WINTER 2010

A Publication of

BURNS & LEVINSON LLP

Focus

Our History and Our Future

DAVID P. ROSENBLATT

Managing Partner at Burns & Levinson LLP

Dear Friends & Colleagues,

A year ago we wrote about the uncertain times ahead and pledged to provide amazing client service and outstanding value. 2009 was even more tumultuous than 2008 and the impact on the global and local economy was worse than anyone expected. It has caused us all to look at how we do business, how we think about the future, how we treat our clients and fellow workers, and how we find ways to once again excel.

Many businesses, industries and individuals are finding the need to re-invent themselves, to position themselves for a new and uncertain future. The legal industry is among those that are changing. Change requires vision, flexibility, creativity, great talent and hard work. Yet these are values that have always been a major component of Burns & Levinson. We have spent this past year assisting our clients; some have sold businesses, some have purchased them and some have restructured. We have helped clients secure and defend their intellectual property, and are helping them position themselves for our future economy. We have guided our clients through changing family needs, employment concerns and pursuing their business and personal needs through the court systems.

The business model that Burns & Levinson has followed over the years now appears to be the business model that other law firms are trending towards. The business community is now, more than ever before, seeing value in working with midsize law firms because of a consistent focus placed on access to senior partners, an efficient structure and tremendous value. Our history of treating our clients as if their businesses and individual issues are our own continues; clients know that we are stable and that our attorneys and staff are always there for them.

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We are excited that we ended 2009 with more attorneys than we had at the beginning of the year. New partners and new associates expanded our intellectual property, finance and litigation practices in both our Boston and Providence offices. Experienced attorneys are enthusiastic about joining our Firm because of our long-time commitment to client service, our understanding of our clients' businesses and needs, and providing value to our clients by working efficiently and creatively.

As we celebrate our 50th anniversary in 2010, it is appropriate that we look at both our history and our future. We are thrilled that the values of our founders, including passion for the law and commitment to our clients and communities, are the values of our attorneys today. The spirit and purpose with which Tom Burns and Larry Levinson created this firm in 1960 carry forward into our sixth decade. We hope to continue providing you the best and most caring service and appreciate your ongoing support.

Best wishes for a healthy and happy new year.

Sincerely,

David P. Rosenblatt

Amazing Clients®

Making the World Sound a Little Clearer

South Shore Hearing Center

David Citron, III, Ph.D. & Louise G. Citron, M.A.

The economic tone of 2009 was largely negative, but there were some upbeat notes coming from the South Shore Hearing Center located on Route 18 near the intersection with Route 3 in South Weymouth, one of the first full-service, independent audiology practices in the greater Boston area.

Dr. David Citron and Louise G. Citron, a husband and wife team who both have advanced degrees in audiology, started the Center by themselves in a tiny 750 square-foot space in 1982, and now they have a 2,300 square-foot customized professional space with six full-time audiologists in their practice, one audiology assistant and a four-person support staff.

"As baby-boomers age, audiology has become a growth profession, and there is no sign of it slowing down," says Louise, noting that loud music, modern urban noise and certain occupational environments have contributed to hearing problems. She adds that the number of patients has also increased at the South Shore Hearing Center because of the full-service nature of their practice. They not only conduct hearing evaluations and fit children and adults with state-of-the-art hearing aids, but they

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Protect it Now!
Using the US Patent Office's Accelerated Examination Process

BRUCE D. JOBSE

is a Partner in the Firm's Intellectual Property / SciTech Group.

Protecting the intellectual property in a product or service offering is critical to maintaining a market advantage. This is particularly true for products, such as consumer goods, electronics, medical devices, etc. whose design and function can be understood from simple use and observation of the product. Such products lose most of their trade secret protection once they become publicly available. At that point a business must rely on patent rights to prevent competitors from copying key structural and/or functional aspects of the product. However, the task of obtaining patent protection in the span of time between idea conception and product launch has become an increasingly daunting task for most patent applicants. With shortened product design cycles in many technologies and an increasing backlog of unexamined patent applications before United States Patent & Trademark Office (USPTO), many corporations and businesses have had to wait years after the launch of their best-selling products before patents protecting the same have issued. Such is the dilemma facing inventors, small businesses and corporations currently seeking patent protection from the United States Patent & Trademark Office (USPTO). The wait for examination is even more acute for patent applications dealing with software, electronics, business methods, telecommunications, and medical device technologies, where wait times of 4-5 years are common. Although an applicant can represent a product as patent pending once the patent application has been filed, patent rights cannot be enforced until the patent issues.

There is an alternative to all that waiting. The USPTO's Accelerated Examination (AE) process offers an opportunity to anyone who doesn't want to wait several years before their patent rights become enforceable. Started approximately two years ago, the AE process has been gaining popularity. The premise of the AE process is simple. The inventor and his or her attorney not only prepare the patent application, but also perform a preliminary or self-examination of the application, essentially performing the patent examiner's role ahead of time. Such self-examination requires the attorney to go through the same evaluation protocol as the patent examiner, including searching for similar prior patents and analyzing how obvious the invention is in light of similar prior patents from the same or related technical fields. The results of the self-examination are then presented to the USPTO in the form of a petition at the time of application filing. The petition is initially examined for compliance to ensure that the patentability search performed by the applicant was of proper scope and that the analysis adequately establishes grounds for patentability under the current patent laws.

Once accepted into the AE process, the application gets the immediate attention of a patent examiner who reviews the self-examination materials, including the search results and the applicant's support for patentability. From there the process moves rather quickly with much of the normally written correspondence between the patent examiner and the applicant's attorney being replaced with one or more telephone interviews. If allowable subject matter cannot be initially agreed upon between the patent examiner and the attorney, the patent examiner will issue a single written office action. The applicant must respond to the office action within one month, placing the application in allowable condition, otherwise the examination process terminates and the application is rejected.

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Burns & Levinson Gives Back To Boston's Youth

Burns & Levinson has been a leading firm in showing Boston's youth the importance of education. We have developed two programs, the Brighton High School Partnership and the Power of an Idea® Scholarship Contest, as well as supporting individual efforts of our attorneys and staff to give back to the community, and encourage students to pursue their interests and become our future leaders. In addition, we work with children support-related non-profit clients in pro bono work. Below are a few programs we lead and/or support:

POWER OF AN IDEA® SCHOLARSHIP CONTEST

The Power of an Idea® Scholarship Contest gives Boston public high school and Boston charter school students (grades 9 - 12) an opportunity to create an invention by taking an idea from concept to creation to patent. The winner of the contest receives a $15,000 scholarship to be used for tuition and expenses for higher education. Also, as part of the prize package, the winner receives legal patent services for the winning device, machine or process. We are currently in the 5th year of the contest and actively looking for interested judges. If you are interested, please contact Anna DeLeo at adeleo@burnslev.com.

INTERNSHIP PROGRAM

In conjunction with the Boston Bar Association (BBA) and the Boston Private Industry Council (PIC), Burns & Levinson created a partnership with Brighton High School in 1998, focusing on the school's Law, Government & Public Services Pathway. This partnership provides the school's teachers, students and Burns & Levinson attorneys and paralegals, with the opportunity to work together to supplement and enhance the educational experience and to offer motivation for students to pursue careers in legal services-related fields. This partnership serves as a model for other firms seeking to establish an ongoing positive presence at a school. The firm provides practical experience to Brighton High students by inviting the students into the Burns & Levinson offices for internships and summer employment. A unique aspect to the program is our commitment to students throughout their latter years of high school

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Amazing Clients®

Making the World Sound a Little Clearer

South Shore Hearing Center

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also assist in the diagnosis of unusual ear problems as well as assess and treat balance disorders and dizziness in patients of all ages.

She is quick to point out, however, that the psychic rewards of running a successful audiology practice far exceed any monetary rewards. "We have treated three-year old patients with serious hearing problems, and then watched them grow up to have families of their own," she exclaims. The Citrons were especially touched by a six-year-old patient who thanked them, saying "My favorite sounds are church bells and my hearing aids helped me to hear them."

David elaborates on the value of these psychic rewards, pointing for example to the lasting excitement from his own work as a Rotary Club president with "Project Deaf India." One of the goals of the project was to reduce the incidence of hearing loss in children of India through immunizations for measles, mumps and rubella. The other goal involved early hearing loss identification through the implementation of a newborn hearing screening program. The Citrons both helped to train more than 150 local health care workers in Goa, India to use advanced medical equipment donated by Rotary Clubs to diagnose hearing problems and understand the necessary treatments.

The India project also reinforced for David the value of what he does professionally here at home. "We are selling the ability to hear, and that is not just another commodity," he says. "When people tell us that amplification has changed their lives, it makes us very happy," he adds.

Locally, senior citizens and aging "boomers" represent the fastest growing patient segments. "As people live longer and stay more active, it becomes more critical to them to correct even a mild hearing loss and now we have the technology to do that," says Louise, who notes that hearing loss often begins in subtle ways. "Higher pitches are usually the first affected, and sometimes people have more trouble with consonants than vowels because they are typically softer," she says, adding that state-of-the-art hearing aids can amplify specific parts of the sound spectrum as required by individual needs.

> *"We are selling the ability to hear, and that is not just another commodity"*

"Balance and dizziness problems are also a big part of any practice that deals with an aging population," David says, noting that those symptoms are frequently related to inner ear disorders and sometimes are associated with hearing loss. Dizziness is not only the number one malady for patients over 70, it also contributes to the loss of balance that causes 300,000 hip fractures a year due to bad falls. With proper diagnosis and therapy (known as "balance retraining") many older adults can maintain an active lifestyle instead of becoming shut-ins, he adds.

"We are also experiencing growth due to South Shore Hospital's partnership with Dana Farber on their new cancer center," says David, who explains that chemotherapy can affect hearing due to ototoxic medicines that can also cause balance disorders.

He asserts that their pediatric practice also continues to grow in the wake of regulations that require newborn screening for hearing loss.

DAVID CITRON, III, PH.D. & LOUISE G. CITRON, M.A.

Principals and Co-founders of South Shore Hearing Center

"We work a lot with physicians to help them answer questions relating to hearing loss in children due to infections or other problems," he says.

Louise adds that there is no known cause for hearing loss in close to 50 percent of all children so careful attention must be given to family history, infections, environmental factors and other possible factors.

According to the Citrons, they look at each patient problem with a professional methodology, attempting to answer the following questions:

- Is there a problem with hearing or balance?
- Is it medically correctable, with medication, surgery or outpatient procedure?
- Is the problem correctable, either with hearing aids or therapy?

They also express appreciation for the thoughtful, professional methodology of the lawyers at Burns & Levinson, who have supported their business success since 1982. "They ask the right questions, they give plenty of explanations and they make sure you think about the most important issues in your business both from a legal perspective and a strategy perspective. They consistently offer angles on problems we would never have thought about, and they think about alternative solutions for us to choose," says David.

From the very start, Burns & Levinson lawyers assisted the Citrons in essential lease and contract negotiations, choice of corporate structures, and protection of intellectual property, such as business names and logos.

"As our practice grew, we were not a 'mom and pop' client anymore, so we also sought out support for human resources and employment issues," says Louise, noting that the lawyers developed an excellent HR manual for the business. "As we became more successful, it was also important to have someone that could help us organize our future and our children's futures, so we got estate and tax planning help from them as well," she adds.

The Citrons credit Bob Weinstein for handling their real estate matters and acting as liaison for general corporate matters, Renee Inomata for handling employment matters and various corporate documents, and the team of Howard Medwed and Clifford Cohen for handling estate and trust matters.

"They have all been wonderful, and we would not be where we are today without them," Louise concludes.

- John O. Cunningham, freelance writer/editor

Protect it Now!
Using the US Patent Office's Accelerated Examination Process

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According to USPTO statistics, the average length of time from the acceptance of an application into the AE process until a notice of allowance is approximately ten months. However the time can be significantly shorter. Recently, one Burns & Levinson client with an innovative mechanical device received an initial call from the assigned patent examiner indicating allowable subject matter only two days after the application was accepted into the AE process, with an end-to-end process from application filing until patent issuance of less than six months.

Preliminary statistics from the USPTO indicate that the rate of patent issuance is significantly higher (approximately 85%) for applications accepted into the AE process than for applications examined under the normal process (currently below 50%). This statistic is due, in part, to the much greater understanding of the prior art which the applicant's attorney gains during the self-examination process. It comes as no surprise that corporations looking to rapidly grow their patent portfolios can utilize the AE process to their advantage, particularly those in highly litigious technical fields or those with pioneering technologies. IBM Corp., the number one patent grantee of US patents year after year, has filed approximately 90% of all accelerated examination to date.

The total costs associated with obtaining a patent utilizing the AE process are approximately same as the total costs for obtaining a patent using traditional examination, with one caveat. Those costs are expended in a much shorter period of time, typically less than one year. However, the allure of rapidly obtaining patent protection and the advantage of enforcing patent rights now, instead of several years in the future, outweighs such inconvenience for most patentees.

Burns & Levinson Gives Back To Boston's Youth

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– we generally hire students at the end of their sophomore year and they grow and learn with us through graduation, occasionally staying on after.

MOCK TRIAL PROGRAM

For several years, Burns & Levinson has partnered with Brighton High School to participate in the Massachusetts Bar Association's Mock Trial Program, which involves over 100 high schools throughout the Commonwealth. A team of attorneys, primarily associates from the Litigation and Private Client Groups, coaches the students once a week for several months leading up to the event. They review the materials with the students and discuss the ins and outs of the court system; assist the students in preparing witness outlines and provide feedback on opening and closing arguments, as well as direct and cross examinations; and also give tips for public speaking and presenting the case to the judge. As the event draws near, the attorneys ramp up the frequency of the visits to Brighton High in order to do some dress rehearsals, and the like. The program culminates with the mock trials at actual courthouses before a judge (usually a volunteer lawyer/member of the MBA). It is a fun and educational program for all involved.

EVERYBODY WINS!
METRO BOSTON READING PROGRAM

Everybody Wins! Metro Boston is a mentoring program in which adults read to elementary school children for about 40 minutes during lunch once per week. The Firm's participation has been such that instead of one mentor per student, we have two mentors so that each volunteer goes every other week. The program runs from approximately October through mid-May.

WHAT'S NEW?

Burns & Levinson's attorneys frequently write about changes in the law and how they may affect your business or your personal life. Check out some of our most recent Client Updates on our website from the links below. All articles or publications provide general information and do not constitute legal advice.

Tax & Estate Planning Advisory
"Death and Taxes - Not So Certain After All: Important News About the Federal Estate Tax" (January 2010)
www.burnslev.com/taxadvisory

Securities Law Update
"SEC Requires New Compensation, Governance and Risk-Related Disclosures" (December 2009)
www.burnslev.com/securitiesupdate

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