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Patenting goes the offshore route

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Intellectual property, long ago undermined by countries like India for cultural and economic reasons, has suddenly become a hotbed of offshoring activity. Now Indian firms are recruiting engineers and training them to become patent agents – with their eye on the large number of companies abroad looking for cheaper patenting.



Currently, India has only a handful of patenting companies, with 500-odd professionals, but this is projected to grow 20-fold by 2010. Last year a significant number of patent applications filed in the US last year were drafted in India.

The logic is simple: in the end the patent process is about getting to grips with novel technology, which an engineer, a molecular biologist or a clinician is better able to understand and translate it into the patent draft better than a patent lawyer.

According to a study by Evalueserve of Noida, near New Delhi, a company providing services in knowledge-intensive business processes, the overall market for outsourced patent preparation and processing will be \$17 billion by 2010, of which India's share will be \$12 billion.

Another statistic from Evalueserve, the largest player in the intellectual property services market, with 160 professionals (out of 1,000 staff), shows that outsourcing patent work to India makes a lot of sense for start-ups.

In a study of 70 start-ups in the San Francisco Bay area, the firm found that one-third would not consider patenting their technology if the total cost exceeded \$6,000. Indian firms undertake the complete patent filing process at about a quarter of price charged by US firms, which ranges from \$15,000 to \$25,000.

What value can innovative US or European firms get from outsourcing patent work to India? "They get quality and domain expertise at the right cost," claims Ashish Gupta, Chief Operating Officer of Evalueserve.

One could also add "and not a moment too soon", as according to Evalueserve's estimates there will be shortage of 2,000 European Patent Office-accredited patent lawyers by 2010. At the same time, the number of patents filed at the US Patent and Trade Mark Office is increasing at over 25 per cent a year and is projected to exceed 500,000 by 2010.

Eyes on the US

Currently, Indian firms and professionals offering patent services are primarily looking at the US

market, both for size and acceptance of offshoring.

"Businesses in the EU are more circumspect about offshoring," says Arun K Narasani, founder and CEO of Brain League, a two-year-old start-up, based in Bangalore. An engineer by training, Narasani started the business by training executives in IP, but has graduated to undertaking the entire patenting process, leaving only registration to be done in the US.

It is the sheer growth rate in patenting that makes start-ups like Brain League and its peers confident enough to think of 10-fold expansion in one year. "The US resource pool just cannot handle it," says Narasani,

What started off as traditional patent drafting, prior art searches and overlap analysis (freedom-to-operate) has morphed into complex IP asset management, which also includes analyses on licensing needs, technology commercialisation and IP donation/abandonment.

Little surprise, then, that engineering graduates are willing to consider this as one more career option. "We got tremendous response from the Indian Institute of Technology in Mumbai, where for five posts in the IP division, we received 185 applications," says Vaibhav Parikh, division head at Nishith Desai Associates, a leading law-firm in Mumbai with worldwide operations. "Two years ago, not one engineer would have applied," he adds.

With the quality of India's recent moves to improve its intellectual property legislation still to be tested in anger, there are bound to be security and confidentiality issues about using offshore patenting services.

"Yes, there are concerns but they are no different than asking Infosys or Wipro [India's largest software services firms] to develop software," says Parikh. To date no clients have encountered any legal problems. Narasani believes this is because the regulatory framework for IP in India is progressing and will soon be in sync with the rest of the developed world.

As would be standard elsewhere, both sides are taking care to sign non-disclosure agreements with each employee of the firm. "This fear is not rooted in race or ethnicity - one cannot say lapses will occur because the work is being done in India," says Gupta. "It arises out of human psychology. After all, credit card fraud happens, and there are more such frauds in the US than in India."

So will this upstart competition force American and European patent lawyers to cut their fees? "It's inevitable and is already happening," claim both Parikh and Narasani.

Spill-over benefits

Besides finding a good overseas business opportunity, the growing number of Indian firms engaging in IP-related work also augurs well for the country as a whole, as it increases the domestic investment in R&D.

There was a 400 per cent increase in private R&D spending on drugs and pharmaceuticals in the four-years up to 2005, according to Council for Scientific and Industrial Research (CSIR) in New Delhi, the umbrella organisation of 38 federal laboratories.

CSIR recently released the number of international patents accumulated by India, showing US patent applications increased by 36 per cent to 1,278 in 2005, reversing a decline of 15 per cent in 2004. The number of patents issued increased by 11 per cent, a higher growth rate than Japan, Taiwan, Canada, Germany, or even China.

This is a marked cultural change, as the Indian research community has never relied on protecting its inventions. And since there was no local demand, the supply of trained IP professionals was limited. Suddenly, not only are local firms and Indian subsidiaries of multinationals filing more US patent applications, overseas firms are patenting more in India, with the number of patents filed increasing four times in 2005.

Naturally there's a ripple effect in the domestic market. Not only has the demand for patent lawyers

surged, firms are clamouring for patent-education programs for their employees. Narasani's Brain League has trained thousands of people in the corporate sector, including over 1,800 staff members of a single telecom company in Bangalore. "There's an urgency to increase patent awareness. Apart from the basic level training, we train middle management so that they use IP as a tool; and top management so that they can strategise with IP," says Narasani.

Aggressive challenges

The need is more evident in the pharmaceutical sector, which is the patent growth driver in India. Both multinationals and locals have become aggressive in seeking and challenging patents. "With the increasing awareness on patents, outsourcing of patent services in pharma industry will increase, given the availability of skilled persons in India. There's also a possibility in the increase of patent challenges in months to come," says Milind Antani, a medical surgeon and lawyer heading the life science and healthcare practice at Nishith Desai Associates in Mumbai.

Patent opposition has already begun. Earlier in the year, the Swiss pharmaceutical company Novartis was denied a patent by the Indian Patent Office for its cancer drug Gleevec on the grounds that the application did not qualify as an invention and was merely a modification of the key component of the existing drug, which already enjoyed a patent.

In another instance in April, a group of HIV/AIDS patient associations filed an opposition to the patent application made by GlaxoSmithKline for Combivir, a fixed dose combination of two essential AIDS drugs. "We are objecting to the Combivir patent because it is not a new invention but simply the combination of two drugs," says K.K. Abraham, president of the Indian Network of People Living with HIV/AIDS.

Understandably, private and public sectors in India need patent-literate professionals. "There's incredible optimism in the field but can the business grow at the same clip? Not quite, but equilibrium will be attained in a few years, says Parikh. Firms also feel they might face a resource crunch, as it is not very easy to train engineers to write good patent applications. "Two-three years ago 99.9 percent engineers did not understand the nuances of patents. Today that percentage may have decreased but we still do not have a culture where engineers innovate from an early stage and write disclosures," rues Parikh.

Given the way colleges and university programs in IP are being introduced in the country, it'll be a while before the Indian firms hit the wall. Till then they will be focused on the growing Indian market, which Evaluateserve estimates will generate revenue of \$500 million by 2010.