



S. Todd Rogers / Daily Journal

# Changing Course

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Adam Sand was blazing a career toward big-firm partnership and then he found himself dodging bullets in Nigeria while his wife and child were waiting for him a half a world away.

Adam Sand, general counsel of San Jose-based ZL Technologies Inc., nurses a rarely held desire for an in-house attorney: He actually pines for the grind of law firm life. "I miss it 100 percent," Sand said of his days as an associate at Pillsbury Winthrop Shaw Pittman and Jones Day. "I do."

Starting a family prompted Sand's transition to company man. He left Jones Day for eBay Inc. in 2007, working as litigation counsel and helping the company prevent scammers from defrauding the online

CORPORATE COUNSEL  
**Q&A**

auction site's affiliate marketing network. Last May, he joined ZL Technologies as the company's first in-house attorney in several years. There, he's helping the software maker through a growth spurt as it expands its e-discovery and record management software and creates a cloud offering.

Sand met recently with Daily Journal staff writer Sara Randazzo to discuss what he's done since joining ZL Technologies, how the fiercely independent company fights for its rights in court and why his current job is safer than a trip to Nigeria. The following is an edited version of what he had to say:

**Daily Journal: What was creating a department from scratch like?**

**Sand:** The hard part was prioritizing what needed to be done first. There wasn't anyone who came through and said, "These projects are in motion and you should do these things." Instead it was, "Hi, you're here. Here's your desk. Good luck!" I decided, first of all, the contracts needed to be as standardized as possible. After that, we revamped our website. I've also been doing a lot of speaking in terms of e-discovery and records management. I recently spoke at the [Association of Corporate Counsel] conference, at the ARMA [an organization for records and information management professionals] conference. I speak pretty often, actually, almost once a month.

**DJ: What are the take-aways from your talks?**

**Sand:** One of them is that every single company out there should be trying to find a way to unify their content. They should be trying to determine a way so they don't have just Word documents and Excel documents and e-mail and all of these various silos of data. They should be putting them together and making it

so you can actually search it and use the data.

One other is that people should be more proactive about litigation readiness. If you wait until a lawsuit is filed against you, I guarantee your costs are going to be three times higher than they would be if you could ahead of time get rid of documents that are not relevant or not needed. You wouldn't have to go through this gigantic process of trying to get all the documents and put them into a review platform. Those two ideas I play with a lot — if you unify the content, then you can be proactive and get rid of documents you don't need.

Literally, we're in the jungles and swamps of Nigeria. I had armed guards. At one point we take off in a helicopter and it goes straight up. [The pilot says], 'Bullets can only travel about 500 feet in the air.'

**DJ: How did it end up that most of ZL Technologies' clients are banks?**

**Sand:** Because [the Financial Industry Regulatory Authority], one of the regulatory bodies of the SEC, made regulations that essentially said traders have to keep every single one of their e-mails, in or out, for seven years. The SEC will come in and say, 'I want to see these five traders' e-mail for January 2004. You've got a month to hand it over.' They realized, 'Oh my goodness, we have to find something immediately that can do this.' We were already doing this, but as soon as that happened, we have jumped into this space and jumped as hard as possible.

**DJ: Has ZL Technologies acquired any companies or considered finding a buyer?**

**Sand:** Nope. We do work with companies, but all the technology we have is home-grown. Because of the archiving backbone, [ZL Technologies] can build on top of that. What's really cool about the way they've done the archiving backbone, it's scalable to gigantic numbers. We have a couple of clients that have billions of records. Three clients have four billion records each in one single database, and they search

that on an hourly basis.

**DJ: Have you had to deal with much litigation?**

**Sand:** We have a lawsuit against Gartner, an organization that puts together ratings and reviews, in the 9th Circuit [Court of Appeals]. I walked into a situation where [ZL Technologies] had filed the first complaint, and it wasn't really that good. They lost. They filed a second complaint, which was a lot better, but ultimately Judge [Jeremy] Fogel [of the Northern District] also tossed it. The wheels were already going for me in terms of the appeal. What I did do was dramatically change our focus. I think it's a much more solid argument, and we stand a very good chance.

**DJ: In the suit, ZL Technologies says Gartner rated its technology lower than it thought was justified. Why did the company feel strongly enough about it to sue?**

**Sand:** It's important enough because they say one thing, then they do another. They come through and say essentially, 'We're who you should trust, we're telling you what the best software is.' But in disclaimers and in court documents they say, 'We don't make any claims whatsoever about everyone's software. We're just telling you, this is what's out there and what we found during our research.'

**DJ: So what did the ratings say about ZL?**

**Sand:** It said the technology was good, but they have this "magic quadrant" and put us into the quadrant that was essentially the "niche player." We said this doesn't really make a lot of sense. On the one hand, you say our software is great, then in this you're not putting us very high. Why?

**DJ: Are any other lawsuits in progress?**

**Sand:** We also have a patent lawsuit in the Eastern District of Texas where a patent troll is suing us. It's so far away from reality it's kind of hard to defend in some ways. It's against us and 50 other people, and we are probably the smallest fish in the entire bowl.

**DJ: How many patents does the company hold?**

**Sand:** It doesn't hold any patents. We thought long and hard about what patents we wanted to get, but decided it wasn't really worthwhile to go after. It's one of those things where if I was in this company 10 years ago, we might have had a different story [in which the company would have pursued patents].

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## Adam Sand

General Counsel

ZL Technologies Inc.

San Jose

Age: 40

Size of legal department: 1 attorney

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**DJ: Going forward, will you consider patents?**

**Sand:** Absolutely, positively, yes. We have new things we are now in the process of creating that I believe we will go for patents.

**DJ: What initially brought you in-house?**

**Sand:** I was [at Jones Day] working on *Bowto v. Chevron* [a human rights case involving Chevron's operations in Africa], and I was being sent to Nigeria, which was totally interesting and great, but at the same time, my wife was pregnant. She said, 'It's great you like to travel, but I can't handle Nigeria. It's too nerve-racking.' So, little by little, I realized I can't keep doing this.

**DJ: What was your time in Nigeria like?**

**Sand:** On one trip, one of the other associates looked at me and said, 'You know Adam, this is probably the most interesting case we will ever work on. It's all downhill from here.' Literally, we're in the jungles and swamps of Nigeria. I had armed guards. At one point we take off in a helicopter and it goes straight up. And I'm like, we need to go down to see things. And he was like, 'You can't go any lower than this. Bullets can only travel about 500 feet in the air.' It was so interesting, but my wife was not kidding. I knew I couldn't give my all. And eBay was perfect for me in a lot of ways. I worked mostly on antitrust cases, and then they had a very big antitrust case. I walked right into it. We litigated for about two and a half years and won summary judgment. At that point was when I knew — I can leave. And then this opportunity came up.

**DJ: Did you have the mentality of 'I'm going to be a law firm partner'?**

**Sand:** Yeah, I did. Kids is honestly what threw it for a loop. I never even thought about being an in-house lawyer. It wasn't until I had kids that I realized, you know, I could actually have a little more of a life.

sara\_randazzo@dailyjournal.com

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