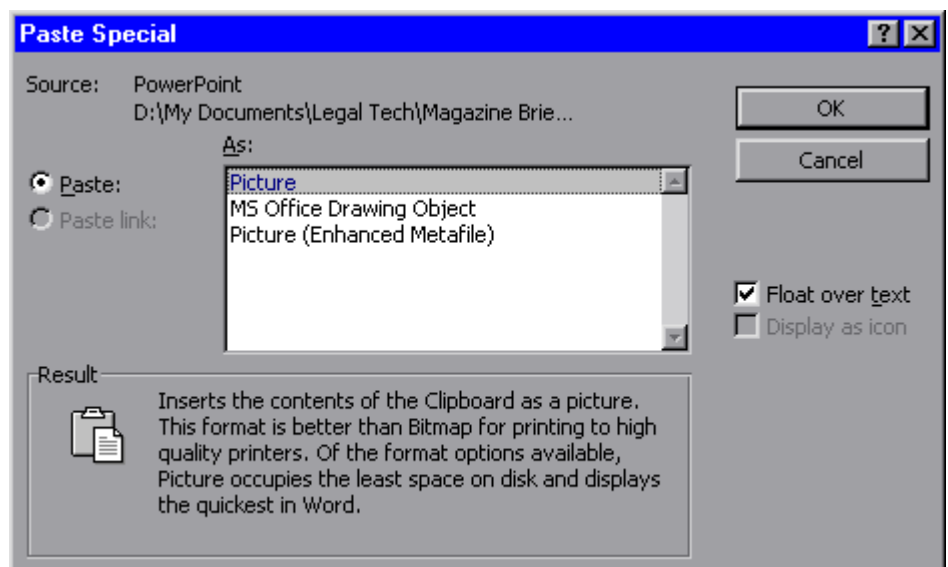
## b)     Wrapping text

The key to getting your graphics to behave in Word is "Wrapping text."

Once you have inserted your graphic in the text, right click on it and select "Format Picture."  Select the "Wrapping" tab (shown in the graphic at right).  For a sidebar graphic like the one at right, you would select wrapping style "Square" and wrap to "Left."  You can set the distance between the text and the graphic.

**This is an example of text wrapping "Square" and "Left"**
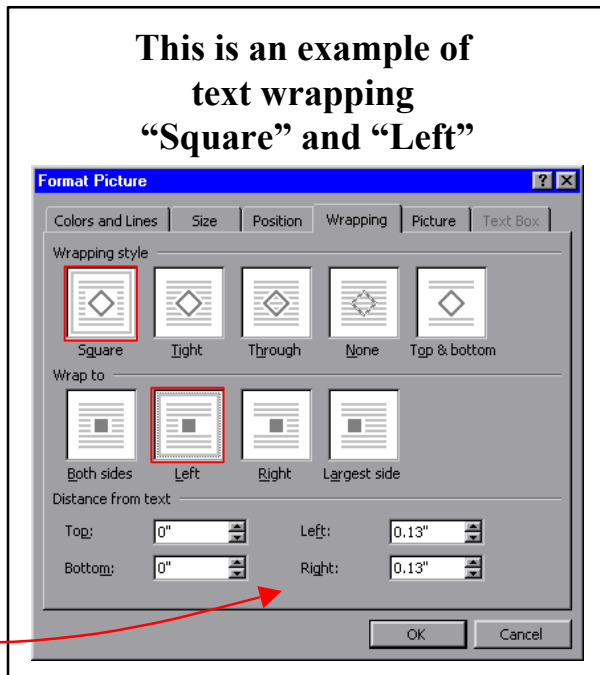
The other common wrapping style is "Top to Bottom."   This attaches the graphic to the paragraph above it.  As with other wrapping styles, you can set the distance between the graphic and the paragraphs above and below it.

**This is an example of text wrapping "Top to Bottom"**
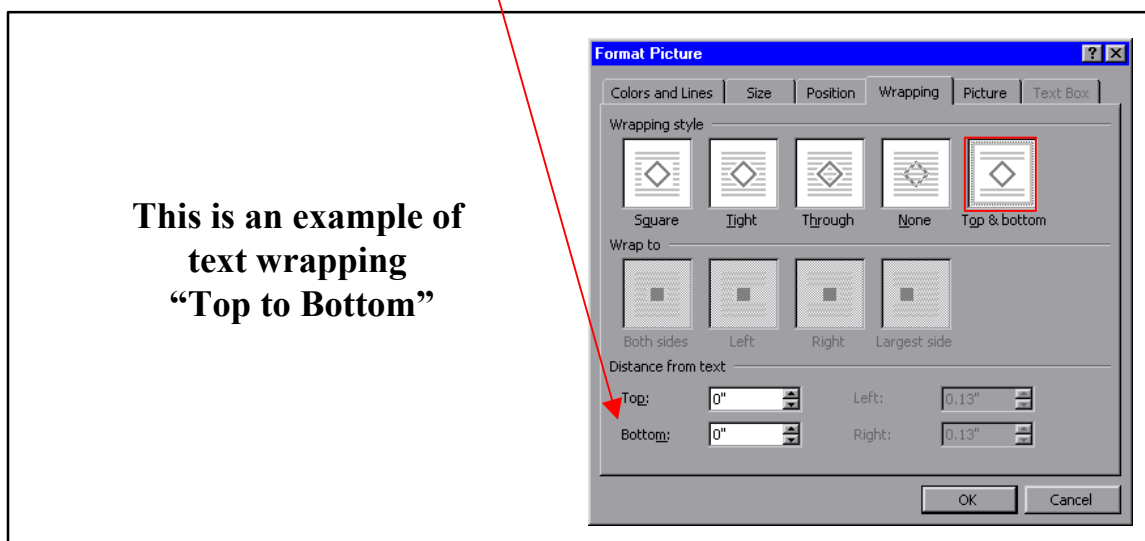
## IV.   HELPFUL HINTS

### A.      Keep the Word file under 30MB

These Magazine Briefs can get pretty big.  I have found that if you keep the Word file

under 30MB the system is stable.  Some of my briefs have been bigger than 30MB, in which I

case I have just busted the brief into pieces.  A better solution might be to use the Master

Document function in Word (which allows you to print the entire brief pulling from separate

files).  The problem with this is that the print file is huge and can hang up your computer.

### B.      Leave plenty of lead time for printing

Printing Magazine Briefs takes time.  The files take a long time to "spool."  The vendors

that operate high quality color printers can tweak the machine to get your color exactly the way

you want it.  They do this for each big print job.  On the day of the big print, go to the printer

yourself or send a trusted colleague to ensure that the operator has adjusted the machine to

maximize your print quality.  This will save you time and headaches down the road.

### C.      Printing into Adobe Acrobat 4.0 PDF Writer

Many of my Bartlit Beck colleagues have printed their Magazine Briefs successfully right

out of Word.   In such a case, save the Word file to a Zip disc or CDR and send it to your service

bureau for printing in color.

I prefer to convert the Word file to a PDF file in Adobe Acrobat 4.0.  First, I am told that

this locks color and position.  Second, I can use my computer with an LCD projector to display

the Magazine Brief as a PDF file through the Acrobat viewer.  I can zoom in on the graphics in

the brief and the resolution is excellent.  I have successfully used this technique in the Courtroom during oral argument, arguing right off of the demonstratives in the brief.

When you install Adobe Acrobat 4.0, you have the option of printing to the Adobe PDF Writer.  The PDF writer will show up as a printer.  The key to printing to an Adobe PDF Writer file is to set your resolution in PDF Writer to 600 dpi and to make sure that the page orientation and size in the Adobe printer options match what you have in Word.

When you print to Adobe PDF Writer, you create huge temporary files on your C: or main drive.  I have found that you need to delete these temporary files after each printing as the Adobe PDF files are much bigger than the Word files.   The PDF files can exceed 200MB.   To delete the temporary files in Windows 98 do "Start," "Find," "Files or Folders" and insert "*.tmp" in the search line.  You will see the "ac" prefix on the Adobe temporary files.  Delete these and go to your recycling bin to ensure the files are completely deleted.

## V.   CONCLUSION

Magazine Briefs are a powerful tool for advocates.  Technology today is such that this power is now directly in the hands of the lawyer.  While I am sure there are better ways to create Magazine Briefs with special publishing software, it is easy enough to do the job with Microsoft Office.  I encourage you to try it and let me know how it goes.

Copyright © 2000 by Peter B. Bensinger, Jr.
Bartlit Beck Herman Palenchar & Scott
Courthouse Place
54 West Hubbard
Chicago, IL 60610
312-494-4426
peter.bensinger@bartlit-beck.com
www.bartlit-beck.com