

Conner Inn “Dating Game” Topics – October 2018

Guest	Conts. 1	Conts. 2	Conts. 3	Conts. 4	Issues Raised
Lawyer’s Experience					
<p>Tell me about how long you have been practicing law?</p> <p>Do you have a technical degree? If so: What is your technical degree?</p> <p>What clients have you represented?</p> <p>Do you have experience litigating? What types of cases?</p> <p>Do you have appellate experience?</p> <p>Do you have experience arguing before PTAB?</p> <p>So many cases these days are settled or are decided by arbitration / ADR. What’s your track record in settling</p>	<p>Senior partner is an experienced litigator at a big multi-national firm who has little personal experience in patents and no technical degree, but has an IP group with a partner and several junior associates with patent experience, technical backgrounds, litigation experience, but no specific experience at the PTAB.</p>	<p>Solo practitioner with electronics technical background and many years of patent prosecution and litigation experience, and is an IP “Super Lawyer”</p>	<p>Junior partner at patent boutique firm with computer engineering background, several years of litigation experience but never as first chair, and has argued twice before the PTAB; she follows Oligo on Facebook and saw Oligo’s post about its electronic payment software update</p>	<p>NYC rep of a virtual law firm that seems to have very well qualified people, but not someone in NYC who is personally well suited to handle this case. Rep has EE degree, patent prosecution and PTAB experience, but limited trial experience. She’s confident the virtual firm’s trial attorneys can help her with that side of things.</p>	<p>How far can attorney go in relying on the experience of others?</p>

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Firm size, IP group size, firm experience (vs. Contestant lawyer's experience)					
Does size really matter?	Yes, because our patent trial team is routinely selected to take cases to trial. Only a big firm has the bandwidth to handle a case through trial.	Not at all. Anything others can do, I can do more cheaply and efficiently. I have a lot more flexibility and significantly lower overhead.	Junior partner's firm has 100 attorneys, mostly based in NYC	Smaller is better- it's much more cost efficient to keep a lean staff and bring in help only when needed.	
Have you or anyone at your firm ever handled cases involving the same technology? If so, what did you do on behalf of your other client?	Senior partner has no idea of specific experience of the rest of the attorneys in the big multi-national firm but we have won several patent trials on the defense side. Our IP group can tell you more when you meet with them.	Solo practitioner has worked for other clients in very similar technology, and prepared landscape opinions in the past that may have included this exact technology. If you want, I can get you a list of all of those clients for whom I prepared opinions and all of the various outcomes of the litigations	Junior partner knows that others at her firm have specific technical knowledge and experience, but she and they do not get along well, and if she brings them in they will demand a big chunk of her origin credit, so she would prefer to use some well-qualified associates instead of other partners.	Virtual firm has done a lot of prosecution in the area, and handled several IPRs that arose from clients whose patents they prosecuted.	Can you share client list information? Can you share client project information? Did in house or outside counsel run conflict check before this pitch meeting?

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		concerning those opinions.			
Who will do the work?					
<p>Who else in your law office will work on my case?</p> <p>Can junior attorneys or paralegals in the office handle some of legal work at a lower rate than what you charge?</p>	<p>Senior partner who is trying to bring in this client will be away in Japan for the next 6 months and is likely unable to work on this case. Our IP partner will have day to day control of the case, with supervision from me.</p> <p>We are willing to cap each attorney's time to 10 hours per day, regardless of how much we make them work. Our team will work on a 20% discount off our regular rates if the case proceeds past the answer/ motion to dismiss stage.</p>	Solo practitioner has no support and lots of time to dedicate to this client.	Junior partner has a team of paralegals and associates to work on this case, but is worried that the associates may be committed to work on other work for other partners	In fact, it was a junior associate who identified Oligo's in-house counsel as a potential client because in-house counsel is a subscriber to the associate's mobile phone IP blog.	
My company wants me to do as much of this work as possible,	We will certainly incorporate all of your work into our	Happy to work with you to make this mutually	Yes, but junior partner would expect to be	I'm comfortable signing off on the PTAB part so long	Should outside counsel surrender professional

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so would you be willing to sign off on my work for filing with the court/PTAB?	papers, that way your company will get top value for everything you give to us and it will be there to be seen by your superiors on the board.	beneficial. I know that you get assessed internally based on both cost and outcome, so I'll do whatever works for you.	involved in strategy, reviewing the drafts and final submissions, and be listed as lead counsel	as I can review and edit, but need to bring in others on my team to help with court filings.	judgment to in house counsel?
Managing the Case					
What are the possible outcomes of my case?	Unsure without asking other attorneys at firm	Solo practitioner is pretty sure that the case is a loser.	Junior partner is optimistic about outcome because she recalls the consensus during her time as an examiner that BI's patents were weak	NYC rep is confident the case can be handled cheaply no matter what.	
How will you let me know about what's happening in my case?	Our IP partner will send you a weekly summary, in addition to any urgent matters which we will report same day.	You can ping me whenever you need an update. I'm going to be pretty busy working the case, so I'm not going to build-in a set schedule for updates. You can trust me to handle stuff as it comes	Junior partner plans to provide updates on a rolling basis	I'll let you know when anything substantive happens.	

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		up. You'll let me know when you need to know something.			
Should we file some IPRs?	We have not run a conflicts check yet, but in my experience working with the IP group it is virtually essential to file an IPR in a case like this. To help defray costs we propose using a DC boutique that specializes in IPRs (real reason: they have no PTAB group)	Maybe. How much do you want to spend? And when do you want to spend it?	Yes	Not at first. We have a year to file an IPR from the time you get sued and I'm sure this trial stuff won't take that long.	
Should we file a d.j?	Our IP partner should make that decision in conjunction with you.	Probably not. But again, how much do you want to spend and when do you want to spend it?	No	No.	
Might we get sued in Alaska, and if we do, is that bad?	Possibly, and being sued in Alaska is not a problem. We have local counsel we routinely work with over there and he is well known to both the local bar,	Alaska would be bad. Unless it's in the summer.	Junior partner believes it is hard to predict, but believes a motion to transfer would be wise	You may get sued in Alaska, which would be fine. We have a guy up there, and he says they never get patent suits and would probably be	

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	judges and political establishment.			happy to use Alice to get rid of the case.	
Legal Fees and Costs; chances of successful outcome					
<p>What is a ballpark figure for the total bill, including fees and expenses? What alternate fee arrangements are you open to? Are you amenable to alternate fee arrangements? If so, what could that look like, in your view?</p>	<p>if the client rates the Senior Partner on Avvo or otherwise provides us with the ability to market our IP practice group to future clients, we will be very flexible on the bills. Likewise, if Oligo retains the firm for other work, like lucrative M&A deals, we can of course extend a deep discount on handling this litigation. The managing committee owes me for some favors I did their clients, and I am happy to push back on them if it's worth my time.</p>	<p>Whatever you need it to be. Let me know where the other firms you're looking at come in, and we'll figure out a way to make it work.</p>	<p>Junior partner provides an estimate of \$2-3 million, but she hasn't calculated how much more it would be if there is a parallel district court action</p>	<p>We are confident we can handle this for under \$500,000. We provide excellent value because we don't have expensive overheads like a big NYC office.</p>	<p>How much effort is needed to accurately provide estimates?</p>
<p>Do you think we will win?</p>	<p>Our IP group is top notch</p>	<p>Of course we will win.</p>	<p>Junior partner</p>	<p>I don't think they'll even</p>	<p>When does a prospective</p>

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<p>Before I hire you, can you provide a free legal opinion about the case and about the likelihood of success? I'd like to use that opinion to shop it around: do you see any issues with that? Is that opinion privileged? (I don't want to tell you about my case if there isn't already a privilege / protection in place.)</p>	<p>and we've won numerous cases. I'm sure they will secure the best outcome possible for you, keep mind they have not ever lost a case at trial and I am sure your result will be the same.</p>	<p>Can't really do a free opinion but tell me what you could pay for one.</p>	<p>believes there is a good chance of winning at the PTAB.</p>	<p>sue. If they do, I've looked at their patents and it's total 101-ville. Plus there's all kinds of prior art we can throw together to make a 103 case.</p>	<p>new client become a client? Did in house counsel or outside counsel run conflict checks before this meeting?</p>
<p>What are your rates and how often will you bill me? How often do you adjust your rates? Can you give me 'most-favored nations' billing – if your firm charges any other client less, you'll match that lower rate for me?</p>	<p>We bill monthly and charge out senior associates around \$725, partners at \$975 and junior associates range from \$400-600.</p>	<p>My rates are flexible; I can beat anyone else's rate. I'd like to bill monthly but with no office staff, it'll depend on how busy I am. There won't be a set schedule. But if you can pay in cash, I can shave the bills a little.</p>	<p>Junior partner bills \$700/hour; her firm sends invoices monthly</p>	<p>We bill monthly. My rate is \$350/hour. Associates are less. Alaska trial counsel is dirt cheap. And of course we will use your patent people as much as possible.</p>	<p>Can you offer a modest cap, betting that the case will settle?</p>

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<p>Can you help me with a legal funding entity that will defray some of the expenses and risk?</p>	<p>I can lean on some of my contacts at funding entities. While they do not normally loan money for defense costs, we send these folks a ton of business and I can make them “see the light” so to speak. If they give Oligo a hard time Senior partner will threaten to pull his client’s business from them.</p>	<p>I don’t work with any of those entities (or should I say, they refuse to work with me).</p>	<p>Junior partner has not had a client use a legal funding entity, but is open to it</p>	<p>Let me look into it.</p>	
<p>Personal Questions</p>					
<p>Would you be interested in going out for drinks later?</p> <p>Do you like artisanal cocktails?</p>	<p>Senior partner would be happy to drink with you at his private club, where coincidentally Oligo’s outside board director is also a member. Senior partner likes to host all night drinking sessions, but claims to be able to hold</p>	<p>Sure. Or I can just send you a case of whatever you like to drink.</p>	<p>Junior partner abstains from alcohol on religious grounds</p>	<p>Yes, and yes.</p>	<p>What lengths will attorney go to make potential future clients happy?</p>

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	<p>his liquor and have no problem with alcohol. However, this is strictly a “brown liquor firm” and Senior Atty cannot under any circumstances be seen drinking artisanal cocktails - he’d never hear the end of it from the executive committee “guys”.</p>				
<p>Can you get me tickets to the World Series?</p>	<p>Senior partner can get tickets, but is attending with another larger client.</p>	<p>Boy, I see they’re like \$600 and up on StubHub. If I could bill you in advance for some of the work on the case, I could probably get you a ticket or two.</p>	<p>No</p>	<p>How about the best NYC bar for artisanal cocktails instead?</p>	
<p>I’m an insomniac and work 24/7. Would you be available for late night calls or meetings?</p>	<p>After hours you can call me - I’m usually at my club with some drinking buddies. Might be best to call in the morning actually or if it</p>	<p>Sure. I work out of my home office, and often fall asleep at my desk, so just call me when you need.</p>	<p>Junior partner is a single mother and would be stretched thin to participate in late night calls or meetings,</p>	<p>Absolutely. I work from home so I can log in at a moment’s notice.</p>	

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	cannot wait my IP partner will handle the calls. He's always in the office or at home.		but is willing to be flexible to get the work		

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Questions for all participants / discussion:

1. Who, among the 4 contestants, is the best match to “date” (i.e., be engaged as counsel by) the “Bachelor”?
2. What additional subjects should be delved into, and what additional questions should be asked, in the real-world “Dating Game” of selecting counsel?
3. What subjects should not be delved into in the real-world dating game?
4. Should the Contestants’ respective secrets DQ them as potential dates? How forthcoming should they be in revealing their secrets (versus downplaying them, etc.)?