

Pointers For Women IP Attorneys Building Fed. Circ. Practices

By **Julie Goldemberg** (November 14, 2022, 6:13 PM EST)

I am writing this article from a hotel room the night before I present to a board about a high-stakes appeal in the U.S. Court of Appeals for the Federal Circuit.

Moments like this rarely offer an opportunity for self-reflection; I am usually too busy reviewing the presentation, balancing other work obligations, or trying to figure out who will put my first-grade son on the bus and drop off my 3-year-old daughter at daycare the next morning.

But as I prepare for the boardroom tomorrow, I reflect on where my practice is and what brought me to this point. I hope that my experiences can serve as an example, and a guide, for other lawyers — particularly working mothers — who want to build a Federal Circuit practice.

My story begins much like that of many members of the patent legal community: I earned a bachelor's degree in engineering — in my case, electrical.

I realized I did not enjoy working in a lab, and — with some degree of trepidation — took the LSAT.

I was fortunate enough to end up at a great law school. I spent the summers after my first two years working at two different Am Law 50 firms, and I was choosing among multiple law firm offers when, much to my surprise, U.S. Circuit Judge Sharon Prost hired me to serve as her clerk.

After my clerkship, I joined the intellectual property practice at Morgan Lewis & Bockius LLP, where I became a partner in 2020.

Ten years out of law school, I now serve as co-leader of the firm's Federal Circuit practice and education industry group, have presented five oral arguments in patent appeals to the Federal Circuit, and have drafted more than 60 appellate briefs — numbers that I hope will continue to increase.

In addition to my Federal Circuit practice I have significant trial experience, having taken seven cases to verdict. I did this while raising my children and taking two maternity leaves.

My success is statistically unusual, as evidenced by Paul R. Gugliuzza and Rachel Rebouché's recent article "Gender Inequality and Patent Litigation" in the North Carolina Law Review.[1]



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According to their research, in the past 10 years, only 12.6% of oral arguments in patent appeals at the Federal Circuit have been presented by women.

When limited to private sector attorneys, the percentage of arguments presented by women falls to just 8.9%. Of the 64 private sector lawyers who presented 10 or more arguments to the Federal Circuit, only five of those lawyers (7.8%) are women.

Although I am not one of those five women noted in the recent study, I hope the trajectory of my career will put me among them in the next few years. I offer the following five pieces of advice to those who share similar goals:

1. Choose a Firm Where You Can Excel

My decision of where to work was strategic. Coming off a Federal Circuit clerkship, I interviewed with numerous firms, many of which regularly hire Federal Circuit clerks. Morgan Lewis had a strong intellectual property practice and regularly filed high-quality Federal Circuit briefs, but I could not find a single former Federal Circuit clerk on its website.

This meant that when I joined the firm as an associate, I stood out even among the firm's experienced intellectual property attorneys. I had unique experiences and skills, which made me a natural fit for staffing on Federal Circuit appeals and district court cases.

If I had joined a firm with a large group of other Federal Circuit clerks, I doubt that the same opportunities would have been offered to me so quickly.

I also knew that Morgan Lewis had a strong commitment to supporting its female attorneys, including working mothers. I wanted to have children while I was an associate, and I knew to look for a firm that would both let me commit to my family and not slow down on the partnership track.

Finally, I liked that the firm was woman-led; Jami McKeon had just been elected as firm chair, and she is a mother of four.

2. Leverage Your Experiences and Network

Mike Abernathy, a great patent litigator and partner whom I am fortunate enough to call a colleague, praised me for leveraging my Federal Circuit clerkship more than anyone else.

I highly doubt that, but I leveraged my clerkship experience almost immediately upon arrival at the firm. Although it took several months to be staffed on my first Federal Circuit appeal, in the meantime I built my profile internally as a Federal Circuit expert by offering to assist with a Federal Circuit year in review CLE presentation.

The presentation was run out of the firm's Silicon Valley office, and after making some slides I was invited to fly across the country and present.

I later learned I was the only associate ever invited to travel to this yearly presentation, and I asked why. The answer: I was the only associate who ever saw this presentation on the firm's schedule and reached out to offer to help.

I did not just passively sit on my credentials and experiences, waiting for my colleagues to realize my value; rather I leveraged my experiences to create opportunity. Now, as a partner, I continue to leverage my experiences and my extensive Federal Circuit network to generate business for the firm.

3. Ask for It

I regularly preach — both to myself and to anyone who will listen — the mantra of Linda Babcock and Sara Laschever from their book "Women Don't Ask" and its sequel "Ask for It: How Women Can Use the Power of Negotiation to Get What They Really Want." As the titles imply, Babcock and Laschever encourage women to ask for opportunities consistently and confidently. Often the requestees will say yes or, if not, keep you in mind for the next opportunity.

When I was eligible to be nominated for partner, I asked my practice group leader to put me up. I asked for my first deposition, my first claim construction argument, and even my first — pro bono — trial. I ask for Federal Circuit oral arguments and to take the lead on cases.

I asked to assist with U.S. Supreme Court merits briefing. I ask for business from my friends and colleagues. As I mentioned before, I asked to help with a Federal Circuit presentation as a young attorney.

And I recently asked for the firm's World Series tickets — unfortunately I was reminded that sometimes when you ask for things, the answer you get is "no." Maybe next time.

As Babcock and Laschever point out, women often fail to ask for the opportunities we need to advance ourselves. Law firms value and reward ambition, particularly when coupled with outstanding substantive work. Asking for opportunities only demonstrates interest in advancing yourself and your practice, which is good for you and the firm.

4. Say Yes

That said, opportunities sometimes come unexpectedly. McKeon advises young lawyers to say yes to everything because you never know where an opportunity may lead you.

Many of my successes came from the moments in which I was forced to stretch beyond my comfort zone. Sometimes I am offered great opportunities when my work plate is already overflowing or I feel stretched too thin, and my knee-jerk reaction is to say no.

But in my experience, there is always a way to fit an exciting opportunity in. And instead of leaving me feeling burnt out, that type of work actually leaves me more energized about my career and fulfilled.

5. Find the Right Mentors to Advocate on Your Behalf

Learning to practice appellate law at the highest levels requires a mentor. In many ways, it resembles an apprenticeship: working closely together and learning from someone else's experience — and from what they learned from their mentors.

I have been fortunate enough to work with incredible lawyers and mentors, including partner William Peterson, who helped me refine my writing style, tease out sophisticated legal arguments, and take joy in well-crafted briefs and arguments.

The best mentors will not only teach you but will create opportunities for you. I have been lucky enough to work with partners who have stopped counting their own oral arguments. Rather than keeping these opportunities for themselves to bolster their own practices, my mentors have recognized the value of Federal Circuit arguments to my practice and have had enough confidence in me to convince our clients that I was the right woman for the job.

I was also fortunate to have clients who were not just willing but eager to have a less experienced, younger female attorney argue on their behalf on one of patent law's biggest stages.

Women should be present in the boardroom, the trial court, and at the lectern before the Federal Circuit to the same degree as men. I feel very lucky to file briefs and present argument regularly at the court where I served as a law clerk and to have partners and clients who entrust me with these responsibilities.

I hope very much that other women can build and are building practices as well and may benefit from my sharing of my experience.

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[1] 100 N.C. L. Rev. 1683 (2022).