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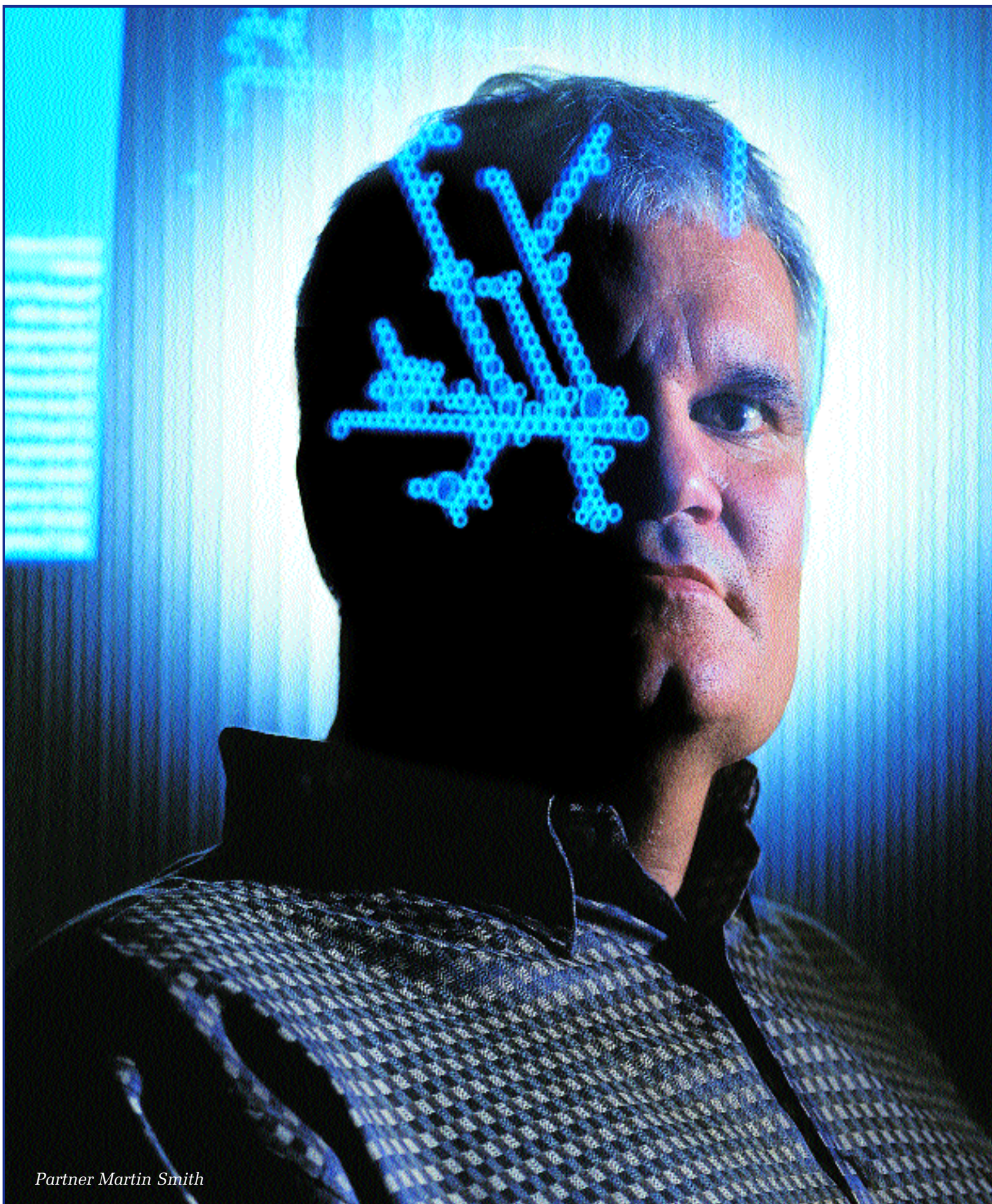
MARCH 2003

A portrait of Martin Smith, a middle-aged man with grey hair, wearing a blue and white checkered button-down shirt. He is looking directly at the camera with a neutral expression. The background consists of vertical bars, some dark and some light, creating a striped effect.

## Seattle Sleuth

**Martin Smith of Preston Gates has taken  
digital discovery to another realm.**





*Partner Martin Smith*





# Seattle Sleuth

*Preston Gates has developed software that helps uncover buried treasure in a pile of electronic discovery documents.*

*By Carlyn Kolker*

*Photographs by Rick Dahms*

**D**uring the summer of 2000, Skip Walter took a seat beside Martha Dawson and began to analyze her thought process. He scrawled meticulous, handwritten annotations detailing the decisions Dawson made while categorizing, reading, and combing through documents. He then pasted the paper with his annotations to a wall, and labeled it “Martha’s world.” This wasn’t some bizarre psychiatric experiment. Walter, a seasoned software engineer, was simply trying to get inside the mind of Dawson, a litigator and head of the 100-lawyer document review group at Seattle’s Preston Gates & Ellis.

Working from the “Martha’s world” poster, Walter created a piece of software called Patterns, which is basically a search engine on steroids. Patterns helps Preston Gates speed and simplify the painstaking process of sifting through electronic documents essential to discovery in litigations. It relies on sophisticated search technology to organize each document into distinct categories and then find the patterns in the maze. It also looks cool: a collection of amoeba-like clusters crawl across the screen in response to each search request. Those clusters represent groups of similar documents. When an attorney searches with a new word or concept, the amoebas regroup. On the side of the screen, the attorney can see the subject matters contained in each document, and can click to view the documents themselves.

This is how Preston Gates works now. But not that long ago the firm was as mired in paper as other Am Law 200 firms. In the early nineties, Preston Gates associates camped out in tents in Microsoft Corporation’s parking lot,

staying warm with space heaters while wading through documents for the firm's largest client.

The firm has a long history. But today, at the 400-lawyer firm, many roads lead to Microsoft, which supplies about one-fifth of the firm's revenues. The Gates in Preston Gates & Ellis is the father of Bill Gates, the titan of Microsoft. The firm brought Microsoft public in 1986 and represented the company in its fight

## *When Microsoft told Preston Gates to become more efficient, the firm set to the task with dispatch.*

with Sun Microsystems, Inc., over the Java programming language. Preston Gates assisted New York's Sullivan & Cromwell in Microsoft's antitrust battle with the government.

In late 1999 Microsoft's then general counsel (and former and current Preston Gates partner), William Neukom, suggested at an annual meeting with firm attorneys that they become more efficient. It was a wake-up call. "Whenever a client expresses cost concerns, a law firm responds," says B. Gerald Johnson, Preston Gates's managing partner.

Johnson told his lawyers to start acting more like their clients. Besides Microsoft, those clients include Amazon.com, Inc., and Starbucks Corporation, companies that have also redefined their industries. Johnson's goal was no less ambitious for the law. "We've [represented] transformational businesses," he says. Now he wanted to be one.

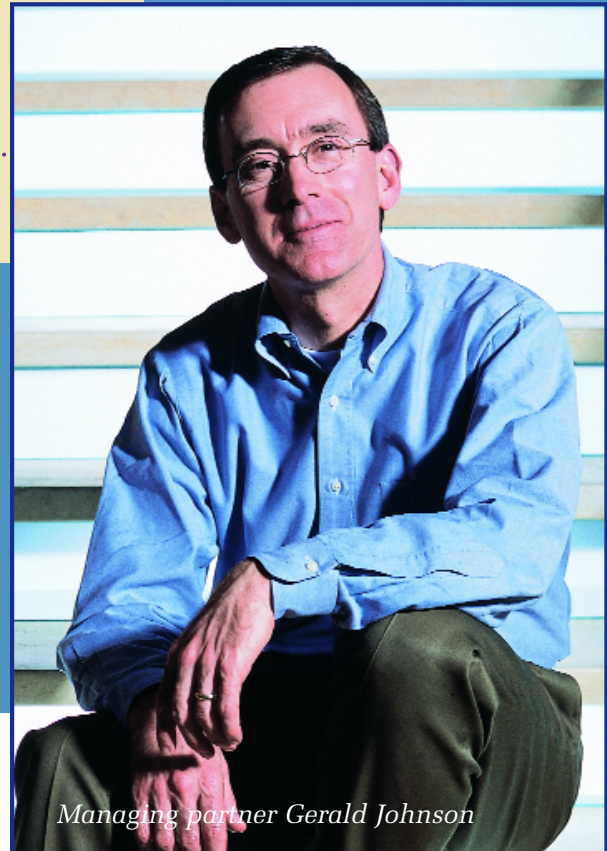
Johnson set up a committee called "Work Smarter," headed by IP partner Martin Smith, to search for the good ideas. It has taken awhile, but Preston Gates lawyers have created two tools that have made their lawyers work faster, and their clients envious. One is the document search tool Patterns. The other, called Structure, helps assemble documents in transactions.

Patterns was waiting to be created at Preston Gates. In the nineties, Preston Gates developed an expertise in reviewing massive discovery requests. The firm represented the state of Alaska in post-*Valdez* oil spill litigation against Exxon Corporation. The firm hired contract attorneys to do much of the document review work. After that case settled, Preston Gates became the clearinghouse for the documents for all other plaintiffs. (Dawson herself spent five years in Alaska overseeing the operation.)

In 1997 the firm formed a separate group, the document analysis technology group, consisting of

about 100 full- and part-time lawyers who only review documents. These attorneys are not on partnership track. Many have hobbies or other pursuits. Some would work for several months and then take an extended break. Others kept unique hours. "We pioneered special staffing models," says Johnson.

The group had one particularly large undertaking: document review in the U.S. government's antitrust case against Microsoft. New York's Sullivan & Cromwell was lead trial counsel, but Preston Gates was in charge of the documents.



*Managing partner Gerald Johnson*

Preston Gates discovered just how quickly the world had gone electronic. Clients weren't just turning over boxes of documents; they were producing megabytes and gigabytes, spreadsheets, and photo images—and especially e-mails. During discovery, the government turned up multiple emails from Microsoft executives that were damaging, at least in the sphere of public relations.

"We were hitting a situation where the documents that were coming over the transom were flooding the system," Smith, 47, says. As head of the Work Smarter committee, Smith wanted to find a better way to handle electronic discovery.

One answer came from David McDonald, a self-described programming geek and IP litigation partner. McDonald represented Microsoft in its litigation with Sun over Java and had stayed current with programming languages through the years. In



the spring of 2000, he took some time off to care for his ailing father. During his leave, McDonald sifted through programming books, looking for inspiration to solve the firm's data overload problem.

McDonald's original goal was to find a way to cut down on the problem of duplicate e-mails. During an e-mail exchange, the prior messages are repeated in a "thread" below each new message. Typically, in discovery, every e-mail in that thread is turned over. But in many cases, the final e-mail contains all the preceding messages.

McDonald wanted a quick way to cut to the chase. With the firm's technology department, McDonald developed a program that suppresses 20–40 percent of e-mails. "It gets down to the

Gates's desire to develop technology to sift through documents efficiently.

Walter, 53, who was semiretired at the time, was looking for a challenge. The next morning, Walter recalls, Smith called and said, "When can you get your rear end in here?"

Smith and Walter spent months plotting the technology development of Patterns on the ferry each morning from Bainbridge Island to downtown Seattle. Smith had to explain how lawyers worked;

*For clients, this means faster, cheaper results.*



*Partner Mary Williamson*

wisp of documents that people need to look for," says McDonald.

At the same time, Smith was still on his quest to collect the big answers for the Work Smarter committee. Serendipity struck when Smith ran into Skip Walter one night in June 2000 at a parents association meeting on nearby Bainbridge Island. Walter had been a client back when Smith represented Aldus Company and Walter worked there as vice president of engineering. (Aldus, which developed the desktop publishing program Pagemaker, was bought by Adobe Systems Inc. in 1994.) Smith told Walter about Preston

Walter, how programmers designed software.

Walter began the process of observing the firm's document review group, creating the "Martha's world" poster. He soon realized that he wanted to build a snazzy, easy-to-use piece of software that graphically represented documents. He called the idea "visualization." Within six months, Walter had created a prototype of Patterns. Patterns relies on McDonald's algorithm, as well as search technology licensed from InXight Software, Inc. This technology consists of concept-based searching: It knows to recognize concepts, not just words. It "knows," for example, that a diamond can be both a gemstone and a baseball field. Walter refined the

product by showing it to the document reviewers, who gave feedback on each new version. Many of the changes Walter made were design-related.

"The first time I was introduced to the visualization notion, I was like, 'I'm not sure how this is going to work.' And it's worked marvelously," says Dawson.

Today Preston Gates has an entire floor in its new office devoted to the 175 attorneys in the document review group. With fancy flat-screen monitor displays, they play with Patterns daily to mine documents. Attorneys review—but don't necessarily read each word—of each email; they see which documents are entirely unrelated, and which are important. For associates, this means less time on document review and more time on depositions. For clients, this means faster, cheaper results.

A host of vendors, including Seattle's own Applied Discovery and Electronic Evidence Discovery, specialize in sorting through discovery documents. They typically take the data to their own labs, and return it to firms on CD-ROMs or as PDF files. Most of these products use what is known as keyword searching, which like Google, simply finds certain words in each document, regardless of context or concept.

Preston Gates's group goes a step beyond the electronic discovery vendors because its lawyers identify if documents are responsive. It charges \$20 for each megabyte of electronic material, plus \$95 an hour for attorneys to conduct a final "quality control" review making sure the material is properly separated into privileged and responsive piles. (Electronic vendors do not typically reveal their pricing structure.)

Over the last year, Preston Gates has begun to win business for its document review group by giving demonstrations of Patterns to clients. Partners show clients how much time—and money—Patterns can save in the discovery process.

Gail Lynch, regional counsel at Waste Management, Inc., asked Preston Gates last year to conduct a voluminous document request from a government agency. The firm's process "saved us legal fees," she says.

With Patterns, Preston Gates says a document review process that might typically cost more than \$1 million and take two months can be done at half the cost and in half the time.

Many firms shy away from time-saving initiatives, because they could end up billing fewer hours. Preston Gates jumped that hurdle early in the process. The firm's flexible staffing approach to its document review team has helped deal with some of the economic ramifications of becoming more efficient. Most importantly, Microsoft is happy.

Kevin Harrang, deputy general counsel at Microsoft, says Patterns and other technology set the firm apart from its competitors. "I would certainly give credit to Preston Gates, not only for heeding [Microsoft's previous] advice, but also because they decided they wanted to be the leader in the new wave of practicing law," says Harrang.

Johnson's directive about helping clients seeped to other attorneys at the firm. Mary Williamson, an IP licensing partner, noticed another set of voluminous data: a disorganized clause bank. When Williamson wanted to write a licensing agreement, she often relied on a library of clauses she'd written and stored on her computer. But when she wanted to borrow a clause from another attorney in the firm, there was nowhere to go.

So Williamson began assembling her clauses, adding

explanatory annotations. For a year, she spent about 30 percent of her time annotating, and rounding up other lawyers to do the same. Then she pulled the programming team in, and they developed Structure. Preston Gates attorneys can highlight a few clauses in the clause bank—say, indemnification and warranty clauses—and Structure will create a new document with the distinct clauses. They are the building blocks of a licensing agreement. "It doesn't crank out a product that you can just e-mail a client," says Williamson. "It gets you to a good place to start."

Clients think so too. Microsoft's Harrang says that Preston Gates has created efficiencies that show up on the bills. "We certainly know . . . from the billings that they haven't had to have a senior partner spend untold hours showing a younger associate how to draft a relatively simple clause."


In April 2001 Preston Gates spun off Skip Walter's group as a stand-alone company, Attenex. Attenex has begun to sell both Patterns and Structure. The firm and company declined to discuss pricing. The plan is that customers—either in-house counsel or other firms—will license the products and use them internally. Preston Gates, of course, will continue to use both Patterns and Structure in its practice.

(Other law firms also have separate, technology-driven business lines, including Denver's Holland & Hart, and Winston-Salem, North Carolina's Womble Carlyle Sandridge & Rice.)

Attenex is in the early stages of the sales process. McCarthy Tétrault, an 800-lawyer Toronto firm, is testing Patterns. Microsoft says it plans to license Structure soon.

Minnesota Mining & Manufacturing Company, another firm client, is testing Structure. The program would allow the company's 100-lawyer in-house department to draft its licensing agreements more quickly, says IP counsel Richmond Rolfs. Preston Gates' attempts to simplify the life of in-house lawyers "helps the relationship" with the company, says Rolfs. "We'll remember their name."

Attenex is sure to have competition. In addition to the electronic evidence vendors, there are other more general data mining companies.

Competition doesn't faze Johnson, the managing partner. Maybe that comes from having Microsoft as a client. 

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