

Diversity and inclusion: what success looks like in the trademark environment

Trademark experts offer critical insight into the creation, maintenance and monitoring of meaningful diversity and inclusion programmes

For both law firms and those in the corporate environment, embedding diversity and inclusion (D&I) in hiring and team-building practices is not just the right thing to do, it is critical for brand reputation, staff motivation and positive results. But what does this actually mean and how should it be approached?

In this roundtable discussion, a panel of industry thought leaders – Sydney English and Anna Naydonov of Finnegan, Henderson, Farabow, Garrett & Dunner LLP, Jorge Arciniega, Christina Martini and Jennifer Mikulina of McDermott Will & Emery, and Joana de Mattos Siqueira and Marianna Furtado de Mendonça of Montauray Pimenta, Machado & Vieira de Mello – explain how their firms encourage D&I, identify the resources available to practitioners and opine on whether client demands are effecting change in the industry.

To kick off, how would you characterise the current situation with regard to D&I in both the trademark and wider law firm communities?

Joana de Mattos Siqueira (JMS): Nowadays D&I is an integral part of the business objectives of most law firms. Significant research has shown that law is traditionally a field of work dominated by a white, male demographic. Research has also found that many large law firms have disappointing diversity records (“Masculine law firms”, McGinley, Ann C, *FIU L Rev* 8 (2012): 423). Yet other studies have demonstrated that gender, ethnic and cultural diversity continue to correlate with financial performance. So, as many reputable law firms all over the world have discovered, improving D&I is not only equitable but also a solid business rationale.

In Brazil, research undertaken by the Centre for Studies of Labour Relations and Inequalities – conducted alongside the

Legal Alliance for Racial Equity and São Paulo-based global law school FGV Direito SP – found that 19% of law firm employees are black, with 10% identifying as women and 9% as men. Looking at the senior levels, 11% of white employees within firms are partners, while the number of black partners stands at under 1%. These percentages were calculated using data collected from nine of Brazil’s leading law firms, which are all members of the Legal Alliance for Racial Equity. So what about trademark firms? Trademark law firms are unique places as we engage in extensive international contact as part of our daily work routine, so we have a favourable environment for D&I. When demonstrating to higher management the need for diversity, it is easy to remind our partners and founders that we meet clients not only in Brazil but also in the United States, Nigeria, Angola, China, Argentina, Russia, India and many other countries. Our need for diversity therefore comes in part from our own business need.

Christina Martini (CM): I think that law firms, like many organisations, are at a crossroads. Many recognise that D&I is a moral and strategic imperative, but it often requires patience and tenacity to implement and change firm culture. Today, most organisations have a department or other formal infrastructure in place to support D&I efforts. This is key to a successful D&I programme. It is also important for organisations to understand that D&I is more an art than a science. While law firms in particular

seem to be more open to incorporating new approaches to D&I, like any new initiatives, it can take time to drive action and change. While the trademark community experiences similar challenges and successes as the broader legal profession, in our experience, trademark practices are often more diverse than other practice areas. In fact, at McDermott, 80% of our trademark team self-identifies as diverse.

Sydney English (SE): I have certainly observed the law firm community making meaningful strides towards hiring, retaining and promoting diverse lawyers. I am fortunate to work with just as many female partners as I do male. Further, it is not difficult for me to find and network with other female attorneys at legal events, particularly in the trademark community. That said, the legal community at large suffers greatly from the underrepresentation of ethnic minorities from disenfranchised and systemically oppressed communities. This void is at the associate and partner levels, both male and female.

Can you briefly outline the key D&I programmes or policies in place at your firm?

SE: Finnegan is making a concerted effort towards increasing representation at the associate and partner levels. In adopting the Mansfield Rule, Finnegan has committed to affirmatively consider women, LGBTQ+ and ethnically diverse attorneys for at least 30% of its candidate pool for leadership roles, promotions and senior-level hiring. Moreover, it has carved out roles within the



More and more clients vocalise their commitment to inclusion and expect diverse teams



organisation, including a partner-in-charge of diversity (Mareesa Frederick) and a D&I specialist (Adrienne Hamilton), specifically dedicated to supporting and promoting diverse attorneys. The firm also launched its affinity group programme last year to encourage diverse attorneys who would not otherwise work together to connect. These efforts have not gone unnoticed. Finnegan was awarded the 2020 Vault Top 10 Best Law Firms For Diversity Award and *The American Lawyer* Top 20 Leading 100 US Law Firms for Overall Diversity Award, to name a few.

Jennifer Mikulina (JM): The D&I committee, led by partner Tony Upshaw, drives McDermott’s initiatives to sustain a work environment that values diversity of thought and expression from every employee — and it is working. In fact, for the 14th consecutive year, we earned a 100% rating for the Human Rights Campaign Corporate Equality Index, we are a top 10 firm for gender equality (Yale Law Women, 2019), and we are a founding signatory of the Mansfield Rule programme, achieving Mansfield Certification status since its inception, signing on to Mansfield 2.0 in 2018 and achieving Certification Plus in 2019. McDermott has also signed on to this standard in the newest iteration, Mansfield 3.0, which formalises the addition of lawyers with disabilities. We offer many D&I programmes, including our 1L Diversity Summer Fellows programme, Heritage Month Celebration Series, LGBTQ+ Workplace Awareness Programme and Women’s Business Development Coaching Initiative. We actively support and are deeply involved with a number of professional women’s and LGBTQ+ non-profits and organisations, and have formed *pro bono* partnerships with these groups. Additionally, we host many D&I events for our clients, including our biannual Racial and Ethnic Diversity Summit and Women’s Leadership Summit. Both events encourage an open and honest dialogue about the challenges faced by diverse lawyers in the legal industry and strategies for overcoming these barriers. All of the partners in McDermott’s trademark practice group are active members of at least one of the firm’s diversity committees, including in key firm-wide leadership roles.



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Marianna Furtado de Mendonça (MFM):

From its earliest days, our firm has been committed to providing employees with an open and inclusive working environment on a daily basis. We are constantly working to overcome D&I barriers by recruiting, training and developing a diverse workforce that reflects the diversity of the communities for which we work. Our workforce reflects a range of diverse and multicultural backgrounds and we are committed to treating different and diverse perspectives with respect and dignity. Our internal data reveals that our workforce identifies as 60% female and 40% male. Further, we are partnering with organisations and associations that are engaged in the development and management of projects and strategies for the inclusion and promotion of diversity in the labour market. The firm has implemented several initiatives to support and encourage our D&I efforts, including:

- offering language courses to diverse candidates;
- creating a D&I committee to refine existing diversity programmes, as well as plan and implement innovative new initiatives;
- conducting an internal employee satisfaction survey to gauge employees’ opinions and needs and to better

understand how representative we are regarding gender, ethnicity and sexual orientation – which we intend to run annually;

- working with the Camp Manguera Project – which aims to contribute to the socio-educational formation of adolescents and other young people by training them for the job market – by providing job opportunities to young apprentices, who are registered onto the project, from a community located in north Rio de Janeiro; and
- sponsoring events that promote the inclusion of women and LGBTQ+ employees in the IP industry including GLINTA (an event that welcomes members of the LGBTQ+ community during the INTA annual conference) and the Women in IP Leadership Forum.

Who should drive such policies and how should they be communicated externally?

Jorge Arciniega (JA): Within a law firm, the chair of the firm, the executive committee and the global head of D&I and/or chief D&I officer should drive these policies and programmes at a high level with the support of practice group leaders, office heads and C-suite leaders. When senior leadership is successful in driving these policies and

D&I is effectively ingrained within the organisation, each team member should feel a personal sense of responsibility for fostering a culture of inclusion and belonging. Law firm lawyers can work with their D&I, marketing and business development teams to communicate the details and spirit of D&I programmes and policies externally in any number of ways. These methods include prominently displaying them on the firm website or social media platforms, active participation in external organisations that promote D&I and driving thought leadership in venues such as conferences, speaking opportunities, articles, interviews and podcasts. Firms can include diversity topics in firm-wide professional development programmes and at firm-wide gatherings and retreats. Other methods such as participating in diversity reporting to clients (eg, through an annual report or publication distributed to clients and peers) or in organisational surveys can also be very effective.

JMS: D&I policies are currently the responsibility of our diversity committee approved by higher management and implemented by HR. We have a special website page with information about our D&I and social activities. Further, we are constantly looking to participate in events and presentations that support the D&I cause.

SE: I would say everyone. But practically, policies must come from the top down. If management is not onboard, the policies will not come into effect.

What challenges are likely to be encountered, and how can these be overcome?

SE: People can be resistant to change, particularly when it is not perceived to be in their self-interest. To overcome resistance, make an objective case supporting D&I with quantifiable benefits. Explain how D&I will affect the firm's bottom line. Also, communicate that everyone in the organisation has a role to play in achieving firm goals.

MF: Our country has to deal with its historical past, which has led to significant

exclusion. This has a direct impact on our working reality today and it is important that we do not hide these historical points, which must be taken into consideration. Considering our firm's international disposition, language requirements remain a barrier. We try to overcome this by paying for English courses for suitable candidates (when applicable). In addition, underrepresentation means that students from minority groups often believe that they may not be welcome at bigger law firms, so we are working with HR to develop a hiring process whereby candidates from minority groups know that we offer a welcoming atmosphere.

Research by the American Bar Association (ABA) has also identified a number of possible challenges facing US law firms. One is minorities finding adequate access to mentors and fighting off preconceived biases based on race. Plus, true D&I in the legal profession requires more than just checking off the requisite

boxes on a checklist or survey; it requires action from leadership down. Therefore, we are also taking these challenges into consideration, as well as getting involved with law schools, which is something that we have found to be beneficial in Brazil too.

TM: A common challenge that legal professionals encounter is tackling the longstanding practices and behaviours embedded in a firm. From the top down, an organisation must purposefully address those aspects of its culture that inhibit the progress of a D&I initiative. D&I should be part of the firm's core values, and everyone within the organisation should be held accountable towards achieving specific goals. D&I is not just about recruiting; it is about the retention and promotion of legal and business professionals as they advance in their careers and having a culture that values diverse perspectives. Including employees across the organisation in driving diversity initiatives and providing



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Participating in diversity reporting to clients or in organisational surveys can be very effective in driving policy



training on D&I issues and policies can help in this regard. Firm leadership and management across departments must also commit to and incorporate D&I policies in every aspect of the work that they do following a top-down approach.

How are these programmes or policies monitored and what does success look like in your firm?

JM: One way that we monitor our progress is through participation in the Mansfield Certification Programme. Participating law firms must meet the programme's 30% diverse candidate threshold for key lateral positions and governance and leadership at the programme. We have adopted this 30% as a guideline for the representation of women, lawyers of colour, lawyers who identify as LGBTQ+ and other diverse lawyers for lateral associate and partner hires, client teams, pitch teams, partner classes, our management and executive committees, and other key areas. Additionally, we are developing further benchmarks for measuring inclusion at the firm moving forward, and firm leadership receives frequent reports on our D&I activity.

SE: Programmes and efforts to further inclusion are embedded throughout our firm, at various levels. We are constantly measuring our progress as we consider new hires, the demographics of those participating in work or pitch opportunities, and diversity among those being considered for advancement, among other things. As I mentioned, Finnegan has a D&I specialist dedicated solely to the firm's diversity efforts. She collects and compiles this information for the firm for both internal and external purposes. While there is room for improvement, we are proud of our results. For example, Finnegan's current managing partner, Anand Sharma, is ethnically diverse and leads a management committee that is 66% diverse. Not many law firms can boast that type of diversity at the highest levels of leadership.

JMS: We understand that the first measure is to conduct diversity research, so that once



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we have numbers, we can use the metrics to create an action plan. With that in place, we will be able to establish measures and evaluate results. We have also created a diversity committee, which comprises people from different areas of the business. The committee works with HR and marketing to ensure that communication is aligned and moving in the right direction. During these hard times following the outbreak of covid-19, we have also opened up new communication channels with employees, partners and founders to understand their experiences and support them. People can send us a video stating their name, department, history at the firm and any other information that they would like to share. The video is then shared with all employees so that we can feel closer to one another. People are also encouraged to share their views and send suggestions on how we can improve communication, as well as how we can



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help during this difficult time through an HR communication channel. We have also circulated a step-by-step guide on how the firm is handling business during this time. This is proving to be a successful campaign, as we have high rates of participation. After the pandemic has passed, we intend to keep communication channels as open as possible, so people are encouraged to give their opinion on how the D&I programme is being perceived by all.

For practitioners in firms that do not yet have D&I policies in place, what are the key arguments that they should make to management to encourage their creation?

SE: First, impactful D&I policies, when implemented, lead to increased diversity in the firm. Diverse people bring diverse thoughts and analysis leading to better performing teams and increased

innovation and creativity. Second, diverse attorneys attract diverse candidates. Representation in the firm will improve the hiring and retainment of talent. Finally, more and more clients vocalise their commitment to inclusion and expect diverse teams. Firms that struggle to meet this expectation risk losing client relationships and work.

JA: Formal D&I initiatives offer legal professionals key advantages that can be presented to firm management to encourage the creation of specific programmes and policies. Studies show that diverse and inclusive workplaces increase company innovation and growth. Clients are also increasingly holding outside counsel accountable for D&I within their organisations and client teams. Practitioners can look to the strides being made by current and prospective clients, as well as studies on benefits to innovation, and present this information to firm management.

D&I also has a profound impact on hiring and employee retention. The new generation of lawyers has shown that they actively seek out firms where D&I is an important part of the firm's values. Additionally, if existing diverse senior talent does not feel like they have the opportunity to succeed and advance, they may leave to join another firm that is more focused on D&I or may exit the industry all together. Attrition and advancement data, as well as information gleaned from exit interviews regarding D&I, are important tools to share with firm management.

MFM: Although we have only just implemented the first steps in our D&I programme, we have already seen:

- an increase in confidence among all women participating in it;
- challenges to some practices that would never have been questioned if not for the existence of the D&I committee;
- higher management acknowledging that the result has been a renewed and more competitive law firm; and
- employees experiencing a better work environment.

If these reasons are not enough to convince law firms to implement a D&I

programme, then research has repeatedly shown that gender and ethnic diversity inclusion go hand in hand with improved performance. This has been evidenced by different studies at various intervals.

There has been a growing trend among clients requiring diversity quotas to be met – have you encountered such activity and how effective do you feel the strategy will be in encouraging meaningful change?

TM: Like many firms, McDermott has received requests from clients regarding the firm's diversity statistics, including the number of diverse attorneys working on client matters. These requests have caught the attention of most law firms and many practitioners see them as a positive change because they force firms to address what may be difficult facts. As a result, many law firms are re-examining their own practices and policies, as well as the D&I on their client teams and within the partnership and practice group levels to draw awareness to the importance of embedding D&I into firm culture.

Anna Naydonov (AN): As an early adopter of the Mansfield Rule, Finnegan is excited to see that more and more clients are taking a proactive approach (whether via quotas or other similar requirements) to ensure that the teams working on their projects are diverse. For example, our client Unilever (for which we handle advertising and related IP work) is a great example at the forefront of diversity initiatives. Unilever periodically inquires whether – and ensures that – a substantial portion of the billable work for ongoing projects is performed by diverse lawyers. Although for Finnegan these directives are not an issue (eg, all

members of the Finnegan Unilever team are gender and/or racially diverse), quotas and similar requirements are, in my opinion, effective to ensure that diverse lawyers get meaningful opportunities every day, as opposed to simply being token figures on a client pitch.

JMS: Trademark law firms have been faced with increasing demands by clients that every year seem to understand the importance of having a diverse firm manage their IP portfolios. It is really nothing new for big companies to send D&I-related queries to evaluate how inclusive a law firm currently is, so D&I is a consistently important part of the business.

Are there other ways that clients can or should collaborate with law firms to foster a more inclusive IP environment?

MFM: We understand that the more clients insist on seeing measurable D&I results in law firms and other suppliers, the more we can advance D&I matters internally and build a successful business case with higher management, as it is always easier to direct our business decisions focusing on clients' needs and demands. Clients could also engage in exchange programmes with Brazilian law firm interns to help improve their English language skills and acquire business experience outside Brazil for students who have been unable to leave the country for financial reasons. Clients and law firms could also offer webinars for exchanging experiences between minorities groups, which could be inexpensive and very effective for learning new strategies.

AN: I have always admired in-house counsel who ensure that female or other

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diverse lawyers, especially more junior members of the team, get meaningful opportunities – whether it relates to managing significant aspects of the client’s portfolio or substantial roles at trial. It is this type of individual mentorship that, at the end of the day, is more valuable than any speeches, talks or general advice. There are female in-house leaders in the trademark, advertising and IP space who, in my opinion, stand out, including Kathryn Farrara and Risa Drexler (Unilever), Kristin Herber (Under Armour) and Laura Quintano (Combe). This type of individual mentorship helps younger diverse lawyers obtain the exposure and experience that they need to succeed.

JA: It is important that clients collaborate with law firms to help encourage a more inclusive IP environment, and McDermott frequently engages in worthwhile conversations with clients to identify new ways to effectively partner on D&I initiatives, particularly in the IP practice. These include organising a joint mentoring programme for diverse lawyers, co-hosting events such as an annual or biannual diversity summit, networking events, training programmes and collaborating on various types of D&I thought leadership. Clients can work with law firms to organise secondment programmes, collaborative community service or *pro bono* initiatives, or a recruiting or pipeline programme for diverse law school or college students. Clients and outside counsel can also create a joint accountability programme, through which to monitor their diversity goals for the year.

What additional support and tools would you like to see industry associations develop, and why?

AN: To follow up on my prior point, any programmes or initiatives that help to pair more senior in-house counsel with more junior, diverse outside counsel mentees are invaluable to the development and advancement of diverse lawyers.

JMS: Any technological tools which could help us to measure D&I development (eg, the inclusion of women, people of colour,



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LGBTQ+ employees and age differences) would be extremely helpful. In addition, tools which could help to monitor the areas that best achieve this and attach this to a pay incentive would be welcome, as would software to help monitor academic and mentoring programmes.

JM: There is still much work to do within the IP profession to promote D&I, and we continue to see great progress made through industry organisations such as INTA and the Intellectual Property Owners Association (IPO). Recently, the IPO launched its Gender Diversity in Innovation Toolkit to encourage more women inventors to participate in innovation programmes. Similarly, INTA recently launched the Women’s LeadersHIP Initiative to champion and



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advance women’s leadership in intellectual property and to acknowledge the role that women play as leaders in the legal arena across industries. INTA has also started to incorporate specific D&I topics into its substantive meetings.

Through these efforts and other similar D&I committees within these and other associations, the IP industry should continue to promote programming and training for lawyers at all levels on recruiting, retaining and promoting diversity talent. They should also create formal mentoring opportunities that drive meaningful connections between members and open a dialogue on the challenges of D&I in the profession. Providing additional support for members to connect on D&I issues through networking and thought leadership programming can



also create more partnering opportunities to promote collaboration among diverse lawyers and a sharing of ideas on how to drive a culture of change and inclusion within organisations.

For those looking to implement formal programmes, are there any industry resources that you would recommend?

TM: For organisations willing to make the investment in implementing a formal D&I programme, hiring someone to focus exclusively on D&I at the organisation is often a good starting point. Taking a grassroots approach and selecting a group of lawyers to lead D&I efforts can also be effective. There are a number of resources that legal professionals can use to help implement formal D&I programmes. Many legal industry associations provide research and reports, as well as templates and other insights, to help organisations launch D&I initiatives. Examples include the Association of Law Firm Diversity Professionals, which is a member organisation for anyone who oversees diversity for their law firm. The group focuses on sharing information, best practices and education resources for members. The ABA offers its Model Diversity and Inclusion Plan, which provides templates for any legal entity looking to launch a D&I programme, as well as its D&I Toolkits page, which offers information on how to address issues such as implicit bias, running disability-accessible events and other areas. There are also tools available through groups like the Society for Human Resource Management, which offers a ‘how to’ guide for starting a D&I initiative. Law firm professionals can likely obtain access through their HR function.

AN: There are some great programmes that we have taken advantage of and would highly recommend to others, including seeking Mansfield Certification (or at least adopting the certification’s underlying principles), engaging with the Leadership Council on Legal Diversity and attending programmes organised by the Women’s Bar Association, the Hispanic National Bar Association IP Law Institute, the Minority

Corporate Counsel Association and the IPO diversity committee. All of these initiatives include corporations and law firms working together to increase diversity within the legal industry. Some of them are specifically focused on increasing diversity within intellectual property.

MF: In São Paulo, there is a successful programme called *Projeto Incluir Direito*, which was created by seven of the biggest law firms when they decided to hire a number of law students and provide them with a range of classes, varying from English to law firm protocol and etiquette classes, so that they would not feel intimidated when faced with a new environment. After that, the students were sent for interviews at the same firms in order to be selected for internship positions. The programme has had a high success rate, so we may consider implementing a similar initiative in Rio de Janeiro. Private Brazilian society the Centre for the Study of Law Firms has also reported the following good practices:

- Define the purpose of D&I for your business and programme structure.
- Remember, building a diverse and inclusive environment is a journey.
- Map and diagnose diversity in your organisation.
- Establish priorities and partnerships.
- Set achievable performance goals.
- Create and review internal codes, standards and policies.
- Stakeholder mapping, training and communication are good D&I practices that need to involve all office employees and must be shared with all stakeholders so that they can influence and promote change. In this way, we can encourage suppliers, local communities and customers to be part of the established project. This involves the following actions:
 - Suppliers – promote D&I in your value chain and favour suppliers who share these practices directly and indirectly.
 - Communities – sponsor events and associations in your local community, in schools and in universities that reinforce respectful and non-discriminatory behaviour.



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- Customers – share the initiatives of your D&I programme, schedule conversation wheels with customers to exchange ideas and encourage them, as well as your firm, to seek suppliers that are highly committed to the concept of D&I.
- Internal audience – transparent communication and continuous training are key to the engagement of the principal.
- Obtain a strong commitment from higher management and leadership.

Are there any other issues that you wish to raise?

JMS: All law firms should be paying particular attention to D&I projects. This is not only desirable, but necessary for any business that wants to deliver innovative solutions to client issues. **WR**

The authors at McDermott Will & Emery would like to thank senior D&I manager Edith Gondwe for her valuable insight into the firm’s diversity initiatives.