

Lagging behind the dragon on IPR

China is significantly ahead of India in implementing an IPR framework, and is expectedly reaping the benefits thereof in national commerce and at international platforms where technology standards are set, says **Subramaniam Vutha**

As the two largest emerging economies, comparisons between China and India are inevitable. But nowhere is the contrast more significant, perhaps, than in the sphere of Intellectual Property Rights (IPR) — an area of economic and social activity that is critical to growth.

In the medium and long term, development and implementation of IPR strategies is key. This will determine whether success in the research and development of products and processes can be sustained by either country for any significant period of time.

THE PATENT INFRASTRUCTURE

To date, China seems to be significantly ahead

of India in overall research and development and in its strategic approach to IPR. In 2010, of the approximately 400,000 patent applications filed in China, about 75 per cent were by Chinese companies; foreign companies filed about 100,000 registrations. In contrast, in the last five years Indian companies have filed only 19 per cent of the total patents registered in India, whereas foreign companies account for about 81 per cent. The total number of patent filings in India has yet to exceed 50,000 a year.

Chinese inventiveness goes beyond its shores. The Tata IPR Learning Mission discovered at a World Intellectual Property Organisation meeting at Geneva that China files almost 10 times more patent applications in Europe than Indian companies.

China's seriousness about IPR is evident in its patent infrastructure as well. Whereas in 2010 the Indian Patent Office had about 250 patent examiners, their counterparts in China numbered 4,500; and where India plans to add another



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1,000 examiners soon, China is working to double their strength to 9,000 by 2015.

TAKING IT SERIOUSLY

Expectedly, China is attracting serious attention from international research and patent bodies. It has been invited to 'standards-setting' platforms across segments. From operating systems and software applications to storage media, wireless communications, and satellite positioning, Chinese government agencies and companies are looking to break the hold of the West on standards and are working to shape new technology frontiers, according to Manoj Singh, chief executive officer, Asia-Pacific region, Deloitte. On the other hand, India has yet to make a beginning in this strategic domain.

India's poor performance on IPR strategies and plans extends even to clarity on vital issues. On a recent visit to Mumbai, Judge Randall Rader, Chief Judge of the US Court of Appeals, Federal Circuit, the highest patent appellate body in the US, commented that the questions he faces when in China are more sophisticated and challenging. Indians, he said, are still grappling with basic issues.

IPR REGIME MATTERS

Studies show that Japanese, South Korean and Chinese companies have captured dominant market share in developed countries for certain indigenously-developed products. They have, however, also paid a high price for not having substantial patent portfolios in the developed countries that they address. The net effect is that US patent holders have collected millions of dollars in patent infringement damages and IP royalties from these companies. Chinese companies, for instance, paid \$10.6 billion more in royalties and licensing fees in 2010 than they earned under these heads.

For India and Indian companies, the prospects are even more daunting. When the foreign companies that account for over 80 per cent of patent filings in India are granted these patents, they can use them

to stifle the 'freedom-to-operate' of Indian companies in their own domestic markets.

WHY COMPARISONS ARE RELEVANT

In comparing a company with a strong IP portfolio with a company that has no significant IP portfolio, it becomes immediately obvious that there are significant differences in their abilities to:

- Gain a competitive edge in markets.
- Mitigate risks of third-party claims by trading IPR with potential claimants.
- Open up new business options for their businesses.

Indian companies are doing well in terms of innovation, quality improvement, adherence to international standards, business excellence and similar initiatives. But the missing piece is an IPR strategy to match. The cost of developing IPR portfolios should be compared with the cost of not having one — in terms of loss of competitive advantages, risks of third-party IPR claims and the loss of new business options and negotiating power.

Not having a vigorous national and 'company-level' IPR strategy could prove costly for India and Indian companies. China has woken up to the challenge. It has taken actions that we should study and emulate.

Or counter. □

Contrasting performance

The Chinese technology company ZTE has over 100 IP professionals. On the other hand, it would be difficult to name a single Indian company that has even 30 members in a dedicated IP team.

In 2008, a Chinese company won \$7.4 million dollars after establishing its ownership of a 'utility model' or 'light' patent — an IP option for innovations that don't merit a traditional patent. There is no such utility model patent system in India.