

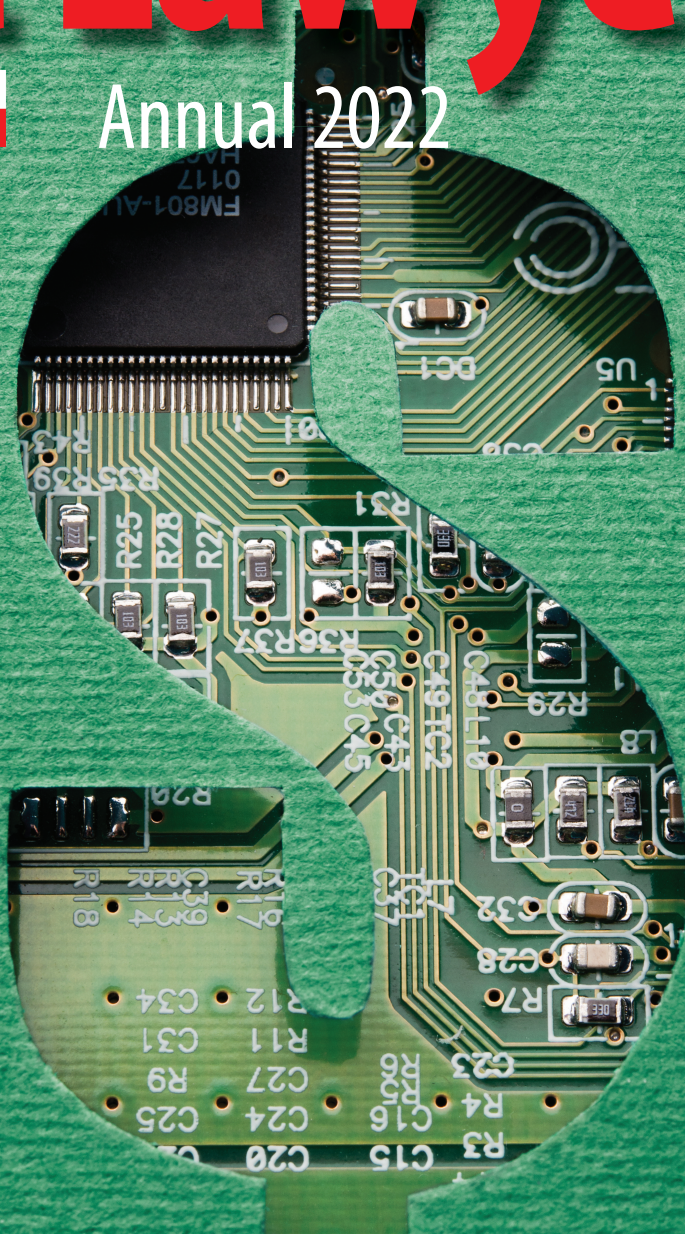
The Patent Lawyer

GLOBAL REACH, LOCAL KNOWLEDGE

www.patentlawyermagazine.com

Annual 2022

Keeping up with Fintech: patent filing strategy



Hui Li, Partner at Beijing Sanyou IP Agency Ltd., provides an informative update on the developments of Fintech and provides guidance for developing a successful strategy for patenting in this field.

Interview:
Robert Mino,
Cybin

Page 13



China: SEPs

Page 33



Drug patent linkage

Page 48



Diversity, equity, and inclusion with Suzanne Wertheim.

Chapter 4: DEI in law

In this six-part series Dr. Suzanne Wertheim, of Worthwhile Research & Consulting, talks to *The Patent Lawyer* about diversity, equity, and inclusion: what it means; the current challenges; DEI in law; gender bias; and what we can all do to improve.

How do you train for diversity?

One of the most useful tasks is educating people about the many, many ways that people can be diverse. Sometimes people from dominant groups, like white people, think that diversity as a concept doesn't apply to them. But with education, many of these people eventually start to understand that diversity applies to them as well – and that there's much more going on than just race or ethnicity or gender.

In my workshops, I demonstrate this with all kinds of real-world anecdotes. For example, involving people who are celiac and forgotten about when it comes to lunch planning. People who are in a different time zone and not taken into consideration when meetings are scheduled. People with young children who have time restrictions that should be taken into account, especially during a pandemic. People who are neurodivergent and should be accommodated - lots of people have ADHD, or are on the autism spectrum, or have Tourettes. Or someone may be a "class straddler" – a person who started from the working class, or even abject poverty. They might look like a young and carefree middle-class white person, but in reality be living ultra-frugally, supporting their whole family, and with lived experiences that aren't being taken into account.

Some people face obstacles because they grew up in a very rural area, or because they speak with a non-prestige accent. Once, during a training, we were talking about the most prestigious accents in English, and I pointed out how "fancy" and "sexy" many English speakers find French accents. And a manager, who had moved to the US from France around 10 years previously, told us his story. He was from Marseilles, a city in the South of France with what is seen elsewhere in France as a low-prestige accent. He told us



Dr. Suzanne Wertheim

There's much more going on than just race or ethnicity or gender.

about his boss in Paris who would say, "Come to my office and talk with me. I need a laugh." And the boss was actually just laughing at how he was talking, at his accent. So again, here we have a white man who is a high-level manager, making a good income – but he is also someone who has experienced bias and discrimination.

What's more, **everybody** contributes to diversity. A lot of people think that diversity is about other people. Like if you're white, or male, or heterosexual, or born in a body that aligns with your gender identity. But diversity is actually about everybody – and everybody has a role to play. The goal of a more diverse and inclusive workplace isn't to get rid of straight white men! It's just to create a better balance; to look at who has been left out of the conversation and left out of consideration. And to bring them to the table and really hear them when they speak.

In fact, white men have a really important role to play when it comes to diversity and inclusion. The higher status you are, the more power you have to make change. For example, higher status people get listened to more. Their voices get amplified. And when they say things that people disagree with, they face less blowback and less retaliation. White men have the most social power in many, many countries. And research has shown that this social power, which often translates into organizational power, amplifies diversity work done by white men. In fact, the only people who don't face professional penalties for diversity work are white men – instead of penalties, they get praise. So I like to tell the white men I work with through my training and consulting that they are like superheroes. Their one step is like seven steps for someone else. And they're wearing bulletproof armor. So if they push for something, they can make a real difference – and with way less effort or danger than for other people, like women of color.

I like to think of diversity and inclusion as an important form of process optimization. How do you get to an optimized workplace culture? Where everyone can thrive? Clients are well-served? Revenues are leading edge? Well, having a diverse leadership and employee base is correlated with good business outcomes, including higher revenue. And carefully adjusting workplace policies and practices so everyone feels comfortable and can do good work – this is also correlated with good business outcomes.

What's more, everyone likes to work at an optimized workplace. Everyone! You bring in more money, there's more innovation, it's less toxic, meetings go better, you feel like your work is seen – it doesn't matter who you are. When high-ranking people are being especially honest with me, it becomes clear that they think they're going to have to give stuff up. That it will be painful and difficult. But if you're bringing in more revenue, there's new room for more partners or more vice presidents. You can diversify your leadership by adding new roles, not by firing white men. The pie gets bigger: it's not a zero-sum game. So I like to be very optimistic in my training and show people that we can all play a role in making things better. We all matter.

What adviser problematic bias from a client?

My advice is to keep yourself safe. If you're on the receiving end of bias, it is usually way more dangerous for you to advocate for yourself than it is to remove yourself from the situation. Research that shows that when you're a member of a group and you call out bias against that group, then you are usually penalized. So, for example, if an Asian person points out that someone has said racist and anti-Asian things, then most of the time, that Asian person is now in way more danger of retaliation – to the point of even getting fired – than the person saying racist things is in danger of actual professional consequences. It sounds incredibly unfair. And it is! But it's also how it works most of the time. So, what you need is someone else to advocate for you. The higher ranked they are in terms of social or organizational power, the better. Most of the time, the most effective advocate for you will be a white man who is high up in your organization, like an equity partner or managing partner.

But when you've been a target of bias, there's a good chance that you won't be believed. And there's a dilemma for your organization – if they take action to protect you, it can damage their client relationship. It might be uncomfortable, or they might lose money, or they might even lose the client altogether. What we often find, especially on the junior level, is that people are sacrificed to sexual harassment, to toxic yelling,

“
The bias that's out there in the world comes right into the courtroom. Some voices are amplified, seen as more credible, and just heard more.”

to rude questions on competency when they're actually being very competent. A lot of people are sacrificed. My advice is to ask to be removed from that client if possible and seek out a potential advocate who will protect you. And if that doesn't work, look for an organization with a strong commitment to inclusion and anti-bias work, one that will actually work to protect you from toxic client interactions.

What impact can unconscious bias have on lawsuits?

In my experience, the biggest problem is credibility. There's a credibility gap that comes from unconscious bias and it has profound legal ramifications. There's been a lot of good research by linguists and linguistic anthropologists on testimony and credibility in the courtroom, and the bias that's out there in the world comes right into the courtroom.

Some voices are amplified, seen as more credible, and just heard more. And some voices are muted and seen as less credible. People who are amplified and seen as more credible are generally white people, male people, and people who speak a standard dialect. People who are seen as less credible and muted are people of color, people who present as female, and people who speak in a nonstandard dialect or foreign accent. Of course, sometimes this is all the same person, and then you've really got some unconscious bias penalties when it comes to how your testimony will be received.

There was an award-winning paper a few years ago about testimony in a big case here in the US. An unarmed teenage boy, just walking home from buying candy, was shot by a neighborhood vigilante who said that he felt threatened. It probably won't be a surprise to learn that the victim was Black. He was on the phone with his best friend at the time of the shooting, so she gave testimony for what she'd heard through the telephone. But because she was young, Black, and female, and spoke a non-standard English dialect associated with Black people, her testimony was perceived as much less credible. In fact, her testimony was widely derided on social media. But scholarly analysis showed that it was actually excellent testimony, using all the criteria for what is credible and convincing. It is widely believed by people who think about racialized dialects that if the same testimony had been presented in a standard dialect by a white man, it would have been seen as much more credible, and might have changed the outcome of the trial.

So, I think that this is an enormous problem for justice in lawsuits; some people's words are perceived as more credible while other people's are less credible. And who they are and how

“When there is a supposed meritocracy, one of the biggest problems is recognizing that bias is a real problem and distorting outcomes.”

they are speaking turns out to be way more important than what they're saying and the actual content of their testimony.

What do you think is important for the improvement and continuation of diversity in the legal world?

One of the biggest problems is the idea of the legal profession as a meritocracy. Research has demonstrated that a profession that thinks of itself as a meritocracy is one where bias is more entrenched and more severe. What we find is that the highest "merit" goes to the people in the dominant groups, whoever they are. So it is the people in those dominant groups who rise to the top. I've heard the word "mirror-tocracy" used to describe tech, where you see white male company founders hiring white men as their first employees, who then hire white men to work for them, etc. When there is a supposed meritocracy, one of the biggest problems is recognizing that bias is a real problem and distorting outcomes. That the idea of the meritocracy is flawed and presumes a fair and equitable world that doesn't actually exist. That in many cases, someone's rise has been less about merit and more about distortions that have pushed some people down and pulled other people up. Until these systematic distortions are recognized and addressed, it's going to be an enormous problem. The supposed meritocracy and disregard of bias in academia is brutal. It's brutal in tech and all STEM fields. And it's brutal in the legal profession.

The whitest, male-est room I've ever presented to in all my years of teaching and training was when I was asked to give a continuing legal education course to only the partners of a California law firm. I was asked to train people about bias in the legal profession, a course that fulfills the California anti-bias requirement. I went into the room and had to turn around and pretend to dig through my bag so I didn't burst out laughing. This was a room full of partners. And I saw one white woman. And one man of color. And that was it. Everyone else was a white man, just filling up that room. I myself am technically white, even though I don't look particularly white. But again, in this room everyone except for one person was white. And it was amazing to me when I got to the slides talking about how much diversity dropped off in US law firms as you moved from the associate to partner level. How there were way more women of color, white women, and men of color who were associates at firms than ever made it up to partner. Because the numbers I was giving, which were pretty bad, were nothing compared to this firm! I mean, from what I could see, literally 5% of the partners were **not** white men.

And these partners watched me with what looked like complete unconcern. I got one desultory question during the Q&A portion, and then they got up and got lunch from the back of the room.

This was a particularly striking moment, but it is a reminder of what seems to be a terrible lack of self-awareness on the part of the legal profession. I very honestly think that the biggest motivation for change on the part of law firms is going to be external forces.

What I'm hearing in the US is that some companies are telling their external counsel if they don't make some changes when it comes to diversity and inclusion, they will drop them. I think we're at the very beginning part of this trend, where there will be an "inclusion rider" as part of the contract template. Very honestly, I think this is the only way that the legal profession will actually buckle down and make real changes. Changes at the institutional level, like law firm policies involving recruiting, hiring, work allocation, and promotion. And changes at the interpersonal level, where so much bias sneaks in. So you make sure people aren't being insulted and demeaned in everyday conversations; that they're invited to the right meetings and are getting the necessary emails; and that they are being mentored and introduced to the right clients and the right opportunities.

Join us in The Patent Lawyer January/February 2022 for Chapter 5.

Contact

Worthwhile Research & Consulting

www.worthwhileconsulting.com

wertheim@worthwhileconsulting.com

<https://www.linkedin.com/in/suzanne-wertheim-ph-d-1508464/>

