

5 Ways IP Attys Can Make The World Better This Year

By Erin Coe

Law360, San Diego (January 4, 2016, 2:40 PM ET) -- Intellectual property attorneys may assume signing up for pro bono work means they must venture outside their practice specialty, but outreach opportunities abound in this area — ranging from helping local artists navigate copyright laws to negotiating international patent licensing deals that empower indigenous tribes.

While there is still plenty of need for pro bono representation of individuals in criminal cases, tenant-landlord disputes and more general matters, IP lawyers don't necessarily have to veer from what they know best to offer meaningful legal services to disadvantaged communities in the U.S. and abroad on a voluntary basis.

"It makes IP lawyers feel good to do pro bono work in their sweet spot because it's where they can provide the most value," said Stuart Meyer, a partner at Fenwick & West LLP.

Here are some pro bono options for IP lawyers looking to do some good deeds this new year:

Giving Inventors and Artists a Boost

IP attorneys who want to volunteer their services while making use of their extensive knowledge of the U.S. patent system need look no further than the U.S. Patent and Trademark Office's patent pro bono program.

While the first U.S. pro bono program devoted to patents began as a pilot in Minnesota in 2011 known as the LegalCORPS Inventor Assistance Program, the America Invents Act that was signed into law later that year required the USPTO to set up a broader pro bono framework for low-income inventors and entrepreneurs.

As part of its patent pro bono program, the USPTO teams up with nonprofit groups, bar associations and other organizations to screen client applications and match those who qualify to volunteer patent attorneys for assistance with obtaining patent protection. According to the USPTO, all 50 states offer access to a patent pro bono program.

In California, for instance, the California Lawyers for the Arts nonprofit administers a program that assists inventors with submitting patent applications to the USPTO and counsels them on the best route for obtaining IP rights, according to Meyer, whose firm helps support the program. These efforts can help individuals who might otherwise be shut out of the patent system jump-start a business or sell an

invention, he said.

“Backyard inventors come up with clever ideas but don’t always have the money to pay patent attorneys \$10,000 to \$15,000 to write a patent application, and while entering the program doesn’t make the patent system entirely free, it’s a lot cheaper than normal,” he said. “This program makes it possible for someone of modest means to use the patent system, which is normally thought of as a prince’s game because it’s so expensive to get and enforce patents.”

Like many pro bono programs across the U.S., the California Lawyers for the Arts also offers lawyer referral services in other IP-related matters, such as helping artists secure copyright protection or IP licensing agreements.

“One of the most valuable experiences I have had was with one of the group’s programs offering IP services to the homeless,” said Rod Berman, chair of Jeffer Mangels Butler & Mitchell LLP’s IP department. “The fact that you’re homeless doesn’t mean that you’re not creative or an artist. This program helps individuals who can’t afford a copyright lawyer to protect their drawings, stories, scripts and other artwork.”

Thinking Globally

IP attorneys also should keep in mind that pro bono opportunities in their practice can extend beyond the cities in which they reside, as Jorge Goldstein, co-founder of Sterne Kessler Goldstein & Fox PLLC and chair of its pro bono practice, learned a few years ago when he became a member of Public Interest Intellectual Property Advisors.

The international nonprofit organization offers pro bono IP legal counsel to governments, businesses, indigenous people and public interest groups in developing countries that are looking to promote health, agriculture, biodiversity, science, culture and the environment, according to its website. The group seeks to close the gap on inequities in the global economy by helping disadvantaged communities gain access to the IP legal system.

“The group serves as a clearinghouse for requests from around the world for pro bono advice,” Goldstein said. “There is a need to serve folks not just in the U.S., but indigenous populations in areas like Latin America and Asia, and to use IP as a way to empower people who have been disenfranchised or underrepresented sometimes for centuries.”

Initially based on his membership with PIIPA and subsequently based on independent opportunities, Goldstein is working pro bono to obtain patents and negotiate licensing deals with international food companies on behalf of a Colombian indigenous tribe that, with the help of a local provincial university, discovered a process for rendering blue fruit from local rain forest trees into a powder that can be used to color food and beverages an intense shade of dark blue.

“There are very few edible blues in the world ... and companies want to sell blue drinks, candy, cupcakes and other food,” he said. “Industries’ traditional, 19th century approach to dealing with indigenous communities is ‘We’ll buy all the fruit you’ll sell us, and we’ll give you a goat.’ What we did was we started obtaining patents on the blue powder and the process of adding it to food and drinks, and we are in the middle of negotiations with food companies and others around the world. It ends up benefiting a tribe that, without this representation, would basically be providing the fruit to whomever pays the best price.”

The program is one avenue for patent and IP lawyers to help disadvantaged groups — not just at a local level but on an international scale — make a difference in the world, Goldstein said.

“This program helps communities that don’t know how the IP system works to protect their IP so that they can leverage it and do better deals,” he said. “The ability to do work for populations that have been discriminated against and whose IP has been misappropriated and to help empower them through the tools we know so well is an extremely satisfying and enriching experience.”

Helping Veterans at the Federal Circuit

The Federal Circuit is known for overseeing appeals of patent and trademark cases, but it also handles appeals related to veterans benefits. For junior attorneys looking to gain more experience in this forum and do a good public service for an underrepresented group, taking on veterans cases on a pro bono basis may be the way to go.

“This allows younger lawyers to get appellate experience without doing it on IP cases for multimillion-dollar clients,” said Jordan Sigale of Dunlap Codding, who does pro bono work for veterans referred by John Marshall Law School’s veterans clinic in Chicago. “Handling veterans cases gives attorneys exposure to the Federal Circuit and brief writing, and Federal Circuit panels are grateful when attorneys do these cases.”

Veterans benefits disputes also make a good match for IP lawyers because they deal with a U.S. code, just like patent and trademark cases do, according to Sigale. In addition, the panel of judges overseeing veterans cases tends to be friendlier than when patents are at issue.

“You can get a hostile bench when you’re doing a patent case,” he said. “But when I’ve sat through arguments in veterans cases, rarely is there any animus directed to veterans’ representation. It’s a great opportunity to get experience and that’s why veterans pro bono work is ideal for IP law firms.”

While veterans matters can involve simpler legal issues than complex patent litigation, the stakes can still be high and can make for especially fulfilling work, according to Sigale.

“Sometimes the ability for veterans to pay their rent is hanging in the balance,” he said. “Doing copyright, trademark or patent work, you rarely represent someone who has trouble paying their mortgage.”

Writing for Underrepresented Groups

Patent cases before the U.S. Supreme Court, IP legislation pending in Congress and proposed rule changes by regulatory agencies like the USPTO and U.S. Copyright Office can have far-reaching implications on a wide swath of IP stakeholders, making it important for decision makers to receive input from groups that may have a hard time getting their voices heard.

Lawyer organizations like the Boston Patent Law Association make it a priority to write amicus briefs for universities and other underrepresented groups in significant IP cases at the Supreme Court and the Federal Circuit to ensure that different viewpoints and perspectives are brought to light.

“The BPLA might align with law school professors, academics or other organizations to give the court

deciding an important patent or trademark case a broader perspective of what a particular ruling might mean,” said Erik Belt, a McCarter & English LLP partner who is president of the association. “We try to get involved in as many cases as we can.”

IP lawyers also can play an active role in writing letters when Congress seeks to make changes to IP law or submitting comments when the USPTO plans to update the prosecution process or procedures before the Patent Trial and Appeal Board, he said.

“Don’t think you can’t make a difference; you can,” he said. “It’s really important that courts, Congress and the USPTO hear from us about why patents, trademarks and IP rights matter.”

Remembering the Little Things

Busy IP attorneys should recognize that even a few hours of their time can go a long way toward educating the public about IP rights.

Belt said he has counseled the parent teacher organization at his children’s school on a voluntary basis when questions arise over copyright and trademark infringement issues and also has spent a couple hours giving free copyright advice to an artist seeking to create a large installation in a public park that planned to be a derivation of others’ artwork.

“Don’t think that in IP land, you necessarily have to spend 40 to 50 hours on pro bono work; sometimes an hour or two can actually make a difference,” he said. “Sometimes a small thing that takes you an hour or two can have bigger results in a positive way.”

Taking part in public speaking events also can benefit communities as a whole, according to Sigale, who plans to give a talk to small and midsize companies about how to enhance their business with IP at the Illinois Small Business Development Center at Governors State University near Chicago in January.

“I’m going out there and telling people how to use IP laws on a shoestring budget while starting their businesses,” he said.

While such events can help companies get a better grasp of IP law, they additionally give lawyers a chance to improve their public image in general.

“If IP lawyers do more public speaking and talk about how individuals can make their lives better, we can improve the public opinion of our profession,” Sigale said. “Lawyers hover somewhere between hated more than and less than car salesmen. ... If we do more of these kinds of opportunities that show we can be helpful and altruistic, it can balance the scales a little bit.”

--Editing by Jeremy Barker and Emily Kokoll.
