



THE BRAIN DRAIN: WHY ARE SENIOR PATENT ATTORNEYS LEAVING?

Brought to you by

JAMES & WELLS

CHAMPIONS
OF INNOVATION.

NZ | LAWYER

AUSTRALASIAN Lawyer

The brain drain: Why are senior patent attorneys leaving?

Corporatisation is to blame for the exodus of senior patent attorneys from formerly private firms, say **Ceri Wells** and **Adam Luxton** of James & Wells. They explain why they believe the rise of the listed IP firm has drawbacks – and offer advice for anyone looking for a good patent attorney

BACK IN 2017, an article in *Forbes* magazine declared, “The law firm partnership model had a great, long run. It’s over”. Looking at developments in the Australian patent attorney sector since 2013, when legislation changes allowed patent attorney firms to incorporate, it’s tempting to believe this kind of bold statement to be true. The year following the amendment to the Patent Act saw one of Australia’s oldest patent and trade mark attorney firms list on the ASX, then go on a shopping spree, acquiring a number of long-established private IP firms. In 2016 further firms followed.

So, it seems corporatisation has made itself right at home in Australia. A large majority of the biggest IP firms in Australasia are now owned by two ASX-listed corporations. And this has all happened in less than a decade, which, in legal years, is a blip in time.

“The landscape has changed more in the past six years than in the previous 100 years,” says Adam Luxton, partner at James & Wells, one of Australasia’s largest privately owned patent and trade mark attorney firms.

But that’s how it goes in the modern world,



right? Industries evolve, change happens fast, and those who don't adapt get left behind. However, 'evolution' suggests improvement, and Luxton, along with James & Wells founding partner Ceri Wells, believes the move away from private practices to corporate structures is not good for the patent attorney profession or those it serves.

He regards the recent exodus of senior patent attorneys as an unsurprising outcome of corporatisation. One that leaves a vacuum of knowledge and experience at these merged/acquired entities.

"As a consequence of the sale of the firms to these listed companies, many former equity partners have left and are continuing to leave. There's been an exodus of senior attorneys who are being replaced by younger people with a lot less experience. They are no longer business owners but employees in a large organisation. You are also seeing a break between established relationships; between corporate clients and the attorneys that have acted for them for 15 to 20 years."

Again, isn't change inevitable? Isn't the influx of fresh blood a good thing, ensuring the profession keeps pace with the times and receives an injection of new energy

and ideas? To a degree, says Luxton, who is keen to emphasise that there is nothing wrong with the calibre of junior attorneys coming through.

"The next generation of patent professionals is very competent, but increasingly they're missing out on the mentorship they

and mentoring of seasoned professionals.

"There are also concerns about providing a good work environment in which staff can thrive. Senior attorneys have developed their knowledge and intuition over years of practice. Junior attorneys that are dealing with workloads beyond their level of experience



"With so many senior attorneys leaving the profession, the new breed may struggle to become well-rounded professionals without benefiting from [their] experience and mentoring"

Adam Luxton, partner, James & Wells

need at that point in their career," Luxton says. "And some of those [newer attorneys] are saying, with this senior cohort moving on, 'will I continue to develop professionally?' While it's good to see the next generation of attorneys moving in, I am concerned that with so many senior attorneys leaving the profession, the new breed may struggle to become well-rounded professionals without benefiting from the experience

can easily feel overworked and stressed."

Respected Australian commentator and patent attorney Mark Summerfield has said there is a "silver lining" to the loss of patent attorneys. Writing on his Patentology blog, Summerfield noted that the replacement of outgoing attorneys with trainee patent attorneys "represents an admirable commitment to the training and development of the next generation of practitioners".



MEDIATION



However, Wells feels the problem goes deeper than numbers. “Clients are at the forefront of our firm, and we make it a priority to nurture a mindset in our younger attorneys that truly serves the client,” he says.

“Obviously they must be technically good, but they also need business acumen when it comes to real client service. Sometimes with clients, you don’t bill them for a job which had an adverse outcome, or where you are digging

professional excellence. Being adaptable and having more autonomy means we have the time to understand the nuances of our clients’ businesses and build long-term relationships. This insight enables us to provide more pragmatic and relevant support.

“If I was a corporate and was dealing with a firm, I would want to know, who am I going to be dealing with? Are they going to be there long enough to really understand my busi-



“You never want to lose a client; you look at it as a multi-decade relationship. That is the difference between someone who owns the business and ... someone whose job is to meet fee targets”

Ceri Wells, founding partner, James & Wells

your client out of a hole. The client becomes loyal to you forever and a day, and you build a strong relationship based on trust and respect.”

In the corporate model, employees may not have the same discretion to look after clients, Wells adds.

“Someone who owns or aspires to own the practice will instinctively feel more invested in building a long-term relationship than an employee who could move to another firm tomorrow. You never want to lose a client; you are always looking at it as a multi-decade relationship. That is the difference between someone who owns the business and has a relationship with their client versus someone whose job is to meet fee targets set by the firm’s owners. It’s a different mentality.

“We’re always striving to be easy for our clients to work with, while maintaining

ness, who my competitors are, the nature of the industry I am in, so they are going to give me advice based on their understanding of my business?”

Luxton, who recently joined James & Wells, agrees it’s great being in a firm that is owned and managed by partners who work in the practice.

“If you have run and owned a business and had a say in how it is managed and how your people are treated, that control is lost in the corporate structure. I think we’re seeing senior staff branching out on their own as they want control back.

“That is where the dissatisfaction stems from. I think we’re seeing a lot of attorneys leave listed firms to set up smaller boutique practices because they dislike their loss of control over decision-making.”

The objections notwithstanding, the steady creep of corporatisation over recent years is a fact. So, what does anyone seeking the services of a patent attorney conclude from all of this?

It’s about being aware of how far the landscape has shifted and looking more critically at who you are engaging, says Luxton.

“The feedback we are starting to get from referrers is that the quality of service and experience we’re providing is getting harder to find in what traditionally have been regarded as well-established firms.

“I think the impact for those seeking patent attorney services is you have to critically analyse what are very traditional and, should be, commonplace qualities. As a procurer of patent services, what are you looking for? For experience from someone who can deliver high-quality services in an environment that can offer a compelling value proposition. Established firms used to guarantee that whoever you engaged in that organisation would be able to deliver. Now you have to look critically at who is doing the work, not just at the firm.”

As for what lies ahead, Wells believes the system will “right itself”.

“The big firms are already fragmenting, and indeed some have disappeared. Less choice means more opportunity, and we’re already seeing an increasing trend towards attorneys going out and starting smaller practices, which will recruit and train more staff and grow over time. Privately owned firms will come back, but I think over the next decade there will be a shortage of really experienced attorneys and further dramatic shifts in the IP firm landscape.

“Businesses are noticing the industry changing and feeling its effects, which is why we’re offering an alternative to fill the gap. As we expand, we’re looking for like-minded people who share our values.

“I don’t see the listed firm model being dominant over the long term. I think the model has a sunset. New firms will spring up and grow, and established privately owned firms like ours will seize the opportunity for growth by providing quality attorneys and their clients with a place to go to – one with excellent support and a great working environment.”

ABOUT JAMES AND WELLS

James & Wells is one of Australasia’s largest full-service, independent IP firms, with a reputation that has been built over 40 years. Its expert team of specialists works with clients to learn the nuances of their business strategy, markets, risks and opportunities, enabling them to provide the pragmatic and relevant support required.