

CAREERS IN INTELLECTUAL PROPERTY FOR NON-TECHNICAL STUDENTS

By Jeremy M. Roe

For the lay public and many law students, the term “intellectual property” (“IP”) often brings to mind patent law. While a number of IP practitioners are patent attorneys, there are ample career opportunities for those without the science or technical background required to practice patent prosecution before the U.S. Patent and Trademark Office.

There are three main areas of IP that extend beyond patents: copyrights, trade secrets, and trademarks. Many practitioners practice all three of these areas, but some specialized attorneys may focus on only one or two of the categories. Copyright attorneys are often involved in helping their clients enforce their rights in works of authorship, such as music, books, or photography.

Career options for copyright attorneys are somewhat limited geographically. Since copyright law, in its broadest sense, protects the rights of authors and artists, *which necessarily requires that* the majority of job opportunities in this arena be concentrated in major metropolitan markets such as New York and Los Angeles. This does not necessarily mean, however, that a student in the Midwest must consider moving to one of the coasts to practice copyright law. There are also several pro bono opportunities for aspiring copyright attorneys. For example, the Chicago-based *Lawyers for the Creative Arts* provides students and attorneys with opportunities to gain valuable real-world experience by working with entrepreneurs and artists to obtain copyright registrations and to enforce their rights in their works. Attorneys who focus on sports or entertainment law are also presented with client scenarios that entail copyright law, such as assisting the client with filing for registration, drafting or reviewing a licensing agreement, or enforcing the client’s rights through litigation.

Trade secret law is probably the most misunderstood area of IP, as the area is often confused with patent law. While trade secrets may be technical in nature much like patents, protection is not acquired via federal registration, but rather by keeping proprietary information confidential. Non-technical practitioners may be sufficiently qualified to practice this area of law by learning about the technologies underlying the client’s trade secret materials. Trade secrets are enforced under common law and state statutes, and practitioners are often involved in litigation to protect the confidentiality of their client’s trade secrets. Often, trade secret litigation arises in related contexts such as contract disputes and employment law. Thus, attorneys in these practice areas may become involved in trade secret misappropriation actions.

Trademark law can be a relatively hidden gem of opportunities for law students and young practitioners. Practicing trademark law is ideal for those with experience or education in business or communications, especially for those with an interest in helping their clients develop new advertising, marketing and promotional programs. Many trademark attorneys spend a considerable amount of time engaged in “prosecution,” working with the U.S. Patent and Trademark Office to help clients obtain federal trademark protection for their marks. Another area of practice involves trademark enforcement, which includes active monitoring and targeting of potentially infringing uses of marks by others.

Trademark attorneys vary greatly in their practice settings. Many practitioners are solo or work for small boutique firms that specialize in trademark law and the other related areas of unfair competition. There are also national intellectual property law firms that focus primarily on patent law, but have a separate practice group for trademark law. In many of these instances, a technically-trained patent attorney may practice trademark law concurrently for the same clients.

General practice law firms may also have an IP practice group. The IP group may be divided into specialties or industries, including separate groups that focus on trademark and unfair competition, advertising and promotions, and copyright law. Beyond the traditional law firm setting, trademark law offers some unique career opportunities. The U.S. Patent and Trademark Office employs a full staff of trademark examiners. An increasingly attractive feature of working for the USPTO is the ability to work remotely. Additionally, many trademark practitioners work as in-house counsel for organizations with a special need for IP protection. Companies in industries such as consumer electronics, foods and beverages, and financial services need active enforcement policies to protect their IP assets, and thus these companies often have dedicated IP attorneys on staff.

In today’s employment environment, it is especially challenging to land a position with a large law firm or boutique, especially in the non-patent areas of IP law. Many experienced IP attorneys have taken various paths before landing a job that focuses primarily on IP law. For instance, experience in general litigation matters, particularly in federal court, is valuable experience for IP law. Like other areas of the law, IP litigation rarely results in a jury trial, and is often resolved via motion practice or settlement. Thus, experience in negotiation and arbitration is also helpful. Attorneys that practice corporate transactional law, such as mergers and acquisition, bankruptcy, and finance, are presented with IP valuation issues that serve as valuable experience for moving into an IP career. Students and recently admitted attorneys without experience may also consider pursuing an LLM degree after completing their law school degree to gain additional specialization in their preferred area of IP law.

There are also various opportunities in government that might serve as a launching pad into private intellectual property practice, in addition to those provided by the USPTO. Federal agencies with some degree of IP work include the Federal Communications Commission, the Federal Trade Commission, and the Department of Justice (especially its Antitrust Division). State Attorney General Offices often have dedicated consumer protection divisions, which target false and misleading advertising practices. International organizations such as the World Intellectual Property Organization also provide opportunities for young attorneys to gain

valuable experience in international law, domain name enforcement, and the development of more uniform international laws and practices.

In sum, trying to land a job in intellectual property is not as daunting as it might seem at first blush. There are various paths available for aspiring IP lawyers who do not have a technical background. The work itself is challenging, but most certainly rewarding. If you have an interest in practicing copyright, trademark, or trade secret law, be sure to become actively involved in your law school's IP organizations and programs, as well as bar associations with an IP focus, like the ABA Section of Intellectual Property Law.

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