

IP Prosecution Firms... Brace For Impact

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Once treated like the crazy uncle no one wants to be seen with, Intellectual Property and the scope of its influence is fast becoming a media darling. Public releases from both the U.S. Bureau of Labor Statistics as well as the American Bar Association have let that crazy uncle out of the closet and pushed him into the spotlight.

To wit:

- Intellectual Property made it to the top of the ABA Law Practice Management's '[What's Hot & What's Not](#)' list as the legal profession's hottest business sector.

- In the current U.S. Bureau of Labor Statistics '[Occupation Outlook Handbook \(OOH\) 2010-11 Edition](#)' the '[Overview of the 2008-18 Projections](#)' cites technology as the fastest growing sector outside of the health industry, with Services (14%) trailing only Professionals (17%) in projected occupational growth.

- Also according to the [OOH 2010-11](#) "demand for paralegals is expected to grow as an expanding population increasingly requires legal services, especially in areas such as intellectual property, healthcare and international law..."

... and these are just samples.

Prospectors the world over have taken notice and are frantically assembling snazzy [IP prosecution paralegal outsourcing](#) bandwagons in the hopes of grabbing market share. While this scenario might be considered amusing, I cannot help but ponder the significance of what may result.

CONSIDERATIONS

With Intellectual Property's new-found stardom, pause for evaluation becomes relevant. Barriers of entry into the IP prosecution paralegal services market are largely unprotected, rendering it susceptible to ransacking by divesting enterprises that are in it purely for diffusion. If that happens – watch out. The end client who loses their ownership rights because an outsourcing firm's priorities lie elsewhere will be hunting for payback, with the liable law firm caught squarely in the crosshairs. How much of this our industry is willing to tolerate engenders a nice roundtable that could prove most interesting.

In time everything comes full circle, which means the non-lawyer professionals who physically do the work would be called upon to affect repairs... but not without trepidation. Increased business from administering damage control is one thing. But on an interpersonal level, repairing a betrayed psyche is another thing entirely. Securing the attorney/paralegal bond is paramount in this business, which is hard enough to establish from scratch. Having to resurrect this confidence for a new client who is coming from a bad relationship can be excruciatingly painful – and expensive.

On a larger scale there is another consideration: new power players expanding from other fields and communities striving to become the 600lb. gorilla. It happens in every burgeoning market, and the paralegal outsourcing segment of Intellectual Property prosecution will be no exception.

Earlier I mentioned the barriers of entry into the [IP prosecution paralegal services](#) market as being largely unprotected. That's because its only true barrier is the revelation of core competency through due diligence.

Proficiencies in other IP-related communities of practice such as litigation don't adapt to prosecution very well. Moreover, skill

sets from other legal fields don't translate to IP at all. In litigation's case the reason is simply this: *prosecution R&Ds the product that litigation sells*. The two disciplines are mutually exclusive in both technical severity and scope, making their fundamental tools and processes virtually incompatible.

Furthermore, litigation outsourcing firms and e-discovery software companies bringing in prosecution paralegal ringers for good measure is of little merit. It must still be proven that an explicit and focused prosecution infrastructure is in place or they effectively can't do the job. Fortunately our industry's astute law practitioners already know this.

Unfortunately, there also exists concern that the aspiring 600lb. gorilla may try hiding deficiencies behind lowballing. Typically supported by substantial cash reserves, this is a common front-end sales tactic intended to undercut the competition and capture market share. While not necessarily illegal it does present a "you get what you pay for" conundrum for practices on a tight budget.

DUE DILIGENCE

Commit this word to memory: consequence. Prospectors will eventually execute an exit strategy to focus on their next venture. It's what they do. The real challenge can be in smoking them out. Thus, the here and now of our industry's increased visibility warrants practices both large and small to protect themselves by performing *extreme* due diligence on their abeyant paralegal services partners.

Enough emphasis cannot be placed on the importance of deconstructing hype to obtain pertinent facts. This is accentuated during your interview with the paralegal and/or their firm. Here are two hypothetical inquiries you can pose up front that should help your dispensing with disingenuous become an efficient and intuitive exercise:

- 1) If cutbacks forced your firm to focus on only one thing, what would that one thing be and why?
- 2) Were you faced with this decision, how would our working relationship be affected?

If their answers are not what you wanted to hear, then precious billable time has been rescued by ending the dialogue early. However if their answers do satisfy your requirements, then the rest of the interview can concentrate on filling in the usual blanks:

- ascertaining their IP prosecution knowledge level
- determining how reliable and compatible their tools and support structures are
- divining how well they would perform and communicate under duress
- gauging their commitment to ethics and confidentiality
- enumerating profitability metrics, and finally
- getting a visceral sense for whether or not the attorney/paralegal bond can be established.

Whoever cannonballs into the [Intellectual Property prosecution outsourcing](#) pool will hopefully make *doing everything right* their top priority. The disastrous prospect of libelous consequences befalling their attorney clients becomes very real if they don't. In the absence of trust and track record, one is left to assume that ambitious entrants will take our craft seriously.

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