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Committee Leadership



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Leadership Notes

From the Chair

By Lisa Boswell



As this challenging year comes to a close, so does my time as chair of the Intellectual Property Litigation Committee (IPLC). I would like to take the opportunity to thank our committee leadership and members at large. I would like to give a special thank you and congratulations to our new committee chair, Eileen Rumpfelt, for her continued leadership and being an all-around great committee co-captain for the past two years. Thank you and congratulations to our new committee vice chair, Brian Brookey, for keeping us all engaged in these challenging times and most recently compiling our favorite IPLC memories into a virtual photo album. Brian and our membership subcommittee vice chair, Steven Kennedy (with an MVP worthy assist from Rachael Rodman), also kept us all connected this year through virtual happy hours and sharing our DRI membership stories through the Membership Mondays initiative. Thank you to our Law Institute liaison, Re Knack, for all that she does to steer and advocate for our committee. Kudos to our committee's 2020 program chair, Peter Henein, and vice chair, Warren Bleeker, for creating an amazing seminar. Unfortunately, due to the pandemic, the program did not

go forward as they envisioned. But that in no way minimizes their tremendous efforts to bring this program to life. As a testament to their commitment to DRI and this committee, Peter and Warren have signed onto head up our committee's 2021 seminar. We are excited to see what they have in store for us next year. Finally, thank you to our publications subcommittee chair, Kara Thorvaldsen, and vice chair, Jeffrey Bergman, for curating an amazing collection of intellectual property articles for our committee and DRI as a whole. It has been an honor to work with and get to know each and every one of you. I am excited to see Eileen, Brian, and the other future leaders of this committee take it to the next level and beyond.

Lisa L. Boswell is Of Counsel in the Los Angeles, CA office of Early Sullivan Wright Gizer & McRae LLP. Lisa's practice focuses on real estate litigation, commercial and business litigation, and intellectual property. She represents corporations, private individuals, and insurance companies. She is the immediate past chair of the DRI Intellectual Property Litigation Committee.

Committee News

By Jeff Bergman



While the pandemic kept us from meeting in person at the virtual Annual Meeting in October, it hasn't kept our committee from moving forward. We have:

NEW LEADERS. Congratulations to our new chair, Eileen Hintz Rumpfelt of Miller & Martin in Atlanta, and our new vice chair, Brian Brookey of Tucker Ellis in Los Angeles. And thanks to our outgoing chair, Lisa Boswell, for two years of high energy and effective leadership. She leaves metaphorically large shoes to fill, but I know that Eileen and Brian are up to the job.

A NEW SLG. Did you know that SLG stands for specialized law group? You did? I'm the only one who didn't? Well, that's embarrassing. Anyway, thanks to Adam Bialek of

Wilson Elser Moskowitz in New York City, we now have a Right of Publicity SLG to go along with SLGs for Patents, Copyright, Trademarks, and Trade Secrets. I'm looking forward to their first presentation; if you'd like to get involved, please contact Adam at Adam.Bialek@wilsonelser.com.

NEW MEMBERS. I'd like to highlight two: First, Jason Palmer of Bradley Arant's Nashville office. Jason's practice in the Music City focuses primarily on matters related to the protection and infringement of copyrights and trademarks, and also on media and entertainment litigation. Jason is active with the Nashville Arts and Business Council. He is a motorcycle rider, and just got back from a driving trip to Yellowstone National Park. Ask him to show you pictures when you see him at the seminar in Minneapolis in May.

Second, Hilary Maynard of Ulmer & Berne's Chicago office. Hilary is chair of the Intellectual Property Committee for the Chicago Bar Association's Young Lawyers Section, and counsels clients on matters including trademark, unfair competition, and copyright issues. She also handles trademark clearance, prosecution, portfolio maintenance, and enforcement. Hilary is from Toronto; she came to Chicago for law school and stayed, apparently for the warmer weather. She remains a fan of the Toronto Maple Leafs, who last won the Stanley Cup in 1967. According to Wikipedia, "Leafs fans have been noted for their loyalty to the team in spite of their performance," so she should fit in with all of the Cubs fans here in her new home.

Welcome to Jason and Hilary, and to all of our new members. I'm sure that DRI will be a great place to grow your career.

Jeffrey H. Bergman, Of Counsel to Sperling & Slater in Chicago, is a business trial attorney, with broad experience in areas including complex commercial litigation, accounting and securities fraud, directors and officers liability, bankruptcy and restructuring, ERISA and other fiduciary litigation, intellectual property litigation, litigation concerning the enforcement of employee restrictive covenants, and defamation defense.

Feature Article

Why You Need an English Major on Your Patent Litigation Team

By Brian Brookey



Okay, maybe "need" is a little strong. Nor are the recommendations below limited to English majors (although having been one myself, I have a special fondness for such folks). The point is that a patent litigation team would do well to have at least one attorney involved who does not have an engineering, scientific, or other technical background. Obviously, having someone on a patent litigation team who has familiarity with and can easily understand the technology at issue is very helpful—and sometimes essential. But lawyers with different backgrounds—those with degrees in, for example, history, economics, philosophy, political science or, yes, English—have their own set of skills and offer specific advantages. Whether as the primary counsel handling a patent litigation matter, or as part of a team, an attorney with a non-technical background is a valuable—and often undervalued—asset.

1. Writing and Critical Thinking

English majors and other attorneys with non-technical degrees often have particular facility with language, and are strong writers. These lawyers spent years developing non-linear critical thinking skills, which can be put to use in analyzing the issues in a patent infringement case. Ask an English major to solve a calculus problem and you may get a blank stare. Ask one to craft a well-structured, grammatically correct, and logically compelling argument, and you're on to something.

A lawyer who is not an expert in the technology at issue in a matter (which could include having a chemist working on an electrical engineering matter) can provide a different, broader perspective. It is easy to get lost in the weeds when too narrowly focused on any single issue, and that different perspective can be invaluable in drafting well-written, understandable, and persuasive arguments. And when it comes to *Markman* hearings, who better to offer insight into the "plain meaning" of certain claim terms than someone whose training is all about words?

2. Translation

Of course, plenty of engineers and scientists can also write well. What non-technical attorneys also bring to the table is the ability to serve as the jargon police.

The odds are very small that the judge in a particular case—even one participating in the Patent Pilot Program—has the type of technical degree that would allow him or her to sit for the patent bar. And most jurors—even those who do have technical backgrounds—are likely to be unfamiliar with the specific technology at issue. What an attorney who holds a Ph.D. in biochemistry, or who has years of training and experience in electrical engineering, finds quite simple may prove hopelessly convoluted to a judge or jury.

A non-technical lawyer can develop explanations and arguments that a judge and jury can readily understand,

without getting bogged down in jargon or in overly complex minutiae. Legal concepts are foreign enough foreign to most jurors. Highly technical engineering, scientific, or chemical discussions are likely to be even more difficult for them to grasp. A history major leading or working on a patent infringement case can identify jargon and concepts that are likely to sail over the head of jurors and possibly the judge. Moreover, that history major can serve as a proxy for judge and jury. If he or she can learn and understand the technology at issue, then chances are the fact-finders will be able to as well.

3. Diversity

More than half of all law students in the United States are women. Yet many firms still struggle with diversity in their firms generally, and in their IP departments specifically.

This is often presented as a “pipeline” problem: engineering programs in particular remain overwhelmingly male, even in 2020. Despite the laudable recent emphasis on encouraging girls and young women to pursue STEM classes and careers, we have a long way to go in achieving gender parity in engineering and scientific fields. It is not unusual for a litigation team comprising exclusively patent lawyers to be exclusively male.

One way to avoid the pipeline dilemma is to expand the pipe. Bringing in non-technical litigators will result in a broader pool of attorneys and increase the diversity of the team. Again, a group of people that is diverse with respect to such characteristics as gender, race, sexual orientation, gender identity, ethnicity, and national origin is one that is well-rounded and can offer a variety of perspectives and experiences. The jury pool also is much more diverse than

the patent bar, and having a litigation team that looks like the jury can only help your client’s cause.

None of the above is meant to denigrate the many excellent patent litigators with traditional technical backgrounds. The point is not that attorneys with non-technical degrees are inherently better than lawyers with science of engineering backgrounds. It’s that they also are not inherently worse, and should be strongly considered by clients looking for representation in a patent litigation matter, and by attorneys staffing their cases. Often, when hiring counsel or assigning attorneys to a matter, barely any consideration is given to attorneys with non-technical backgrounds. But there is an opportunity for powerful synergy when the unique skills of a diverse team of attorneys are combined. And whether your background is in neuroscience, electrical engineering, or comparative literature, you all want the same thing: the best possible result for your clients.

Brian K. Brookey is a partner of Tucker Ellis LLP in Los Angeles, where he focuses on patent, trademark, copyright, and trade secret litigation. Brian litigates intellectual property matters in district courts throughout the country, U.S. Courts of Appeal, and the International Trade Commission. He also has significant experience handling contested trademark matters before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office. Brian represents a broad range of companies across numerous industries and technologies, including telecommunications, computer software, lasers, construction, lighting, medical devices, automotives, and electronic components.