Shining the Spotlight On Gender Inequality in Patent Litigation

by April Abele Isaacson, Kathleen R. Geyer

In the latest Sidebars Podcast episode, we welcome Temple University professors Rachel Rebouché and Paul Gugliuzza, authors of a forthcoming paper in the North Carolina Law Review titled, “Gender Inequality in Patent Litigation”—a data-rich paper that touches on many of the central themes in Season 2 of the Sidebars podcast.

Rachel is a leading scholar in feminist legal theory, reproductive health law, and family law. She is the Interim Dean of Temple University Beasley School of Law, the James E. Beasley Professor of Law, and a Faculty Fellow at Temple’s Center for Public Health Law Research. Rachel is an author of Governance Feminism: An Introduction and an editor of Governance Feminism: Notes from the Field, a co-author of the sixth edition of the casebook, Family Law, and the editor of Feminist Judgments: Family Law Opinions Rewritten. Rachel received a J D from Harvard law school, an LLM from Queen’s University Belfast, and a BA from Trinity University.

Paul is an award-winning scholar, a sought-after author, and a teacher who specializes in civil procedure, federal courts, and intellectual property law with a particular focus on patent litigation. He has testified before both the U.S. Senate and the U.S. House of Representatives on topics of patent law, and his scholarship has been cited in over a dozen judicial opinions across all levels of the state and federal courts. A summa cum laude graduate from Tulane University School of Law, Paul clerked for Judge Ronald M. Gould of the U.S. Court of Appeals for the Ninth Circuit and practiced in the Issues and Appeals group at Jones Day prior to his academic career.

In this episode, Rachel and Paul discuss the shocking gender disparity that continues to persist in private-practice patent litigation and the much more equitable distribution of legal work in government agencies. They highlight the mechanisms that militate against greater equity in law firms, which are absent in governmental agencies.

Rachel’s and Paul’s paper shows unequivocally that gender disparity is neither a generational issue that will be resolved by the passage of time nor is it a pipeline issue due to insufficient female STEM lawyers. Through their research, we gain a greater understanding of how law firms must change their economic incentives and entrenched, unconscious cultures if they are to foster true gender equity.

Highlights include:
• Studying the experience of women patent litigators from two different perspectives (4:37)
• Data-driven insight about gender disparity in the private sector vs. public sector (7:50)
• Why the government seems to do better on equality (9:36)
• Do client-created carrots and sticks actually nudge firms to improve gender equality? (17:26)
• Pulling the ladder after you climb it (24:48)
• Highlight, add women & stir (28:59)
• Unconsciously perpetuating exclusionary practices (31:37)
• The myth of not having enough women in the patent litigation pipeline (38:06)
• The arc of history is not inevitably leading to greater equity (43:00)
• Objective metrics as a means to track progress and propel further improvements (50:01)

Further Reading:
• Overqualified and Underrepresented: Gender Inequality in Pharmaceutical Patent Law
• Extraordinary Writ or Ordinary Remedy? Mandamus at the Federal Circuit
• @TempleLaw
• @RRebouche
• @prgugliuzza