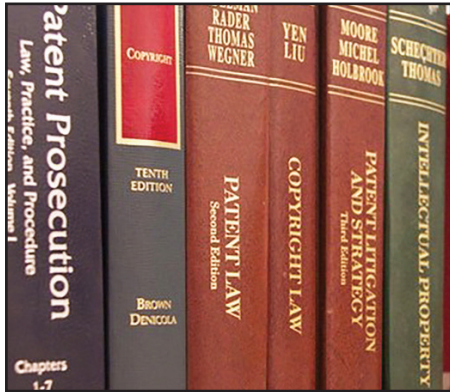


Focus

The Enterprise **F1**

July 24, 2017

INSIDE



ABCs of Patent Law

There are a lot of misunderstandings floating around out there concerning patents. What is a patent? Why do companies and inventors acquire them? What is that process and how do you protect your patent once you've obtained it? Attorney Adam Smoot gives us answers to those questions and many more in his "Primer on Patent Law."

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Law List:

Utah Law Firms

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Issue Sponsor:



The Open Law Services staff poses in front of the Scott M. Matheson Courthouse in Salt Lake City (left to right): Matthew Bell, staff attorney; David McNeill, assistant director; Mary Dewey, staff attorney; A. Daniel Spencer, co-founder and supervising attorney; Shantelle L. Argyle, co-founder and executive director; Gretchen Devine, client relationship manager; Ariana Barusch, staff attorney; and Martin T. Stolz, staff attorney.

Filling the gap

Salt Lake City's Open Legal Services caters to those who aren't indigent but still can't afford the high-priced spread

Frances Johnson
The Enterprise

Despite the old adage that says justice is blind, the American justice system still sees money. If you find yourself in legal trouble and don't qualify for free legal services — for example, from a public defender or legal aid society — but also don't have enough money to pay a large law firm several hundred dollars an hour to represent you, your options for access to justice are limited to non-existent. Or they were until several years ago when Open Legal Services opened its doors in downtown Salt Lake City.

Founded by Shantelle Argyle and Daniel Spencer in 2013, just after they graduated from the University of

Utah's S.J. Quinney College of Law, Open Legal Services is a nonprofit offering legal assistance and representation on a sliding fee scale based on clients' incomes and family size. Hourly rates at Open Legal Services range from \$75 at the bottom to \$145 at the top.

"We're basically trying to fill the gaps," Argyle said.

And there are plenty of gaps to be filled. Open Legal Services launched with four full-time-equivalent attorneys and two part-time staff members in an office in the basement of a Himalayan restaurant. The firm now has six full-time attorneys, two

staff members, brand-new offices in downtown Salt Lake and a satellite office in Ogden. There was no one doing what they were doing in 2013;

now there are four other similar models operating in Utah and about four dozen nationally, Argyle said.

"The future of what we do and access to justice will probably be a hybrid," Argyle said. By charging clients instead of operating on federal and other grants, Open Legal Services avoids the risk of folding if grant money dries up. "We didn't ever want to hire somebody and get them a bunch of clients who depended on them and then lose a grant and they're gone."

Funding their company through donations and client fees — which cover 92 percent of Open Legal Services' operating costs — rather than government grants also gives the organization more flexibility in the cases they can take and clients they can represent.

For example, the firm recently



see OLS pg. **F2**

OLS*from page F1*

represented a refugee woman from Sudan who was falsely accused of domestic violence. The reality was that the woman was a victim of domestic violence and rape at the hands of her husband. When police responded to a call about an incident at her home, the woman didn't speak enough English to explain what had happened. But her husband, who did speak English, told the officers that she had assaulted him, showing off scratches she had given him in self-defense as evidence. Unable to communicate well enough to refute the husband's story, the woman went to jail. Her husband filed for and was granted a protective order — meaning the woman also lost custody of her four-month-old baby.

Respondents to protective orders do not qualify for free legal aid. But because they do not accept federal grant money, Open Legal Services has no such restriction. The refugee liaison at the Salt Lake City mayor's office scraped together some money and Open Legal Services took the case. Working with a public defender and the guardian ad litem assigned by

the court to represent the interest of the minor child, Open Legal Services prevailed in having both the protective order and criminal charges dismissed. A private attorney would have charged around \$3,000 for the work they did, Argyle said. Open Legal Services charged \$150.

Had the woman not been able to secure legal representation, she most likely would have been convicted, Argyle said.

Stories like that one show exactly why a model like the one Open Legal Services uses is necessary, said Charles Stormont, a Salt Lake City-based attorney who serves as chair of the organization's board of directors.

"For better or worse, justice is rarely free," he said. "Once you get above a certain income level — which is not very high — all of a sudden your choices become do it yourself or go to a law firm where they charge hundreds of dollars an hour."

Self-representation is rarely good for anyone — the individual or the system, Stormont said — but many people find themselves with no other alternative.

Stormont confessed that when he first met Argyle on a pro bono committee through the Utah State Bar, he

was intrigued by, but a little skeptical of, what she was doing. The more he learned about Open Legal Services, however, the more impressed he became with what they were trying to do — and what they were already accomplishing.

"They're not just surviving; they're growing," Stormont said. "That's as much the success of the model as the drive to help people. Part of our mission is to reach out and help as many people as we can. We made a conscious decision not to hoard the model but to open our doors and say, 'This is what we are doing. If you want to learn how to do it and help more people, let us show you how.'"

In addition to legal representation, the Open Legal Services model also includes "wrap-around" services whenever possible, Argyle said. Attorneys at Open Legal Services help clients find therapy, domestic violence counseling and family counseling when necessary and feasible.

"We recognize, particularly in this demographic, if they have a legal problem they probably have life problems as well," Argyle said. "Solving their legal problem won't do any good if we don't solve the problems that contributed to it."

That mission to not only provide legal services but to try to improve lives is what is most attractive about the Open Legal Services model, Stormont said. And it is something that the newest generation of lawyers values, as well.

"We're seeing that they want to make a good living but they also want to make an impact and they're willing to sacrifice income," Stormont said.

Argyle said she is frequently asked to present to legal groups about what Open Legal Services is doing, and how they do it. Especially as federal money that supports legal aid organizations that provide free legal services shrinks, more and more people are interested in the type of self-sustaining model Open Legal Services uses. And Open Legal Services is more than happy to oblige.

"Our perspective is that we want there to be so much competition to provide affordable legal services that there are so many other people doing this that we close our doors," Argyle said. "If there were so many people providing affordable access to legal representation that we went out of business, mission accomplished."



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Patents, their uses and their purposes are often misunderstood. These misunderstandings arise from all sorts of places, from “Shark Tank” episodes to the movie “Flubber.” For most people, misunderstandings about patents are not problematic. For entrepreneurs, business owners or other decision-makers, these misunderstandings can hamstring a startup or expose a business to dangerous liabilities. To that end, this article explains a few fundamentals regarding patents and why companies acquire them.

What is a patent?

A patent is a property right in a new, useful, non-obvious invention, such as a new gumball machine, a new composition of asphalt, a more efficient way for a cell phone to get on the Internet or a new method of distilling water. Things like catch-phrases, abstract ideas, art work, slogans or mathematical equations cannot be patented.

Conceptually, a patent can be thought of as a bargain between society (via the government) and an inventor. Because of the cost associated with developing an invention as compared to simply copying that invention, market incentives for many inventions are to keep them secret. To further the public knowledge and incentivize the dissemination of knowledge associated with

inventions, patent law adjusts normal market forces to grant a limited-time monopoly to an inventor in exchange for a detailed publication of

how their invention works. Additionally, after the patent expires, the invention is in the public domain. Because of the bargain involved, patent law requires that the inventor be actually adding something to the public knowledge. Thus, a public disclosure of an invention

(for example, by offering a product for sale, doing a poster session at a conference, or mailing samples to customers) can destroy the possibility of acquiring patent protection because the knowledge has already been given to the public. The U.S. provides for a short window after such a disclosure to file a patent application, but most foreign countries are not so lenient and any disclosure can prevent patent rights being acquired in foreign countries. This can be a potential trap for many startup or early-stage companies who seek investor funding or provide web releases before adequate protections or safeguards are in place.

Another aspect of patents that emerges from the fundamental bargain is that the applied-for invention must be new. If the patent sought is already in the public knowledge (“anticipated”) or is a trivial variation or combination of knowledge already in the public knowledge (“obvious”), then a

patent cannot be obtained.

When considering a patent in terms of use rather than acquiring patent protection, a patent can be thought of as a nuclear weapon that can be aimed at someone, but does not provide actual protection. For example, numerous inventors or business people have the notion “I need to get a patent so I can make my widget.” However, a patent doesn’t legally protect you in making your invention. A patent allows you to take someone to court to prevent them from making, using, selling or importing your invention.

Because a patent only allows for an exclusionary right, situations may arise in which the same product or method may be covered by more than one patent, potentially from more than one company. Thus, even if one patent has expired, it does not guarantee that a person who does what is claimed cannot be infringing a different patent. Similarly, licensing a patent right from one company does not guarantee that another entity won’t sue you on a different patent covering the same technology.

What are claims?

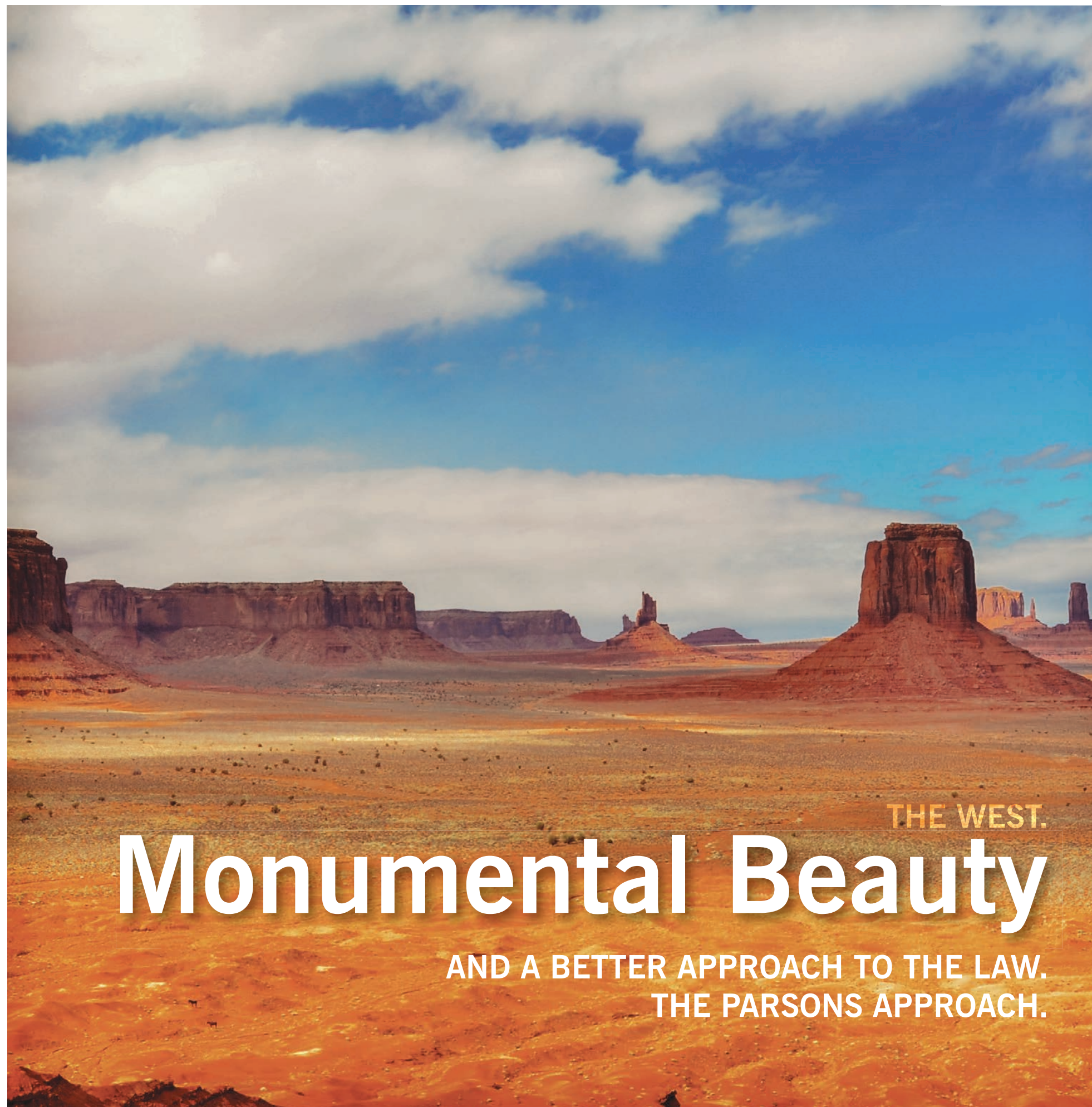
One of the most important parts of a patent are the patent claims. The claims are the verbiage that describe the actual property boundary and appear as numbered paragraphs at the end of a patent. When an inventor wants to enforce her property right in court, she must show the judge that the alleged infringer has actually

done every single thing mentioned in her patent claim. Taking a basic example, if the inventor has a patent with a claim for a stool with a back and four legs, she would have to show the judge that the alleged infringer has a stool with a back and four legs. A stool without a back or a stool with only three legs would not be infringing the patent claim. However, a stool with a back and four legs with additional features such as rolling wheels, a cushion, etc., would still infringe the patent claim.

Additionally, the claims are what is examined by the patent office to determine if the invention for which protection is sought is indeed new and non-obvious. For example, the patent office may look at the claims of a patent application and respond to a patent applicant that the claims are too similar to previous inventions. In response, an applicant might add more detail to make clear that what is invented is new and non-obvious.

However, by adding additional detail, fewer potential infringers can be prevented from using the invention. Continuing the stool example, if a claim covered a stool with a back and legs, and a more detailed feature of an “arm rest” was added to the claim, makers of stools without arm rests would no longer be infringing that claim.





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The ROI of Cyber Security

You've heard you need it. Daily headlines warn you to secure your data to protect your business, your employees and your customers. But how can you afford to pay for cyber security when you already have a tight budget and it may not add a dime to your revenue stream?

The answer is that the return on this investment is not measured in new income, but in the value of asset protection. To determine whether cyber security is a worthwhile investment for your company, you must understand what is the true cost of a data breach, and how much will you benefit from investing in measures to avoid those costs.

The cost of a data breach varies depending on many factors, including the root cause of the breach (such as a malicious attack or employee negligence), the time it takes to discover and remedy the breach, the industry involved, if there is extensive use of mobile platforms and whether an incident response team had been developed prior to the breach. Despite the many variables at play, both direct and indirect costs should be tallied. Direct costs include forensic experts to investigate and remediate, credit monitoring, lawsuits and settlements, regulatory fines and penalties and notification expenses. Indirect costs include business disruption, network downtime, loss of reputation and customer turnover.

The IBM/Ponemon "2017 Cost of Data Breach Study," which interviewed individuals from 63 U.S. companies in 16 industry sectors that had suffered at least one breach in the prior 10 months, found that the average cost of a data breach was

\$225 per lost or stolen record. Of that amount, \$79 represents direct costs and \$146 is attributed to indirect costs.

To calculate these amounts, the researchers asked respondents how many records were affected in the breach, what percent of their organization's customer base was breached and how much the organization spent on various activities to discover and respond to the breach. Of the companies interviewed, the number of breached records per incident ranged from 5,563 to 99,500. That translates to a cost of \$1,251,675 to \$22,387,500.

Think about what kind of costs your company could incur from a data breach. Are you an online retailer? A 2014 study performed by Avaya found that 80 percent of companies lose revenue when the network goes down, averaging losses of \$140,000 as a result of network outages. If you are in the financial sector, those losses climb to \$540,358 per incident.

Now think about what would happen if your IT professional had to stop focusing on keeping the computer systems working to turn his or her attention to investigating and remediating a breach. Once detected, it takes an average of 55 days to contain a breach. Ponemon's "2015 Cost of Cyber Crime Study: Global" found that business disruption accounts for 39 percent of total external costs, which includes business process failures and lost employee productivity.

In addition to losing employee productivity, hiring a forensic expert to help identify and resolve the breach could cost over \$15,000 per week. Notification costs, which include activities such as developing a contact

database, engaging outside experts (state notification laws are based on the location of your customers, not the company's headquarters), determining regulatory requirements, paying postage and staffing call centers averaged \$690,000 per breach in 2017.

And if your company is in a regulated industry, fines and penalties can be steep. Depending on the level of neglect, HIPAA violations can result in penalties ranging from \$100 to \$50,000 per violation, with an annual maximum of \$1.5 million. Financial institutions that are governed by the Gramm Leach Bliley Act can be fined up to \$100,000 per violation, and officers and directors of the financial institution can be personally fined up to \$10,000 for each violation.

Now that you have an idea of how much a data breach could cost your company, consider how much it could save by investing in cyber security. Ponemon's "2017 Cost of Data Breach Study" highlights 20 factors that can increase or decrease the average cost of a breach. For example, having an incident response team already organized and ready to spring into action decreases the cost by \$25.90 per record — over 10 percent. Extensive use of encryption reduces the cost by \$22.50 per record and training your employees reduces the cost by another \$16.80 per record. If you add insurance protection, you can further reduce the price tag of a data breach by \$9.90 per record. Investing in these four relatively inexpensive areas could reduce the cost of a data breach by \$75.10 per record. If 10,000 records are stolen, the investment could save you \$750,000.

How much would it cost to implement these cyber security controls? Cyber insurance is typically

priced based on the class of business and the amount of revenue, with premiums starting around \$1,000. A business in a neutral class with revenue of \$10 million could expect to pay a premium of around \$8,500 for \$1 million in coverage. Based on research carried out by the Ponemon Institute in 2012, the total cost of ownership for full disk encryption averaged \$232 per user, per year. And the cost of training your employees and organizing an incident response team? That is largely a matter of investing company time to understand your own systems and processes, develop an information security policy and corresponding incident response plan, and train your employees on those procedures.

You may already have someone in your company savvy enough to do this for you. If so, then an excellent starting point is NIST's reference guide, titled "Small Business Information Security: The Fundamentals" (Nov. 2016), available here: <http://nvlpubs.nist.gov/nistpubs/ir/2016/NIST.IR.7621r1.pdf>.

Or, it may be more cost-effective for your company to hire a cyber security professional to perform a risk assessment, draft an information security policy and train your employees on how to be good stewards of your company's information.

Whichever path you choose, spending capital on cyber security today may be the best investment your company makes this year.

Tammy B. Georgelas is a cyber security and litigation attorney at Parsons Behle & Latimer, based in Salt Lake City, who advises clients on data security, breach prevention, information security policies and response strategies, including compliance with state and federal laws.



**TAMMY
GEORGELAS**



Selecting an attorney to help patent your invention

You have a great idea and need to obtain a patent to protect it. Great! What's next? Before you make any public disclosure of your idea, you need to find an attorney to help you file the patent application with the United States Patent and Trademark Office (USPTO).

Where do you begin? What should you look for? Here are a few things to consider:

- **You need a patent attorney.** Not just any attorney will do. You need to find an attorney who is qualified and registered to practice before the USPTO. In addition to a law degree, a patent attorney has a technical background in the sciences (often a degree in physics, chemistry, biology or engineering) and has passed the USPTO's "Examination for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office" (usually referred to as the "patent bar"). General practice firms may have one or more patent attorneys, while specialty firms focus specifically on patents and other intellectual property (IP) matters.

- **Don't hesitate to shop around to find the right fit.** Many people are hesitant to reach out to an attorney, fearing they will receive a bill in the mail. A firm should not bill you anything until you have actually signed an engagement letter with the firm, with terms of billing being spelled out in that letter. Most patent attorneys are happy to meet with you, free of charge, for an hour or so prior to any engagement. These meetings are helpful for the attorney to get to know you, to familiarize you with the firm and its attorneys and to discuss your options for protecting your idea at a general level. Meet with multiple firms until you have found one that you feel comfortable with.

- **Find an attorney with expertise in your idea's technical field.** A patent application is both a legal document and a technical document. As such, make sure that you find an attorney who is able to fully understand your invention at the most technical

level so that he/she can draft a document that fully and clearly describes it. Most firms that practice intellectual property place attorney profiles on their websites that include each attorney's technical background. When shopping for a firm, look for one that has an attorney(s) with the appropriate

technical background, and consider asking specifically for that attorney when you contact the firm.

- **Meet the attorney who will be drafting your patent.** Often, the attorney(s) you initially meet with will not be the one who actually drafts your patent applica-

tion. Don't hesitate to find out which attorney will actually draft your patent, and ask to meet with him/her — even during your first meeting with the firm. When "disclosing" your invention to that attorney, be sure that he/she is conversant in the technology and understands what you are disclosing. Look for an attorney who is able to ask insightful questions and demonstrates a thorough understanding of your invention.

- **Discuss billing arrangements.** You should not engage a firm

to draft your patent application until you have a clear idea of how much it will cost. Often, once the attorney understands the technology and complexity, he/she will provide an anticipated cost, a range of anticipated costs or even a fixed fee for drafting your patent application.

- **Discuss the total cost of obtaining a patent.** Filing a patent application is only the first step. Once it is filed, it is queued for consideration by a patent examiner. It is normal for a patent application to be rejected by the patent examiner one or more times prior to being approved or abandoned. You should discuss what the firm charges for "prosecuting" the patent, including typical costs for responding to rejections from the USPTO.

- **Discuss the firm's relationship with the USPTO.** Often, the speed and quality of the examination of a patent application can be greatly improved by conducting "examiner interviews" when a patent application is rejected. This involves the attorney discussing the patent application and the grounds of the rejection(s) with the patent examiner on the phone, in a video conference or in person at one of the USPTO's locations. You can be well-served by choosing a firm that has a good reputation with the USPTO

and that has a regular habit of conducting examiner interviews, particularly in-person interviews.

- **Consider the firm's experience with foreign filing.** If you are interested in also filing your patent application internationally, you should ascertain the firm's experience with foreign filing. You may want to ask questions such as:

1. How many international patents does the firm file each year?
2. Does the firm have relationships with other firms in the particular jurisdictions you are interested in?
3. How familiar are the firm's attorneys with the patentability requirements in the particular jurisdictions you are interested in?
4. What are the typical costs involved with foreign filing?

- **Determine if the firm also litigates patents.** Some firms focus solely on "prosecuting" patents — i.e., filing patents with the USPTO and working with patent examiners to get them approved. Other firms also litigate patents — i.e., enforcing and defending patents in the courts. You may want to consider a firm that does both.

- **Determine if the firm has experience with other IP matters.** There is much more to IP than just patents. Determine if the firm can help you with other IP matters such as trademarks, copyrights, software licensing, patent licensing, patent valuation and sales, nondisclosure agreements, trade secrets, patent infringement analysis, freedom to operate analysis, etc.

Choosing an attorney for any type of matter can be daunting, especially for something as specialized as patents. When engaging any firm, it is essential to find one that is a good fit for you and your business. Being mindful of the considerations above should help you ask the right questions and make an informed decision.

Kirk C. Coombs is an attorney at Workman Nydegger, an intellectual property law firm in Salt Lake City. He specializes in helping clients obtain patents, particularly in the areas of software and electronic arts.



KIRK COOMBS



STEPPING UP:

Corporations navigating the new normal of climate change

For many businesses, the once far-off impacts of climate change are beginning to affect the bottom line. Drought, pollution, declining natural resources and migrating populations are increasingly disrupting global business practices. These new dynamics are forcing those in charge to rethink what constitutes savvy business. Increasingly, companies are conducting — and shareholders and investors are demanding — sustainability assessments that not only protect a company's profit margin, but proactively protect the Earth.

By foregoing a top-down response and focusing on lateral solutions from businesses, cities and citizens, the ability to effectively respond and adapt to climate change

is strengthened. For example, in their new book *Climate of Hope*, business and governmental leader Michael Bloomberg and environmental policy leader Carl Pope promote the belief that cities, businesses and citizens share a responsibility to work within their respective spheres to simultaneously promote their own interests *and* lead

on climate change. They recommend moving from partisan squabbling to pragmatic solution making, concentrating on benefits instead of costs, focusing on today instead of tomorrow and working from a place of hope instead of fear.

One way businesses are being pushed to proactively address climate change is through shareholder initia-

tives. "Proxy Monitor," a database launched in 2011 by the Manhattan Institute, reported a 27 percent rise in social and environmental board proposals in 2017, even in industries not typically thought to be environmentally minded. Many successful shareholder proposals urge companies to meet the provisions of the 21st Conference of the Parties to the U.N. Framework Convention on Climate Change, otherwise known as the Paris Climate Agreement. Popular proposals asked companies — including ExxonMobil, Occidental Petroleum and PPL — to "publish an annual assessment of the long-term portfolio impacts of technological advances and global climate change policies, at reasonable cost and omitting proprietary information ... consistent with" government policies "to limit global average temperature rise to well below 2 degrees Celsius."

Shareholders also asked companies to report on greenhouse gas emissions, methane emissions, product packaging carbon-asset risk, environmental and human rights risks and "sustainability." These shareholder proposals also face challenges as federal proxy rules may soon change. Currently, shareholders must hold at least \$2,000 in company shares for at least a year to propose a ballot item. Proposed legislation known as the "Financial Choice Act of 2017" would require investors to own at least 1 percent of a company's stock to file a resolution. Under this change, even for a small company, shareholders may need to hold millions of dollars in shares in order to bring new company directives. In America's largest companies, share-

see CLIMATE pg. F11



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	Company Name Address	Phone Web	No. of Utah Attorneys	No. National Attorneys	No. of Utah Partners	No. of Utah Paralegals	No. Utah FT Employees	No. National Locations	Major Areas of Practice	Year Est.	Managing Partner
1	Kirton McConkie Kirton McConkie Bldg. 50 E. South Temple SLC, UT 84111	801-328-3600 kmclaw.com	150	150	95	16	262	3	Corporate, intellectual property, real estate, litigation, immigration, international, employment, tax, estate planning, family law, First Amendment, etc.	1964	Lee A. Wright
2	Parsons Behle & Latimer 201 S. Main St., Ste. 1800 SLC, UT 84111	801-532-1234 parsonsbehle.com	107	138	80	11	187	6	Full-service business law firm serving all major industries	1882	Hal J. Pos
3	Ray Quinney & Nebeker PC 36 S. State St., Ste. 1400 SLC, UT 84111	801-532-1500 rqn.com	103	103	68	10	177	2	Litigation, IP, patent prosecution, labor law, real estate, tax/estate planning, banking/finance, bankruptcy/creditors' rights, white-collar defense/corporate compliance, environmental & natural resources	1940	Arthur B. Berger
4	Durham Jones & Pinegar 111 S. Main St., Ste. 2400 SLC, UT 84111	801-415-3000 djplaw.com	55	93	*	17	174	5	Business & finance, real estate, intellectual property, estate planning, litigation, ERISA	1991	Kevin Pinegar
5	Jones Waldo Holbrook & McDonough 170 S. Main St., Ste. 1500 SLC, UT 84101	801-521-3200 joneswaldo.com	77	78	36	10	125	6	Litigation, real estate, bankruptcy, employment, construction, tax, corporate & securities	1875	Keven M. Rowe
6	Parr Brown Gee & Loveless PC 101 S. 200 E., Ste. 700 SLC, UT 84111	801-532-7840 parrbrown.com	76	76	52	9	29	1	Corporate, securities, mergers & acquisitions, finance, technology, probate, estate, construction, real estate development, employment law, tax, commercial litigation, natural resources law	1975	Jeffrey J. Hunt
7	Fabian VanCott PC 215 S. State St., Ste. 1200 SLC, UT 84111	801-531-8900 fabianvancott.com	69	75	31	4	95	2	Bankruptcy, education, labor, energy/utilities, environmental, ERISA, government investigations, white-collar defense, IT, litigation, product liability, real estate, tax/estate planning	1874	David N. Kelley
8	Strong & Hanni Law Firm 102 S. 200 E., Ste. 800 SLC, UT 84111	801-532-7080 strongandhanni.com	65	65	41	17	131	2	Business & litigation firm	1888	Graden P. Jackson
9	Snell & Wilmer Gateway Tower West 15 W. South Temple, Ste. 1200 SLC, UT 84101	801-257-1900 swlaw.com	57	404	27	6	110	9	Bankruptcy, commercial finance, corporate, intellectual property, litigation, natural resources, real estate	1938	Wade R. Budge Brian D. Cunningham
10	Snow Christensen & Martineau 10 Exchange Place, 11th Floor SLC, UT 84111	801-521-9000 scmlaw.com	54	54	35	15	52	2	Corporate, employment, healthcare, commercial real estate, transportation, trusts & estates	1886	Andrew M. Morse
11	Workman Nydegger 60 E. South Temple., Ste. 1000 SLC, UT 84111	801-533-9800 wnlaw.com	42	*	30	7	*	1	Intellectual property	1984	Thomas R. Vuksinick
12	Dorsey & Whitney LLP 111 S. Main St., 21st Floor SLC, UT 84111	801-933-7360 dorsey.com	37	544	18	6	67	20	Corporate transactions, finance, restructuring, litigation, natural resources, IP, real estate	1912	Nolan Taylor
13	Prince Yeates & Geldzahler 15 W. South Temple., Ste. 1700 SLC, UT 84101	801-524-1000 princeyeates.com	35	35	27	4	52	1	Litigation, real estate, labor & employment, bankruptcy/foreclosure, estate/probate, financial institutions, family law, criminal, corporate	1971	Thomas R. Barton
14	Clyde Snow & Sessions 201 S. Main St., Ste. 1300 SLC, UT 84111	801-322-2516 clydesnow.com	34	37	24	3	53	3	Employment, natural resources, business, banking, white-collar criminal, family law, securities	1957	Edwin C. Barnes President
15	Maschoff Brennan 1389 Center Dr., Ste. 300 Park City, UT 84098	435-252-1360 mbr.com	34	41	22	5	73	3	Intellectual property & complex litigation	2011	Eric Maschoff
16	Ballard Spahr LLP One Utah Center., Ste. 800 201 S. Main St. SLC, UT 84111	801-531-3000 ballardspahr.com	30	534	9	6	10.25	15	Public finance, litigation, labor & employment, real estate, environmental, business	1885	Mark Gaylord
17	Thorpe North & Western LLP 8180 S. 700 E., Ste. 350 Sandy, UT 84070	801-566-6633 tnw.com	30	30	13	3	20	1	Intellectual property, patents, trademarks, copyright & IP litigation	1979	Garron Hobson
18	Cohne Kinghorn PC 111 E. Broadway, 11th Floor SLC, UT 84111	801-363-4300 cohnekinghorn.com	23	23	20	1	14	2	Bankruptcy, civil litigation, real property, business, healthcare, municipal, divorce, general	1975	John Bradley
19	TraskBritt PC 230 S. 500 E., Ste. 300 SLC, UT 84102	801-532-1922 traskbritt.com	20	20	5	9	50	1	Intellectual property	1973	H. Dickson Burton
20	Smith Hartvigsen PLLC 257 E. 200 S., Ste. 500 SLC, UT 84111	801-413-1600 smithhartvigsen.com	12	12	5	2	24	1	Water, litigation, construction, land use, appeals, redevelopment, domestic, government, lobbying	2002	J. Craig Smith



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When + just isn't enough

I think the obsession with backing up my data started in law school. I had a paralyzing fear that I would drop my computer or it would randomly crash and I would lose everything. The data on my computer seemed to represent proof of my entire existence over some timeframe. Without this “proof,” that period of time would have been seemingly imaginary. A horrifying concept. All the endless Westlaw and Lexis research, drafts of briefs, arguments, interrogatories and all my class audio and notes — gone. Gone as if I had been spending that time on the beach instead of glued in front of my computer being the traditional lifeless law student.

Sure, I had an external hard drive, but let's be honest. Sometimes remembering to eat was enough of a challenge during law school. Remembering

to do daily external hard drive backups? Not happening.

Instead, I thought I came up with a solution. I created an email account that was solely responsible for receiving endless drafts of files. It was a lot easier to remember than it was to back up externally and it didn't clutter my actual email inbox. It served as a sheer backup plan in case something went wrong.

Ideal? No. But it did help me feel a little less vulnerable by knowing at least my work would have a better chance at some degree of recovery.

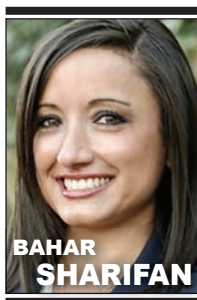
This paranoia continued as I moved on and became an associate where every six-minute block of my life was tracked and I worked at a frantic pace with the ever-looming fear that I wasn't doing everything fast enough for the client. The need for efficiency

was crucial. There was no room for data loss. We couldn't bill the client again, I didn't want to lose the position on the team I was on at the firm as a result and I really didn't feel like “volunteering” any more of my time to legal work. In a world where people agonize over every single word in a brief, that finely worded masterpiece you finally created couldn't just vanish — that just couldn't happen.

Thankfully, there is really no excuse to not be properly backed up nowadays. With the advancement of “always-on” options for continual backup, I no longer have to worry. Personally, we use our own programs internally for cloud storage and backup and I have all my personal docs and anything that ever gets saved to my computer constantly uploading and saved to my iCloud drive. When Apple added the desktop being immediately backed up to an iCloud file, I

felt a level of stress vanish from my world. While I love this machine, if I dropped it, it got stolen or if it crashed — I didn't lose everything anymore. The computer now became a facilitating device instead of the guardian and storage of all my important information. It turned into a tool instead of something treated like a family heirloom that was the sole keeper of all the information you needed to operate your personal and professional life.

I regularly hear others in the legal profession echo this same fear of data loss. Often many do not even think about the systems in place for data backup until they experience some sort of loss. For whatever reason, it seems many law firms try to avoid formalizing their IT needs. It never ceases to surprise me that



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a world with such important daily business, cases, projects and sensitive information often does not direct proper resources to their IT systems — even having an in-house lawyer handle IT issues when not doing client work.

Often the many other pressing issues cause the lack of proper focus, attention or planning to IT management — particularly in a proactive nature including a data backup plan. However, when something does go wrong, the time lost rectifying what could have been avoided or more quickly resolved leaves firms wishing they had planned properly. As a large portion of data loss is not the result of any hacking or malicious occurrence, but instead, sheer human error, the

importance of ensuring the company has a thorough data backup and disaster recovery plan in place is key.

Thankfully, lawyers are well-versed at writing thorough and articulate policies for most issues. That being said, it is important to consult with an IT professional to determine the various more-technical issues and data loss implications around which they should be structuring a policy. By no means is this a comprehensive list, but a few things to consider in order to help determine your needs and shape your data backup policy are:

- **Current Data Backup Frequency.** Are you backing up data? How often are these backups occurring?

- **Data Backup Checks.** How often are the backups being tested to ensure they are working properly?

- **Ideal Data Backup Frequency.** How often should your data be backed

up? What is the ideal number of restore points?

- **Data Backup Redundancy.** Is all of the data backed up into one place or is there any sort of redundancy?

- **Data Backup Guidelines.** Are all users following backup guidelines? Are users saving their data to proper files in order to be properly backed up according to the plan?

- **Data Recovery.** If you are performing backups, do you know how to recover your data if there is a loss?

- **Business Continuity.** How will the company run if there is a loss/disaster/failure?

- **Recovery Time.** How long can the company be down without affecting the bottom line? Seconds? Minutes? Hours? Days?

- **Recovery Point.** How much data can the company lose without affecting the bottom line? Seconds?

Minutes? Hours? Days?

- **Insurance.** Does the company have insurance in place in case of lost data?

Once you have answered these questions, it will be easier to work with your IT team to determine the options available to best cover the needs and goals of your company. With countless options available for on-site, off-site, daily, hourly, geo-redundant datacenters, etc., a backup plan can be custom fit to the specific needs of your company. While building a more ideal IT system involves more than a backup plan, this is a key component and is a great way to check the status of your current practices or start on the road to a more proactive IT structure.

Bahar Sharifan is president of Wasatch I.T., a Murray-based provider of outsourced IT services for small- and medium-sized businesses.

CLIMATE

from page F7

holders would need to hold billions of dollars in stock to essentially buy a voice. The act recently passed the U.S. House and is now in the Senate. Regardless of this federal uncertainty, companies should take note of increased shareholder attention to and demand for corporate policies that address climate change.

Investors and lenders are also demanding corporate accountability regarding climate change. For example, the largest lender in the U.S. agricultural sector recently awarded a \$300,000 grant to THRIVE, a global accelerator program investing in companies that innovate technology solutions for the agricultural sector. These startups focus on clean technology that support growers in smarter pesticide use, increase their yield and promote soil health and food safety using improved robotics and more

efficient infrastructure. With programs like Wells Fargo's "Clean Tech and Innovation Philanthropy," major banks and lenders are not only getting behind climate solutions but are also trailblazing.

As awareness grows, the competitive advantage of publicly incorporating climate change and natural resource assessments in business planning and risk analysis is becoming increasingly clear. A high profile example of this is the "We Are Still In" campaign created in the wake of the United States' withdrawal from the Paris Climate Agreement. This campaign is an open letter signed by hundreds of companies, investors, mayors and governors published to the international community and parties to the Paris Agreement proclaiming "We are still in" and agreeing to abide by the provisions of the Paris Climate Agreement.

On the local level, businesses are aligning to mobilize industry support for specific climate initiatives,

like pricing carbon emissions. For example, the Oregon Business Alliance for Climate (OBAC) is a 27-member group including homebuilders, banks, retailers and grocers working to establish a "framework for Oregon industry leaders to collaborate in policy and business engagements aimed at promoting investment, job creation, competitiveness, and economic growth towards Oregon's low carbon economy."

While healthy discourse about OBAC's proposed legislation continues, membership is rapidly growing and those involved share a common understanding that business can be a strong agent of social change. Steve Clem, vice president of Skanska USA, a large-scale project development and construction group and founding member of OBAC, also recognizes that fueling innovation results in cost savings.

Corporate recognition of climate change is here and growing daily. Is

your business prepared to meet this challenge? Are your practices responsive to shareholder or investor demands for environmental stewardship? For example, here in the arid West, do you properly understand how climate change might affect the availability and price of water needed for your business? Have you considered where your energy comes from and are you fully participating in the low-carbon sources that are available to you? Are there partners you could be working with to better assess and meet your climate goals?

A changing climate requires developing the tools to navigate a new reality. Accordingly, the future of corporate leadership requires adapting to the climate complexities of today. Are you ready?

Reagan L.B. Desmond and Emily E. Lewis are attorneys at Clyde Snow & Sessions in Salt Lake City, where they help clients identify and resolve complex water law and natural resources issues.

PATENT

from page F3

Why do companies/inventors get patents?

Patents serve a number of strategic considerations for companies, several of which can be explained with reference to the nuclear weapon analogy. First, if a competitor or other player in the market is using a patented invention, the nuclear missile can be fired at the competitor, i.e., the competitor can be taken to court to be prevented from making, using or selling the patented invention.

Second, the presence of the patents may have a deterrent effect on new players entering the market. For example, a company may consider branching into a certain space covered by a patent, but the threat of potential lawsuit may deter them from entering the space.

Third, a patent can act as a deterrent from having other companies sue the patent holder. The reasoning is similar to the Cold War stand-off between the U.S. and the U.S.S.R. We have our nuclear bombs and you have your nuclear bombs. If we bomb you, you will bomb us while our bombs are

in the air and there is mutually assured destruction. In like manner, if you sue me and I sue you, we will both end up owing each other money. In some circumstances, rather than going the lawsuit route, companies will enter into cross-licenses, partnerships, joint ventures or other agreements to make use of each other's patent rights without having to fight in court.

Patents can also serve as a value generator. For example, patents can be the basis of royalty-bearing licenses or can be used as a saleable asset. As another example, patents are considered as one of the intangible assets

that can increase the valuation of a company. Additionally, the acquisition of patents can also serve to generate goodwill and other intangible benefits. For example, press releases and recognition by customers or peers as innovators carries a certain benefit. Additionally, the acquisition of patents shows that a company's products or processes are unique.

Adam Smoot is an associate attorney in Maschoff Brennan's Salt Lake City office. His practice focuses on post-grant proceedings, patent prosecution and counseling and complex intellectual property litigation.

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