

Few lawyers well-versed in patents

Patents

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and presentations relating to patent protection.”

“Providing information is critical,” he added. “Informing clients about what not to do is particularly important.”

Ironically, as the need for more information and sound advice continues to grow, so does patent-related expertise. “The emergence of so-called ‘patent trolls’ in the past five to 10 years gives clear evidence of growing expertise in this field,” noted Daniels. “So while we may see increased activity in this area as business leaders discover the value of their patent portfolios, lawyers and patent agents will likely experience this as a continuation of a trend that has been increasing for some time.”

Facilitating growth, he added, is a matter of increasing capacity of service firms to meet the growing

demand. “The challenge here is that patent services typically require depth of training and experience in sophisticated areas of technology, so the pool of lawyers and patent agents who are able to properly service the patent-related needs of clients is actually very small.”

But all lawyers have a role to play, noted Cancellara, a member of the national litigation group at Davis. “You have to ask your client about their business. The lawyer has to probe. It’s amazing what you find out simply by asking questions.”

He added that there is one fundamental question lawyers must always ask of themselves and their clients: Is this the right time to consider patents?

The legal landscape for patents is also shifting and emerging issues are demanding both attention and consideration. “Patent laws in the U.S. and Europe are changing,” noted Daniels, “and this is expected to impact the subject matter that

can be patented in the future and, in some cases, may impact the validity of patents that have already been granted. For example, Europe has adopted new rules concerning patentability of software-related inventions. At the same time, multiple changes have been introduced in the U.S.”

Of key importance, is the handling of business-method patents. In particular, focus should be on the asymmetric patent protection given to business-method patents in the global marketplace said Borges.

“The U.S. grants business-method patents, while other jurisdictions do not,” he noted. “This may provide clients in the U.S. with a competitive advantage — particularly because these business-method patents often relate to web-based or Internet businesses, which can be accessed by anyone in the world.” ■

Properly redacting documents crucial



HI-TECH

LUIGI BENETTON

Despite recent high-profile redaction slips most law firms have failed to implement stringent policies, training and software to minimize the risk of redaction leaks.

For instance, recent headlines highlighted the February fiasco that embroiled leading social networking site Facebook.

Some background: Founders of student social networking site ConnectU sued Facebook, accusing creator Mark Zuckerberg of basing the popular networking website on ConnectU intellectual property.

Nearing a settlement and

striving to keep terms confidential, Facebook representatives asked the judge to remove reporters from the courtroom while the two parties finalized the deal. The press received a redacted transcript that hid settlement details.

However, an *Associated Press* reporter copied text from an electronic version of the transcript and pasted that text into a blank document, thus learning the settlement amount and other closely-guarded information.

“The message must not be getting out yet,” says Christine Musil, director of marketing for Scottsdale, Ariz.-based content visualization, collaboration and redaction technology firm Informative Graphics Corp. “This is not the first headline.”

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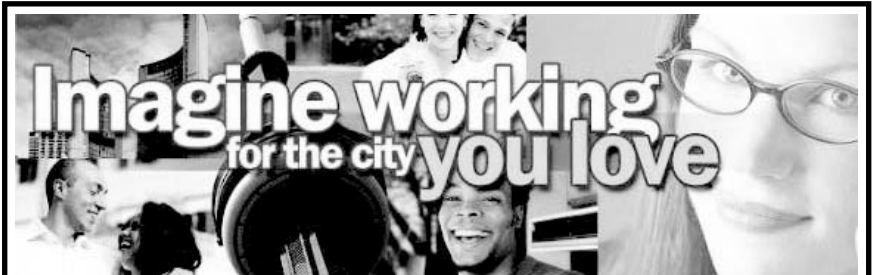
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Set policies, procedures to avoid redaction mistakes

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But even redaction-savvy organizations slip up. For instance, the U.S. federal government, already defending itself against allegations of what the Electronic Frontier Foundation calls “warrantless wire-tapping,” came under further fire last year when a document attempted to justify the existence of an AT&T communications surveillance room.

The shot in the foot: Until AT&T’s attorneys released the document, with all mention of the room “redacted,” the EFF didn’t know about the room.

The irony: The surveillance room, an alleged collaboration between AT&T and the U.S.

National Security Agency (NSA), would have remained unknown if AT&T lawyers had read the NSA’s paper on secure redaction.

In such cases, bad press and bruised reputations may be the least of a lawyer’s worries. Musil says that consequences can range from e-discovery slip-ups and loss of privilege to sanctions and disbarment.

The situation is particularly precarious since tech-savvy reporters, bloggers and opposing counsel, among others, regularly scan documents for ineffectively redacted information.

Musil muses that today’s problems may stem from the days of “redaction parties,” when legal teams armed with Sharpies marked up reams of paper. Simply marking

text works on paper documents, although Musil says the process is paper- and labour-intensive. “It takes two or three copies to really get it black,” she explains.

But simple black marks on word-processing or PDF documents do not obliterate the text underneath. The marks serve as graphic layers above the text, but the text underneath still resides in the document. Copy a redacted paragraph from a PDF, for example, paste it into a simple text editor that does not handle graphics, and you’ll see if, in fact, the redacted text is still in the document.

Metadata, or information about the document, can also be a land mine. Any metadata on paper documents shows on the pages themselves. Not so with electronic docu-

ments, which can store tracked changes (right back to the original draft), author names, creation and modification dates and file names and paths, among other information.

Effectively redacting a digital document means:

- Creating a copy of the document so that the original document survives the redaction process.

- Ensuring the copy contains no metadata.

- Removing the redacted text from the document, not simply covering it.

Adobe Acrobat 9 contains proper redaction tools, even a handy search and redact feature (although these tools are hidden in submenus).

If your version of Acrobat does

not include redaction tools, redaction software can cost less than an Acrobat upgrade and may offer a wider range of options. Redaction tools include Redact-It from Informative Graphics, RapidRedact from the eponymous New Zealand firm and I.D. Shield from Madison, Wis.-based Extract Systems, LLC.

To avoid headline-grabbing mistakes, Musil offers several redaction tips:

- Set a formal in-house redaction policy.

- When choosing redaction tools, see if they can easily support your redaction policy.

- Train staff on redaction policies and tools.

- Designate an in-house redaction expert to guide people who need to redact. ■

Announcements

[Stephen Birman



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