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Without Disruptive Innovation, Many IP Law Firms are Destined to Meet the Same Fate as Buggy Whip Manufacturers

A possible upside to the recent economic downturn is that many previously accepted business models are being revealed as in need of substantial reinvention or even total elimination. The billable hour/leverage law firm model for legal services is one of these increasingly maligned business models, and is now appearing to be in danger of ending up in the dustbin of history. Specifically, [even those who benefit handsomely from the billable hour, such as the Cravath firm's many \\$ 800 per hour lawyers, now realize the fundamental irrationality of charging a client for time spent instead of value provided.](#) This alone should signal that change is in the air.

Notwithstanding the growing conversation about the need for alternative client service models, I fear that the majority of IP law firms will either try to ignore the desire for change or will respond by offering only incremental modifications to their existing methods of providing legal services to their clients. As someone with considerable experience dealing with IP lawyers, I believe that, unfortunately, the conservative nature of most IP attorneys means that IP firms will likely lag behind in client service innovations. Thus, I am of the opinion that many prestigious and historically highly profitable IP law firms will in the foreseeable future cease to exist.

I reach this conclusion as a result of various salient experiences. In one of these, several years ago, I approached a managing partner of a well-known IP law firm with suggestions of how to decrease the number of attorney hours expended on client matters. At that time, the firm was beginning to experience considerable push back from clients about

the cost of routine legal services. I noted to the managing partner that he could lower the cost non-substantive *e.g.*, administrative client IP matters, by assigning such tasks to lower billing paralegals. His response to this idea: "If paralegals did the work, what would the 1st and 2nd year associates do?"

Of course, the central premise of the managing partner's response was that in order to keep the gears of the firm's billable hour/leverage partner model turning smoothly, he needed to keep the young associates busy billing by the hour. The existing paradigm of his law firm required that it keep hiring associates to increase partner leverage and ensure that they efficiently billed clients by the hour, with a significant portion of each associate's billed time directly going into the partner's pockets. Left out of this business model was whether the clients' best interests were properly served by the model that best served the law firm's partnership.

Clearly, this law firm was not well managed, which might serve as an excuse for the managing partner's self-serving perspective on client IP legal services. However, my experience as a corporate buyer of IP legal services further revealed that that the billable hour/leverage partner business model was an arrangement that frequently put the client-- which was now me--after the law firm's interests.

As an in-house counsel spending several \$100K's per year for legal services at a number of respected IP firms, I consistently felt that when I called outside counsel for assistance the first thought that popped into the lawyer's mind was "So glad she called--I wonder how much work this call is going to lead to?" More often than not, I got the sense that my outside IP lawyers viewed my legal concerns as problems for them to solve on a per hour basis, not as issues that might affect the profits of the company for which I worked. The difference is subtle, but critical: the context of the former is lawyer as a service provider, whereas the latter is lawyer as a business partner.

Against these experiences, I was not surprised at what I heard recently when discussing my feelings about the billable hour/leverage model with a partner friend at one of the top IP specialty law firms in the US. This partner echoed my sentiments about the need for innovation in IP client services. However, she also indicated that most of her firm's partners do not recognize that there is a problem with the way they currently provide IP legal services to their clients. As she told it, many of her more senior partners have been living well on the billable hour/leverage model, so they currently see little need to modify their behavior. My partner friend nonetheless realizes that her law firm is critically ill and is likely

to soon experience something akin to sudden cardiac arrest. Sadly, she is not a member of her law firm's management and, since there is no upper level recognition that change is needed, it would serve little purpose for her to raise her concerns to those partners who could effect change (and would probably not be politically expedient for her to do so).

The failure of these currently well-compensated IP law firm partners to recognize the shifting winds of their client's acceptance of their billing practices--the fundamental basis of their law firm's business model--mirrors the response of entrenched interests throughout history to innovations that did not mesh with their existing business model paradigm. Moreover, the inability of many IP law firms to recognize the climate for change leads me to believe that many of these venerated law firms will soon [meet the fate of buggy whip manufacturers](#) if they do not innovate in the manner by which they provide legal services to their clients.

Playing out this analogy, buggy whip manufacturers met their demise because they thought they were in the buggy whip business when they were actually in the transportation business. When buggy whips became obsolete, so did these formerly prosperous manufacturers. Notably, buggy whip manufacturers possessed the ability to change and thrive in the new world of the automobile. They already held strong business relationships with the buggy manufacturers that became the first automobile companies. They also employed skilled craftsmen who could have turned their efforts to making leather seat covers or other aspects of the automobile. These buggy whip manufacturers needed only to accept that they needed to ride the wave of innovation occurring at that time and reinvent themselves as suppliers to automobile manufacturers instead of buggy makers.

Like buggy whip manufacturers, I believe that many lawyers have become so entrenched in the law firm business that they have effectively forgotten that they are first legal services providers. As people charged with ensuring the continued vitality of the business, law firm lawyers often become primarily fee generators in that the fees are obtained from billing clients by the hour for legal services. Care and feeding of the law firm and its partners by ensuring constant creation of billable hours therefore often takes precedence over the legal needs of clients. Also analogous to buggy whip manufactures, IP lawyers working in law firms have the ability to change to prevent obsolescence. Indeed, these lawyers possess the requisite skills to continue practicing their craft outside of the existing paradigm of the law firm. Still further akin to buggy whip manufacturers, lawyers also have the existing relationships with customers *i.e.*, clients, which gives them a valuable

head start over newcomers who wish to enter the IP legal service arena using innovative, but unfamiliar, client service models.

Using the well-known picture of obsolescence presented by buggy whip manufacturers more than 100 years ago, I believe that IP lawyers who recognize that they must embrace innovation in the way they provide IP legal services to clients will be poised for success when their clients decide that the time for change has arrived. On the other hand, lawyers who believe they are in the IP law firm business will invariably be left behind when innovations in client service enter the marketplace that render the law firm business model obsolete.

IP lawyers should not expect that they will be able to predict when their clients will demand change. As with the customers of buggy whip manufacturers, law firm clients will not serve their IP counsel with notice warning prior to taking their business to lawyers who provide them with innovative, and more client-centric, service models. To the contrary, when clients are finally presented with acceptable alternatives, they will naturally migrate to the innovation that best meets their business needs. The result will be that one day, these currently successful IP lawyers will likely wake up to realize that they are losing their clients in droves to lawyers who succeeded in developing and introducing an innovative client service model to the world. And, as most lawyers will tell you, once a client is gone, they are likely gone forever.

Not only will clients fail to announce that they intend to leave their law firm before they do so, they also will not tell their lawyers how you can serve them better. Why should they--they are not in the business of providing legal services. Accordingly, mutually beneficial client service innovations must be generated by and because of lawyer action. But, because of their inherently conservative nature, I believe that many IP lawyers may fail to realize that innovation is critical until it is too late to preserve their client base.

Some might contend that complaints about the billable hour model have abounded for many years, but no major changes have occurred to date, thus indicating that most clients may be all bluster and no action. While it is certainly true that clients exerted no real pressure on lawyers for change in the past, circumstances are markedly different today than before. [Disruptive innovation](#) is rocketing through society, and many formerly solid business models, such as newspapers and recorded music, are now teetering on the cusp of demise as a result.

The signals are there that law IP firms that rely on the billable hour/leverage model appear poised to experience significant stress from clients and critics in the near future.

Those relying on this model for their livelihood would be well-served to look for innovative ways to address this changing environment. In short, those who think that the billable hour/leverage law firm model will escape the transformative business innovations of the current era are merely "whistling past the graveyard." IP law firms, as well as other types of law firms, must innovate now and innovate big or I fear they will suffer the fate of the buggy whip makers.