



Pitch – Double Attribution

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Double Attribution: Crediting Practitioners



Western Digital®

Sabra Truesdale, Western Digital



PATENT
EQUITY
PROJECT™

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The Current Situation

- At law firms, junior associates often draft patent applications and office action responses under the supervision of partners
- At some law firms, those supervising partners routinely claim sole authorship of those documents in USPTO filings
- Supervising partners claim sole authorship even when the junior associates are registered to practice with the USPTO
- RESULT: Junior patent associates' names don't appear on their own work ("misattribution")

Current Situation: Application Cover Sheet

SIGNATURE _____

DATE _____

TYPED OR PRINTED NAME _____

REGISTRATION NO. _____

(if appropriate)

TELEPHONE _____

DOCKET NUMBER _____

Current Situation: Office Action Response

Respectfully Submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Bradley D. Lytle

Registration No.: 40,073

Kevin M. McKinley

Registration No.: 43,794

Current Situation: Issue Fee Transmittal

2. For printing on the patent front page, list

- (1) The names of up to 3 registered patent attorneys or agents OR, alternatively,
- (2) The name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

- 1.
- 2.
- 3.

NOTE: This form must be signed in accordance with 37 CFR 1.31 and 1.33. See 37 CFR 1.4 for signature requirements and certifications.

Authorized Signature

Date

Typed or printed name

Registration No.

Why It's a Problem

- Outside recognition from clients, press, and judges can affect a lawyer's career prospects
- Named credit on one document (e.g., brief) can lead to named credit on related documents (e.g., a judicial opinion and a news article and a journal article discussing that opinion) ("credit snowball")
- Named credit on various documents can lead to client origination and speaking engagements
- When junior associates' names don't appear on their own work, their career prospects are limited

Why It's a Problem (continued)

- Misattribution disparately impacts underrepresented members of the legal profession
- Since minoritized attorneys are less represented demographically at the partner level, even if all partners equally took named credit for their associates' work, then minoritized attorneys would be more negatively impacted than other attorneys
- Research shows that male partners claim more named credit for the work of others than female partners
- **RESULT:** Women are systematically under-attributed relative to their representation as patent attorneys and agents

Personal Anecdotes

- Example: Misattribution
 - Draft office action response from Texas firm (Western Digital outside counsel)
 - Email containing response came from female associate
 - Female associate passed USPTO bar exam 5+ years ago
 - Response set up for signature by partner
- Example: Benefits of Attribution
 - While at law firm, I drafted office action responses and signed my name
 - Cases were transferred to new counsel
 - Years later, that new counsel told my current manager that he liked my work

Data is the plural of anecdote

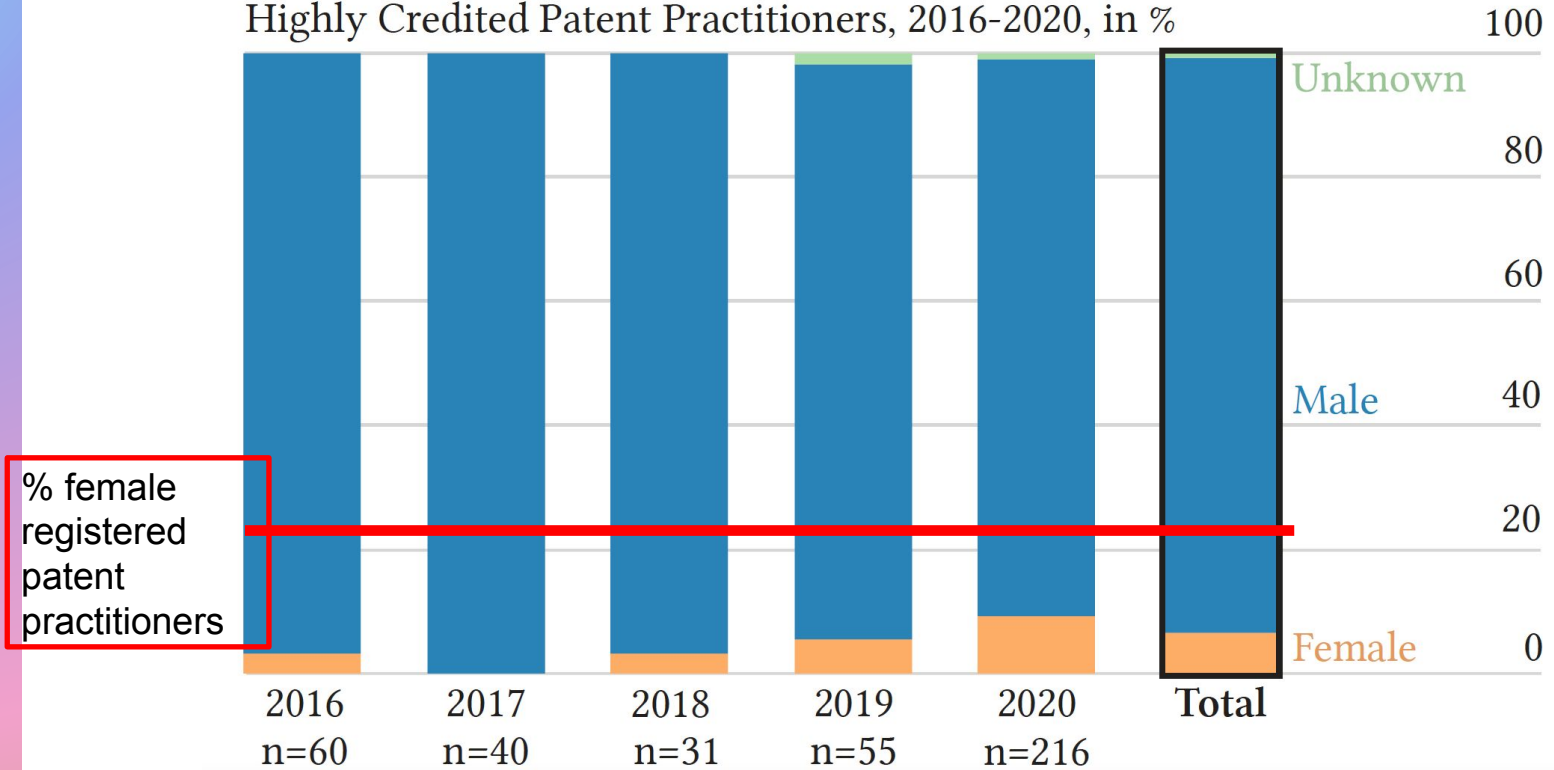
- 218,784 patent applications and their office actions from 2016-2020
- Matched registration numbers to the patent practitioner name using the USPTO practitioner roster
- Gender-matched practitioner names with WIPO's WGND 1.0 worldwide gender-name dictionary obtained from the Harvard University Dataverse

A few caveats!

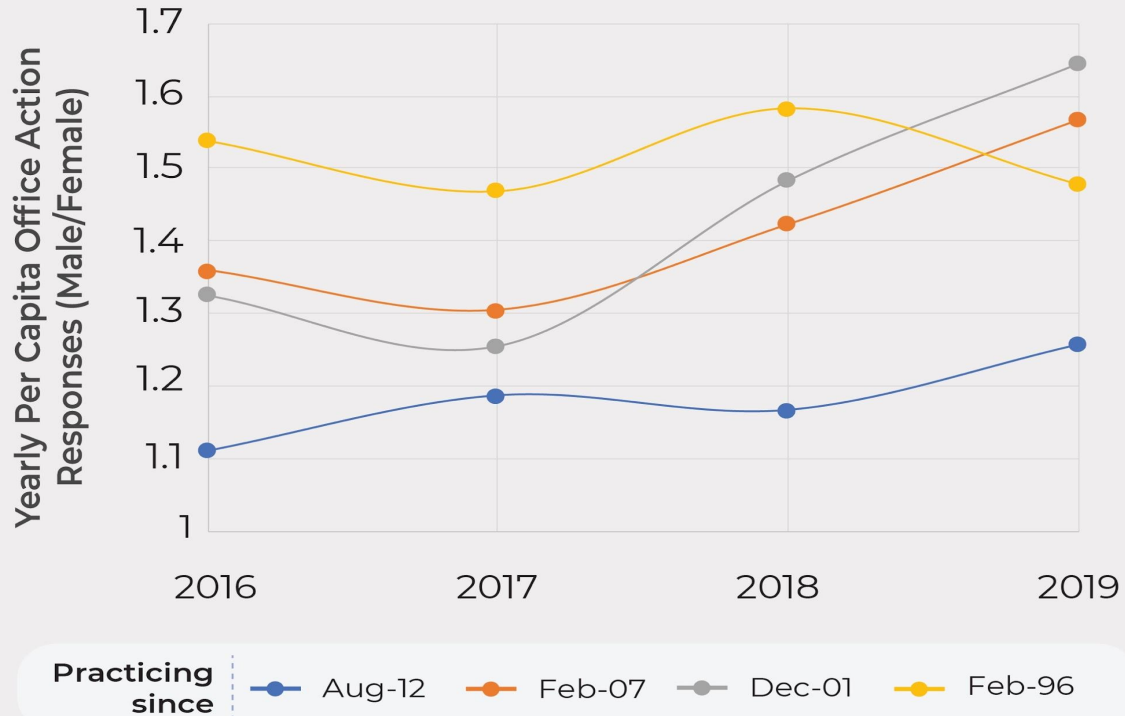
- All names are matched via gender algorithm
 - Binary
 - Accuracy differs based on name origin
- Correlation test, not causation test
- These tests cannot distinguish between full time and part time attorneys
- These tests cannot calculate the equitable attribution point

Figure 1

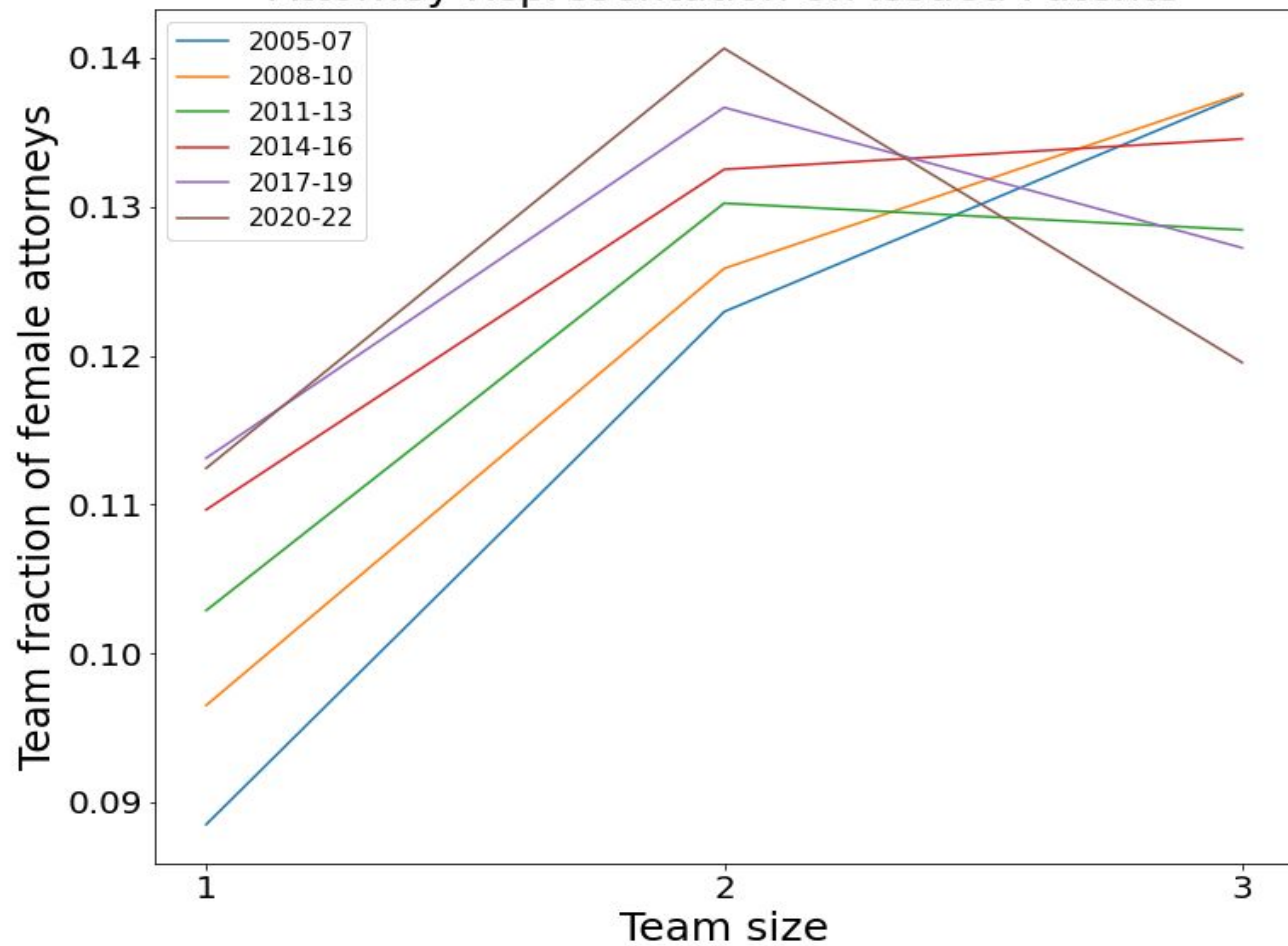
Highly Credited Patent Practitioners, 2016-2020, in %



Yearly Change of Gender Gap by Experience Level



Attorney Representation on Issued Patents



How to Increase Attribution

- Who? USPTO
- What?
 - Add signature lines to the ADS and cover sheets to increase attribution opportunities
 - Publish guidance for recognizing more than one practitioner
 - Publish attorney attribution data
- How? Follow up with us! jordi@bu.edu and sabra.truesdale@wdc.com

References

- News Article
 - Matthew Bultman, “Young Female Attorneys Lacking Fair Credit for Work Suffer Later”, Bloomberg Law News, 2022-05-06.
 - <https://news.bloomberglaw.com/ip-law/young-female-attorneys-lacking-fair-credit-for-work-suffer-later>
- Journal Article
 - Jordana Goodman, “Ms. Attribution: How Authorship Credit Contributes to the Gender Gap”, Yale Journal of Law & Technology, Forthcoming Spring 2023.
 - https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4105773