Wireless World: Rehnquist's legacy

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Chief Justice William H. Rehnquist, who died last Saturday at age 80, may be known to the public as a conservative intellectual, but his rulings influenced much more than just the political landscape of the United States. They helped to reshape the technology world as well, and may have even contributed to the dot-com bubble of the 1990s, experts told UPI's Wireless World.

As chief justice of the Supreme Court of the United States, Rehnquist, appointed to his position by President Ronald Reagan (he was appointed associate justice by President Richard M. Nixon), had the distinct power to assign the writing of opinions on cases to his associate justices.

The major intellectual property case of recent years -- Grokster -- was given to Justice David Souter and other justices to develop.

"Whether this was spread by Rehnquist's design, after all, the chief justice gets to assign opinions, is hard to say," said Daniel E. Venglarik, an intellectual property attorney with the Dallas-based law firm of Davis Munck.

Yet, an earlier case, Diamond vs. Diehr, dealing with the patentability of algorithms, or lines of computer code, changed the technology world. The 1981 case set the precedent that allowed software to be patented. That meant computer programmers could create inventions -- software games, ring tones, Web browsers -- and retain ownership of them for a specified period of time.

Those property rights were essential, persuading Wall Street and other investors the time was right to put money into technology. The case was "a very important decision that led to patents being granted on software and, arguably, eventually to the dot-com bubble," Venglarik said.

John Roberts, the replacement chief justice nominated by President George W. Bush, clerked for Rehnquist from June 1980 to August 1981, when Renquist authored the Diamond vs. Diehr ruling, Venglarik added.

"This is an area where the U.S. is somewhat at odds with the rest of the world," he said. "Diehr, however, followed Rehnquist's proclivity for small, fact-specific decisions over sweeping changes to the law. Thus, the importance of Diehr became apparent from its lower-court progeny, which expanded and built upon that decision."

Peter Vogel, another intellectual-property lawyer, with Gardere Wynne Sewell in Dallas, said most justices "do not understand technology, (but) they do understand prior lawsuits."

Venglarik agreed. "The supremes currently don't really have a technophile."

In the past, major intellectual-property cases often were decided at the appeals-court level. The so-called "10th Justice," Judge Learned Hand, had a role in many technology cases in his day on the Second Circuit, and, to a lesser extent, Judge Giles Rich, also served a similar role on the federal circuit.

One interesting case on which Rehnquist dissented, however, is the famed Sony vs. Universal Studios lawsuit, the so-called Betamax case, during the 1980s. That case allowed individuals to videotape movies presented on TV.

"The Betamax case was a prelude to the recent Grokster decision," Venglarik explained.

The death of the chief justice came as a surprise to many, even though he had been ill for some time -- and was repeatedly hospitalized -- with thyroid cancer.

"I think the chief bet he could live out another term, despite his illness," said Judge Roberts, during remarks at Rehnquist's funeral Wednesday in Washington D.C.

"There is no doubt Rehnquist contributed significantly to IP, as to other areas of the law," Venglarik said.