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.

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