

Popular Threads on Solosez

Taking The Patent Bar

I was surprised to find out that I have enough college credits in engineering, physics and chemistry to qualify for the patent bar exam (I started out college thinking that I wanted to be an engineer and changed to a finance major at the end of my Jr. year. I ended up graduating with about 210 hours). Of course, it has been over 20 years since I took any of those courses so I'm probably a little rusty.

How difficult is the patent bar exam? Is it something that I could take a bar review course, study for a few weeks and pass (which is basically how I passed the Texas bar)? Would I have to be out of my mind to try?

It's been about 7 years since I left the law factories and went solo and I am starting to feel like I'm due for another career change. Preferably one that would allow me to send my daughters to college in a few years.

Neal Kennedy, Marble Falls, Texas

In my opinion, you could probably do a review course and pass. The technical background is mainly needed for dealing with the inventions and inventors and the prior art. The bigger question is whether, once you were registered with the PTO, you could effectively market your services to companies and inventors, especially if you were working solo.

Eliza I. Stefaniw, Washington, DC

I have taken the Texas Bar Exam, the California Bar Exam, and the Patent Bar Exam, and passed all three the first time around. The Patent Bar pass rate is more like the California Bar than the Texas Bar. I know plenty of people who failed both the California Bar and the Patent Bar, but I know of only one person who did not pass the Texas Bar on the first try.

Ernest Schaal, Gifu, Japan

Well, you just haven't asked around enough, or you don't hang out with the right people. :-)

A **lot** of people don't pass the Texas bar on the first try. Not as many as CA, I'm sure, but still, the pass rate in some of our law schools is 60% or less on the first try.

I went to UH, where the pass rate the year I graduated was about 80%. This means 20% of my fellow students, or approximately 60 people, did



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not pass. I knew of (personally) just two. Neither of them were in the bottom of the class, or anywhere near it, one was on the Journal. Both of them *were* poor test-takers, and the Texas bar does not measure knowledge so much as test-taking skills (so do most tests).

But, here, unlike California, it just isn't socially acceptable to admit you took the bar more than once.

Becki Fahle, San Antonio, Texas

Yes, the California bar exam is tough and long - three days, the middle day being the MBE, the other two being a split each day of essay and practicum. I understand that the mean MBE score of passers is the highest in the nation.

Craig McLaughlin, Irvine, California

When I took the Alaska bar exam, we didn't have our own exam. We had to take and pass the CA bar exam and the multi state, plus several Alaska specific questions. I don't know how the CA bar works now, but back then the examiners had a bunch of areas and only on the days of the exam were the actual questions picked. Alaskans did not have to answer the state specific questions (wills or family law) but had to answer back-up essays. Say there were 10 essay questions and the examiners picked 6 to give to examinees. If one of those was on wills, the CA examiners would send one of the other non-picked 4 for Alaska. We could not leave the bar exam rooms until the CA bar ended, which meant at the time we couldn't have lunch, due to time difference.

Our CA portion of the exam was graded with all the CA test takers. Only if we passed their bar, could we pass ours. We had a pretty low pass rate, but not as low as actual CA test takers. I was the only one of my acquaintances who passed the first time.

To top it off, we could not be admitted to the CA bar on the basis of taking and passing it, because we didn't take it in CA.

Deidre Ganopole, Anchorage, Alaska

Back to the original inquiry, I think Neal should go for it as well, the patent bar exam, I mean. I mean, this sounds like a great time to delve into a different area of the law, and I think there are definite possibilities of getting patent and other IP clients, esp. via word of mouth... people you know who know others who stumbled upon some inventions. I could get you into contact with a couple of other patent attorneys I know that you could talk to for their feedback. One of them works for a major hi-tech company, but does "freelance" patent work for others on the side.

Gahram King

Wow, they must have really tightened up the test. When I took the Texas bar (1976), the pass rate was around 90%.

Ernest Schaal

State average is generally in the low to high 80 percentile for first time takers, lower if repeaters are included. Test is three days.

Darrell G. Stewart, San Antonio

I have enough credits also, but decided against it. My undergraduate degree is in computer science (at that time, a subsection of the math department). and I clerked at a patent firm after my first year of law school.

As I recall, the partners told me, you had to pick one or two areas of science to be tested on and the engineering part was very rudimentary. But as I considered the option more, I factored in that I do not have the engineering background sufficient to really know what the inventors are talking about and these days biology, biochemistry, etc. were becoming more in demand than mechanical engineering and I would be pretty lost in those fields technically. Also, in the mid-80s, there were no female patent attorneys in my area, no female partners in patent firms and while that doesn't particularly bother me, I figured there would be a resistance to hiring one and, if I didn't really have the scientific qualifications, I had, however, taken all the intellectual property classes in school - it is an interesting, fun and, legally, not terribly difficult area of law. For me, it really came down to I probably could have gotten the license, but didn't think I could get very far in the end. Try talking with some patent attorneys from the law factory (they all seem to have them nowadays) - the feedback could help you decide whether it's worthwhile.

Veronica Schnidrig, Oregon

Why not? With regard to the comments of others who have presumably passed the patent bar, I found it to be quite difficult, even though I passed on first try. Maybe it's easier now that it is all multiple choice, but in any case, if you can take a bar review course for "a few weeks" and pass it, you have a great career ahead of you as a patent attorney. I worked with a PhD at GlaxoWellcome (at the time) who studied 10 to 12 hours per day everyday for three months to pass, which he did, with the benefit of significant resources from the company as well as ready availability to a host of patent attorneys.

Being able to hold myself out as a COMPETENT patent attorney is the hardest thing I have ever done in my life. There are patent attorneys who will do the work and say, "That's good enough for government work", but

I don't have the inclination to do so. Maybe I'm overly cautious, but the thought of having a patent I've drafted (primarily we're talking proper claims) LITIGATED keeps me motivated to take another hard look at the work product before submitting it to the PTO.

My advice would be to take one or both of the leading review courses (Kayton, Longacre), give yourself plenty of time to understand the material, and then go for it. My brother (MSEE) at my urging became a patent agent, although he is not practicing, but he has the credentials should he ever decide to alter his present employment situation. And Veronica, the female patent attorneys around here are the first to be hired and the first to be promoted to partner...and they're darn good patent attorneys. I think you misjudged that one.

Mike Phillips, Raleigh, North Carolina

I sure agree with this paragraph. I am not a patent attorney (I was a French major in college, so I lack the credentials), but I have the greatest respect for attorneys who practice in the field. As an IP attorney in trademarks and copyrights, I have a passing familiarity with patent law principles, if nothing else than to know when one of clients may benefit from obtaining a patent and my need to provide a referral to support that need. Still, there is so much I do not know.

Yesterday, I attended a seminar covering the latest developments in IP law. When it came to the patent materials, I understood the topics generally, Festo, doctrine of equivalents, etc., but there were many intricate issues concerning claims drafting and interpretation, summarizing the invention and the pitfalls of doing so, etc. The presentation reinforced my view that achieving a good working knowledge of patent law practice would take a considerable amount of effort and time.

Just my perspective, from the outside looking in...

Nancy DuCharme

These are good points. The patent bar exam is designed by the USPTO to make sure you make their job easier. In other words, it primarily tests your ability to meet filing requirements and respond appropriately to office actions. At least when I took the exam in 2002. It has been reformatted since then and is taken by computer now.

But the patent bar doesn't focus on testing the ability to draft a patent that will withstand litigation and maximize the patentee's rights. In part, because that makes the PTO's job harder. A good review course, I took Prof. Kayton's, does give you all the material to study but focuses on getting you past the exam. The rest is experience and technique and keeping up with the case law, just like everything else in the law.

Incidentally, all of the patent firms/departments where I have been

majority to entirely male, especially at the partner level.

Eliza I. Stefaniw

Unless you're a complete sponge, the learning curve for patent law is relatively steep. Drafting patents may seem to some to be simple. It's not. Pick up a pencil and describe all of its features and connect them in words. Then draft some broad, then narrower claims.

Once in litigation, the pitfalls in patent drafting get exposed, sometimes in unpredictable ways and with great consequences, i.e. a determination of invalidity after the suit for infringement was launched.

Litigation of a patent is made more understandable if you've drafted patents. And patent drafting skills become better after you've seen a patent taken through the tumble of what can turn out to be a very long litigation process.

Craig McLaughlin

I would agree with Eliza. There are some fine female patent attorneys. However, I would suggest that most patent attorneys are male, the gender ratio being even more male than in general practice or almost certainly family law. Not coincidentally, there are also simply more male science majors.

Craig McLaughlin

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