

Data-Driven Lawyer: Kilpatrick Townsend's Kate Gaudry

By Annie Pancak

Law360 (December 5, 2018, 2:03 PM EST) -- Kate Gaudry perceived something was off in a patent case she was prosecuting. The delays were long, and her team was getting rejections she knew were wrong. When the patent examiner indicated the case was in a secretive U.S. Patent and Trademark Office program, the wheels started turning for her next project.

After her client's case was resolved and patented, Gaudry filed a Freedom of Information Act request in late 2014 for more information on the patent office's Sensitive Application Warning System program, known as SAWS.

"I was very interested in getting the response and would check the mail first thing when I got home," she said.

She analyzed the data the same day it arrived and then published several articles criticizing the program, which subjected certain applications to enhanced review without notifying the applicants. Gaudry found that an application in the program doubled prosecution costs and halved the probability of allowance. Within six months of her articles being published, the program was shut down.

Gaudry, one of five attorneys recognized by Law360 as a Data-Driven Lawyer, is a senior associate and soon-to-be intellectual property partner at Kilpatrick Townsend & Stockton LLP whose work has "fundamentally changed the way we draft patents," according to the firm's IP partner, Tom Franklin.

Her work, which involves making recommendations to clients on whether to pursue a patent, how to focus a patent application and proceed through prosecution, and when to appeal a case, is anchored in statistics.

Eric Sutton, senior patent counsel at Oracle Corp. with whom Gaudry has worked, said she "has changed [the patent prosecution world] with data."

In her work with Oracle, a firm client, Gaudry challenged practices other outside counsel were recommending to the



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software company “that had very low likelihoods of success,” according to Sutton. She supported her advice with data. For example, she pointed out cases in which examiners have never allowed a case and showed that the number of letters from the patent examiner, or patent office actions, does not equate to a higher likelihood of allowance.

“Kate has been able to fast-forward prosecution in those cases by looking at what you can get and acknowledging that you’re in a very low allowance scenario and not wasting client budget on chasing a rainbow,” Sutton said.

In another instance, Gaudry provided an analysis of the data on how a technology and health care company that Kilpatrick Townsend was pitching managed its portfolio, which the firm was then able to include in the pitch.

“I don’t think we would have landed the client otherwise; they just hadn’t seen that,” Tina McKeon, another IP partner at Kilpatrick Townsend, said.

But Gaudry’s numbers savvy was not always met with praise. She said when she first presented statistics to attorneys in the firm she encountered “a high degree of skepticism.”

“I was a very young attorney coming to the field of much more experienced attorneys with a number saying that in some cases the strategies were wrong,” she said. “I got some subtle pushback ... that the numbers were not that important.”

Franklin was one of the attorneys sitting in on Gaudry’s first presentations. He had met her when she was a summer associate at the firm in 2009 and quickly identified her talent.

“We stopped giving presentations in certain places because I was worried about the progression of her career, because the status quo is a very powerful thing,” Franklin said. “We found venues that are receptive to this analysis, and we found venues that are not receptive.”

Many of Gaudry’s analyses of patent application and prosecution strategies have since been integrated into the firm’s IP practice.

“She’s managed to get a lot of disciples and influence the way a number of us think,” McKeon said.

For example, Gaudry said some of her recent research shows that rejections of artificial intelligence patent applications have recently increased in prevalence, and she has been able to identify prosecution strategies to adapt this new reality.

Franklin said Gaudry has also influenced his own practice.

“My rule as a partner is nobody walks into my office asking my opinion without an examiner report ... Kate was instrumental in that,” he said. The person who has never allowed a case “is a different conversation than the person who is more in line with the norms of the patent office.”

Gaudry credited much of her ability to tie data and patent law together to her academic history.

She graduated with a bachelor’s degree in physics from Fort Hays State University and holds a doctorate in computational neurobiology from the University of California at San Diego. She spent two years as a

patent scientist at Knobbe Martens Olson & Bear LLP before pursuing a law degree at Harvard University.

“I was used to using data and informing decisions based on data from my grad school work. You wouldn't do otherwise when you're studying neuroscience,” she said. “Coming to the field of patent law there were questions I felt I needed answers to, so I looked to data to try to get those answers.”

When Gaudry was in law school, she said she would spend weekends going through thousands of patent applications from the PTO's website, collecting data points to give her a sense of patent statistics.

From there, she started publishing her findings. Gaudry has now published about 50 articles on empirical analyses of programs and strategies in the patent space.

She said everything she publishes starts with the question, “Is this working the way it should?” The SAWS case is one example in which she found something she didn't think was working. Her articles helped change that.

“I felt like the patent office was listening and that we were making a difference with the publication and with the data analysis,” she said.

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--Editing by Pamela Wilkinson and John Campbell.