

## MARK E. FOSTER

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### Overview

Highly experienced international business lawyer with substantial corporate management experience as C-level officer in public and private companies. Commercial, regulatory and trade policy lawyer with public and private international law practice. Over three decades in Silicon Valley, with offices in Portland's "Silicon Forest" and Tokyo. Represented U.S. Government as trade lawyer in Japan. Represented entire U.S. Electronics and Telecom Industries as Lawyer/Lobbyist in Japan. General Counsel to numerous public and private companies. Over 35 years' experience as lawyer and corporate manager in the U.S., Japan, Europe, India, Asia handling securities, commercial, financing & regulatory matters. AV Rated© by Martindale. Significant management and operations experience as C-level officer in domestic and international businesses. Lectured and taught law, international business, international technical standards in the U.S. Europe and Japan. Described by The Wall Street Journal as "A full time lobbyist for American interests in Japan". Japanese language fluency. Member of American Law Institute. Security-cleared Adviser and member Industry Trade Advisory Committee (United States Trade Representative).

### Experience

#### ➤ **Principal, Law Offices of Mark Foster 2013-Present** **Offices in Silicon Valley and Detroit.**

Corporate business transactions, financing transactions, new venture creation, Board of Directors advice. Recent transactions and clients include:

- Bill Baumel, Managing Director, Ohio Innovation Fund. When VC Bill Baumel decided to leave the highly successful Silicon Valley venture fund that he had started in order to accept Ohio's Governor's request to head up the new Ohio Innovation Fund, Bill called on Mark Foster to represent him in making that epochal move for Bill and his family. Mark had represented Bill for years in Silicon Valley, and represented Bill in Bill's move to the Managing Director's role of publicly funded OIF, helping Bill also to set up the legal infrastructure for OIF.
- Peregrine Network, Inc. (Slingshot Networks): creation and management of telecom startup that designed and built a proprietary VPN for use by HP Corp. in its HP DataPass, an always-on Internet connection enabling seamless switching worldwide between cellular and Wi-Fi networks. Investors included HP, Sprint and Qualcomm. Acquired by Qualcomm. Served as Chief Legal Counsel, Secretary.
- PixoVR, Corp, an enterprise VR company whose proprietary VR network and content enables enterprises to train employees at remote locations in simultaneous, multi-user managed sessions. I serve as Corporate Secretary. I reincorporated the company in Delaware, converting from an LLC, and brought in HP Corporation as a strategic investor.
- Volumetrics Medical Systems, LLC. The successor to Volumetrics Medical Imaging company, a technology spinoff of Duke University Engineering and Medical schools, Volumetrics Medical Systems is in stealth mode while it creates the next generation of ultrasound medical imaging device. Mark is President, Chairman, Secretary and leads the company, which is privately funded.
- Hybrid Seed Company, Inc., a New Zealand company that produces over 80% of the ornamental pumpkins used annually in the USA. Establish US entity, distribution, sales network, hire management. Serve as Secretary of the Company.

#### ➤ **Volumetrics Medical Imaging, Inc./LLC 2005- 2013.**

President, General Counsel, Chief Financial Officer, Volumetrics Medical Imaging, LLC. Volumetrics is the inventor of 3-D real-time ultrasound medical imaging, a Duke University technology spinoff. <https://bme.duke.edu/about/news/pioneers-3d-ultrasound> After a federal court jury awarded Volumetrics \$318 million in damages against Philips corporation for fraud and breach of the acquisition agreement, we reorganized Volumetrics and filed patent enforcement lawsuits in the U.S. against GE, Siemens, Toshiba, Samsung/Medison, and Philips. This is the largest and most complex patent infringement case ever in the medical device sector. Foster managed Volumetrics in planning and executing this patent enforcement effort, handling a multi-million budget, selecting and managing legal teams in the US, Europe, Japan and Korea, and litigating cases in the US, Germany and Korea during the effort. After eight years, all defendants have agreed to license the fundamental patents of Volumetrics and have paid substantial licensing fees in that connection. Foster advised the Board of Directors; handled securities and investor relations. Delivered substantial return to employees and investors including Duke University. Largest patent infringement case in the medical device industry to date.

➤ **Rudy Giuliani for President, 2007-2008**

**Director of International Trade Policy for Giuliani for President**

Working as part of the Economic Policy team of the campaign, I headed up the International Trade Policy silo. I authored and collaborated on numerous policy position pieces in trade, economic and international affairs that Mayor Giuliani studied and, in many cases, adopted as official positions of his campaign.

➤ **USTR/Department of Commerce ITAC**

Appointed 2005 by President G.W. Bush's Commerce Secretary Gutierrez and USTR Portman to Industry Trade Advisory Committee. Re-appointed 2010 by President Obama's Commerce Secretary Locke and USTR Kirk. Security-cleared Advisor. Represented US high technology and medical device sectors.

➤ **Natus Medical Inc., San Carlos, CA (NASDAQ:BABY) 2002-2005**

Leading neonatal medical device company providing solutions to newborn baby healthcare needs. Founded by Dr. Bill New, M.D., Ph.D. (co-founder Nellcor), Natus brought neonatal hearing screening to the world market. I was C-Level Officer with these roles and titles:

- General Counsel
- Executive Vice President for Human Resources: managed worldwide HR
- Executive Vice President for Regulatory and Quality Affairs, domestic U.S. and Japan, Europe and worldwide
- Acting Chief Financial Officer, handled S.E.C. compliance, audit and reporting
- Secretary of the Corporation and its subsidiaries in the U.S., UK and Japan
- Chairman, Natus Japan K.K., and Natus Neonatal UK, wholly-owned subsidiaries; Responsible for producing over 15% of the company's annual revenue.

**As General Counsel, my practice areas:**

- Securities & Finance, Investor Relations
- Business Development
- IP Rights worldwide
- Domestic and International Regulatory, Clinical and
- Government Affairs
- Litigation
- Domestic and International Sales, Marketing and Service
- Corporate Governance & Board of Directors
- Human Resources

➤ **Principal, Law Offices of Mark Foster.**

**Offices in Tokyo, Silicon Valley, Portland.**

1988-2002. Offices in Portland, Tokyo and California. Advised American, Japanese, European companies on commercial, regulatory and trade policy affairs. Clients including multinationals like AT&T, NEC, United States Gypsum, Motorola, Toyota, Société Générale de Surveillance (SGS), Northwestern Steel & Wire and Tuscaloosa Steel (British Steel), and fast-growth companies like Possis Medical, Brooktrout, Natus Medical, St. Jude Medical, Protocol Medical who relied on my firm to successfully represent them in commercial, financing and regulatory matters worldwide. Founded in Tokyo, my firm had Portland and Silicon Valley offices handling transactions in the U.S., Asia, Europe, India and worldwide. Served as corporate counsel in U.S. for numerous U.S., Japanese, Indian and European companies. Private law practice. Served as outside General Counsel to several Boards of Directors.

**Significant startups** in which I served from startup to initial public offering and/or acquisition include:

- Brooktrout Technology, Inc. through IPO and acquisition.
- Natus Medical, Inc. through IPO; served as Chief Legal Counsel, Secretary after IPO
- Possis Medical Inc. through acquisition
- Protocol Medical, Inc. through IPO and acquisition by Welch-Allyn
- St. Jude Medical through acquisition
- Oregon Steel Company through acquisition

- Trus Joist Corporation through acquisition by Weyerhaeuser
- Volumetrics Medical Imaging, Inc./LLC through sale of IP assets to Philips
- Fluid Management, LLC through organization to acquisition by IDEX.

**Significant international trade matters** handled include:

- **“Super 301” Forest Products unfair trade practices** case against Japan on behalf of TrusJoist (now part of Weyerhaeuser). Successfully lowered Japan’s 21% tariff on engineered lumber to 3.9%; substantial increase in US exports. Obtained certification by Japan’s Agriculture Ministry of TrusJoist’s U.S. plants for export of its engineered lumber products to Japan under the “JAS” symbol, first ever U.S. company.
- **Steel industry:** Obtained approval from Japan’s Ministry of International Trade for Northwest Steel & Wire (Illinois) to produce in U.S. and export Japanese certified steel. Two-year project funded by Illinois and Trade Adjustment Assistance Act. Stakeholders included Steelworkers Union and Governor of Illinois.
- **Other Steel Industry** cases for Oregon Steel, and Tuscaloosa Steel: Obtained coveted Japanese Industrial Standards certification for steel plants in Oregon and Alabama, permitting direct export of U.S.-made steel.
- **Building Industry** significant transactions for USG Corporation for Japanese Building Code approvals for USG high-technology materials including Duracrete and other structural materials exported from US
- **Medical Device industry:** numerous Ministry of Health and Welfare of Japan approvals for U.S.-made devices and factories for dozens of U.S. companies, exporting successfully to Japan from U.S. plants nationwide.
- **Agricultural Products and Laboratories:** Certification obtained for numerous processed Ag products from Oregon, Minnesota, Illinois, California. Represented California rice growers exporting to Japan.
- **Testing Laboratories Industry:** Negotiated and implemented new administrative procedures in Japan for certification of non-Japanese test labs in broad range of sectors including Ag, forest products, construction materials, medical devices, automobile, consumer products, and electronics. Enabled U.S. labs to certify exports to Japan.
- **Industrial Machinery case:** Successfully obtained certification from Japan’s Ministry of Labour and MITI for Fluid Management L.P. (now a division of IDEX, NYSE) to export its complex fluid dispensing machinery; previous such equipment had been required to use Japan-made electrical components. Retained hundreds of Chicago area jobs.
- **Direct Foreign Investments:** Handled DFI greenfield development projects for Japanese electronics and semiconductor companies in Oregon, Washington and California in the semiconductor, electronics and food products sectors. Handled DFI for American, European and Asian companies investing in Japan, in the Philippines, Taiwan, Malaysia and India.

➤ **Lawyer-Lobbyist in Japan for the U.S. Electronic Industries Association and American Electronics Association Japan Office.** Late 1980’s.

Represented the entire U.S. electronics and telecom industries as lawyer/lobbyist in Japan. Negotiated with Japanese government and industry for market opening in telecom and high-tech sectors. First such full-time American lobbyist in Japan.

- Following up on “MOSS” talks (“Market-Oriented, Sector Specific”), led the electronics and telecom industries to implement newly adopted Japan-market opening laws and regulations, which I had helped put in place as Special Counsel to U.S. Embassy. Represented new exporters of US-made telecom and electronics products at Japan’s regulatory agencies.
- Received letter of commendation from President Reagan, and Commerce Secretary Baldrige, citing increased U.S. exports to Japan.
- Subsequently served as Counsel to Joint Electronics Industry Tokyo Office

- **Special Counsel to the Embassy of the United States of America, Tokyo, Japan.** 1984-86. **Appointed to Commerce Secretary Malcolm Baldrige's team** pursuant to special services contract. Reported concurrently to USTR, Commerce and State Departments. My efforts led to major improvements in Japan's Medical Device and Telecom Laws, the Japanese Industrial (JIS) and Agricultural (JAS) Standards systems, leading directly to substantially increased U.S. manufactured exports to Japan. Letters of Commendation received from Secretary Baldrige.
  - Advised USTR and Commerce on Japan's Medical Device Law. Wrote and successfully negotiated adoption by Japan of new provisions permitting appointment by U.S. firms of "domestic caretaker" for medical device approval of U.S.-made devices, facilitating substantial new exports from U.S. of devices.
  - Successfully negotiated adoption by Japan's Telecom Ministry of transparent technical standards and regulatory approvals system for U.S. telecom hardware, including establishment of new independent approvals agency, to permit for the first time direct import into Japan of US-made telecom hardware.
  - Wrote and successfully negotiated new Japan regulations enabling UL, TUV, etc., to be "designated testing labs" under Ministries of International Trade, Agriculture, Construction, & Transport, certifying U.S. exports to Japan.
  - Wrote three books in English on Japan's regulatory procedures to import US-made products, published by USDOC/ITA: *Telecom Terminal Equipment Regulatory Approval in Japan*; *Medical Device Regulatory Approval in Japan*; *Industrial Equipment Technical Standards and Regulatory Approval Procedures in Japan*.
- **Braun Moriya Hoashi & Kubota Law Firm, Tokyo** 1982-84. Associate. Handled significant international transactions for American, Japanese and European multinational corporations. Worked with in Tokyo, Singapore, Kuala Lumpur, Hong Kong with clients on multinational transactions.
- **Associate, Law Office of John R. Hetland, Berkeley, California.** 1981-82. Prof. Hetland is author of *California Secured Transactions* and Professor Emeritus, UC Boalt Hall. I researched and briefed cases before the U.S. Supreme Court and other appellate litigation.
- **Law Clerk Extern to the Honorable Judge William A. Ingram, United States District Court for the Northern District of California.** 1980-81.

#### **Education and Fellowship Grants**

- 1970 Alma College, Michigan. B.A., Western Civilization, the Classics and Religion
- 1972-74 Fellowship Recipient, Rockefeller Foundation/National Council of Churches. Geneva, Switzerland, Berlin, Germany and Tokyo, Japan. Worked in an ecumenical fellowship program.
- 1973-74 Japanese language studies, Tokyo.
- 1978-81 University of California Hastings College of the Law, San Francisco. J.D. 1981  
University of California, Berkeley, Japanese Language. 1981
- 1982-83 Japanese language studies, Inter-University Center for Study of the Japanese Language, and Waseda University, Tokyo, Japan.

#### **Bar Memberships**

- Member of State Bar of California, Oregon
- United States Supreme Court
- United States District Court for the Northern District of California
- United States District Court for Oregon
- United States Court of International Trade

#### **Memberships**

- American Law Institute:** nominated by Attorney General Richard Thornburgh
- Federalist Society
- Silicon Valley Association of General Counsel-former Chairman, Director
- Association of Corporate Counsel
- American Society for Quality

#### **Political and Public Interest Service**

- Republican Party activities:** Bush-Cheney Recount, Florida 2000; Recount lawyer and team leader, Broward County, FL. Bush-Cheney Reelection Voter Integrity Project, 2004; lawyer for Oregon. Recount attorney for Dino Rossi (WA) 2004-2005. Chairman of Republicans Abroad to Re-Elect President Reagan, Tokyo 1984. Frequent volunteer in political contests nationwide. Member Advisory Board, Republican National Lawyers Association; frequent speaker on election law matters.

**President of the Trustees of the University of California Hastings College of the Law 1066 Foundation.**

**Senior Fellow, Conference of World Regions.** CWR provides a forum for public and private sector leaders to exchange ideas on market-based economic development issues that increasingly ignore national and regional boundaries. CWR's activities are officially endorsed by the Organization for Economic Cooperation and Development (OECD), the U.S. Council for International Business, the World Bank, the US Council of State Governments, and the European Commission. The CWR Chairman is The Honorable Alan J. Donnelly, Member of the European Parliament and former Chairman of the European Parliamentary Delegation for Relations with the United States. CWR co-chairs include the governors of Illinois, Michigan and Colorado.

**My appointment in the 1980's to several Government of Japan Advisory Councils and technical standards committees made me the first American ever to serve on those advisory Japanese Government councils.**

**Ministry of Posts and Telecommunications:** former member, Radio Wave Regulations Council.

**Ministry of International Trade and Industry:** former member, Information Network Standards Council

**Frequent speaker in the U.S., Europe and Japan** at Bar Associations, the ISO and the Japanese Standards Association (in Japanese). Lectured at the Medical Alley Association, the USC IBEAR Program, and Brussels EU Commission on Regulatory Standards. Frequent speaker at law schools and business groups in the U.S., Japan and Europe on international commercial law and regulation.

### **Representative Publications, Speeches, and Awards**

#### **Books**

*Medical Device Certification in Japan: A Guidebook*, 1985. Published by US Department of Commerce

*A Guide to Mandatory Technical Standards and Product Certification Procedures under Japan's Electrical Appliance Law*, 1985. Published by the US Department of Commerce.

*Japanese Telecommunications Terminal Equipment Certification and Procedures*, 1985. Published by the US Department of Commerce.

*Politics and Productivity: The Real Story of Why Japan Works*, 1989, by Chalmers Johnson and Laura Tyson, University of California Press. Foster's original research into Japan's industrial economic and trade policy cited extensively therein, and used elsewhere by Professor Johnson.

#### **Selected Technical Papers**

48<sup>th</sup> Annual Quality Congress of the American Society for Quality Control, May 1994, Las Vegas, Nevada: "The Japanese Industrial Standards Systems - An American's Viewpoint" (published by ASQC)

International Standardization Organization (ISO) and Japanese Standards Association (JSA) Joint Conference, Tokyo, Japan, 1994: Keynote Speech (in Japanese): "The Japanese Industrial Standards System from an American's Standpoint".

#### **Selected Articles**

"Recent Development: Analysis of the Newly Amended Commercial Code of Japan", *Journal of International Law*, Vol. 15, No. 3, (1983)

"Japan - Sweeping Amendments to Standards and Certification System Adopted", *East Asian Executive Reports* (1983)

"Breaking the Standards Barrier", *East Asian Executive Reports* (1983)

"Japan - First Foreign Lab Designated as Inspection Agency", *East Asian Executive Reports* (1984)

"Japan - Building New Barriers? The Draft Telecommunications Act", *East Asian Executive Reports* (1984)

Others: Numerous articles and treatises concerning Japan's government regulatory system, manufactured product technical standards and certification system, industrial policy, and various market sectors; published in *East Asian Executive Reports*; *Case Western Reserve Journal of Law*; etc.

## Teaching, Speeches and Lectures

**U.S. Department of Commerce, United States & Foreign Commercial Service and the University of Southern California** IBEAR program, frequent lecturer on “*Breaking Down the Barriers to Japan’s Market*” at Asia-Pacific Forum, and Doing Business in Japan intensive graduate classes. 1990-98

**World Trade Institute, World Trade Centers of NY/NJ:** Lectured on international business law and regulations, customs law, Japanese distribution and sales contracts; other international business classes. 1991-97

**Medical Alley Association, Minneapolis, MN.** Periodic lectures on international regulatory matters to members of the Association.

**ISO (International Standardization Organization) and JSA (Japanese Standards Association) Joint Conference, Tokyo, Japan:** Keynote Speech (in Japanese): “*The Japanese Industrial Standards System from an American’s Standpoint*”. 1994

**Conference of World Regions, Global Economic Forum, Brussels, Belgium.** 1998, Keynote Speech: “*Rise of Regions in the Global Economy - Telecommunications and Information Technologies: Enabling Global Entrepreneurship and Regional Economic Development*”

**Republican National Lawyers Association 2007 Election Law School: *Initiatives and Judicial Elections.*** Plenary Session Moderator, New Orleans, LA

**Conference of World Regions, Global Economic Forum, Brussels, Belgium. 1998,** Keynote Speech: “*Rise of Regions in the Global Economy - Telecommunications and Information Technologies: Enabling Global Entrepreneurship and Regional Economic Development*”

**Mark Foster is featured or cited in the many publications, including:**

See [http://www.markfoster.com/in\\_the\\_press.php](http://www.markfoster.com/in_the_press.php)

The Wall Street Journal

The Asian Wall Street Journal

Business Week

Fortune Magazine

Tom Peters “On Excellence”

The Chicago Tribune

Who’s Who in America

Who’s Who in American Law

**Professional References** will be furnished on request.