

Separating Myth from Reality: Preparing for IP Law and Practice

Professor Cynthia M. Ho, Loyola University Chicago School of Law

Myth 1: IP is only for geeks, or those who are recovering geeks.

Reality: FALSE. IP rights include *copyrights*, which are owned by pop stars and entertainment companies, ranging from Oprah Winfrey to Britney Spears and MGM Studios. In addition, IP rights also include *trademarks*, which are created and used by corporation in all sectors of business; for example, would you rather buy an ipod or a Target-brand music player? Similarly, the marks Porsche, Ralph Lauren, and Evian are not typically associated with geekiness. Nonetheless, those who have been considered (or alleged to be) geeks also may find a comfortable place within IP practice – patent law requires a good understanding of technology, including material that is considered “geeky” to most.

Myth 2: It’s easy to get an IP job, because IP law is “hot.”

Reality: Did you really buy the Brooklyn Bridge? It’s true that IP law is considered “hot” and that many firms are adding this practice are (or already have such a practice). However, that does not mean that it is “easy” to get an IP job – especially if everyone is under the (false) assumption that this is the ideal job.

Myth 3: It’s easier to get an IP job if you were an engineer, rather than an art historian.

Reality: Probably, but that does not mean that an art historian wouldn’t be interested or successful as an IP attorney. While it’s true that the market is generally better for patent attorneys (which usually requires a technical background, including engineering, chemistry, biology, physics, and computer science), an art history background could be quite relevant for the practice of trademark law. Similarly, prior experience in advertising, publishing, or the music industry may provide good background for copyright or trademark practice. In addition, while there may be more jobs available to those with a technical background, those are usually not ones that a former art historian would enjoy – after all, patent lawyers need to understand things like recombinant DNA or electrical circuitry work and not how to illustrate them.

Myth 4: If I say I’m interested in patent law, I’ll have a better chance of employment.

Reality: FALSE. What is relevant is whether you actually have the right background for patent law. Employers will quickly be able to assess whether this is a good “fit” for you. Basically, if you have a technical background (something like engineering, biology, chemistry, physics), firms with patent departments may be more interested in you than general practice firms because of your expertise. If your technical background consists of reading “Wired” magazine, reading the “Science Times” section of the NY Times, or enjoying NPR’s “Science Today,” that will not help you for pursuing a patent law career – even if it may make you an interesting and well-rounded person.

Myth 5: If I want to do IP, I need to take as many IP classes as humanly possible.

Reality: FALSE. A basic foundation of IP law is much more important than a knowledge of many specialized areas. You should remember that an IP attorney is still an attorney and should know certain basic areas of law to best serve his/her client. Plus, IP law is ever-changing, both as a result of Congressional amendments, as well as judicial evolution. Have you ever noticed how many IP cases make headlines? If so, you should keep that in mind when thinking about what IP classes you should take since classes focus on existing law. It's best to learn the general framework and how to negotiate within the general types of subject matter, such as statutes and case law. In addition, there are various types of roles within IP law that may suggest the relevance and importance of non-IP courses. For example, there is IP litigation, which involves litigating IP cases; for this practice, all classes related to litigation would be relevant, including evidence, trial practice, and moot court. Similarly, IP may be part of corporate practice, including a practice devoted to licensing; so, for a corporate career-path, classes focused on commercial transactions would be appropriate. Finally, no matter how many classes you take, there will still be new law. So, a good foundation – of both IP and non-IP courses – in law school is essential. After all, many courses that “real” (practicing) IP lawyers consider to be most important are actually not even IP courses – in particular, practicing IP attorneys have noted that fundamental first-year courses such as **civil procedure** and **contracts are important**. In addition, many IP attorneys note that good writing skills – which need not be acquired through IP classes – are very important. Also, practical experiences through externships are often an invaluable educational tool, as well as an asset on the job market. Judicial externships in particular can help strengthen writing skills while simultaneously exposing you to actual IP cases. Many Loyola students who have participated in federal judicial externships have had the opportunity to work on IP cases when they have expressed such an interest.

Myth 6: I have to decide ASAP whether to be an IP lawyer.

Reality: FALSE. You certainly don't need to decide at the beginning of law school what area to focus on since you only have the option to take one elective course. In addition, you should know that successful IP attorneys have sometimes made the decision to pursue IP late in law school (as a 3L) or even later in their legal career. Students with a technical background often know that they want to be patent lawyers. But even those students sometimes pursue different paths – students with such backgrounds have gone on to pursue careers in criminal law, as well as medicine! However, it is recommended that you take full advantage of opportunities to explore a variety of fields in law school and also keep an open mind about career opportunities. Sometimes people will stumble into an area that they develop into a successful career that is far different from their initial plan. Especially for students without a science background, it is best to be aware of many other legal practices since there are so few entry-level positions that focus exclusively on trademark and copyright law. That does not mean you need to abandon your interest in IP, but you may want to broaden your horizon about other possible career paths of interest.

Myth 7: I need an IP certificate to get a job as an IP attorney.

Reality: FALSE. Loyola does not presently offer this as an option. Moreover, you do not need to transfer to another school that offers such certificates since a certificate in IP does not guarantee or necessarily even help you land a job. There is no evidence of a correlation between obtaining a certificate and getting an interview – at least not for obtaining patent jobs. I know this to be true because I have actually analyzed the data on students from schools who do have IP certificates and found that students who were obtaining an IP certificate were not more likely to get an interview. In addition, I know that Loyola students have never had a problem getting an interview without a certificate and many employers do not even ask them about this. While I have no comparable data on whether a certificate helps students get non-patent IP jobs, I believe that the same is true based on the experience of former students. Loyola has never had an IP certificate, yet its students have nonetheless successfully landed jobs in this area and also become in-house counsel focused on trademark law at companies, such as BlueCross and McDonald's.

Myth 8: If I get a certificate in something, it will help me get an IP job, even if its not an IP certificate.

Reality: Unlikely. If you were an employer and got a resume from someone who claimed to be interested in patent law, but actually had a health law certificate, would you be persuaded that they were a superior candidate for *patent* law? I wouldn't. A certificate indicates a subject area you are interested in. However, if the certificate subject matter has no bearing on your desired job, you will simply appear confused – not a trait often sought by employers. In addition, even if you think the certificate might be potentially related, you need to consider your long-term career goals and what classes will best help you achieve them. For example, while an Advocacy certificate may seem to help you obtain a job in patent litigation, obtaining that certificate should be secondary to taking a core class in patents. In addition, you should know that while the Advocacy certificate encourages students to develop skills to be trial attorneys, most patent attorneys rarely see the inside of a courtroom and when they do, they are very senior attorneys – who have obtained more specific training at their firm.

Myth 9: I need to participate in an IP journal to get an IP job.

Reality: FALSE. There is no need to participate in an IP journal to get an IP job. Plenty of Loyola students have successfully obtained IP jobs without participation in an IP journal. Experience on a journal – not necessarily one focused on IP – is what is valuable to employers. While you need not participate in an IP journal, you can apply to be a member of a national journal called the American Intellectual Property Quarterly; however, you can only apply in the Spring of your 1L year; more information is available at <http://www.aipla.org/learningcenter/library/books/qj/Pages/default.aspx>. Alternatively, you can participate in any journal at Loyola and still get exposure and experience in IP issues by writing your student “note” on an IP issue of your choice.

Myth 10: If I want to do IP, I have to take a different bar exam.

Reality: Maybe – depending on what type of IP you intend to practice. First of all, almost everyone must take a state bar exam after law school (except if you're going to school in Wisconsin and intend to practice there). Those who are interested in patent law may need to take what is commonly called the *patent bar*. This exam qualifies you to correspond with the United States Patent and Trademark Office as either a patent agent or patent attorney. Typically, before a patent is issued, there is correspondence between the PTO and the inventor or his/her representative (the agent or attorney). The back and forth correspondence is actually called *patent prosecution* and has nothing to do with criminal prosecution – a good thing to know for interviews. The patent bar is the only exam required to do patent prosecution and can be done in advance of the “regular” bar exam. There is no separate exam for those interested in trademark or copyright law. In addition, for those without a science background, the patent bar does not get you entry into the IP arena because a pre-requisite to take the exam is an undergraduate science major, or its equivalent.

Myth 11: I must pass the patent bar to get a patent job.

Reality: FALSE. I have seen plenty of Loyola students get summer jobs and even permanent jobs without taking the patent bar. These students are often in the enviable position of having their firms pay for them to take the patent bar – including the preparatory course. However, passing the patent bar can be a “plus” factor on your resume that helps you land a job. If you have the time to seriously study for the exam (including the cost of the preparatory course), then it may be something to think about. On the other hand, passing the patent bar does *not* guarantee that you will readily secure a job. There are an increasing number of students with science backgrounds who now attend law school – and pass the patent bar. So, while the patent bar may be a “plus” factor, it is only a factor. If you're committed to taking it in law school, please bear in mind that *I strongly discourage anyone from attempting to take the patent bar as a 1L with no prior exposure to the area.* I would also strongly discourage students from focusing on the patent bar in lieu of any legal employment during their 1L summer since there is no guarantee that you will pass the patent bar on your first try and most employers are interested in students with actual legal experience.

Myth 12: I need to know more science to pass the patent bar.

Reality: FALSE. The patent bar requires that you are technically qualified. However, there is no actual science on the exam. Rather, the patent bar tests knowledge related to the rules and practice of the United States Patent and Trademark Office. It's roughly analogous to the rules of civil procedure, but with even more technicalities. So, even if it's been a decade since you did anything remotely scientific (i.e. if you've since become a manager), that's of no importance to taking and passing the patent bar.