Do You Deserve Better from Your Patent Attorney?

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In recent times we have seen a steady stream of new patent clients fleeing from large national and international "name brand" law firms with patent practices. Specifically, these clients have had patent portfolios (i.e., multiple patent applications and granted patents) initiated and maintained with the same large law firms for years. During the initial discussions, we ask these prospective clients, why, after so many years with the same firm are they motivated to make a change now? The answers I receive time and again reveal a symptom of what is happening in the legal industry today. Some of the realities of large law firm practice are negatively impacting the services provided by such firms. As these clients have indicated to us, it was time to be proactive in the management of their patent portfolio and move away from the expensive "name brand" firms to a better alternative. They had realized that they deserved better from their patent attorney.

There are many reasons why clients move work from one firm to another. However, there does appear to be a recent uptick in clients moving for the same reasons. The legal industry, and specifically life for attorneys in large national and international law firms, has changed significantly in the last decade. Costs continue to increase, especially at large firms with ever-increasing overhead costs in downtown city locations. Meanwhile, clients continue to place downward pressure on hourly rates, or request flat fee or other creative billing arrangements in an attempt to contain costs of legal services.

The result is that the profit per hour billed and collected by attorneys in large law firms has dropped considerably in recent years (even at their hourly rates of $700 to $1,000 per hour). This has placed more pressure each year on partners and associates to produce and collect more billable hours to pay for the high overhead costs of rent, marketing, and personnel (if the profits per hour are decreasing, then more hours must be produced to cover increasing costs). The end result is that because each individual attorney in these large firms is required to handle considerably more work and to bill more hours, the same level of service that existed even just a few years ago can no longer be maintained.

Companies have noticed, and they come to us as prospective clients with two major complaints about their old firms: 1) their patent attorney is no longer responsive to their communications or questions like they once were; and/or 2) they are not receiving the work quality that they previously had received. I do not believe that at a general level this is because the attorneys at the firms I've described are not good at what they do. Rather, the only consistent theme is that the demands placed on these individuals have become so extreme that very few have the bandwidth and endurance to keep up with it all while still providing top-shelf service and high quality work. Clients are seeing the impact on the services provided, and they are taking action.

What are you as an owner of a valuable patent portfolio to do if you are experiencing a reduction in the level of service and quality you are receiving from these long-standing large law firm relationships? The obvious response is – find another patent attorney who can provide the same

high quality service and work product that was once a “given” at the large firm patent practices and be responsive and proactive in the management of your patent portfolio. But how do you find another patent attorney?

There are three basic options: you can look for different patent attorney at another large national/ international law firm and hope that they have a less intense set of requirements placed on them; you can look for another patent attorney at a mid-sized firm outside of downtown city locations (so that their overhead is presumably lower); or, you can look for a patent attorney at a small firm or a solo practice.

The chances of finding another patent attorney at a similar large national/international firm who has escaped the above-described trends in the legal industry and is not running short on bandwidth and endurance are slim at best. The basic logistics of operating a large law firm dictate that all of the attorneys will have similar intense production requirements and other burdens placed on them. In the opposite extreme, you might seek an attorney in a very small firm or solo practice. However, for a non-patent-attorney individual or company to determine whether attorneys at small firms or solo practices can produce good quality work or not is virtually impossible. There is no peer assessment of such attorneys to provide such insight. In addition, very small firms or solo practices will often lack the resources or desire to effectively handle larger patent portfolios. Managing complex patent portfolios requires substantial infrastructure, including quality review, established and standardized cross-checking tools and procedures for filings, a network of foreign associates tested over time for the quality of their work, robust docketing systems to track upcoming due dates, and the like, which are often not found in very small or solo practices.

That leaves the option of finding a patent attorney at a mid-sized firm, preferably not in a high cost office location. Once you have narrowed down the list of firms with patent practices to only mid-sized firms, how then do you find the right patent attorney at such a firm? Many believe the ideal candidate would be a patent attorney that previously worked many years side-by-side with a sizeable peer group of patent attorneys, but who has now moved to a mid-sized firm. If that attorney excelled in the larger, higher pressure, environment, and that peer group promoted that attorney from associate to partner, there is a higher probability that such an attorney provides high quality work and a high level of service. If they have since moved to a regional firm, or single location mid-sized firm (i.e., 25-65 attorneys) with lower overhead costs, then they are well positioned because their present daily requirements in terms of minimum required billable hours and other requirements are likely less, making it possible for each individual attorney to have the necessary bandwidth to produce good quality work and be responsive.

It is not that mid-sized firms are without their own daily requirements. These firms have many similar categories and metrics as the larger firms. However, the difference in most cases is that the requirements are not as extreme or intense, in part because their overhead costs are lower, especially if they are just outside of a major city rather than in an expensive downtown location. As a result, the attorneys don’t need to always be chasing billable hours, and they consequently have more time to provide high quality legal service, and be more responsive to their clients.

When is it time for a change?

Ask yourself these questions:

- Is your patent attorney accountable to you?
  When you schedule time to discuss a matter, do they come to the discussion prepared?
- Do they act as an advocate for you and your business, and develop strategies in line with such advocacy?
- Does your patent attorney have the perspective of an experienced outsider who has seen other clients implement similar strategies before you, and the ability to routinely apply what was learned to your situation, and for your benefit?

- Above all, is your patent attorney accessible?
- Do they return calls and emails in less than 24 hours, and preferably within only a few hours or less?
- Do they care about your patent portfolio?

Your answers should tell you whether now is the time.
Your patent portfolio is a valuable asset that needs careful attention and management. If the service you are presently receiving from your long-standing firm has been declining in recent years, then you do deserve better. Don't be afraid to move away from the pressures being placed on the "name brand" large national and international law firms, and correspondingly the attorneys that work there. You can find great patent attorneys operating in better work environments. The effort you make now will contribute greatly to the value of your patent portfolio in the future.

For more information about how Morse's Patent Practice can assist you, please contact **Sean D. Detweiler**.