



9-6-2016

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Cardozo Arts & Entertainment Law Journal

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Recommended Citation

Minkoff, Elana, "Where have all the IP Firms gone?" (2016). *AEJ Blog*. 120.
<https://larc.cardozo.yu.edu/aelj-blog/120>

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Where have all the IP Firms gone?

BY [ELANA MINKOFF](#) / ON SEPTEMBER 6, 2016

In following with the recent trend, earlier this week yet another one of the previously prominent Intellectual Property Boutiques, Kenyon & Kenyon moved its practice and joined Andrews Kurth, a full-service Texas based firm.^[i] As a current law student hoping to practice IP law after graduation this trend is something I have been monitoring closely.

From my first day in law school, I could confidently answer the question of what type of law I wanted to practice after graduation: patent law. However, *where* I wanted to practice was a much tougher question. Now, when I say *where* I do not mean the question of whether I want to be in New York or California. *Where* to me means whether I want to be at a full-service law firm or in an IP boutique – and this was something I was very unsure of.

When I initially thought about where I wanted to practice law after graduation an IP boutique seemed ideal. I knew if I went to a boutique I would work alongside like-minded people and be guaranteed the opportunity to work in IP. These two things sounded great, especially since I was concerned that at a general practice firm I could possibly end up in a different department due to firm needs. Yet, the more I spoke to people in the field the more I began to rethink this decision.

This past summer while going through the OCI process, I learned a lot about the changing landscape of the IP market. When I initially applied to firms I still did not know what I was looking for so I applied to both boutique and general practice firms. However, once I began the actual interview process I truly began to understand the difference between these two types of firms. Since I know (or at least think I know) that I want to work in patent litigation, all my interviews were with attorneys in that practice group when I met with general practice firms. During the interviews one question I made sure to ask each interviewer was “why did you choose to come here?” Much to my surprise, almost every partner to whom I asked this question started her answer the same way. “Well I started at a boutique, but then...” I quickly began to realize that less than twenty years ago if someone wanted to do IP work their options were almost exclusively IP boutiques.

However, more recently, as IP has become a “hot” area of the law, the full service firms have wanted to get in on this lucrative business and have started IP departments of their own. Typically, the way the big firms develop this practice group is by swallowing up a boutique firm.^[ii] Other times, the firm will just bring on one or two key partners from a boutique firm. Although, once a few key partners leave a small boutique the firm may struggle for business and then close down even if they aren’t completely merging into a general practice firm. Almost every attorney at a general practice firm I met with described to me one of these alternatives when telling me about how they came to join their firm. These stories, along with

some of the general stories about the differences between boutiques and general practices helped inform me a lot about the future of boutique firms.

Another recurring theme I heard throughout the interview process was that clients increasingly desire to choose general practice firms over IP boutiques for their IP work now that they have this option because clients prefer a one-stop-shop for all legal needs.^[iii] This is something general practice firms can do for their clients that boutiques often cannot provide, which gives general practice firms an edge when trying to attract new clients. Given that many general practice firms now have strong and growing IP practices, and given this competitive edge that they have over the boutiques by being able to serve any and all of the client's current or future needs, clients are often leaving the boutiques and taking their business to the big firms. Therefore, this trend has led the boutiques to try and merge with general practice firms because they often do not have enough work to remain independent.

Now, looking at the market of IP firms that have been able to remain independent – the recipe for success seems to be to grow big themselves.^[iv] In order to thrive in the current market, it seems that if a firm wants to remain IP only they have to lose their “boutique” nature. These firms (such as Fish & Richardson and Finnegan) have hundreds of attorneys and truly specialize and attract top rate IP attorneys so that they are able to continue to attract clients. Yet, absent this small category of thriving IP only firms, it seems the few number of boutiques that are still around today may be gone in a few years time. As a result, it is likely that law students in my position will not even face the decision between boutique and general practice as general practice will likely be the only option to choose.

For further discussion about what this recent merger means for the remaining boutiques also see – <http://www.worldtrademarkreview.com/Blog/detail.aspx?g=63c6552a-ed60-407d-bcc2-4d86e05d2130>

It is important to note that this article is not intended to suggest that many of the very small IP firms (with typically 20 and under attorneys) will disappear from the market, or that when law students are trying to decide what to do after law school that big law firms will be their only option. The market does not currently suggest that the small IP firms will disappear entirely or general counsel positions will disappear. Rather, this article's goal and purpose is to discuss the disappearance of the previously prominent, but now shrinking number of mid-size IP firms that have been absorbed by the large general practice firms.

Elana Minkoff is a second-year law student at Benjamin N. Cardozo School of Law and a Staff Editor of the Cardozo Arts & Entertainment Journal. She is an active member of the Intellectual Property Law Society and looks forward to a career in patent litigation (at a general practice firm) after graduation.

[i] Randazzo, Sara, Intellectual Property Law Firm Kenyon to Close, The Wall Street Journal (Aug. 29, 2016 5:11 pm), <http://www.wsj.com/articles/intellectual-property-law-firm-kenyon-kenyon-to-close-1472505113>

[ii] Simpson, Jake, 3 Firms Use Mergers for Game-Changing IP Partner Growth, Law360 (Nov. 16, 2015 9:54 PM), <http://www.law360.com/articles/727484/3-firms-use-mergers-for-game-changing-ip-partner-growth>

[iii] Coe, Erin, IP Slowdown Sets Stage for More Firm Combos, Law360 (Feb. 24, 2016 1:26 PM) <http://www.law360.com/articles/762321/ip-slowdown-sets-stage-for-more-firm-combos>

[iv] Randazzo, Intellectual Property Law Firm Kenyon to Close, The Wall Street Journal (Aug. 29, 2016 5:11 pm), <http://www.wsj.com/articles/intellectual-property-law-firm-kenyon-kenyon-to-close-1472505113>