

**OPENING STATEMENTS**

**THE Q FACTOR**

PatentRatings annual take on who prosecutes the highest quality patents.

**S**mall firms have dominated PatentRatings LLC's annual patent-quality survey since we started publishing this list in 2003. Newport, California-based PatentRatings looks at patents in six categories—biotechnology, chemistry, electrical, medical, computer and software, and mechanical. Using a computer model, the company gives the patents an Intellectual Property Quotient (IPQ). Like an intelligence quotient, the IPQ has an average score of 100. Here we publish PatentRatings's list of the firms that procured the patents with the highest IPQs in 2004.

Once again, Schwegman, Lundberg, Woessner & Kluth was mentioned in five categories. The Minneapolis-based firm is small—about 70 lawyers—but it has grown quickly since its 1993 founding. In October 2004 the firm opened a San Jose office staffed by two former partners from Blakely, Sokoloff, Taylor & Zafman. Blakely tied Schwegman for most mentions, but the firms share more than list space. Both count Intel Corporation as a client.

Schwegman has expanded into a space opened up by the many larger IP firms that have folded or merged out of business in recent years. While IP litigation migrated to general practice firms, prosecution has dispersed. Take Myers Bigel Sibley & Sajovec, for example. The firm (mentioned in four categories) was founded in 1997 by 16 lawyers from Bell Seltzer, a Charlotte, North Carolina, boutique, who opted not to go with their firm to Alston &

**MOST MENTIONS 2005**

Blakely Sokoloff	5
<b>SCHWEGMAN, LUNDBERG</b>	<b>5</b>
Myers Bigel	4
Mattingly, Stanger	3
Antonelli, Terry	2
Beyer Weaver	2
Dorsey & Whitney	2
George O. Saile & Associates	2
McAndrews, Held	2
Robinson Intellectual Property	2
Sterne, Kessler	2
TraskBritt	2
Wells St. John	2

Bird. The 28-lawyer Myers now represents a number of North Carolina clients, as well as out of state companies like Samsung Corporation and BellSouth. Founding partner Mitch Bigel says general practice firms approach his firm from time to time with the argument that a big firm can “cross sell” its services. “But we don’t want to cross sell,” Bigel says. “All that does is create conflicts.” Besides, he adds, “We’ve got a good reputation, why would we want to get saddled with that horse?”

—Emily Friedlander

**METHODOLOGY:** Not all patents are created equal. That's the idea behind PatentRatings LLC, a Newport Beach, California, company that rates patent quality. The company, founded by a former partner at Irvine, California's Knobbe, Martens, Olson & Bear, evaluates patents with a computer model and a premise. The premise is that patent owners are more likely to pay maintenance fees to the patent office for a patent that is valuable.

The model predicts which patents will be maintained based on objective criteria that correlate with maintenance of older patents. The model examines, for example, the number of claims in a patent—the more claims, the higher the maintenance rates. Shorter claims, on the other hand, tend to make better patents, because fewer words translates to broader protection. The opposite holds true for the written specifications—longer is better. Finally, the model looks at a patent's forward citation rate—the number of times other patents make reference to the patent in question. The more times a patent is mentioned, the higher that patent's maintenance rate.

## OPENING STATEMENTS

### MEDICAL

Rank	Firm	# of Patents	% of Total	IPQ
1	Basch & Nickerson	13	81	152.8
<b>2</b>	<b>SCHWEGMAN, LUNDBERG</b>	<b>61</b>	<b>10</b>	<b>141.1</b>
3	Mayer Fortkort	15	21	140.6
4	Myers Bigel	10	2	134.5
5	McAndrews, Held	23	12	132.1
6	Crompton, Seager	37	52	131.6
7	Blakely Sokoloff	16	1	129.2
8	Martin & Ferraro	15	71	129.1
9	Pauley Petersen	28	22	128.3
10	Foley & Lardner	35	3	128.0

### BIOTECH

Rank	Firm	# of Patents	% of Total	IPQ
1	Swanson & Bratschun	27	52	149.6
2	Senniger, Powers	34	23	142.7
3	Hale and Dorr*	28	27	133.6
4	McDonnell Boehnen	91	31	133.1
5	Davidson, Davidson	24	16	129.3
6	King & Spalding	18	34	129.0
7	Sterne, Kessler	86	25	125.4
8	Seed Law	106	28	125.1
9	Carella, Byrne	19	83	124.8
<b>10</b>	<b>SCHWEGMAN, LUNDBERG</b>	<b>39</b>	<b>6</b>	<b>124.1</b>

\*Now Wilmer Cutler Pickering Hale and Dorr

### CHEMICAL

Rank	Firm	# of Patents	% of Total	IPQ
<b>1</b>	<b>SCHWEGMAN, LUNDBERG</b>	<b>80</b>	<b>13</b>	<b>138.3</b>
2	Wells St. John	162	49	137.9
3	TraskBritt	139	32	136.3
4	Blakely Sokoloff	104	8	131.9
5	Mattingly, Stanger	33	10	130.3
6	Robinson Intellectual Property	43	30	129.4
7	George O. Saile & Associates	144	48	128.6
8	Myers Bigel	89	21	127.4
9	Antonelli, Terry	145	13	122.7
10	Trop, Pruner	33	13	121.1

### COMPUTER/SOFTWARE

Rank	Firm	# of Patents	% of Total	IPQ
1	Lee & Hayes	111	86	148.7
<b>2</b>	<b>SCHWEGMAN, LUNDBERG</b>	<b>173</b>	<b>28</b>	<b>148.1</b>
3	Blakely Sokoloff	714	52	148.0
4	Sterne, Kessler	108	31	140.0
5	Dorsey & Whitney	133	29	139.6
6	Beyer Weaver	178	34	138.5
7	Jenkins & Gilchrist	60	33	138.3
8	Mattingly, Stanger	135	42	138.3
9	Myers Bigel	104	24	137.7
10	Perkins Coie	60	21	137.5

### ELECTRICAL

Rank	Firm	# of Patents	% of Total	IPQ
1	TraskBritt	140	32	165.6
2	Wells St. John	73	22	158.9
<b>3</b>	<b>SCHWEGMAN, LUNDBERG</b>	<b>198</b>	<b>32</b>	<b>150.7</b>
4	George O. Saile & Associates	81	27	145.8
5	Blakely Sokoloff	341	25	144.7
6	Myers Bigel	89	21	142.2
7	McAndrews, Held	54	28	140.6
8	Dorsey & Whitney	75	16	140.4
9	Robinson Intellectual Property	81	57	139.4
10	Mattingly, Stanger	94	29	138.4

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Source: PatentRatings LLC, patentratings.com

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Intellectual Property Attorneys

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**OPENING  
STATEMENTS**

## THE Q FACTOR

Small firms get high marks for patent quality.

**Q**uality patents come from small places. At least that's the conclusion of the annual patent-quality survey conducted by PatentRatings LLC of Newport Beach, California. PatentRatings looked at patents that issued in 2003 in six categories—biotechnology, chemistry, electrical, medical, computer and software, and mechanical—and ranked them for quality. The company uses a computer model to examine patents and gives them an Intellectual Property Quotient (IPQ). Like an intelligence quotient score, the IPQ has an average score of 100. PatentRatings identified the firms that prosecuted patents with the highest IPQs in each category.

Two firms were mentioned on five out of the six lists: Los Angeles's Blakely Sokoloff Taylor & Zafman and Minneapolis's Schwegman, Lundberg, Woessner & Kluth.

Blakely Sokoloff, whose core business is electrical engineering and computer science prosecution, handles patents for Intel Corporation and Sun Microsystems Inc., according to Mark Watson, who manages the firm's Denver office. The 73-lawyer firm prosecuted 747 computer and software patents that issued last year, with an average IPQ of 154.9. If the firm were a person, in other words, it would be a genius, but only at prosecution. Blakely Sokoloff does not handle that many litigation matters.

Only three large, full-service firms made it on to these lists: San Francisco's Morrison & Foerster, Chicago's McDermott, Will & Emery, and Boston's Hale & Dorr. Otherwise, the top scorers belonged to small and midsize IP firms—some staffed with big-firm refugees. Schwegman, Lundberg's founders, for example, came from Merchant & Gould. Both name partners at Boston's Clark & Elbing's left Fish & Richardson. The five-year-old firm ranked first in the biotech category. One of the firm's clients, Acambis, Inc., of Cambridge, Massachusetts, has a vaccine against the West Nile virus in clinical trials.

Some IP firms, such as Washington, D.C.'s Howrey Simon Arnold & White, were conspicuously absent from the list. Partner Q. Todd Dickinson says the ratings are not all that valuable. He is critical of PatentRatings's use of the forward citation criteria, which is the number of times a patent is cited in subsequent patents. Some patent examiners "have a particular patent they may use as their favorite specification and will cite it again and again in certain arts where the same kinds of issues come up. That may not be a more valuable

MOST MENTIONS 2003	
Blakely Sokoloff	5
<b>Schwegman, Lundberg</b>	<b>5</b>
Antonelli Terry	4
Fitzpatrick, Cella	4
McDermott, Will	3
Morrison & Foerster	3
Oliff & Berridge	3
Staas & Halsey	3
Beyer Weaver	2
Knobbe, Martens	2
Myers Bigel	2
Sterne, Kessler	2
Trask Britt	2

patent; it just may be very broad in the specifications," Dickinson says.

PatentRatings founder Jonathan Barney says the study is "completely objective" and looks at 50 different factors for each patent. Whatever its limitations, the system is certainly better, Barney says, than other rankings, which simply list how many patents a firm collected in a year. "Your numbers may be up there, but the value you are creating for clients may not be that high. We are looking at who is creating the most value for the clients." —Victoria Slind-Flor

**METHODOLOGY:** PatentRatings, a Newport Beach, California, evaluates patent quality with a computer model and a premise. The premise is that patent owners are more likely to pay maintenance fees to the U.S. Patent and Trademark Office for a valuable patent. The model predicts which patents will be maintained based on objective criteria that correlate with maintenance of older patents. The model, for example, examines the number of claims in a patent; the more claims, the higher the maintenance rates. Shorter claims tend to make better patents, because fewer words translates to broader protection. The opposite holds true for the written specification—longer is better.

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### BIOTECH PATENTS

Rank	Firm	# of Patents	IPQ
1	Clark & Elbing	73	114.7
2	McDonnell Boehnen	126	114.6
<b>3</b>	<b>Schwegman, Lundberg</b>	<b>73</b>	<b>114.0</b>
4	Myers Bigel	76	112.4
5	Senniger, Powers	46	111.5
6	Davidson, Davidson	29	110.7
7	Sterne, Kessler	106	109.5
7	Hale and Dorr	48	109.5
9	Morrison & Foerster	152	108.4
9	Ropes & Gray	42	108.4

### CHEMICAL PATENTS

Rank	Firm	# of Patents	IPQ
1	Blakely Sokoloff	136	127.4
2	Antonelli Terry	175	125.4
<b>3</b>	<b>Schwegman, Lundberg</b>	<b>62</b>	<b>122.8</b>
4	Fitzpatrick, Cella	190	120.6
5	McDermott, Will	173	119.9
6	Trask Britt	135	117.7
7	Beyer Weaver	51	117.5
8	Myers Bigel	91	115.7
8	Oliff & Berridge	185	115.7
10	McGinn & Gibb	52	115.0

### COMPUTER/SOFTWARE PATENTS

Rank	Firm	# of Patents	IPQ
1	Blakely Sokoloff	747	154.9
2	Gates & Cooper	87	146.9
2	Fitzpatrick, Cella	559	146.9
<b>4</b>	<b>Schwegman, Lundberg</b>	<b>197</b>	<b>146.2</b>
5	Lee & Hayes	82	143.9
6	Staas & Halsey	411	141.8
7	Antonelli Terry	520	141.5
8	Sterne, Kessler	62	140.0
9	Beyer Weaver	150	139.9
10	Fenwick & West	67	139.6

### ELECTRICAL PATENTS

Rank	Firm	# of Patents	IPQ
1	Fitzpatrick, Cella	852	141.1
2	Blakely Sokoloff	366	138.7
3	McDermott, Will	315	133.5
<b>4</b>	<b>Schwegman, Lundberg</b>	<b>191</b>	<b>132.8</b>
5	Trask Britt	136	131.9
6	Staas & Halsey	159	131.0
7	Seed I.P. Law Group	85	129.5
8	Oliff & Berridge	533	128.8
8	Knobbe, Martens	130	128.8
10	Fleshner & Kim	135	128.5

### MEDICAL PATENTS

Rank	Firm	# of Patents	IPQ
<b>1</b>	<b>Schwegman, Lundberg</b>	<b>101</b>	<b>130.1</b>
2	Crompton, Seager	63	123.0
3	Fish & Neave	18	121.4
4	Vidas, Arrett	43	119.4
5	Knobbe, Martens	131	119.1
6	Bozicevic, Field	14	117.7
7	Gray Cary	20	117.3
8	Blakely Sokoloff	37	116.9
9	Morrison & Foerster	53	116.8
10	Antonelli Terry	17	115.4

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# Power Prosecutors

## THE FIRMS THAT PROSECUTED THE BEST PATENTS IN 2002

**S**mall firms do it better. That's the inescapable conclusion of a recent survey of patent quality in six different areas conducted by PatentRatings LLC. The company's computer model measures the strength of patents and scores them with what it calls an Intellectual Property Quotient (IPQ). The IPQ is much like an IQ score—a 100 is average, scores above 100 are above average. In 2002 patents with the highest IPQs came from small IP boutiques, not their larger brethren.

One of the survey's highest-ranking firms is Minneapolis's Schwegman, Lundberg, Woessner & Kluth, a small 55-lawyer firm devoted solely to patent prosecution that finished with top-ten scores in five categories.

Los Angeles's Blakely, Sokoloff, Taylor & Zafman also brings in quality clients. The 100-lawyer IP firm finished with top-ten scores in both computer and electrical patent prosecution. The firm says that it writes patents for more than one out of every six companies on the Nasdaq 100, citing Intel Corporation as a big client. "We don't feel like we have much competition [in prosecution]," says founding partner Roger Blakely, who emphasizes the firm's technology focus.

New York's IP boutique Fitzpatrick, Cella Harper & Scinto, which was a top-ten firm in five categories, is known for representing Big Pharma. But the firm showed up in the computer and the electrical categories with the help of client Canon Kabushiki Kaisha. The Tokyo-based company was issued 1,893 U.S. patents in 2002—more than any other

### MOST MENTIONS\*

Fitzpatrick, Cella	5
<b>SCHWEGMAN, LUNDBERG</b>	<b>5</b>
Antonelli, Terry	4
Blakely, Sokoloff	4
Dorsey & Whitney	3
Frishauf, Holtz	3
Adams & Wilks	2
Dickstein Shapiro	2
TraskBritt	2

\*Firms mentioned in more than one category

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## BIOTECH PATENTS

Rank	Firm	# of Patents	IPQ
1	<b>SCHWEGMAN, LUNDBERG</b>	<b>69</b>	<b>120.5</b>
2	Licata & Tyrrell	86	120.2
3	Woodcock, Washburn	127	117.7
4	Cooper & Dunham	72	116.3
5	Frishauf, Holtz	33	116.0
6	Hamilton, Brook	101	115.8
7	Wolf, Greenfield	45	115.0
8	Fitzpatrick, Cella	53	114.4
9	Knobbe, Martens	139	113.2
10	Senniger, Powers	49	112.7

## ELECTRICAL PATENTS

Rank	Firm	# of Patents	IPQ
1	TraskBritt	127	157.2
2	<b>SCHWEGMAN, LUNDBERG</b>	<b>170</b>	<b>151.3</b>
3	Fitzpatrick, Cella	852	148.2
4	Dorsey & Whitney	90	140.1
5	Dickstein Shapiro	140	139.6
6	Antonelli, Terry	381	135.0
7	Adams & Wilks	91	133.8
8	Blakely, Sokoloff	340	133.7
9	Myers Bigel	96	131.6
10	Parkhurst & Wendel	75	131.6

## CHEMICAL PATENTS

Rank	Firm	# of Patents	IPQ
1	Mueting, Raasch	38	176.0
2	Wells, St. John	201	161.6
3	<b>SCHWEGMAN, LUNDBERG</b>	<b>74</b>	<b>154.7</b>
4	TraskBritt	131	153.8
5	Dorsey & Whitney	62	151.1
6	Amin & Turocy	53	148.9
7	Dickstein Shapiro	94	144.7
8	Antonelli, Terry	138	144.2
9	Beyer Weaver	52	144.2
10	Fitzpatrick, Cella	163	143.6

## MECHANICAL PATENTS

Rank	Firm	# of Patents	IPQ
1	Fitzpatrick, Cella	263	131.3
2	Morrison & Foerster	144	121.8
3	Adams & Wilks	101	117.6
4	Antonelli, Terry	255	116.4
5	Sughrue Mion	1,073	112.2
6	Blakely, Sokoloff	149	111.7
7	Oloff & Berridge	646	111.4
8	McDermott, Will	282	110.9
9	Frishauf, Holtz	180	110.7
10	Oblon, Spivak	925	108.4

## COMPUTER PATENTS

Rank	Firm	# of Patents	IPQ
1	<b>SCHWEGMAN, LUNDBERG</b>	<b>181</b>	<b>157.4</b>
2	Dorsey & Whitney	132	155.3
3	Fish & Neave	78	146.1
4	Wenderoth, Lind	127	140.2
5	Fitzpatrick, Cella	479	139.8
6	Antonelli, Terry	446	139.5
7	Lee & Hayes	65	138.6
8	Blakely, Sokoloff	586	138.2
9	Conley Rose	252	137.4
10	Banner & Witcoff	153	136.1

## MEDICAL PATENTS

Rank	Firm	# of Patents	IPQ
1	<b>SCHWEGMAN, LUNDBERG</b>	<b>87</b>	<b>146.0</b>
2	Vidas, Arrett	48	140.9
3	Henricks, Slavin	17	133.4
4	Frishauf, Holtz	14	126.2
5	Coudert Brothers	15	125.4
6	Brinks Hofer	50	125.2
7	Ratner & Prestia	18	124.8
8	Crompton, Seager	46	124.0
9	Testa Hurwitz	41	123.4
10	Blakely, Sokoloff	14	123.3

## THE PROSECUTION CLINIC

**W**hen patent prosecutors Michael Schwegman, Steven Lundberg, Warren Woessner, and Daniel Kluth, left Minneapolis's Merchant & Gould in 1993, the ratio of prosecutors to litigators at the firm was 1:1, but all was not harmonious.

"There was a lot of tension with the litigation group," says Woessner. "They felt they were more profitable and that litigation work was more prestigious than patent-application work. It had become increasingly difficult to grow a prosecution practice because associates would get pulled off our work for litigation."

So, Schwegman, 58, Lundberg, 47, Woessner, 58, and Kluth, 46, founded Schwegman, Lundberg, Woessner & Kluth. Today, the 50-lawyer practice does work for a few of the clients that they brought with them from Merchant & Gould, including Cray Research, the University of Minnesota, and the University of Iowa.

And according to Patent Ratings, Schwegman, Lundberg prosecuted many of the highest-quality patents issued in 2002. Patent Ratings ranked the firm first in the biotech, computer, and medical fields, second in electrical, and third in chemical [see chart on page 43].

The firm edged out many longtime patent powerhouses such as New York's Fish & Neave; Los Angeles's Blakely, Sokoloff, Taylor & Zafman; Philadelphia's Woodcock Washburn; and Chicago's Brinks, Hofer, Gilson & Leone.

Merchant & Gould didn't make the list, but the firm doesn't mourn the loss of Schwegman, et al. "The firm is better off over the long haul," says D. Randall King, Merchant & Gould's managing director. "They wanted to do their own thing and have prospered. However, those of us who stayed realized the value of being a full-service IP firm with prosecution and litigation types working together." [King talks more about the relationship between

prosecutors and litigators in "A Merchant's Guide to Inner Harmony," on page 29.]

The founding partners say the firm's focus on prosecution work probably led to the high ranking. Lundberg says his firm is like "a clinic that does only heart transplants."

The firm also writes "almost everything from scratch," Woessner says. It doesn't translate and file many overseas patents, as some other patent shops do. Also, unlike other small firms, Schwegman, Lundberg generally charges by the hour.

Another difference: Schwegman,

**Schwegman, Lundberg's founders felt out of the loop at Merchant & Gould. "There was a lot of tension with the litigation group," says founding partner Warren Woessner.**

Lundberg doesn't recruit out of law schools. "We don't find that works for us," says Lundberg. "Most of the folks in law school want to be litigators, so we end up with a retention problem."

"We have very highly trained people with backgrounds in law and industry," says Schwegman. He speculates that those who have worked in another industry before becoming patent lawyers aren't so quick to be drawn to litigation.

The founders know this from experience. Both Schwegman and Lundberg worked at Honeywell, Inc., while attending law school at night at William Mitchell College of Law. Schwegman was a patent agent, and Lundberg designed electronic and software systems for the giant manufacturing company.

Name partner Woessner has a Ph.D. in organic chemistry and did drug research for Miles Laboratories. Kluth spent seven years as a computer design engineer for Sperry Corporation.

The firm boasts a blue-chip client list, including Lundberg and Schwegman's former employer Honeywell. Other high-tech clients in the electrical/computer area include Intel Inc., Silicon Graphics Inc., Apple Computer, Inc., and Micron Inc.

Guidant/Cardiac Pacemakers, Inc., Atrix Inc., Cornell University, Phonar Inc., and LecTec, Inc., bring their medical-device patent work to the firm.

Chemical and biotech clients include the Universities of Minnesota, Iowa, and California, Celltech, Inc., Affymetrix, Inc., NeoRx, Inc., Roche Biosciences, Inc., and MGI Pharma, Inc.

The firm does a little bit of copyright work for some software clients, and also does patent-opinion work, but the core practice area is patent prosecution. The firm does have an engineering culture, but it's not technonerd city, insists Lundberg. "We are engineers with salesmen's dispositions," he says.

—Victoria Slind-Flor



THE FOUNDERS (FROM LEFT): MICHAEL SCHWEGMAN, STEVEN LUNDBERG, WARREN WOESSNER, DANIEL KLUTH

company besides International Business Machines—and Fitzpatrick, Cella prosecuted most of them, says partner Dominic Conde.

Patents from foreign countries often are just translations that U.S. firms process but don't write. "We find that many foreign-originating patents are of low quality and this is generally reflected in lower IPQ scores," says Jonathan Barney, PatentRatings president and cofounder.

However, as is the case with Fitzpatrick, Cella's work for Canon, foreign-originating work isn't always low-quality. Many firms prosecute original patents for overseas clients, Barney says. He cites his former law firm, Irvine, California's Knobbe, Martens, Olson & Bear, and the patent work it does for Yamaha Corporation, as an example.

**F**oreign clients provide about half of the patent prosecution work at Arlington, Virginia-based Antonelli, Terry, Stout & Kraus, and the 22-lawyer prosecution shop scored high on four of the charts. The firm prosecutes patents for such clients as Hitachi Limited and Nokia Corporation.

In the nineties Antonelli, Terry prosecuted patents for a holding company called NTP, Inc. The patents allowed NTP to sue the maker of the BlackBerry pager. NTP won its suit in November 2002 and is seeking a permanent injunction.

**Many large firms don't do patent prosecution for a variety of reasons. They say that the work isn't highly profitable and poses potential conflicts.**

Niche firms don't have a monopoly in prosecution. Washington, D.C.'s Dickstein Shapiro Morin & Oshinsky shows up on two of these lists. The 330-lawyer general practice firm has been building its IP group since 1986, when it brought in partner Gary Hoffman from LeBlanc, Nolan, Shur and Nies, an Arlington, Virginia, boutique. Today Hoffman heads up an IP group of 65 prosecutors and litigators. Last year the firm filed about 1,100 applications with the patent office. In March, Dickstein Shapiro hired two partners and three associates from Lieberman & Nowak, a New York boutique.

Minneapolis's 750-lawyer Dorsey & Whitney, which is mentioned on two of these lists, received a prosecution boost last May when it absorbed 22-lawyer Silicon Valley boutique Flehr Hohbach Test Albritton & Herbert.

Many large firms don't do patent prosecution for a variety of reasons, or they do it only reluctantly. They say that the work isn't highly profitable and poses potential conflicts. Says Roger Blakely, "Prosecution is a mainstay of our practice, I don't know that large firms can do it as efficiently as we can."

—Emily Friedlander

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