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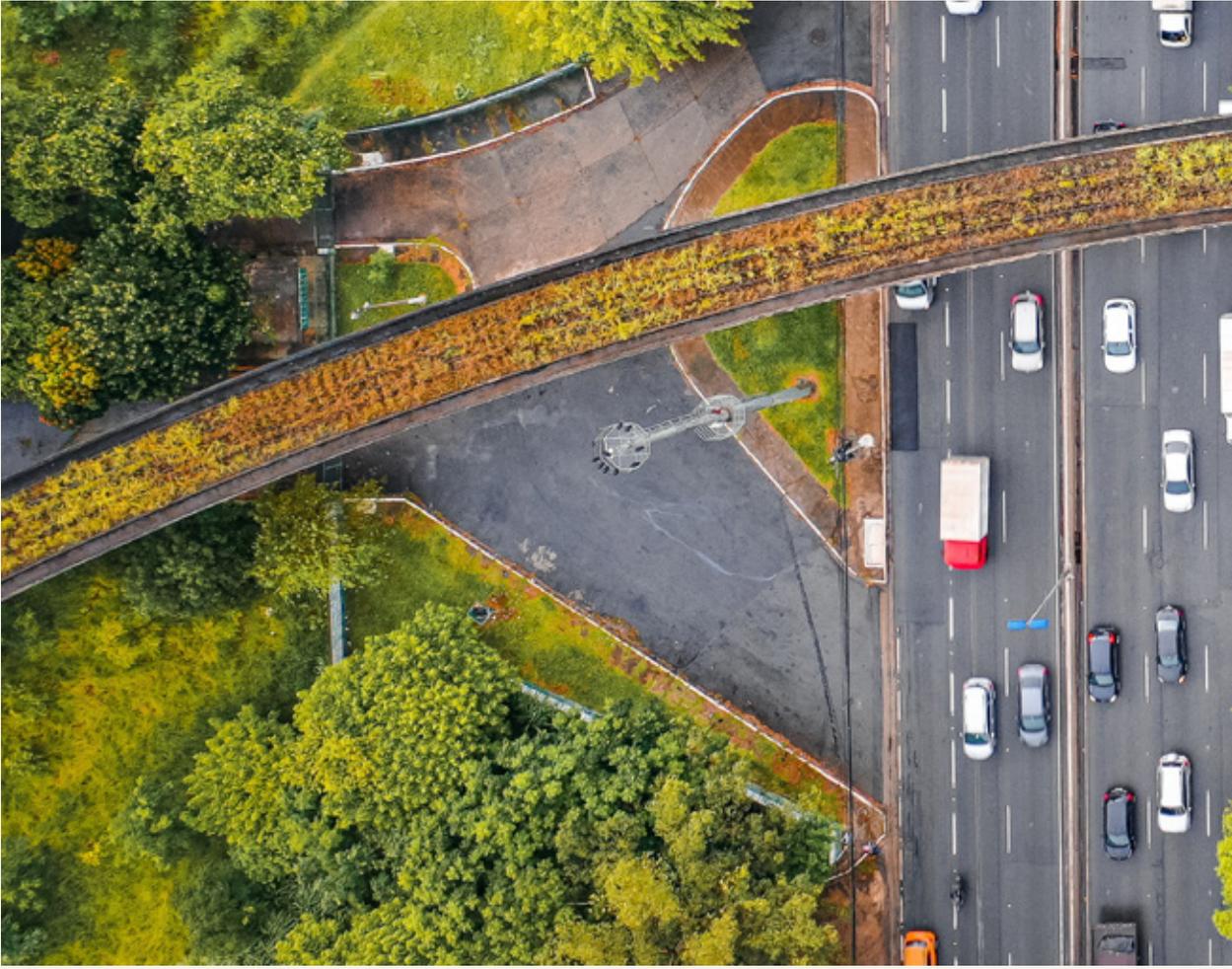
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EXPERT ROUNDTABLE:
GENDER DIVERSITY IN IP

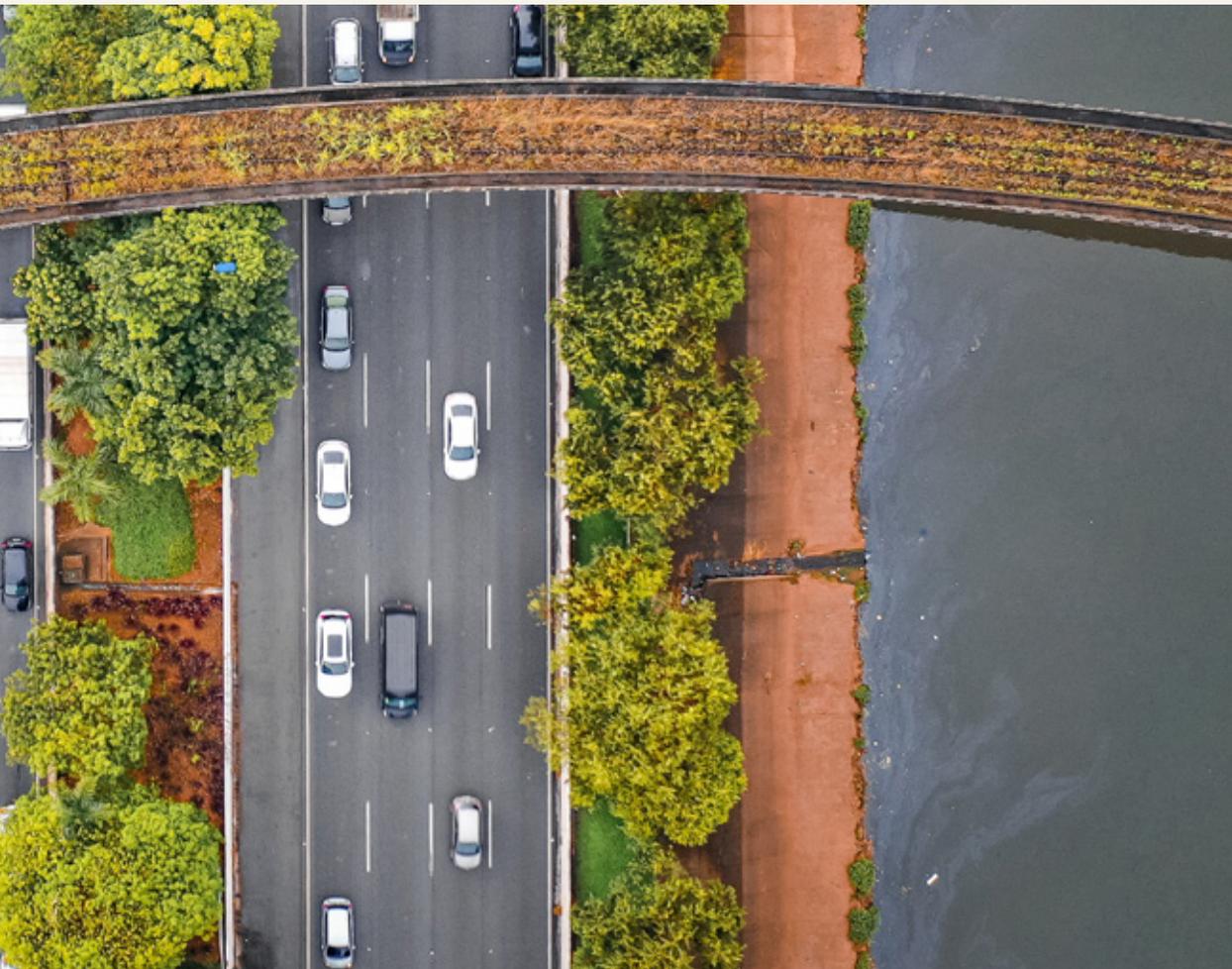
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ROUNDTABLE

Expert insights: Diversity in intellectual property



In September 2021, Burford Managing Director Katharine Wolanyk directed questions concerning diversity in intellectual property to a respected group of IP and patent professionals. Their perspectives are excerpted and gathered below.

Q.

There's a significant gender gap in the business of law—but gender disparity is particularly stark in patent law. Why?**Lisa Ferri:**

While the legal field is more conscious today of the institutional obstacles experienced generally by women lawyers, patent law has additional barriers to entry that exacerbate the gender gap that already exists in the practice of law. To practice before the US Patent & Trademark Office (USPTO), individuals must pass the patent bar exam, but to sit for the exam you must have a technical background, such as a degree in engineering, chemistry, biology and the like. These requirements drastically narrow the pool of candidates, as there are fewer women graduating from the science, technology, engineering, and math (STEM) fields. The numbers bear this out and can be discouraging—the USPTO has reported that women constitute roughly 18% of the patent bar and 10% of the attorneys arguing before the Patent Trials and Appeals Board (PTAB).

This gender disparity is not limited to patent practice before the USPTO but

is especially evident in law firm patent litigation practices. Firms, for the most part, hire only patent bar admitted lawyers into their patent practices. This barrier makes it more difficult to reach gender parity in law firm patent departments—which already suffer from the same retention issues experienced across the profession.

Megan Carpenter:

Gender disparity in patent law is particularly stark because the problem is squared—it's a problem both of gender disparity in the legal services profession, and of gender disparity in STEM. Women represent 50% of law school students, but only about 20% of law firm equity partners. Women are much more likely than their male counterparts to report never serving as first chair in a litigation. One out of five women in intellectual property law report having no real book of business, which is an important metric in the race for partnership. This gender gap is compounded by the fact that women earn only 36% of all STEM

“Gender disparity in patent law is particularly stark because the problem is squared—it's a problem both of gender disparity in the legal services profession, and of gender disparity in STEM.”

degrees. Given the gender gap in legal services and in STEM, it is no surprise that only 18% of all patent lawyers are women.

Jill Bindler:

There is no doubt that the gender gap in patent law is significant. I think the gender gap has been more prominent in patent law because patent lawyers have historically had an engineering or science background. Many of the patent lawyers I have worked with over the years were working in STEM fields before law school. There is certainly a direct correlation between the dearth of women in the STEM pipeline and the number of female patent attorneys. The leadership within the companies who hire patent lawyers tend towards hiring lawyers with technical backgrounds, under the assumption they can more easily understand the technology in the suit and convey nuances to a judge or jury.

Eileen McDermott:

Throughout my career as an IP trade journalist and having worked in-house at both patent and trademark industry organizations, I have always noticed and commented on the stark difference in numbers of women trademark and copyright attorneys compared with patent. Several years ago, I interviewed Elizabeth English¹ of the Archer School for Girls in Brentwood, California, about this persistent and multi-layered problem. She commented that, while more and more colleges and universities are focused on ensuring equal numbers of students in STEM programs, the percentages of women

who actually graduate are much smaller. One problem is that there are very few women professors, and representation does matter. But she also argued that “we deliberately teach courses that are designed to ‘weed people out,’ and girls are much harder on themselves than boys. I think we’re teaching it backwards.” That’s why the Archer School model is “inquiry-based” and research-focused. When girls become immersed in science in the hands-on way that girls are less likely than boys to have been encouraged to partake in at home, they become more engaged. Perhaps getting more girls involved in STEM—and, by extension, patent law—requires doing away altogether with the patriarchal approach to education, which obviously was crafted by and tailored to a traditionally masculine ideal of achievement, to get more girls—and probably more boys, as well—involved from the start. This is unlikely to happen in the near term, but there has been a movement on the consumer side to target STEM toys and books to girls, and to encourage girls in science early, and more and more primary and middle schools have been incorporating innovative STEM programs into their curriculums. This has already resulted in increased numbers of girls and women in STEM across the board, however small the percentages remain. But institutions of higher education, companies and law firms now need to do more to encourage women to stay on and thrive through mentorship and ensure there is appropriate representation to make new hires feel welcome and inspired in their work environments.

Q.

Why is it important to encourage more diversity among inventors and patent lawyers?

Megan Carpenter:

As leaders in IP and tech, we can have an impact and we have a responsibility to do so. There is a strong business case for diversity and inclusion. It is well understood that diverse teams are better problem-solvers than homogeneous ones. McKinsey studies have noted a strong relationship between financial outperformance and diversity on executive teams. Also, representation matters, not just among inventors and patent lawyers, but investors as well. Spanx founder Sara Blakely shopped her idea around to male patent attorneys and potential investors who didn't understand her invention. Women and minorities have historically faced social and legal

impediments to patenting. Some of the most important factors when it comes to women's engagement in this space include having role models, being part of an innovation ecosystem, and creating and maintaining networks throughout the life cycle of an invention.

Jill Bindler:

Diversity is critical to excellence. The world we live and work in is diverse. The decision makers within law firms, companies and the government are becoming more diverse each year. When we consider that most scientific research and invention is team-driven, it is critical that different viewpoints and perspectives are acknowledged and valued.



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