

How Legal Profession Can Help LGBTQ Patent Attys Thrive

By **Jeremy Saks** (June 10, 2021, 4:30 PM EDT)

Members of the lesbian, gay, bisexual, transgender and queer community have made an impressive array of contributions to the science, technology, engineering and mathematics, or STEM, fields.

Perhaps the best-known LGBTQ mathematician is Alan Turing, whose work was instrumental in securing the Allied victory in World War II and became the basis for modern artificial intelligence.

Lynn Conway, a patent holder and computer science pioneer, invented methods that greatly simplified the design and fabrication of microchips that are still being used in production today. Conway was fired by her employer after announcing her intention to undertake a gender transition in 1968.[1]

Carolyn Bertozzi, another prolific patentee who is openly gay, was instrumental in the development of bioorthogonal chemistry, founding numerous startups in addition to her career as a professor at Stanford University.

LGBTQ attorneys have also made significant contributions to patent law and policy. In 1993, then-President Bill Clinton nominated Bruce Lehman as assistant secretary of the U.S. Department of Commerce and commissioner of the U.S. Patent and Trademark Office. Lehman became the first openly gay man confirmed by the U.S. Senate.

U.S. Circuit Judge Todd Hughes, nominated by then-President Barack Obama in 2013 to serve on the U.S. Court of Appeals for the Federal Circuit, is the first openly gay judge on any federal circuit-level court. At the Federal Circuit, Judge Hughes has an immense impact on the development and interpretation of U.S. patent law.

Despite these successes, little is known about the overall state of LGBTQ representation in STEM and patent law.

The lack of representation of women and people of color in these fields is well documented and the target of extensive remediation efforts. LGBTQ participation in the same fields, however, is not well known. The National Science Foundation diligently tracks the participation rates of women, racial and ethnic minorities, and persons with disabilities in science and engineering, but it does not routinely



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collect statistics on LGBTQ participation.[2]

Thus, the question arises: Why are there so few LGBTQ patent attorneys, and what can the legal profession do to increase LGBTQ representation?

Barriers to the Patent Bar

Data shows that the rate of LGBTQ representation in law overall is lower than that of the general population. The most recent Gallup estimate of the percentage of the population who identifies as LGBT is 5.6%.[3]

However, the National Association for Law Placement found that only 2.99% of respondents to the 2019 NALP Directory of Legal Employers identified as LGBT and that only 2.07% at the partnership level at national law firms identified as such.[4]

The representation gap for LGBTQ patent attorneys is likely even greater because patent law depends upon STEM-educated attorneys. Firms pull most of their patent attorneys from STEM fields, which already suffer from a lack of gender, racial and sexual orientation diversity.

A 2018 study by a researcher at Montana State University found that undergraduate students who identify as a sexual minority — lesbian, gay, bisexual or queer — are 7% less likely to remain in a STEM academic major after four years when compared with their heterosexual peers.[5]

A 2020 study by researchers at Vanderbilt University and the University of Exeter found that men who are in same-sex relationships are 12% less likely to have completed a degree in STEM than men in opposite-sex relationships.[6] While women in same-sex relationships are roughly equally likely as their heterosexual peers to have completed a degree in STEM, women overall are still less likely to pursue degrees in STEM than men, regardless of sexual orientation.

While comprehensive data on LGBTQ representation in patent law is scarce, it is likely that lower levels of LGBTQ representation in STEM education directly correlate to a lack of LGBTQ patent attorneys.

LGBTQ patent attorneys are also subject to the same challenges as other LGBTQ attorneys. A particularly fraught consideration for LGBTQ attorneys is how open to be in their professional lives about sexual orientation. In a profession in which success depends a great deal upon relationships with colleagues and clients, being out at work can potentially have career repercussions. For example, attorneys at firms with less inclusive cultures may encounter disapproval and alienation from their colleagues if they are too open about their personal lives.

On the other hand, revealing too little can also have negative effects. Moreover, closeted attorneys cannot engage as effectively in the kind of socialization and networking that leads to career advancement in the legal field and may come to be perceived as impersonal by colleagues. Because LGBTQ status is self-disclosed and not easily detectable, LGBTQ attorneys often become invisible within their organizations, further reinforcing the assumption that LGBTQ attorneys are not the norm.

LGBTQ Inclusion: Good for Innovation and Business

There is evidence that LGBTQ inclusion is beneficial to organizations in STEM and adjacent fields — such as intellectual property law — and that inclusiveness may even influence patenting activities.

For example, a 2016 study published in *Management Science* collected data from thousands of organizations that filed patents between 1976 and 2008.[7] The study found that organizations operating in states with employment nondiscrimination acts banning discrimination based on sexual orientation and gender identity experienced an 8% increase in patents granted, and an 11% increase in the number of patent citations.

These results began to materialize within two years after adoption of employment nondiscrimination acts, and the results were most pronounced in organizations that did not previously implement nondiscrimination policies, organizations in states with large LGBT populations, and organizations in human capital-intensive industries, which are defined as firms with high proportions of knowledge workers. The study further found that once a state adopted an employment nondiscrimination act, a significant number of inventors relocated to that state with protections within three years.

All of this is to say that law firms specializing in patent law can make an effort to capture the increase in patenting activity fostered by employment discrimination protections by aligning their internal policies and corporate cultures with those of their potential clients. Inclusiveness spurs a positive work environment and increased innovation, attracting the best and brightest, and the proof is in the data.

Moreover, corporate counsel seeking to hire law firms increasingly prefer that their outside firms staff matters with diverse teams and evaluate a firm's diversity initiatives as part of hiring decisions. They want to know how many diverse attorneys are in the firm's leadership, the share of hours billed by diverse attorneys, how the firm recruits diverse attorneys, and the number of diverse attorneys who have left the firm.

Firms that fail to implement diversity and inclusion initiatives, or that fall short of the numbers their clients demand, risk losing business and jeopardizing institutional relationships. The bottom line is, diversity and inclusion efforts benefit everyone and are good for business.

How Law Firms Can Support LGBTQ Attorneys

Cultures of openness, acceptance and inclusivity for LGBTQ attorneys benefit not only the attorneys but their firms and clients as well.

A 2019 survey by the U.S. Chamber of Commerce reported that LGBT-inclusive policies have a positive impact on a company's ability to attract and retain top-tier talent, increase employee engagement, and improve a company's financial standing.[8] One study highlighted in the survey demonstrated that a company's stock performance increased by an average of 4.5 percentage points compared to their industry sector after adopting such policies.[9]

In fact, as of 2021, 96% of Fortune 500 companies include sexual orientation in their nondiscrimination policies, and 94% include gender identity.[10]

Law firms specifically have made great strides by instituting LGBTQ-inclusive policies regarding nondiscrimination, healthcare, childcare and partner benefits, and there is evidence that the percentage of attorneys who self-report as LGBTQ is increasing.

The 2019 Vault/MCCA Law Firm Diversity Survey of nearly 250 firms found that, generally, younger attorneys in firm environments tend to identify as LGBTQ at higher rates than older attorneys.[11]

Reflecting this finding, the cohort with the highest rate of LGBTQ self-identification were 2L summer associates who, with an LGBTQ self-identification rate of 5.61%, slightly exceeded the national average. The percentages steadily decrease as seniority grows, from associates to counsel and nonequity partners, falling to under 2% for equity partners.

Figure 1: Percentage of Attorneys Identifying as LGBTQ

2L Summer Associates	5.61%
Associates	4.01%
Of Counsel	2.16%
Nonequity Partners	2.02%
Equity Partners	1.9%

Source: 2019 Vault/MCCA Law Firm Diversity Survey

With the next generation of attorneys increasingly identifying as LGBTQ, firms will have to go beyond instituting LGBTQ-inclusive policies and begin transitioning to creating a culture in which LGBTQ attorneys can not only survive but thrive. This can be achieved through various efforts.

Recruitment

According to recent interviews by Managing IP with LGBTQ law students interested in pursuing a career in intellectual property law, a firm's reputation for being LGBTQ-friendly is one of the top considerations when evaluating employers.[12] Establishing a reputation takes time and requires sustained effort but incorporating LGBTQ messaging and inclusiveness into the recruitment process is a good first step.

Firms can do this by, for example, featuring LGBTQ equality measures prominently on their websites, explaining diversity infrastructure in place and how it benefits LGBTQ attorneys, and highlighting the work of LGBTQ attorneys at the firm. Law students want to see that LGBTQ attorneys are getting substantive work experiences.

Visibility

LGBTQ attorneys can better succeed when they see people like themselves in positions of power. Firms should take LGBTQ diversity into account when considering promotions and partnership offers for qualified candidates.

To counter the problem of invisibility LGBTQ attorneys often feel at work, firms should regularly collect LGBTQ demographic information on a voluntary basis for all employees. This will allow organizations to track LGBTQ representation and identify opportunities for improvement.

Mentorship

Mentor-mentee relationships are essential for success in the legal profession and allow younger attorneys to gain valuable insights from the experiences of their senior colleagues. It is particularly important for LGBTQ lawyers to find mentors who can offer not only career advice, but also guidance for navigating the unique challenges faced in the workplace.

Firms can help foster these relationships by implementing mentorship programs specifically designed for LGBTQ attorneys and encouraging senior LGBTQ attorneys to identify themselves as sources of support.

Community

LGBTQ attorneys frequently feel isolated at work as a result of a lack of connection with their similarly situated peers. A popular method of building connections and community between LGBTQ attorneys is to establish specialized affinity groups that foster a sense of belonging and inclusion. These groups allow LGBTQ attorneys to gather in a safe setting to support each other, discuss their experiences in life and work, and facilitate professional development.

While not specific to patent law, these initiatives should be considered by all firms to promote an open and inclusive work environment. The underrepresentation of LGBTQ attorneys in patent law, however, makes these initiatives all the more imperative in this field.

While the patent law profession and STEM fields have made progress on LGBTQ acceptance and inclusion, there is still work to be done to reach full equality. Until then, firms must take affirmative steps to help their LGBTQ attorneys succeed in often uncomfortable settings. Doing so will create a healthier and more equitable environment for attorneys at firms, for their clients, and for the broader STEM community.

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[1] IBM apologized to Ms. Conway for their treatment of her in 2020. See: 52 Years Later, IBM Apologizes for Firing Transgender Woman - The New York Times. <https://www.nytimes.com/2020/11/21/business/lynn-conway-ibm-transgender.html>.

[2] Women, Minorities, and Persons with Disabilities in Science and Engineering: 2021 | NSF - National Science Foundation. <https://ncses.nsf.gov/pubs/nsf21321/>.

[3] LGBT Identification Rises to 5.6% in Latest U.S. Estimate (gallup.com). <https://news.gallup.com/poll/329708/lgbt-identification-rises-latest-estimate.aspx>.

[4] NALP Research: LGBT Representation Among Lawyers in 2019. <https://www.nalp.org/0120research>.

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[7] <https://pubsonline.informs.org/doi/10.1287/mnsc.2016.2457>.

[8] <https://www.uschamberfoundation.org/sites/default/files/Chamber-Inclusion-pressquality-00m.pdf>.

[9] Return on Equality, the Real ROE The Shareholder Case for LGBT Workplace Equality. <http://docplayer.net/29556796-Return-on-equality-the-real-roe-the-shareholder-case-for-lgbt-workplace-equality.html>.

[10] Corporate Equality Index 2021 - HRC Digital Reports. https://reports.hrc.org/corporate-equality-index-2021?_ga=2.267636364.304386973.1622645642-2037477108.1622645642.

[11] 2019 Vault/MCCA Law Firm Diversity Survey. <https://www.mcca.com/resources/reports/2019-vault-mcca-law-firm-diversity-survey/>.

[12] LGBTQ students reveal diversity policies they want from firms | Managing Intellectual Property. <https://www.managingip.com/article/b1mb314p7pb48t/lgbtq-students-reveal-diversity-policies-they-want-from-firms>.