

A diverse workforce that understands its diverse clients

Article by Marialuisa Taddia



CHAIRMAN'S INTRODUCTION

This thoughtful and penetrating article by Marialuisa Taddia not only analyses the current position of the IP community in the context of a complex issue, but also offers insight into how improvements might be made.

The regulatory objective of *"encouraging an independent, strong, and diverse and effective legal profession"* presents for all regulators a substantive challenge.

As one of eight objectives where does it stand? What rank does diversity have, or is the ranking of objectives an entirely wrong approach?

Throughout the article respected members of the profession offer their views on where we are, how things have improved when compared with the past, and what steps might be needed to continue the improvement.

From the perspective of a regulator a number of steps need to be taken:

Firstly, an understanding that diversity is a subject of real importance (not a topic we have to deal with 'because a statute says we must'). In this regard I think it fair to say that no one pays mere lip service to this any more: a diverse profession brings with it benefits to wider society and is consistent with the commercial interests of even the toughest managing partner. Secondly, a regulator needs facts to work with. The gathering of information can prove controversial, but with the right safeguards in relation to confidentiality and sensitivity in the information asked for, the collection of relevant data need not be burdensome or counter-productive.

The Intellectual Property Regulation Board remains focused on the issue of diversity and will continue to participate in a forward-looking agenda. This article is an important part of our collective effort, I hope you will find it as stimulating as I did.

MICHAEL HEAP

Equality and diversity are exercising the legal profession like never before.

The Legal Services Board last year issued guidance to all approved regulators in England and Wales to develop plans, by the end of 2012, for gathering and publishing diversity and socio economic data.

Equality and diversity are exercising the legal profession like never before.

The Legal Services Board last year issued guidance to all approved regulators in England and Wales to develop plans, by the end of 2012, for gathering and publishing diversity and socio economic data.

Collecting such information will not be easy. All legal service providers – large and small – will be required to ask of their workforce to self-classify against a set of characteristics including religion or belief and sexual orientation.

This follows requirements in the Equality Act 2010 and the Legal Services Act 2007 for more transparency around potential discrimination and barriers including in employment and career progression for under-presented and minority groups.

Extra impetus for obtaining diversity data also comes from research published by the LSB in 2010. The LSB recognised “the strong commitment” from the profession to increase diversity but concluded that “progress at the more senior levels of the profession in particular has been disappointing.” The focus on gender and ethnicity appeared to be at the expense of social background and the other “protected characteristics” in the Equality Act.

The most recent study into the legal profession’s record, Alan Milburn’s updated

Fair Access to Professional Career report, published in May, found that it was on the “right track” in addressing fair access, but progress was “too slow”. The report highlighted that entry to the law that was “still too socially exclusive.”

Despite these criticisms, some large corporate law firms have rolled out impressive inclusion and diversity initiatives. Addleshaw Goddard LLP has a scheme that identifies law students from less privileged backgrounds who don’t meet the firm’s A-level selection criteria and fast tracks them to a summer placement. Simmons & Simmons has similar pre-university outreach initiatives and uses employee network groups to boost women, LGBT, Jewish and Muslim employees’ prospects. At Allen & Overy all fee-earners are offered a career mentor.

So what about the smaller firms operating in trade mark and patents?

Gender diversity

On gender, performance appears to be pretty good. That’s in part down to the nature of the work, and some argue it’s because smaller size organisations have permitted a more human touch.

In trade marks there is a relatively high proportion of women. Says Catherine Wolfe, the newly elected president of the Institute of Trade Mark Attorneys (ITMA): “On gender diversity I think we are a beacon.” Forty-seven percent of ITMA’s 1,600 members – which include trainees and other professionals with an interest in intellectual property – are women. And women make up a similar proportion of the 600 or so qualified

trade mark attorneys. And the numbers have been growing over the past decade and a half, says Wolfe.

In contrast, women only represent 30% of the 3,300 plus members of the Chartered Institute of Patent Attorneys (CIPA) and a similar proportion of the 2,000-plus registered patent attorneys in the UK. But this is in large part because patent firms hire people with technical degrees and these graduates are in the majority males, says Candice Terblanche, a 28-year old recently qualified European Patent Attorney at Page White and Farrer (PWF), a London-based firm of specialist patent and trade mark attorneys.

Terblanche, a graduate in electrical and electronic engineering from the University of Stellenbosch in South Africa, was one of just three women in her final year in a class of 80 men. Terblanche says despite this it felt completely normal to study science as a woman and she has never been uncomfortable nor disadvantaged because of her gender, nor indeed suffered any sexist behaviour at university or work. “Even though there are more men than women it’s not something that you really notice because the environment is not chauvinistic. If you go out with your fellow trainees the conversation is not all about cars and football.”

But how about gender diversity at the more senior levels?

According to the most recent Law Society diversity statistics, women account for 23% of partners.

There are no figures for the trade mark or patent profession but Wolfe says as far as the trade mark attorney profession is concerned, that there is anecdotal evidence to suggest that “a much higher proportion” of women are at the top than in the solicitors profession. At Wolfe’s own firm, Boulton Wade Tennant (BWT),

women account for 8 of 23 (or just over a third) of partners.

Wolfe also highlights other leadership roles held by women. She herself is the third female ITMA president in a row, following Maggie Ramage and Gillian Deas. Then there’s one of her two vice presidents, Kate O’Rourke, and ITMA newly appointed treasurer, Tania Clark, flying the flag for gender equality. “When people look at the Institute, what they see is a woman,” she comments.

At PWF, Terblanche adds that for her Kelda Style (Terblanche’s supervisor), and Virginia Driver, the firm’s two female partners in the 9-strong partnership, are “strong role models”.

So what lies behind women’s progress in intellectual property?

Partly it’s easier to work flexibly or to take scenic routes along the way, some argue.

Dr Roger Cullis, who worked as a patent and trade mark attorney for some 45 years, mainly in corporate practice says: “It is a very good job for a woman if she wants to stop and have a family. She can work part-time or on a freelance basis and then go back into the profession at more or less the same level as when she left.”



The structure of the industry also has advantages for women, Wolfe argues. She points to the fact that most trade mark firms are SMEs and trade mark attorneys employed in large corporations tend to be part of small teams, and says: “You are not dealing with woman X you are dealing with ‘Mary.’ And it is much easier to keep the chair open for Mary than it is when you are dealing with numbers and headcount – they [attorneys] are not heads, they are faces.”

The long term nature of intellectual property rights contributes too as it means attorneys build long term relationships with clients, O’Rourke argues: “The client actually wants to make sure that the person does come back and they deal with them again. It is very important to have people who have the history of the file. We are not in the litigation culture of a single action, we are much longer term, more gradual and less intense in the timing.” As a result there’s more tolerance of people taking long breaks, or going part time or working flexibly in other ways.

But women’s progress is not all accidental. ITMA offers free-of-charge Continuing Professional Development (CPD) courses to allow its members to keep up-to-date with the law while taking a long break for maternity or other reasons.

And flexible working options are widely available among firms. O’Rourke, who is senior counsel at top 50 solicitors’ firm Charles Russell, says: “At ITMA we haven’t collected data yet but we know that lots of people work flexibly. I work part-time every day which is slightly more unusual, but quite a few other people work four days a week.”

Terblanche notes that PWF, which she joined in 2007 as a graduate, is very supportive of employees with parental and caring responsibilities, regardless of their gender. “In my generation at work there doesn’t seem to be a very strong male/female divide on who has to take the kids to school because it just goes on for whom it is more convenient.”

When it comes to diversity in socio-economic backgrounds, the picture is mixed.

One of the main criticisms levelled at the legal profession is self-reflection bias, as pundits would describe it. [LSB-funded research](#) into diversity into the legal profession in England and Wales found that “as a result of the preference of employers for the graduates of ‘old’ universities, sections of society are filtered out of the profession.”

Chris McLeod, vice president of ITMA and director of trade marks at solicitors’ firm Squire Sanders in the UK, argues that this was the case in the past but is now changing. “My own experience – and I have been practising for over 20 years – is that in the early 1990s there was a tendency of partners in firms to bin CVs that weren’t ‘First’ and weren’t from Oxford or Cambridge. I think it flows automatically from that you are excluding a large chunk of socio-economic stratum of society. But I personally think that is going away.”

“In today’s society that sort of dinosaurial mentality is heading for the new ice age,” concludes McLeod who, at the time of writing, was interviewing prospective trainees and said that he could not recall what universities they had been to. “It’s so unimportant, it’s their real life and the way they present themselves in person that matters.”

Cambridge-educated Wolfe concurs, adding with regard to the LSB report: “This is data that would have been more apt 20 years ago. There is a huge movement away from that, not only because of legal obligations and indeed courses are now run to help people identify self-reflection bias, but also because we have professionalised our examination system.”

The new qualification system for becoming a Trade Mark Attorney, which ITMA has implemented, is an important step in tackling socio-economic diversity, Wolfe argues.

Students wishing to qualify as a registered trade mark attorney are required to undertake the qualification courses at Queen Mary University of London (QMUL) and Nottingham Law School and complete a statutory declaration confirming that they have the relevant experience required. “A person can be legally qualified without ever having done an apprenticeship or a training contract and therefore the candidates presenting themselves to firms are not fresh out of college.” This removes much of the unconscious bias in recruitment, Wolfe explains.

Furthermore, at firms such as Squire & Sanders partners and senior associates are obliged to undergo unconscious bias training. Says McLeod: “To Wasps of a certain age it is like nailing jelly to the wall. But notwithstanding this, it is a useful initiative and certainly the firm has a zero tolerance policy in relation to lack of tolerance of any minority.”

Terblanche, a South-African national who studied in her home country, believes class bias persists: “I don’t think the problem is the male/female representation. It just seems that there is a certain type of person who joins this industry. Everybody seems to be from a fairly upper middle class background.” She adds: “There is a disproportionate amount of people who went to Oxbridge.”

While she says she’s not experienced discrimination, Terblanche notes when attending CIPA or other networking events: “I have to make slightly more effort because I don’t have something immediately in common with people who studied at the same university.”

Dr Cullis, a Visiting Professorial Fellow who teaches on the Queen Mary MSc in Management of Intellectual Property (for science and engineering graduates pursuing a career as patent or trade mark attorneys) and on the Certificate in IP Law (for trainee patent attorneys) observes that students come from a variety of countries and universities to follow these courses: “It’s a fairly complete mix.”

However, he adds: “The [patent] profession prefers to recruit from Oxbridge. There are very good students who have difficulties in getting jobs because they are not Oxbridge and particularly if they are from the Poliversities.”

Dr Cullis also notes patent professionals keep it in the family, with the children following in their parents’ footsteps. Dr Cullis’ daughter included.

Although Dr Cullis is not himself an Oxbridge graduate and was the first in his family to go to University (he graduated in physics from QMUL in 1959) he concludes: “We are a very conservative profession and we know that if we recruit the highest calibre graduates from Oxbridge we aren’t making a mistake.”

Ethnicity and invisible traits

There are no figures on ethnicity among patent and trade mark attorneys, but the sense is that the profession has made progress over the past 20 odd years.

McLeod says that when hiring for posts at his firm, he has never acted with a bias against unrepresented and minority groups, including on grounds of ethnicity, religion or sexual preference. “These are things that don’t even come into play; apart from the illegality of making overt assessments on this basis they are just not really relevant.”

There are some clear barriers for some groups, though, for example foreign nationals entering the profession. Dr Cullis notes that while the IP courses at QMUL attract students from all over the world, he argues that the Government’s more stringent Visa requirements are making it harder for non-British and non-EU nationals to come and study in the UK and then remain for work.

Because of his professional background, Dr Cullis has helped students with their CVs and job applications. Without identifying any general concerns over discrimination against BME students, Dr Cullis did point to one recent student

who failed to obtain a training contract and feels this might have been because of a name that was clearly not Anglo or European.

In addition to initiatives like free CPD for women members on career breaks, ITMA is also taking action to raise awareness of diversity. This includes a series of lectures to assist small trade mark firms in introducing their own diversity policies. The lectures may take the form of webinars and feature guest lecturers from charities like Stonewall, which campaigns on equality for gays, lesbians and bisexuals, and Changing Faces, which provides support for people with facial disfigurements.

But arguably the most important work to be done is on getting an accurate picture of the extent of discrimination or disadvantage suffered by groups with 'protected characteristics' in trade marks and patent firms.

This is being tackled, though. CIPA and ITMA are working with their independent regulator, the Intellectual Property Regulation Board (IPReg), to devise a system for collecting diversity data among their members.

ITMA has already started collecting data at firm level on female and BME partners. However O'Rourke, who in May was appointed "diversity czar" at the institute, admits that they are "struggling" with finding the best way of collating some of the diversity information from the profession. This is because of potential privacy issues linked to the small size of many firms. "In small firms you are going to be able to identify individuals and so we have to be very careful." An employer obtaining and handling information on invisible traits such as sexual orientation, religion and socio-economic background can be a sensitive matter.

O'Rourke concludes: "It's a balancing act between collating the information in order to address any injustices and not infringing the rights of people to privacy."

About the author

Marialuisa Taddia is a freelance journalist and researcher (Business and Legal).

She obtained a 1st in BA in Modern Languages and Literature at the Università di Bologna and followed it with a Graduate Diploma in Law, Legal Practice Court at Leeds Metropolitan University.

She has written extensively for the Law Society Gazette including:

"Calm in a crisis: lawyers and the internet age" published in September 2012

"Flexible working patterns" published in April 2012

Useful weblinks

Association of Women Solicitors:
www.womensolicitors.org.uk

Society of Black Lawyers:
www.blacklawyer.org

Simmons & Simmons:
www.simmons-simmons.com

Bar Standards Board Webinar on 2012 Equality and Diversity Rules of Code of Conduct can be found at
www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-and-diversity-rules-of-the-code-of-conduct/

Solicitors Regulation Authority Webinar on Diversity data collection: Gathering an evidence base about diversity across the legal workforce – 6 July 2012 can be found here
www.sra.org.uk/webinars/#completed



IPReg

Intellectual Property Regulation Board (IPReg)
5th Floor, The Outer Temple
222-225 Strand, London WC2R 1BA

020 7353 4373

www.ipreg.org.uk