



## UPDATE: Explaining the continuing surge in the U.S. of non-English language document review projects

Apr 27th, 2011 | By Gregory P. Bufithis, Esq.



27 April 2011 [updating our January 2011 post]

### *The global “patent arms wars”*

Ah, litigation. Truly the sincerest form of flattery. If you have been following all the IP litigation out there the last few months you know that the most recent battle pits Apple who has gone after Samsung for violating 10 iPhone and iPad-related patents in its Android-based smartphones and Galaxy Tab. And Samsung has countersued, starting off with lawsuits in Europe and Asia, with U.S. based lawsuits about to be filed.

The subtext is obvious. Apple to Samsung: you are an unexpectedly persistent competitor, and we don't much like that. But for both companies, legal fights are nothing out of the ordinary. Since the beginning of 2008 the tally of U.S. cases in which either side has been a party reads: Samsung 259, Apple 260. And if you are a contract attorney who has been in the document review game long enough you have probably been in a few of these litigations ... conflicts checks not withstanding.

It is a strategy. For Apple, another tool in the tool box to check the rise of its biggest challenger in tablets, and the dominant user of Android, the rival operating system to Apple's own iOS.

Apple's fear: Samsung's proven ability to accelerate penetration into mid-market segments in both developed and emerging economies, across all manner of consumer electronics.

The “patent arms wars” have reached a new level of intensity. It’s the globalization of smartphone patent disputes. Because the most aggressive corporate asset these days is your IP arsenal and it has affected the subjective document review market. The financial crises has “helped” in its own way, forcing many companies to look at IP commercialization and protection. But no surprise here. As we have shifted from a labor-driven economy to a knowledge-based economy the intangible assets produced by a more highly skilled and services-orientated workforce have emerged as the most powerful asset class, overtaking traditional capital assets such as real property, plant and equipment. A lovely setting for a battleground.

As we have indicated in numerous posts over the last year, foreign language document reviews have dominated the U.S. contract attorney market. Foreign language document reviews were 62% of our postings 2 years ago, and 74% of our postings over the last 12 months. And a big reason is this enormous growth of IP litigation which crosses multiple countries and languages and is normally quite long in duration and almost always leads to extensive document reviews. And you can’t do it in India. Patent/IP prosecution, yes. Multi-language litigations, no.

It is all about the convergence of technology markets — most clearly, the clash of mobile communications and personal computing in the smartphone — which has greatly added to the complexity as well as the potential for conflict as the prime battle for market share. There are potentially more than 250,000 patents involved in a smartphone, according to RPX (one of the new era’s middlemen who buy and license patents wholesale; for more about what they do [click here](#)).

Young companies that haven’t had a chance to amass their own stocks of patents, or those moving on to new technology turf, are the ones most at risk. In this case, that may even include a company as mature as Apple, which ventured into new territory with the iPhone. It has fewer than 4,000 patents; a quarter of those were awarded since the start of last year, suggesting that it has been pushing hard to increase its IP holdings as it moves beyond its traditional computing base. Even Google is light in the IP department which is why it was bidding \$900 million to buy the Nortel patent pool (Nortel being in bankruptcy and its assets under bid, as many of us worked through that document review) as a defense. If Google did not buy the patents, they could well end up with a competitor, or in the hands of patent trolls who are going to go out and start trouble, trolls being buyers who acquire patents purely to start legal actions (for those who have not worked on a patent troll case [some background](#)).

There are now fights against Apple in six courts, over 6 countries, involving 50+ patents. Add to that 40+ cases filed against Android — virtually all of them against companies that have built devices using the software. There are at least 18 non-English languages involved.

*Side note: to stay on top of all of this IP litigation (the whys and wherefores, etc.) we always turn to our colleague Florian Mueller and his blog [Foss Patents](#) and follow him on [Twitter](#).*

***Oh, global M&A is up, too***

This is not to discount the enormous affect on non-English language document review by the surge by U.S. companies to do large strategic deal-making which has boosted global mergers and

acquisitions, and just the simple effect of normal-course-of-business global transactions. The U.S. now accounts for almost half of global M&A activity, up from about a third last year. Nine of the 10 biggest deals this year have been struck in the US, almost all leading to large, non-English document reviews, deals involving companies from Brazil, China, Germany, India, Italy, Portugal, Turkey, and Russia — to name just a few.

Catalyst Repository Systems (links at the top of the right column on this page) was one of the first to provide multi-language search and review for e-discovery and large-scale document review. We spoke with John Tredennick, Catalyst founder and CEO, who explained: *“We have seen corporations and their law firms dealing with this spike in electronic discovery containing multiple languages. I can attribute this to The World is Flat era whereby corporations work globally and communicate across many languages. Today, when documents need to be reviewed, they usually contain multiple languages — the languages in which the companies do business whether it be intellectual property, mergers & acquisitions, or just every day business processes”*.

So just in the DC, LA and NYC document review markets you have multiple language document reviews involving companies such as Aisin, Ansa, Apple, AstraZeneca, Avon, Gitti Gidiyor, HTC, LG Electronics, Merck, Nissan, Pfizer, Research in Motion, Samsung, Sony, Takeda Pharmaceuticals, Toshiba – to name but a few.

For the agencies staffing these projects it has meant being quick and very flexible. Jeremy Michalson of Diamond Personnel in NYC says of this spike in language projects: *“Many of these CJK projects [Chinese-Japanese-Korean] are a result of the deluge of Asia deals by companies in the U.S. and western Europe. Facing sluggish economies many companies are looking “afar” for growth and what has helped are these cross-border deals. You see it daily in just a cursory look at the Wall Street Journal or the Financial Times. Almost all of these deals require regulatory examination — hence non-English document reviews in many cases. We’ve been involved in many of these deals because we have a deep bench of multi-lingual attorneys that extends nationwide. But what is different from the past — especially the IP reviews — is the numbers of foreign language reviewers per project has also become larger, thus creating the need to expand our searches nationally.”*

It is the same in D.C. Lori DiCesare, President and CEO of Legal Placements, Inc. (LPI) told us: *“In 2010, and again in 2011, we have seen a remarkable surge in foreign language reviews. This need had been fueled largely by FCPA and other government investigations. And then the IP work spiked. But because LPI’s staffing team engage in “creative” recruiting to locate the appropriate legal professionals to meet this surge we have staffed a myriad of foreign language reviews across all subject matters. It can be nerve racking because the non-English language projects seem to require more reviewers of late, but we know the market”*.

***And there has been a change in the nature of the work, too***

Yes, a lot more work for contract attorneys fluent in languages other than English, and lots of work for e-discovery companies that handle non-English language document collection, processing and review. Staffing agencies still handle the largest percentage of foreign language

document review. But e-discovery companies have aggressively moved into this market on their own or by teaming with staffing agencies. It is why many of the CJK job posts you see on the Posse List are coming from these companies.

And there has been a demand for attorneys versed in arbitration/alternative dispute resolution (“ADR”) projects, especially IP. This is because businesses mired in IP disputes are increasingly reluctant to expend ever-dwindling resources on protection and enforcement of their IP rights. E-discovery in ADR is somewhat of a “new new” thing. A conventional litigation is long and costly, whereas ADR is relatively inexpensive and fast. In the U.S. (according to IPWatchDog) the average cost of patent litigation is \$2M, trademark litigation is \$600K, and other types of IP litigation average between \$500K and \$800K. This, of course, does not include the price of an appeal, which may add another \$2M to patent litigation. The time involved is possibly more astonishing: the average IP litigation lasts 3 years. Add an additional year for an appeal. ADR can take as little as 5 or 6 months.

And there has been growing use of contract attorneys in preliminary IP due diligence: (i) what IP rights the company owns or uses; (ii) how robust are these rights; and (iii) how unassailable are the company’s claims to these rights. It is why you have seen so many Posse List job posts requiring IP lawyers at all levels and why we created a national Intellectual Property job listserv wherein we post IP work across the country. As Jeremy Michalson of Diamond Personnel said (quoted above) the demand for these projects has created the need to expand the search beyond the immediate geographic area of the document review work for appropriate attorneys. [To join any of our job lists just [click here](#).]

### ***Meanwhile, in Europe ...***

And this has also led to a surge of in-country litigation and compliance reviews in Europe. Our sister company [Project Counsel](#) has completed 6 document reviews in the past year with 3 more now underway in Brussels, Lisbon, and London covering IP litigation, debt restructuring/due diligence, and M&A work ... plus a myriad of specialized legal research and translation projects. We’ll have a detailed post this Friday on the surge in document review work and other outsourced legal work across Europe and the principal players.

***And next week:*** we start our series on the technology behind the processing and review of foreign language documents — encoding, format, script, language, text analytics, audio, etc. — with our video interviews of the people behind [ZyLAB](#).

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