The diversity and inclusion landscape in IP

Managing IP surveyed in-house lawyers in a range of jurisdictions and industries to find out about the state of diversity and inclusion within the IP profession and how it can be improved.

Key findings
- 59% said they have been discriminated against in the IP profession because of their background.
- 49% said that the lack of diversity in leadership roles is a major barrier to progression.
- 66% said companies should have an official policy on diversity for hiring outside counsel.
Nearly 60% of in-house counsel have faced discrimination

The first part of Managing IP’s survey on diversity and inclusion reveals that more than half of in-house IP counsel have faced discrimination because of their background, while respondents were divided on whether the IP profession is diverse compared to other legal sectors.

In part one, we asked in-house lawyers whether their employers have any diversity and inclusion initiatives, how diversity in the IP profession compares to other areas and whether they have experienced discrimination because of their background, among other questions.

The majority of respondents (85%) said that their companies have diversity and inclusion initiatives (see Figure 1, page 3).

The most common initiatives focus on women (65%), LGBT+ (51%), and well-being and mental health (46%) (see Figure 2, page 3). For a few participants who picked “other,” their company does have diversity statements but not active initiatives.

As for those without certain initiatives, they hope to see all of these listed above, but especially those focusing on parenting (24%), black, Asian and minority ethnic (22%), and women (14%) (see Figure 3, page 3). Some participants who responded “other” would like to initiatives to encourage recruitment of staff with different education backgrounds and age levels.

There was a 50-50 split in responses to the question of whether there is a lack of diversity in IP compared to other legal practice areas (see Figure 4, page 3). Some have witnessed a lack of gender diversity generally in the legal practice, not just in IP. Others have seen it more noticeably in patent law compared to trademark law.

In terms of cultural diversity, the definition is nuanced as it can mean people with different life experiences, some respondents say. With rigid academic and Bar requirements for IP professionals, this can lead to people with similar educational and work backgrounds who think similarly, which is a problem in an age that increasingly values creativity.

According to the group vice president of an international hotel company based in the US, the trademark section of the IP Bar appears very diverse but the patent segment is less so. The associate general counsel of a US-based life sciences company says that on the patent side, “it is a white dominated speciality”; because of the requirement for STEM degrees, patent attorneys are traditionally male, they add.

A patent attorney at a UK-based healthcare company says that there is much more diversity in academia and healthcare compared to law.
“People still hire in allegedly safe stereotypes, so the opposite of seeking diversity. It’s so out of date,” she says.

For one Chinese IP counsel of a US consumer goods company, she finds a lack of diversity not in senior management, but in middle management.

“The attention is often focused on the top management, but often times, the lack of diversity is in the middle management, which is dominated by men,” she says.

This creates future challenges when the company wants to promote internally as shortlists of middle management will often be populated by men. She says that unless there is a set policy, human resources departments won’t care.

“It has to be something that the company leadership believes in and constantly reinforces from the top down or else it won’t happen from the bottom up,” she says.

A global head of trademarks of a pharmaceutical company says that “the same lack of diversity exists in IP compared to other legal practice areas.” Rather than being solely related to IP, the problem persists more generally in the legal profession.

For some IP counsel in foreign businesses in China, there is a sentiment that those in senior management roles are always from the company’s country of origin, rather than China. According to a China-based IP manager of a Japanese company, a cultural glass ceiling is common in China for those working in foreign businesses.

“The senior management of foreign companies is still dominated by those who are from the countries where the company headquarters are based,” says the IP manager. “If you look at the IP teams of foreign businesses, the top positions are often at the manager level rather than at director level.”

She says that the lack of trust is a reason why IP teams still have to report to someone in the company’s headquarters. This creates a problem where there is a lack of progression once someone reaches the highest level in the IP team in China. The IP manager says that even though she is managing IP matters across the Asia region and has a similar workload to her colleagues at the director level, there is no further progression for her role. This results in career restrictions not just within her company, but future opportunities being minimised because of the limitations on salary and job title.

In some countries, restrictions on who can pass a Bar exam can limit the cultural diversity...
of the entire profession. For instance, in China, only nationals from mainland China, Taiwan and Hong Kong can pass the mainland Bar exam.

“It’s not surprising to have an IP team made up of entirely Chinese people,” says a Chinese IP counsel of a US-based conglomerate. But he says that when it comes to considering candidates for more global roles, he feels that ethnic minorities have a much slimmer chance.

“I’ve already reached the top IP role for the company in China but there is no further progression to a more global role,” he says, adding that his ethnic background is a limitation for more international opportunities.

From a UK perspective, an in-house counsel at a credit card company says that the single route to qualification with a focus on exams rather than breadth of job experience means that people who are good at exams progress more quickly than those who are actually good attorneys.

According to a senior IP counsel at a US conglomerate, there is a lack of people of colour with technical and law degrees, especially from the “top” schools that are favoured by large firms and companies.

A senior patent counsel at a German pharmaceutical company says that “patent counsel all have the same educational backgrounds and experiences,” in a reference to the lack of cross-education diversity.

Nearly 60% of the respondents cited experiences where they have been discriminated against because of being a woman, an ethnic minority and/or LGBT+ (see Figure 5, page 3). There are instances where certain stereotypical behaviour is expected from a person because of cultural norms, they said. While many respondents have overcome their challenges in being discriminated against and gone on to become successful IP professionals, for some this can be a barrier to entering the profession and cause them to leave it.

A lack of progression, and inevitably lower pay, is observed more by women. A UK-based in-house counsel at a credit card company observes that despite having a legal team with several women in senior roles, the business hired men at higher pay grades and promoted men twice as quickly.

The chief IP counsel of a German technology company adds: “I was paid less than my counterpart who was male.”

The IP counsel of a UK-based charity said that from the blatant fault-finding in a person of colour leading to the assumption that her presence at the table was only limited to a supportive role, she has faced many instances of discrimination in the IP sector.

The associate general counsel of a US-based life sciences company adds: “I was specifically not given responsibility for a project because I was a woman with young children.”

The global trademark counsel of a pharmaceutical company gives her perspective: “Reactions and actions of women are often analysed with respect to being a woman. The same behaviour from a man will often be qualified objectively.”

For instance, she says, where a man may be considered assertive, the same behaviour from a woman may be qualified as aggressive because a specific type of behaviour is expected. The same bias exists based on cultural backgrounds, she adds.

A senior patent attorney at a German pharmaceutical company says that she has been discriminated against in the recruitment process because her resume indicates that she has leadership experience in a LGBT employee network. She claims that it has resulted in her not being contacted or getting through multiple interviews or not being selected at the end of the hiring process.

What is clear from the survey results is that a lack of diversity remains and many respondents have experienced discrimination because of their background. In part two of our analysis, we will be exploring some of the things that can help promote more diversity both within companies and in the IP field more generally.

“I was specifically not given responsibility for a project because I was a woman with young children.”
Part two of our survey shows that more diverse leadership and awareness of unconscious bias can drive increased diversity in the IP profession.

In an age when discussions around diversity are commonplace, many professions, including IP, are still too homogenous. An underlying reason is the lack of understanding of diversity by senior management. But old beliefs are hard to change, as shown by one male respondent to our survey: “Some women choose not to progress because of family needs. Some women on my team would prefer to stay in the office and focus on the paperwork.”

In-house IP counsel want to see more diversity in senior management roles and for businesses to implement unconscious bias training programmes to debunk old beliefs and to break away from cultural and gender stereotypes.

The second part of the survey on diversity comes after part one showed that nearly two-thirds of in-house IP counsel have faced discrimination because of their background and that respondents were divided on whether they think the IP profession is diverse compared to other legal sectors.

In part two, we asked in-house lawyers how a lack of diversity affects their business, what initiatives can help to increase diversity in the IP profession, and about effective ways to promote diversity within companies.

The lack of diversity in leadership roles in IP was selected by the majority of respondents (49%) as a root cause of the lack of diversity in the IP practice (see Figure 6, page 6). Bias, whether conscious or unconscious, in recruitment is another problem, as identified by 19% of those who took the survey. Respondents said that companies with a lack of diversity in senior management roles often overlook the importance of diversity and hire “those who are similar to them.” The lack of role models may lead to more junior staff overlooking or not being aware of opportunities to progress in their careers, and not being able to connect with those in a company who can support them in their journeys.

A few respondents who replied “other” said that the rigid route to qualify as an IP lawyer, especially the requirements to have both a law and science, technology, engineering, math (STEM)-related degree, is also an impediment to diversity.

The Chinese IP counsel of a US-based conglomerate says that the in-house IP profession in China is quite evenly split between men and
women, especially for trademarks, but for patents, there are more men. This could be due to the technical nature of patent counsel roles which require science or engineering backgrounds.

“In the IP and legal fields women are under-represented and often over-looked in favour of men,” says the global head of patents at a multinational pharmaceutical company. “I have had experiences where less qualified men are given advantages and promotion over better qualified women by male bosses and managers. Women are often expected to do more work, better work, bill more hours to be given the same consideration as men.”

Outdated views and stereotypes persist in the IP profession. For instance, the Chinese IP counsel of a US-based company argues that some roles in the IP profession may be more suitable for males.

“A lot of enforcement work requires site investigations so men are in these roles for practical reasons,” he says. “Women on my IP team prefer to stay in the office to focus on the paperwork.”

As for moving on to more leadership roles, he says that “some women choose not to progress because of family needs” but adds that this could be influenced by culture as “women are still more dominant at home than in the workplace” in China.

An IP counsel at a medical company based in Canada observes that women still remain in the minority in the field of IP.

“For every female patent lawyer, there are usually at least five male patent lawyers,” she says, and looking back at her own experience, she views that there is an unconscious bias to hire or promote people that are like those with the authority to make these decisions.

Problems in recruiting and retaining talent (26%), lack of understanding of customers (20%), and lack of creativity (20%) were identified as the key effects of a lack of diversity in a business (see Figure 7, page 6). Helping businesses, especially those in leadership positions, understand the impact of a lack of diversity can be a strong motivation to get them to make changes. Some respondents who responded “other” said that innovation is linked to diversity and that, without diversity, everyone thinks the same way.

The lack of gender diversity was identified by survey participants as a major issue and many who have faced discrimination in the field are women. Of the respondents, 47% said that more flexible/agile work styles can help (see Figure 8, page 6). Other areas for improvement include more role models (18%), more education on the benefits of diversity (11%), and more STEM education targeting women in school and university (8%).

One UK-based IP manager of a charity says that “there are still a lot of white men in senior roles in the IP field,” adding that the sector is still very conservative and not open enough to individuality.

The IP profession was a controlled, closed club for a very long time and the fact that few actually retire at the standard age meant that the culture was set and adopted by all who wanted to succeed,” she says.

However, she does observe that this is gradually changing.

By having more diversity in senior management roles, businesses will be able to have better perspectives on the range of issues that working women are faced with and how best to address them. This can enable more women to stay in the workforce and help them progress in their careers, especially after they start families.

Exactly half of respondents indicated that ensuring there are more people with diverse backgrounds in senior management roles can help to create more diversity at their companies. Ensuring that unconscious bias training (10%) is in place, providing more flexible work environments (10%), and
having more communication and awareness on the subject (10%) are also important (see Figure 9, page 6).

“Unconscious bias is not something that those recruiting new staff may think about,” says the IP counsel at the US consumer goods company. “If two job candidates are the same in their educational level and experience, there’s often a preference for those from the same city where the company is based.”

The bias may not be something intentional on the part of those involved in the recruitment process as they may not even be aware of it, they add.

According to the general counsel of a US-based media company, businesses need to be actively articulating the need for diversity. Even after initiatives and policies are created, it does not work to just walk away, but to have consistent and frequent acknowledgment so that employees are always reminded of the importance of diversity.

In terms of initiatives outside companies that can help to improve diversity, 47% of respondents cited early career mentorship programmes in the IP community as helpful (see Figure 10, page 6). Education and awareness about diversity through IP industry associations (30%) are also useful. One such example is IP Inclusive, a UK-based diversity initiative that helps to widen access to careers in IP.

The general counsel of a US-based media company says that career exploration programmes that connect diverse mentors with graduates have been useful from her experience. She says that even though her mentors may not have all been from diverse backgrounds, they have been very helpful. What stood out from her experience was having a female mentor who could share experiences that she could relate to.

But these role models can be very hard to find. She encourages women in IP, especially those in leadership roles, not to hold back, and share their experience so that future generations of women can benefit.

While a number of respondents view the IP field as still lacking in diversity, with initiatives such as IP Inclusive, change is gradually happening. What is clear from the survey results is that IP counsel want to see more diversity in leadership and that the mindset for diversity needs to be adopted from the top for changes to filter down, not just to different levels of a company, but to the wider IP profession too.

“Some women on my team would prefer to stay in the office and focus on the paperwork.”
The final part of Managing IP’s survey on diversity and inclusion reveals that two-thirds of in-house IP counsel want to see an official diversity policy when hiring outside counsel. While some fear that a strict policy is limiting and can be impractical, other respondents want to see such a policy in place in their companies, to increase accountability.

It comes after part one showed that nearly two-thirds of in-house IP counsel have faced discrimination because of their background and that respondents were divided on whether they think the IP profession is diverse compared to other legal sectors. Part two then found that in-house IP counsel view a lack of diversity in senior management roles as a major barrier to progression.

In part three, we asked in-house lawyers how important diversity is to them when selecting outside counsel, whether they have a policy on diversity when hiring such counsel, and whether it is important to have a policy in place.

The majority of companies (77%) do not have a policy on diversity when hiring outside counsel (see Figure 11 on page 9). For those who have policies, they range from a minimum percentage of budget spend on diverse firms to being encouraged to hire diverse counsel.

According to the general counsel of a US-based media company, her firm asks outside counsel to provide a description of their team’s diversity in requests for proposal.

“It helps us get a better sense of whether we’re all on the same page,” she says. “It’s not necessarily about their race, ethnicity or gender, but more about their experience and backgrounds.”

Nearly half of respondents (48%) cited more ability to see different perspectives as a benefit that a more diverse outside counsel team would bring (see Figure 12 on page 9). Better understanding of customers (14%) is another motivating factor for more diversity. Respondents who said “other” indicated that all of the relevant factors are important, while fees and the ability to work well with the outside counsel are also key.

The associate general counsel of a US-based life sciences company says that a lack of diversity results in everyone thinking about a problem in the same way and proposing identical solutions, which leads to limited risk analyses.

The Chinese IP counsel of a US-based conglomerate says that in China, personal connections play a very important role when in-house...
counsel decide on which outside counsel they prefer.

“I choose people whom I know well,” he says. “These are people I’ve gone to school with and those I’ve worked with in previous companies.”

He says that this can already limit diversity in outside counsel but he does not see the benefits of diversity outweighing the advantages of being familiar with the outside counsel.

The majority of respondents (66%) want to see an official policy on diversity when hiring outside counsel (See Figure 13 on page 9). Some respondents do not like the idea of an official policy because it can be limiting and impractical. They would rather hire the best person for the job. Others see the importance of a policy because, otherwise, nothing will change. Some respondents prefer to have a flexible policy in place where, all other things being equal, outside counsel with more diversity should be selected.

A senior IP counsel at a US-based biotechnology company says that while other services purchased by the company emphasise inclusion, outside lawyers who are hired end up being white and male, like the senior leadership in the legal group.

“The law firms won’t change unless they are forced to change by their clients, and the law firms are where most lawyers get the best training,” she says.

The associate general counsel of a US-based life sciences company says that a good policy should be one where outside counsel must provide data on the professionals working on matters.

Not everyone supports the idea of a policy on diversity when hiring outside counsel as it can be limiting.

“Policies force [us] into hiring not the most suitable people,” says the IP head of a global electronics company. “We select the best people for the job and those who are most capable to do the work.”

According to the director of IP of a global beverage company, he is concerned that having an official policy on diversity would cause undue delays.

An IP manager at a UK-based healthcare machinery company who does not support having a set diversity policy on hiring outside counsel adds: “It’s necessary to pick the best counsel available for the budget; not selecting on merit is a detriment to the company.”

The patent counsel of a car company says: “I feel that in many cases the best person for the job should be recruited, rather than recruiting someone just to be diverse.”

But she adds that there could be unconscious discrimination if the recruiter is not careful.

Just over a fifth of respondents (22%) selected five on a scale of zero to 10, with zero being not important and 10 being very important (See Figure 14 on page 9). Numbers six and seven on the scale were each selected by 19% of respondents. Another
19% selected 10, showing that they value diversity highly when selecting outside counsel. While diversity is not a top priority for some in-house counsel when they seek outside lawyers, those with more diverse teams that are balanced in gender, race/ethnicity, age and international experience create better impressions on in-house counsel.

“If we do not select firms which are diverse, we miss out on the variety of experience which can improve the work product we receive,” says a UK-based in-house counsel at a credit card company.

According to a China-based IP manager of a Japanese company, diversity is not a top priority when she looks for outside counsel. The most important consideration is still the needs of the business. However, she does prefer more diverse teams because “they are more creative and energetic.” It does seem odd if a team is either all-women or all-male, so she prefers teams that are more balanced.

For a Chinese IP counsel of a US consumer goods company, she prefers working with more culturally diverse outside counsel teams because “they can break out of the traditional way of doing things.”

An IP counsel from a US-based chemical company says that it is important to “hire qualified individuals rather than hiring because of someone’s status as part of some real or imagined oppressed group.” He observes some “diversity fatigue” and wants to see less concentration on “victim” status as a reason for hiring.

Gender, race/ethnicity and age diversity are all equally important criteria that 49% of the respondents would consider when hiring outside counsel (See Figure 15 on page 9). The other half of the respondents are split between gender (24%) and race/ethnicity (21%), while just 6% consider age to be an important criterion.

“It’s not necessarily about checking off the ethnicity and gender boxes, but more about the team’s backgrounds, what projects they’ve worked on and where they’ve spent their time.”

In the same way that environmentally acceptable processes are required from our vendors, I believe companies can request their counsel to have certain policies, such as equal pay for employees,” says the global head of trademarks of a pharmaceutical company.

According to the general counsel of a US-based media company, her focus is on the diversity of thought when she looks at hiring outside counsel.

“It’s not necessarily about checking off the ethnicity and gender boxes, but more about the team’s backgrounds, what projects they’ve worked on and where they’ve spent their time.”

The survey findings reveal that while diversity is not always the most critical factor when in-house counsel hire outside counsel, it is something that they want to see more of as more diverse teams have added benefits such as being more creative and being able to have more perspectives.