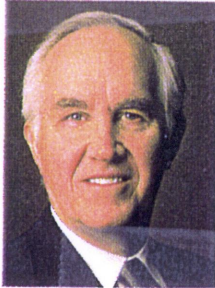


Timothy J. Malloy is a founding partner and shareholder at McAndrews, Held & Malloy (Chicago). In the medical device realm, Malloy obtained a \$166 million damage award on behalf of Guidant Corp., an award that was listed in the top 10 IP damage awards of all time by *Intellectual Property Today*.



Malloy

According to Malloy, there are two primary legal questions that confront medtech companies when dealing with new technology. “The first—which is asked by all companies, small and large—is, ‘Am I free to sell the new technology without fear of injunctive relief or massive

damages resulting from patent infringement?’” he says. “The second question—more often asked by smaller medtech companies and start-ups—is, ‘Is my technology exclusive to me?’ In other words, do I have solid patent protection for the new technology?”

“Failure to ask and resolve those two questions can lead to a world of trouble,” he adds. “While the Federal Circuit has backed off the requirement that an accused defendant produce a legal opinion justifying its conduct, it is still prudent to seek competent advice before launch of a product. As for those seeking exclusivity, companies have a one-year window, which begins counting down from first publication or sale of the device, in which to file a patent application. To delay may be to lose any chance of exclusivity and thus sharply diminish a company’s worth in the marketplace.”

Malloy holds BSEE and JD degrees from the University of Notre Dame.