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## The Current State of IP During the Pandemic: A Q&A With Patterson + Sheridan's Bruce Patterson

**Bruce Patterson, a partner at Patterson + Sheridan, spoke with Texas Lawyer about the state of intellectual property law during the COVID-19 pandemic, and what we can expect once the virus is vanquished.**

**BY KENNETH ARTZ**

Bruce Patterson, a partner at **Patterson + Sheridan** in the firm's Houston office, spoke recently with Texas Lawyer about the state of intellectual property law during the COVID-19 pandemic, and what we can expect once the virus is vanquished.

### **What's happening in your practice area of IP law?**

**Bruce Patterson:** For the most part, we have been very pleased to see that our clients are still protecting their new IP at the same rate as before, and that includes filing patent and trademark applications. Of course, anything energy-related has slowed or stopped because of the dramatic downturn in the oil and gas industry, but our clients in telecommunications, semiconductors, all forms of advanced technology, are moving steadily forward.

Some clients who manufacture consumer products have maneuvered nimbly to develop new product lines to address the pandemic crisis. One tool manufacturer is now producing

hand sanitizer. A candle company is adding a line of antiseptic-infused products. Our bike company client is telling us that bikes are "the new toilet paper": they can barely keep essential parts in stock. Our firm has even filed two patent applications for a new program that will use artificial intelligence and DNA to analyze the susceptibility of different populations to COVID-19.

Clients whose business is based on sophisticated technology cannot stop developing and protecting new products and methods. They fully understand that at some point the pandemic will ebb. While they may be temporarily locked out of their labs, they don't intend to be caught flatfooted while competitors are continuing to protect their rights with patent applications.

We are keeping a skeleton crew in the office, widely spaced, while most employees are working from home and only come to the office occasionally. We were well-prepared, partly as a result of a crack IT team and



*Bruce Patterson is a partner at Patterson + Sheridan.*

our experiences with past storm and flood crises, to move smoothly to a home-based operation with very few glitches.

I am also pleased to say that, while I understand that many firms are being forced to cancel plans for summer associates, we are going to be onboarding our summer associates as usual. Some of our best associates over the years have come from our summer associate program so we are eager to keep that program going. We are providing our summer associates

with laptops linked to our systems and anything else they may need to work effectively at a distance.

We are even going forward with our usual crop of engineering summer interns. We started this program a few years ago in order to introduce third-year engineering students to intellectual property law and legal technology. Some of these students will eventually go to law school; others will go into careers in engineering and may hire our firm someday to help them with their intellectual property needs.

What about IP litigation? New IP lawsuits continue to be filed but, for the present, live court hearings, live depositions and jury trials are not available. Federal judges are responding in different ways. The U.S. District Court for the Western District of Texas has postponed all trials until at least July, while the U.S. District Court for the Eastern District of Texas will probably resume trials in June. Some jurisdictions are already testing the waters with Zoom bench trials. We can expect that litigation will most likely be slower and more expensive as the country begins to recover from the pandemic.

We could also expect an increase in some kinds of IP-related litigation post-pandemic. Job loss and disruption often results in trade-secrets lawsuits when companies fear their IP is walking out the door with departing employees. It's also possible that some companies—not our clients, of course—moved so quickly to produce new products that they didn't do enough preparatory IP due diligence and may be vulnerable to patent infringement or trademark litigation.

**Is the USPTO responding at its usual rate or do you think the review of these applications**

**(and other procedures) is taking more time under current circumstances?**

In general, the U.S. Patent and Trademark Office (USPTO) is functioning as usual. About 90% of the PTO workforce teleworks at least one day a week under normal circumstances, so switching to full-time remote work was not a problem for them. Day-to-day interactions with patent examiners have not been impacted. The pace of patent examination has proceeded at the usual rate.

The Patent Trial and Appeal Board is proceeding normally with appeals, inter partes reviews, post-grant reviews, etc., by conducting all processes remotely. Since March 13, all patent and trademark examiner interviews, hearings, trials, appeals and any procedure formerly held in person are being conducted by video or telephone.

Special efforts are being made to help those attempting to file applications in the midst of a pandemic. The PTO has provided that if it is necessary to reinstate a patent or trademark application that appeared to be abandoned because of the pandemic, the customary petition fee for reinstatement will be waived. The prioritized examination fee for small and micro entity applicants filing patents relating to COVID-19 technologies is also being waived. Prioritized examination will allow these applications to be examined and potentially completed within six months to a year.

The PTO has even launched a new IP marketplace platform, Patents 4 Partnerships, which offers the public a user-friendly, searchable repository of patents and published patent applications related to the COVID-19 pandemic that are available for licensing.

**What should IP attorneys be doing in response to the changes that have occurred since December 2019?**

This is a good time for firms to take a hard look at their client list and study which businesses are likely to slow down and which to grow and how long businesses might take to recover, post-pandemic. Firms may need to shift business development efforts to areas that are recovering more quickly or have not been hurt at all by the crisis. This crisis has demonstrated once more how important it is for an IP practice to have a diversified client base.

**What questions should clients or potential clients be asking due to changes in their business, the courts and the process of filing patents?**

A client's first question should be, can my lawyers continue to conduct business on my behalf as effectively as they usually do? Are they prepared to deal with the new reality of working remotely and responding to my issues virtually? We, and other firms, need to demonstrate that we are as skillful in continuing to serve their needs as they are in initiating new product lines! We also need to reassure them that their patent and trademark applications are proceeding despite the crisis.

**Bruce Patterson**, a partner at *Patterson + Sheridan*, brings a well-rounded perspective to counseling clients, built through decades of work tackling numerous IP challenges, including utility and design patents, trademarks, copyrights, licensing, and more. Patterson serves as head of the firm's trademark section and has deep expertise in consumer products, hand tools and oil-field services.