

‘Start at the End’: A Design Thinking and Visual Advocacy Tutorial with Faegre Drinker’s David Gross

After dedicating thousands of hours to learning about design thinking, Gross, a veteran IP litigator based in Silicon Valley, has authored a book on the topic for lawyers with help from fellow IP litigators Helen Chacon and Kate Razavi.

By Ross Todd
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Today I’m going to start with the takeaways.

That’s one of the key lessons I picked up from “Design Thinking and Visual Advocacy for Lawyers,” an e-book written by intellectual property partner **David Gross** of **Faegre Drinker Biddle & Reath** with help from his fellow IP litigators **Helen Chacon** and **Kate Razavi**, all founding members of the firm’s Design Lab. The book, coming in at a breezy, image- and graphic-heavy 149 pages, was created as a “deliverable” to teach readers the basic concepts of legal design, which the Faegre Drinker team members have spent years and thousands of hours mastering, in about 60 minutes. It’s available for free on [the firm’s website](#) and [Apple Books](#).

Design thinking encourages a user-based approach to legal processes and presentations, putting a high emphasis on empathizing with those facing a legal problem or those being presented with complicated information for the first time. Gross, who is based in the firm’s Silicon Valley office, took some time yesterday to discuss his interest in the topic and why the firm has invested so heavily in it. The following has been edited for length and clarity.

Litigation Daily: How does an IP trial lawyer get interested in design thinking?

David Gross: An IP trial lawyer should have been doing design thinking for years without realizing it. And I, as an IP trial lawyer, was certainly doing design thinking for years — meaning I was really thinking about end-users. I was thinking about jurors. I was thinking about



Courtesy photo

David J.F. Gross partner with **Faegre Drinker Biddle & Reath**.

judges and thinking about how to connect with them and to see things from their standpoint. Basically, we call design thinking user-centered.

Really good trial lawyers are constantly thinking about the audience. But what design thinking does is formalize it. It takes it to another level and it clarifies how to be more effective at communicating with users.

I learned from Stanford Law School. **Margaret Hagan**, who’s the head of legal design at Stanford, had taken a class with Helen Chacon, someone who has just become a partner at our firm who I’ve worked with for eight years in Silicon Valley. Margaret told Helen about Stanford’s legal

design program. Then Kate Razavi, who's a partner and founder of our design lab, Helen and I all got really excited.

This all happened in a very short period of time. Once we heard about legal design, through Helen and from Margaret, we decided this is something that makes a lot of sense. We wanted to dive into it. So that was sort of the spark. It was Helen seeing a former Stanford Law classmate at an event several years ago and reporting back to us and we all got really excited.

About how many years ago are we talking?

About five.

And then since you have gone to the Stanford school and taken a deep dive into design, right?

Yeah. I thought if we were going to start talking about legal design and using terms like "design thinking" and even "visual advocacy," we need to first get some credibility. So, interestingly, we did our first design sprint, and our first design project was how to build a design program. And we went to Stanford with Margaret and we spent a whole day. It was very emotional, very difficult — a whole day trying to figure out how do we build a program. Where we came out was, "Oh my goodness! We need to build our own credibility and expertise before we say anything to others."

So we actually then spent a lot of time. I spent a year auditing Stanford design classes at night. Kate Razavi went to the University of Minnesota and developed a class in visual advocacy. And we actually spent a lot of time reading and thinking and attending things before we got very involved with other clients. And once we felt we'd established some credibility and expertise, then we really kicked it into another gear.

Well, lawyers in many ways are trained to be worst-case scenario thinkers and that training in a way breeds an aversion to risk-taking. Do you think that design thinking might bring some balance to that natural risk aversion?

I have not thought of it in that way. But I think that's a really good insight. I think there is something to what you just said that lawyers are risk-averse. They don't like something that's new. And they don't like something that involves a lot of risk. And what design thinking does is it really changes the process. If you and I were discussing the legal issue, and we weren't using design thinking, often we would just be talking back and forth. And I'd be looking for cues and we'd just kind of resolve it. Like you said, we'd

be very conservative, very risk-averse. But what design thinking does is it says, "Wait a second, let's really think about the users and let's really be truly democratic, and hear from them and see how things affect them."

So for example, I have had a team where there's a general counsel in the room and there's several other people in the room. And if it were not design thinking, the conservative, risk-averse thing to do is to listen to the general counsel and do what the general counsel wants. That's the risk-averse, cautious, careful, "let's just avoid anything bad happening" process.

Design thinking flips on its head. So whenever we have a design activity, including the one I was just referring to, what we'll do is talk to the GC and say, "This is democratic. So you have one vote, but the other eight people each have a vote and they're equal in influence." And so we will have situations where the group decides to do something that the GC would not have decided to do, which is a little more risky, a little less conservative, but way more effective in the long run. I think you've really hit on something that is a key aspect and benefit of design thinking.

Well, from reading your book, empathy seems to be a central concept — taking time to seek out what your client is seeing, saying, hearing and doing and before moving on into a solution to their legal problem. Is that sort of approach central to all design thinking or is it primarily in the field of legal design that it comes up?

Empathy is critical to all design. But learning how to do empathy takes time and involves some expertise and some practice. For example, if we were trying to design a chair, and we want to be empathetic, we might realize that if I was empathetic towards business travelers at an airport that's one thing. If I was empathetic for people who bring children to a playground, that's another thing. So, you spend time trying to make sure you understand all the different groups that could be involved in whatever it is you're doing in the non-legal design project and then make some tough calls about what group you're going to focus on and then be truly empathetic with that group. That's critical.

Then when you do that with a legal issue, it's the same thing. So if you and I were trying to solve a legal problem, we might identify a number of groups who we are trying to be empathetic toward and we might then say, "Well, which group is the one we want to prioritize?"

Which group do you want to be especially empathetic with?” And that takes some time. The process of trying to figure out who are you trying to be empathetic about — that takes some time and practice.

So the design process you describe, where everyone’s ideas are welcome and heard and written down, is very different than the top-down structure that a lot of trial teams have. Are there parts of the process of going to trial that lend themselves more to almost a militaristic chain of command sort of approach than to the fully democratic design thinking approach?

Absolutely. I like to say whether you’re talking about a lead trial lawyer, which is what I do for a living, or you’re a leader in a corporation or an in-house department or anything, it’s actually very efficient and effective to have someone who’s got some really good experience and good judgment who’s in charge of making decisions. We actually want to see that regularly. That’s very effective. That model works. I do it all the time. Someone will walk into my office, either in the middle of a trial or the night before and they’ll just ask me to make some decision and I’ll make the decision and there won’t be a long discussion. So I think effective decision-making, a willingness to make decisions or willingness to take risks, and a willingness to have a vision that you’re trying to implement — all of that is very effective. I encourage it.

But going back to your point about balance, it’s very important that at some point in the process, you try to get people together and you really try to learn what their thoughts are. And then you do have democratic discussions about either strategy or presentation or ideas. And that democratic process can effectively overrule the lead trial counsel sometimes, because you realize as a lead trial lawyer, “Wow, this is a really effective idea” and “I’m going to defer to him or her. We’re going to give that a try.” And so you have to be able to shift into one of two gears: Lead trial lawyer making decisions, taking risks, having a vision implementing it. Then you’ve got to be able to shift into that other gear which is other-centered, democratic, listening, trying things. If you can shift into those two gears

and you know when it makes sense to be in one gear or the other, the overall presentation, the overall strategy can be substantially more effective than if you’re just going in with the typical top-down approach.

Why has your firm, in particular, allowed you so much to dedicate so much time and energy to this?

One reason is we have a really strong track record of success in trials and with clients and in business development. Our IP litigation department has always been really effective and we’ve grown it from a handful of people in the mid-90s, to now over 100 people. So it’s been a really great success story. So we’ve just built up a lot of goodwill.

And the other reason is our firm really tries to encourage entrepreneurialism and encourage people to take chances and wants people to try things. And so one of the things that’s wonderful about our firm is when I called people up and said, “We want to make a massive investment in Stanford and become a partner in the design program. We’re not sure if it’s going to be successful. We’re excited about it.” They agreed to our requests within 24 hours and said they were all in. So I think the culture of our firm is very open to trying things and being innovative.

And then I would say the third thing is, it has already gone really well. And, so, because it’s going well, it’s pretty easy for it to continue and get bigger and bigger. Clients love it. Organizations love it. And we’ve already demonstrated some effectiveness.

And the final reason is we use design thinking in our day jobs as trial lawyers. There’s a lot of revenue in our day jobs, obviously, because we handle cases that often have exposure that’s over a billion dollars in these big cases. And so, to the extent we can be more effective in complex IP cases, that helps the firm’s revenue. And so, at the end of the day, it is actually a very smart revenue play for a law firm. But you do have to have the right team in place and you have to be willing to take a chance. Here our firm thought they had the right team and they were willing to take a chance. And fortunately, so far, it’s turned out to pay off.

