

The U.S. Supreme Court and Emerging Technologies

Exploring precedent setting cases where the U.S. Supreme Court has selected cases that force them to grapple with an emerging technology is both gratifying and frustrating, in hind sight. But whatever the outcome, it is often the U.S. Supreme Court that creates the framework for emerging technologies in the context of societal constraints on individual liberties, scope of powers of government and the constitutional meaning of protecting inventors. In so doing, has the U.S. Supreme Court inspired inventors to “work around” constraints and find ways to avoid infringing on individual liberties? Or for the government to find approaches to accomplish governmental responsibilities through alternate strategies as a result of USCOTUS opinions?

Diamond v. Chakrabarty (2000) from the beginning has raised concerns about the possibility of a broad holding that allows “anything under the sun that is made by man” to be patented. Then recently, *Association for Molecular Pathology v. Myriad Genetics*(2013) raised all of those concerns once again, and more in intellectual property in the life sciences.

Fourth Amendment search and seizure law from *Katz v. United States* (1967), to *Kyllo v. United States* (2001) to *United States v. Jones*(2012) where Justice Alito poked fun at Justice Scalia for applying 18th Century analysis to modern technology, emerging technologies have proven challenging subjects of search and seizure and privacy. Using *Kyllo* as precedent and applying the rules articulated by the U.S. Supreme Court, one lower court was forced to decide whether a sniffing dog still could be used without a warrant.

Virtual Reality will continue to present a range of issues for the Supremes, including the opinion that held virtual child pornography is not child pornography because mere virtual images are not children being harmed, *Ashcroft v. Free Speech Coalition* (2002), finding for free expression. Other questions that have been raised in lower courts and may be presented include virtual murder, virtual rape and other virtual crimes on the internet.

The rules that were created and the implications from the treatment of emerging technologies in these cases will be presented and the salient aspects gleaned from these cases to demonstrate the challenges that face the U.S. Supreme Court Justices as they shape our society’s future limitations and uses of emerging technologies, while using different approaches to analysis of the Constitution, including the originalist approach.

Finally, this presentation will make some conclusions about the U.S. Supreme Court’s treatment of emerging technologies and maybe some predictions about emerging technologies that are candidates for the right case on *certiorari*.

