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Embracing change

Forty years ago, man set foot on the moon. We live in an age when developments in technology have dramatically impacted our lives. Even in a field as specialized as my area, trademark law, the changes have been extraordinary.

I started my career in the 1980s at a small patent, trademark and copyright boutique firm (before the profession rebranded itself as “intellectual property law”). I later joined a large general practice firm and eventually returned to a boutique firm, where I currently practice. All of the firms where I have worked, regardless of size, have undergone fundamental changes to firm structure and work-life balance as a result of new technologies.

Early in my career, even if a firm was amenable to attorneys working remotely, the technology to do that wasn’t readily available. Now, with the advent of the Internet, VoIP, videoconferencing and other technology, the virtual office is a reality and, often, the norm. While these inventions have improved the quality of one’s working life, they have created a different dynamic for lawyers.

One of the best aspects of “growing up” in a small specialty firm was the training and mentoring of new attorneys. In my experience, doors were usually open and partners avidly mentored new attorneys. You learned a lot just by being there. Everyone spent a lot of time in the office, so collegiality was important. The notion of telecommuting was practically unfathomable in the law firm world of the ’80s (and even the ’90s), from both a technology and a career standpoint.

Now, the challenge is getting to know your colleagues when so many work remotely. Luckily, the tools exist and new technology developments keep pushing the outer boundaries of the possible.

One area that requires adjustment in the era of the virtual office is mentoring new attorneys. Human contact — the human factor — remains critical. Chance conversations in hallways, or just being there at the right time, often can lead to great opportunities. With so much reliance on electronic communications, it’s easy to become too focused on the boundaries of a particular assignment, and miss out on the opportunity to absorb the habits and practices that make well-rounded lawyers. On the other hand, with electronic accessibility of files and good communications technology, it also becomes easier to work with colleagues in other locations and to gain a variety of new experiences that otherwise might not arise. The range of information now available electronically is simply unparalleled, and it allows for investigation and analysis that could scarcely have been imagined a decade ago.

I’ve been lucky not only to have practiced at a time when technology dramatically changed the field, but when the substantive law underwent significant changes. In 1989, sweeping amendments were made to U.S. trademark law (the Lanham Act). Suddenly, senior attorneys and associates were all in the same boat: Everyone had to learn the new procedures and rules, and “unlearn” some principles that had been the bedrock of client counseling. It presented a great opportunity for mentoring and collegiality, as we all developed new “best practices” for our clients.

At the same time new trademark law precedents were evolving to accommodate the new law, technology and the Internet were also having a profound impact on our field. When I started out, word processors were just becoming the norm, and they used enormous floppy disks to store data. The Internet had yet to become the global communications high-

way it is today. However, once the Internet became mainstream, it had just as profound an effect on the practice of trademark law as the change in substantive law had in 1989.

Infringement of trademark rights on the Internet has become a major source of headaches for trademark owners and a key area for enforcement efforts. Cyberspace is reminiscent of the Wild West — the rule of law is often several steps behind the actions of enterprising infringers.

The U.S. Patent and Trademark Office (USPTO) also changed the way it operates as a result of new technologies and the Internet. The USPTO started allowing electronic trademark filings almost a decade ago, and now almost all business there is done electronically. A wealth of information is publicly accessible with only a few keystrokes. USPTO attorneys now routinely work at home and rely on the Internet instead of remaining cloistered within the confines of the USPTO. This too presents challenges. In trademark law, the human element — being able to visualize and discuss whether two trademarks conflict — is particularly important in developing a new attorney’s skills, so mentoring techniques must be adapted to keep pace with technology.

Now, all aspects of trademark law, counseling and clearance relating to the selection of marks, registration of marks, infringement, and enforcement actions are affected by the Internet. As soon as the law evolves to resolve one problem, technology (and infringers) create a new one, so there’s rarely a dull moment. It’s fun to practice law in a field that embraces new technologies. However, fast and new is not always better — finding a way to keep the human element an integral part of the practice of law is more important than ever. ■

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