

## One Company's Part Time Solution to the High Cost of Hiring In-House Strategic IP Counsel

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Analysts say that the current economic downturn will likely last at least until early 2010. While this no doubt seems like almost an eternity for the average consumer, for business strategic planning purposes, this date is just around the corner. Indeed, business managers at many companies are likely conducting "short term" strategic planning efforts targeted for introduction in mid-2010. This might account for the recent uptick in job postings for experienced corporate intellectual property attorneys. I see this increase in job opportunities as signifying that smart corporate leaders are realizing that sustainable business success requires companies to not only introduce innovative products and technology offerings, but also that they strategically protect such innovations. As a result, I believe that more companies will seek to hire strategic in-house IP counsel, which is good news for us IP types.

Of course, the traditional model of hiring an in-house IP counsel results in significant costs to a company--likely at least \$250K per year on a fully loaded headcount basis. Such an expense may be out of the question for many small or mid-sized companies; nonetheless, the cost of hiring a sophisticated in-house counsel does not eliminate the need for innovative businesses to engage strategic IP representation. Put simply, small or mid-sized companies are not immune from competitors' knocking off of their innovations. IP-related cost avoidance by any sized company engaged in innovative product or technology introductions is therefore a short-sighted policy. Accordingly, small and mid-sized innovative businesses must strike a balance between effective IP protection and headcount cost issues.

From a recent job listing that came across my desk, at least one company--Lydall Performance Materials of Manchester, CT--may have figured out a way to engage high level in-house IP counsel at significantly overall lower headcount expense. They appear to be accomplishing this in a manner that is not obvious in the realm of corporate attorney hiring. Specifically, Lydall seeks an experienced in-house IP counsel for 20-25 hours a week working primarily from home. Such an arrangement presumably also reduces the need to provide benefits to the attorney as well as the requirement to provide her with office and support staff, thus further reducing the overall headcount costs normally associated with hiring in-house counsel. It is likely that Lydall's part-time in-house IP counsel hire will cost it less than ½ the cost of hiring a full-time counsel.

Judging from its product and technology focus, there is little doubt that Lydall needs to engage strategic business-focused IP counsel to maintain its competitive

advantage. Indeed, Lydall's website ([www.Lydall.com](http://www.Lydall.com)) states that it is a "specialty engineered products" company. By definition, specialty products serve a differentiated need in the marketplace and, as such, require protection through IP strategy to prevent others from knocking off that same technology. Nonetheless, a review of the public patent record indicates that Lydall has not been a particularly prolific filer in recent years. The US Patent Office records reveal that Lydall filed no patent applications between 2001 and 2006, and only 6 applications have published since then. Although Lydall has apparently not aggressively protected its innovations in the past, by hiring an in-house IP attorney, albeit a part-time one, Lydall is signaling that it intends to ensure the sustainability of its current innovations by developing and executing on a business-focused IP strategy.

And, while I have no inside information about its management, I expect that Lydall's current business team understands the critical relationship between sustainable competitive advantage and strategic IP protection. Specifically, if Lydall invests in developing innovative technology and in creating profitable markets for that technology, while not at the same time protecting such innovations with a business-appropriate IP strategy, Lydall will effectively allow its competitors to undercut it on price. When Lydall successfully protects its innovations with a business-focused IP strategy, others must design-around Lydall's innovations, which requires competitors to also invest in R&D. Comparable R&D investment by competitors levels the business playing field and reduces the "free rider problem" for Lydall.

Lydall's decision to hire a part-time in-house IP counsel indicates that this company is "thinking outside the box" of corporate attorney staffing. Moreover, this decision demonstrates that Lydall is getting serious about ensuring that it develops and maintains sustainable competitive advantage in performance engineered materials. This is not only good news for Lydall's investors, but it should also serve as a warning to its competitors. Moreover, other speciality products companies should consider emulating Lydall's smart decision to engage part-time in-house IP counsel to assist their business and innovation teams in developing and executing on a business-focused IP strategy. While Lydall appears to be on the cutting-edge of in-house IP counsel hiring strategies, I predict that other innovative companies will adopt this model in the near future.