

Interview No.23

The Latest patent status in India (I)

Rapid increase in applications as well as patent litigation

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While India, among other newly-developing countries, is expected to undergo growth spurts in future industry, little information is available on litigation concerning intellectual properties in India. Mr. Lakshmikumaran, attorney-at-law who provides many companies among upper Fortune 500 enterprises with advice on patent strategy in India and who is also engaged in legislative procedures, as well as other experts familiar with the situation, had a discussion on the latest patent status in India.

Attendees:

Mr. V. Lakshmikumaran, Attorney-at-law and Patent Attorney, Managing Partner of Lakshmikumaran & Sridharan Law Office;

Mr. Vinit Bapat, Indian Patent Attorney, Representative Director of Sangam IP;

Mr. Masakazu Ito, Patent Attorney, Vice Chairman of Miyoshi & Miyoshi; and

Mr. Toshio Takamatsu, Patent Attorney, Vice President, Miyoshi & Miyoshi

Chair:

Mr. Hiroshi Asakura, Techno-associate, Chief Editor of "Chizai Awareness" published by Nikkei BP

— — First of all, would you tell us about the recent trend in filing of patent applications in India?

Mr. Lakshmikumaran: The number of patent applications filed in 2008 and 2009 was about 36,000 cases a year. The breakdown is: applications from abroad make up 83% and from within India is 17%. International applications (PCT) shifted from domestic applications totaled about 25,000 cases in the same years.

Mr. Ito: Judging from the fact that there are about 300,000 applications/year in Japan and about 500,000 applications/year in China, there should be more applications filed in India. In view of the proportion of the GDP, ten times more than this number is expected.

Mr. Lakshmikumaran: Before 2005, the duration of a patent was only 7 years in India. As for

drug making, there was no substance patent; only the method patent was admitted. It can be said there was not much attractiveness in filing a patent application. Many Indian companies at that time thought that rather than investing in their research and development, it was better to gain technology, if necessary, by paying a license fee and turning it into a commercial reality as soon as possible to put into market. It was also because there were few people who had the skill to be able to write a patent specification. In and after 2006, the Indian Patent Act was also revised to observe the TRIPs Agreement (Agreement on Trade-related Aspects of Intellectual Property Rights; India became a member in 1995). Specifically, the duration of a patent was extended from 7 years to 20 years, and the system for substance patents was established. Further, because of economic liberalization in India, investments from overseas have increased, so that Indian enterprises have also been stimulated to increase patent applications. Patent applications in India will increase further and will reach 70,000 cases/year in 2015 - 2018, which is twice as many as at present. Recently, it is mechanical, electrical, and electronic fields that are particularly growing.

— — **What differences are there from the Japanese patent system?**

Mr. Ito: There is a system like that in Britain and the U. S. A., too. In Britain and the U. S. A., there is a way of thinking that whatever information is known to applicants should be disclosed. This means that the Indian patent system is fundamentally based on Anglo-American Law.

Mr. Bapat: As India was a British colony, the Indian law system is based on British law. Besides this, there is also a system that, when you obtain a patent in India, throughout the period of the patent you should report to the Patent Office every year as to whether it is being manufactured in India. Basically, this means that, if you obtain a patent in India, it is requested that you contribute to development of India by working and manufacturing the invention and products in India. This is a system unique to India, isn't it?
The number of patent suits has increased by one digit over that in 1990's.

— — **What is the state of patent litigation in India?**

Mr. Lakshmikumar: Using data we put together ourselves from the court-published precedents, there was a maximum of 20 cases in total in the 10 years up to the 1990's, but this increased by 7 cases per year in 2006 and 20 cases per year in and after 2009 (Fig. 1). There are three reasons: firstly, the number of patent applications itself has increased; secondly, there was previously no method to find out whether or not your own patent is infringed upon,

but owing to the spread of the Internet, it is now possible to detect infringement and as such, there is now a tendency to try to stop it; thirdly, shortening of the litigation period. It used to take 5 to 7 years, while judgment is now given in 1 to 2 years. Rapid increase in damages by judgment of lawsuits also served to increase the number of cases.

– – **What is the breakdown of Indian enterprises and foreign enterprises in patent suits?**

Lakshmikumaran: The number of cases between Indian enterprises and between Indian enterprises and foreign enterprises are about the same, but there are few cases between foreign enterprises. Meanwhile, there are such cases where instead of a lawsuit, a foreign company prevents another foreign company from allowing overseas products to flow into India.

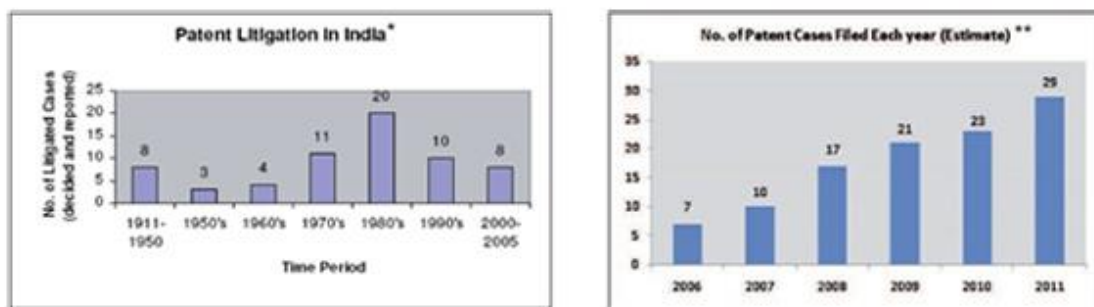


Fig. 1 The number of patent suits in India (prepared by Lakshmikumaran & Sridharan Law Office)



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