

THE ISSUE

The practice of law remains one of the least diverse professions in America². Not only are men overrepresented in the practice of law, but they outnumber women in equity partner positions nearly five to one². In addition, around 90 percent of equity partners are white, and approximately 9 percent of equity partners are racially diverse minorities with only one-third of them being racially diverse women².

Diversity statistics become even more troubling when we examine patent attorneys². The patent bar requires a hard science background, such as a degree in engineering, chemistry, physics, or biology; however, the science, technology, engineering, and mathematics (STEM) field has historically been dominated by men², who, as of 2017, account for 76 percent of all STEM jobs, according to the U.S. Department of Commerce¹.

Since 1950, less than 6 percent of USPTO registrants have been racially diverse (Fig. 1)². For example, throughout the 1970s and 1980s, an average of 1.7 percent of registrants per year were racially diverse². During the 1990s, the average for racially diverse registrants increased to approximately 4 percent of registrants each year. Despite significant increases in 2000 (16.2 percent increase) and 2013 (20.1 percent increase), respectively, the average USPTO registration rate for racial minorities since 2000 has hovered around 6.5 percent². Among racially diverse women, the numbers are significantly worse, hovering at an average of 1.7 percent of registrants since 1950². In fact, there are more patent attorneys and agents named “Michael” in the United States than there are racially diverse women². From 1950 until 1999, an average of 0.2 percent of USPTO registrations each year were racially diverse women, with the first being registered in the late 1980s². Since then, those numbers have improved very little, with an average of 2.2 percent of registrants being racially diverse women since 2000 (Fig. 2)².

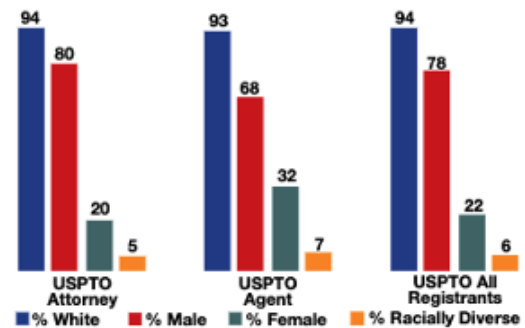


Figure 1. Overall diversity trends among USPTO registrants.

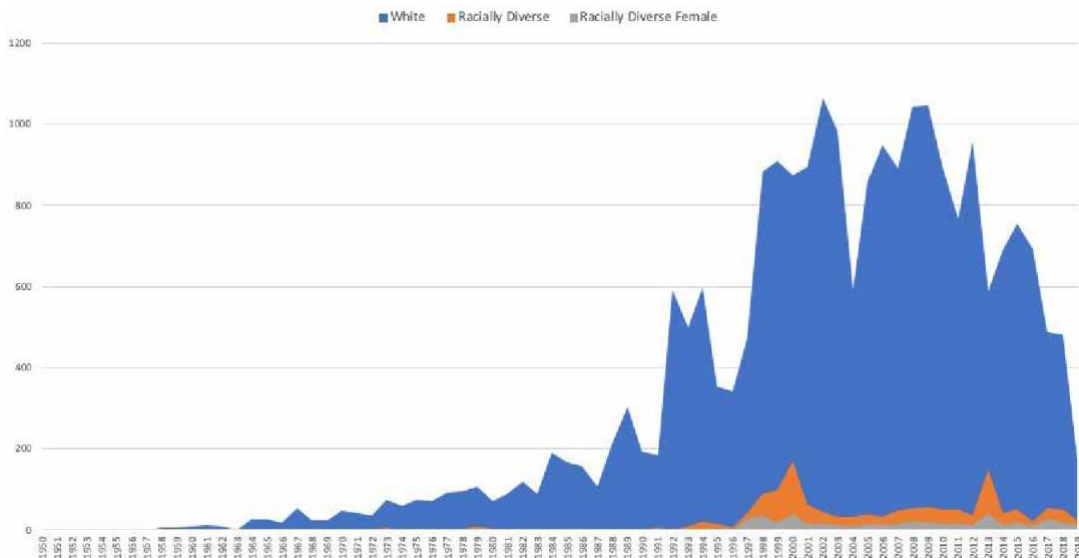


Figure 2. Historical racial breakdown of patent practitioner registrations by year, including racially diverse female registrations². [\(Click here for larger view\)](#)

For patent firms seeking to increase diversity in their practice, existing diversity data is problematic. For starters, less than 15 percent of registered practitioners are diverse (race, gender, LGBTQ+, individuals with disabilities) in the areas of computer science, electrical engineering, and mechanical engineering². As registered patent practitioners move along their career paths, there is inevitable attrition, as reported in the *Vault/MCCA Law*

HARRITY & HARRITY, LLP
DIVERSITY & INCLUSION REPORT | FEBRUARY 2021

Firm Diversity Survey report³. Accordingly, it will be difficult for firms practicing in the areas of computer science, electrical engineering, and mechanical engineering to improve their diversity numbers, particularly at the partnership level, given that the diversity numbers are so low before adjusting for attrition.

Diversity of the patent bar is not only important to those practicing in this profession- it is essential for broadening participation in the innovation process by underrepresented groups. Innovation by underrepresented groups will start to improve when they can go to patent attorneys who understand them, who look like them, and who can relate to them. Lowering barriers to the innovation ecosystem to include all groups of people will foster a more robust economy.

CURRENT APPROACHES

The lack of diversity in the field of patent law is no secret, and several approaches have been tried in an effort to drive change, with two of the most popular approaches being internship and mentoring programs. These programs help STEM/law students and new patent agents/attorneys improve their skillsets; however, these approaches do little to move the diversity needle in a meaningful way. If they were truly impactful, we'd have seen more significant results over the many years that these programs have existed. Even if internships and mentorships focus strictly on helping diverse groups, the programs still only help the miniscule number of diverse individuals who are already in the field, which does nothing to increase overall diversity numbers in patent law.

The Mansfield Rule is another well-meaning approach for addressing diversity in the legal profession, specifically when it comes to diversity within leadership roles. To achieve Mansfield Certification, law firms are required to demonstrate progress in increasing diversity in senior recruitment and leadership decisions by affirmatively considering a minimum of 30 percent diverse candidates for these roles, including women, attorneys of color, LGBTQ+ and lawyers with disabilities. Today, women account for a mere 20 percent of all USPTO registered attorneys and just 5 percent of all registered patent attorneys are racially diverse². Therefore, it becomes statistically impossible for every patent law firm to have diverse candidates make up 30 percent of their leadership talent pool. The data doesn't get much better for the general legal profession either, which has less restrictive requirements to practice as compared to patent bar. As of 2019, all racial minorities combined make up just 17.48 percent of practicing attorneys, and only 3.43 percent of all attorneys include individuals with disabilities or that are openly LGBTQ+³. While women account for just over 36 percent of all attorneys, women of color only account for 9 percent (*Fig. 3*).

Demographic	2L Summer Associates	Associates	Of Counsel	Nonequity Partners	Equity Partners	All Partners	All Lawyers
White/Caucasian	66.39%	73.38%	85.93%	89.77%	89.87%	89.30%	81.69%
Asian American	13.13%	11.99%	5.25%	4.21%	3.73%	3.86%	7.70%
Hispanic/Latinx	7.55%	5.46%	3.41%	3.33%	2.62%	2.81%	4.08%
African American/Black	7.76%	4.83%	3.06%	2.45%	1.94%	2.08%	3.45%
Multiracial	3.81%	3.24%	1.44%	1.23%	0.76%	0.89%	2.02%
Alaska Native/American Indian	0.25%	0.18%	0.20%	0.21%	0.14%	0.16%	0.17%
Native Hawaiian/Pacific Islander	0.14%	0.08%	0.05%	0.06%	0.03%	0.04%	0.06%
Openly LGBTQ	5.61%	4.01%	2.16%	2.02%	1.90%	1.93%	2.90%
Individuals with Disabilities	0.35%	0.55%	0.64%	0.57%	0.44%	0.48%	0.53%
All Racial Minorities	32.63%	25.78%	13.41%	11.49%	9.21%	9.83%	17.48%
All Women	51.37%	46.47%	39.96%	30.11%	21.64%	23.93%	36.16%
Women of Color	19.27%	14.58%	7.05%	5.06%	3.08%	3.61%	9.00%

Figure 3. 2019 Vault/MCCA Law Firm Diversity Survey overall law firm demographics³. ([Click here for larger view](#))

HARRITY & HARRITY, LLP
DIVERSITY & INCLUSION REPORT | FEBRUARY 2021

The Coca-Cola “Heavy Stick” approach is similar to the Mansfield Rule; however, it actively punishes firms that do not meet certain diversity requirements. According to a January 2021 article by *Bloomberg Law*⁴, “Coca-Cola is forcing its outside counsel to staff at least 30% of new matters with diverse attorneys, with at least half of that billable time going to Black lawyers in particular.” The corporation’s General Counsel, Bradley Gayton, stated he hopes to increase the overall diverse billable hour staffing requirement to 50% within the next two years, calling the initiative “one of the legal industry’s most rigorous outside counsel diversity programs yet” and withholding a nonrefundable 30 percent of fees from firms that fail to meet diverse staffing metrics⁴.

As with the Mansfield Rule, this approach poses several logistical issues based on the fact that only 3.45 percent of attorneys are Black (*Fig. 3*). Even after adding in all racially diverse attorneys, Coca-Cola is limiting its legal talent force to less than 18 percent of the legal field (*Fig. 3*). Applying this approach to the patent field produces even worse results. For example, 86.5 percent of all intellectual property attorneys in the United States are Caucasian, meaning just 13.5 percent are racially diverse⁵. Looking at the patent field specifically, merely 1.7 percent, or 578 of the total 34,000 registered patent attorneys are Black (*Fig. 4*).

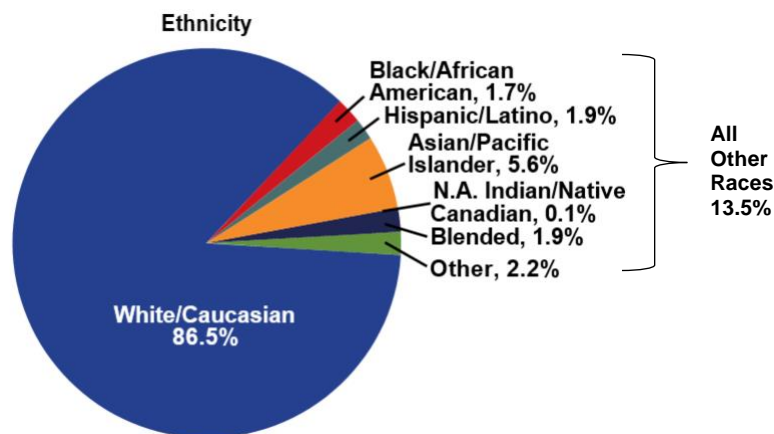


Figure 4. AIPLA 2019 Report of the Economic Survey background of all surveyed intellectual property attorneys⁵.

The “Heavy Stick” approach is sure to result in some level of quality reduction for client work products, because work is assigned based on physical characteristics instead of relevant legal skills and experience. Coca-Cola, and others adopting the “Heavy Stick” approach, should expect a downward shift in quality, and perhaps also timeliness, efficiency, and expertise, if they decide to eliminate their existing standards in favor of this new diversity driven approach.

The overriding problem among the diversity approaches discussed above is that none address the root cause of the diversity issue: *the numbers*. It may be idealistic for an organization to say that it will hire a specific number of diverse candidates or counsel; however, when it comes time to *make diverse hires*, where will these diverse individuals come from? If, for example, every organization requires that 30% of their work goes to Black patent attorneys and, as we know, there is a pool of 578 of them⁵, how much work can those attorneys handle? What happens to the firms whose fees are withheld because these 578 attorneys already have too much work on their plates? How is it statistically viable to meet these standards, and what impact will it have on the health and work/life balance of the 578 attorneys?

HARRITY ADVOCATES FOR A NEW APPROACH

For the reasons above, we believe that the Coca-Cola “Heavy Stick” approach (i.e., an approach that punishes law firms that do not meet certain metrics) is not the correct approach to improve diversity in the legal profession,

HARRITY & HARRITY, LLP DIVERSITY & INCLUSION REPORT | FEBRUARY 2021

especially when the standards cannot be met with today's pool of diverse attorneys. Instead, we recommend a "Carrot" approach, which rewards firms that innovate when it comes to diversity solutions. With the "Carrot" approach, companies can require firms to create and implement new diversity solutions, and explain how these solutions actually help solve the diversity numbers problem in the legal profession. The expectation of firms to create programs that bring more diverse candidates into the field, rather than merely manipulating data to check boxes or achieve unrealistic quotas, will help address the issue from the ground up. Companies should encourage and reward innovative and disruptive diversity solutions however they see fit. Whether this be awarding the firms with the most disruptive and beneficial solutions with a nominal monetary amount, investing in programs themselves through sponsorships or scholarships, or other applicable incentives, firms will switch their focus from scrambling to find diverse attorneys or recruiting from competing firms to making a lasting impact in the field.

HARRITY'S DIVERSITY SOLUTIONS

Our Diversity Mission has always been to promote and nurture a respectful, highly engaged, family-friendly, and inclusive culture that values the diversity of our talented team by leveraging and learning from our team's diverse backgrounds, experiences, perspectives, skills, talents, and capabilities. At Harrity & Harrity, we are committed to The Rooney Rule 2.0, a hiring policy we pioneered that demonstrates our firm's commitment to our Diversity Mission is not just lip service.

The Rooney Rule is a National Football League policy that requires league teams to interview one minority candidate for every head coaching or senior football operations job opening. However, this means that if 1,000 individuals apply to the opening, only one minority individual needs to be considered and the other 999 can be white males. Our Rooney Rule 2.0 takes this policy a step further; we are committed to interviewing one female or minority candidate for every male, non-minority candidate interviewed for any position at our firm. While this is similar to the Mansfield Rule in that diverse candidates are considered, the Rooney Rule 2.0 applies to all positions at the firm, not just leadership roles. Prior to implementing our Rooney Rule 2.0 in January of 2016, 8 percent of Harrity & Harrity attorneys were diverse. Today, 30 percent of our attorneys are diverse, nearly quadrupling our diversity numbers in five years through the implementation of just one policy.

We also remain committed to producing top quality work for our clients, so unlike the "Heavy Stick" approach that selects candidates based on physical characteristics, our candidates must go through a rigorous hiring process, which includes skills-based testing. Once a candidate submits their test, all identifying information is removed to eliminate potential scoring bias and is replaced with an anonymized code prior to sending the test to a separate grading team. We aspire to grow our diversity numbers; however, we cannot sacrifice the quality of our work or the value of our clients' IP assets. Our process allows candidates to be screened based solely on their abilities, rather than physical characteristics. Once hired, every individual is reviewed based on a scorecard that relates to their position and includes strictly objective metrics to be graded on (timeliness, work product volume, efficiency, etc.). This process allows individuals to be reviewed solely based on their job performance, and again removes the likelihood of bias.

We recognize that our high standards for quality limit the overall pool of eligible candidates, and that not enough diverse individuals exist in that pool in the first place. To fix the root cause of this problem - the lack of diversity in the legal profession - requires a long-term approach to be measured in years, not months or days. Several factors contribute to this problem, which, in turn, requires a multi-pronged solution:

1. *Insufficient number of diverse students entering law school.* This aspect requires educating young diverse individuals about legal career opportunities in high school and undergraduate programs; putting programs in place to steer these individuals toward law school (e.g., pre-law classes, scholarships, tutoring for LSAT, summer internships, etc.); and encouraging underrepresented groups to participate by addressing and eliminating historical obstacles (e.g., lack of financial resources, college readiness, institutional stereotypes, lack of focus and self-motivation, lack of assistance and engagement⁶). This aspect has at least a 3-year lead time to see results.
2. *Insufficient number of diverse students entering STEM programs (which is a prerequisite to a career in patent law).* This aspect must be tackled at the middle school and high school levels to increase

HARRITY & HARRITY, LLP
DIVERSITY & INCLUSION REPORT | FEBRUARY 2021

enrollments in undergraduate programs. The above approach can be applied when students are in middle and high school STEM programs to inform them of legal opportunities. This aspect has at least a 2-year lead time (assuming high school juniors are the most advanced targets) for changing college admission rates, and at least 6 years before individuals graduate high school, complete undergraduate degrees, and can enter law school. Realistically, it will take 7 to 9 years before law school graduation demographics change noticeably for the patent field under this solution.

3. *Insufficient number of mid and upper-level attorneys that are diverse.* This aspect requires that firms provide targeted training, mentoring, and work opportunities to diverse attorneys to grow their skills and help them advance within firms. Merely advancing people based on physical characteristics and regardless of skillset will impair quality delivered to clients and will blemish diversity efforts going forward. This aspect has at least a one-year lead time because meaningful training for a narrow skillset takes at least a year to complete. Lead time will be longer for more varied or advanced skillsets.

Using this knowledge, Harrity's Diversity Committee has dedicated many hours to creating, implementing, and evolving Diversity Programs that are focused on serving the legal community by helping to increase the number of diverse legal practitioners and enhancing their quality of practice in patent law.

Minority Firm Incubator Program: We hired our first Minority Firm Incubator (MFI) candidate in 2020. This program was established to help train, cultivate, and launch minority-owned patent law firms. The program consists of four phases: Drafting Patent Applications, Prosecuting Patent Applications, Firm Management, and Firm Launch. In the fourth year, program participants have the tools, knowledge, and experience required to launch their own patent law firms with the added benefit of established corporate relationships based on Harrity working with our clients to send work to a graduate's new firm. Firm leaders will receive ongoing mentorship from Harrity to help ensure their success. The goal of the program is to increase the number of minority owned law firms. Incubator programs are vital because they help jumpstart a new law firm in the same way venture capital funding helps startups ramp up their operations. Minority-owned firms are less likely to have access to the capital and resources needed to run a sustainable business, and the Harrity MFI reduces these obstacles by connecting new firms with clients and by providing personalized training to the firm's leadership team.

Minority Firm Incubator 2.0: In an attempt to make our Minority Firm Incubator program more impactful to the patent field, we are developing an enhanced version of our program. This program will be both a virtual and condensed version of our current MFI and focus on helping diverse individuals launch their own patent firms and help existing, struggling minority-owned firms to succeed. The program will teach best practices of firm management and focus on improving quality processes within the firms, which will in turn allow them to give better pitches, win more business, and produce higher quality work product.

Annual Women's Patent Law Workshop: We are currently planning our Fourth Annual Women's Workshop, to be held May 2021. This four-day virtual workshop introduces the field of patent law to female science and engineering students, law school students, and recent graduates. Women from across the country join us for skills training in patent preparation, prosecution, and writing; career and resume mentoring; patent bar preparation; and to learn first-hand from partners at major law firms, leaders in university tech transfer, and in-house counsel about their experiences as women in the legal field. By engaging women at the early stages of their careers, we hope to encourage them to join the patent field and provide them with tools to do so successfully.

The Harrity Academy: Launched in September of 2020, the Harrity Academy is a free virtual program comprised of three courses that introduce diverse participants to the field of patent law; provide exclusive training, practice materials, and mentorship; and teach how to effectively and efficiently draft and prosecute high-quality patent applications. The goal of this program is to help increase the number of diverse candidates entering the patent field by targeting diverse students in STEM programs and law schools; newly practicing attorneys; and early career engineers. Courses are held each Spring and Fall, with 20 participants per class, and are voluntarily taught by Harrity attorneys.

The Diversity Channel: In January 2021, Harrity launched The Diversity Channel, a collection of resources aimed at increasing diversity and inclusion in the patent field by sharing ideas and sparking conversations. The

HARRITY & HARRITY, LLP
DIVERSITY & INCLUSION REPORT | FEBRUARY 2021

channel includes published articles on the issues surrounding diversity in the legal field; *Driving Diversity*, a weekly vlog produced by Diversity Co-Chair Elaine Spector with consumable tips to drive diversity within an organization; and *Diversity Dialogue*, a series of webinars held throughout the year featuring diversity-thought leaders that provide the benefits, challenges, and processes associated with increasing diversity in the patent field.

Patent Pathways: While each of our Diversity Programs have the implicit goal of encouraging diversity and inclusion in the patent legal field, Patent Pathways will have the most direct impact on the least represented group (i.e., Black female patent practitioners), with a goal of increasing the number of Black female registered patent practitioners. The program includes an introduction to patent careers, several weeks of patent preparation and prosecution training, and a clear pathway to taking and passing the patent bar. This program will include corporate sponsorships for patent bar preparation courses as well as taking the bar, and potential law school scholarships offered to those who pass the patent bar. Patent Pathways participants will also be matched with patent attorneys for ongoing mentorship opportunities and maintain a network of other Patent Pathway participants to help each other succeed throughout their careers.

Harrity's Tutoring Program: While internships and mentoring programs help diverse individuals who are already in the field, tutoring programs aimed at middle and high school students in math and science classes focus on encouraging diverse individuals to enter the patent field. By enlightening students, at a young age, to education opportunities in the STEM field, we provide students with the encouragement needed to become interested in a patent law career, and give them the tools they need to pursue such a career. Our proposed program consists of three phases:

Phase 1 - Provide free STEM tutoring to girls/women who are interested in STEM, starting as early as middle school and continuing through college. This program will help increase the number of women who go to college to pursue a STEM degree and greatly increase the chances that they graduate with such a degree. We recommend that all participants of this program be required to partake in free mentoring sessions, which will include an introduction to the patent field.

Phase 2 - Expand the program to include all categories of diverse students.

Phase 3 - Expand the group of schools and colleges involved.

Possible Expansion - Provide free English tutoring (since writing is an important part of a career in patent law).

The overall goal of the program is to increase the percentage of diverse USPTO-registered patent professionals in the patent field so as to better represent the diversity of the U.S. population. This program requires partnering with skilled tutors for complex STEM courses and requires the support of corporate sponsors.

Internal Progress: In early 2020, we named our first female partner, Elaine Spector. Along with her twenty years of experience in the patent field, Elaine serves as Co-Chair of the Harrity Diversity Committee, Chair of the AIPLA Women in IP Law Committee's Global Networking Event and Outreach Subcommittee, Vice-Chair of IPO's Diversity and Inclusion Committee, Co-Chair of IPO's Diversity & Inclusion Outreach Subcommittee, and a Board Member and Secretary at the non-profit No More Stolen Childhoods.

As a firm, we are actively involved with several organizations that promote Diversity within the legal community: AIPLA- Women in IP Law Committee; Association of Legal Administrators, ChIPs; IPO Diversity & Inclusion Committee; and Minority Corporate Counsel Association (MCCA). We will also be conducting monthly Affinity Group meetings led by Edward Kim, former president of the largest government-affinity group, USPTO-Asian Pacific American Network (APANET). In addition, we are proud to report that all employees at the firm completed diversity and unconscious bias training in the last year. We continue to work every day to ensure inclusion within our firm through open communication, weekly leadership check-in calls, and regular committee meetings which allow any member of our firm to participate in brainstorming initiatives for all aspects of our business development, including our Diversity Committee.

HARRITY SEEKS PARTNERS TO IMPROVE THE PATENT LAW PROFESSION

HARRITY & HARRITY, LLP DIVERSITY & INCLUSION REPORT | FEBRUARY 2021

Imagine the future of our legal profession if companies adopted our proposed Carrot approach, where a majority of law firms are developing new and disruptive diversity programs to finally make the diversity issue a thing of the past. One of the largest obstacles we face in this battle is a lack of action. While current approaches attempt to address internal diversity counts, rarely are organizations creating external programs directed at fixing the root cause of the issue. The legal profession first needs to recognize that the problem is not that firms do not want to hire diverse candidates, but that a sufficient number of diverse candidates do not exist in the field in the first place. Using this knowledge, organizations that require law firms to seek practical and attainable solutions that bring more diverse individuals into patent law will be the ones responsible for revolutionizing the field with respect to diversity. In turn, we can create proportionate opportunities for diverse individuals to thrive in the field, such as described in the Mansfield Rule and Coca-Cola approaches.

That being said, Harrity & Harrity is currently taking action to tackle this issue head-on. As outlined in our aforementioned Diversity Programs section, we have dissected the causes of the diversity issue and created realistic plans of action to begin addressing diversity issues from the ground-up. While we recognize that this will be a long-term effort, we are confident that we can drive the field in the right direction, beginning now.

Next Steps:

Patent Pathways

This program is scheduled to launch in Spring 2022. Materials for patent training will be provided by Harrity, and classes will be taught by both Harrity attorneys and other leaders in the patent field. The goal of this program is to increase the number of Black female registered patent practitioners; however, this training is only successful if participants actually go on to take the patent bar. This opens up several partnership opportunities, including:

1. Exclusive Program Sponsorship: Pay for patent bar preparation course, patent bar exam, and USPTO registration fees for all of the women who participate in our Patent Pathways program. This equates to \$500 per preparation course, \$400 per patent bar exam and \$100 per registration for up to 20 women in the class at a time.
2. Non-exclusive Program Sponsorship: Pay for one or more women for one or more stages of the patent bar registration process. This equates to roughly \$500 per preparation course, \$400 per patent bar exam and/or \$100 per registration.
3. Scholarships: Offer law school scholarships to any number of women who both complete the Patent Pathways training and obtain registration with the USPTO. The amount of any particular scholarship is discretionary.

Harrity's Tutoring Program

Providing diverse students with the resources needed to succeed in the STEM field at a young age will increase the likelihood of them going on to pursue a degree and a career in STEM, which is a critical first step for entering the field of patent law. With a long-term goal of increasing the percentage of diverse USPTO-registered patent professionals, students need to both be aware of this opportunity, and be equipped to succeed should they pursue it, which this program accomplishes. Our tutoring program will have several partnership opportunities, including:

1. Exclusive Program Sponsorship: Pay for full tutoring program for entire participant group, which includes multiple tutors for multiple schools. (cost TBD)
2. Non-exclusive Program Sponsorship: Pay for one or more tutors for one or more students. (cost TBD)
3. Scholarships: Offer undergraduate scholarships to any number of students who complete the tutoring program and enter a STEM program at an accredited university. The amount of any particular scholarship is discretionary.

We are actively seeking partners to join us in transforming the legal profession to one that mirrors the diverse landscape of our society as a whole. This starts with giving diverse individuals the tools required to enter and succeed in the patent field and encouraging early interest in pursuing a career in patent law. We feel that our

HARRITY & HARRITY, LLP
DIVERSITY & INCLUSION REPORT | FEBRUARY 2021

Patent Pathways and Tutoring Program will do exactly that. However, these programs require the partnership of corporations and/or law firms to achieve a significant, nationwide impact. **Will you join Harrity on the forefront of this transformation?**

CITATIONS

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