

Involve Public in Examining Patent Applications

A remarkably simple and innovative exercise has been launched in the US in order to cope with the overload of patent applications. Given the growing emphasis on knowledge creation and knowledge ownership as key underpinnings of the global economy, the world is moving towards sequestering knowledge rather than sharing it. The expected outcome of this trend is a spurt in patent applications in all the major patent offices of the world. India too registers a sharp increase over an admittedly small base. An overload of patent applications leads to delays and inadequate scrutiny of the application, leading to incorrect patent grants and subsequent litigation.

The US Patent and Trademark Office (USPTO) has started a novel experiment at the initiative of Beth Noveck of the New York Law School to tackle problems of overload. The project called 'Peer to Patent' seeks to open up the patent examination process to the public. It has begun a pilot project to post patent applications on a designated website and invite public comments on the merits of the patent.

The crux of patent examination is to search for 'prior art'. This means to examine whether the claims made in the application have already been patented before or whether they are known in the public domain. By involving hundreds of reviewers and tapping their knowledge and expertise, the examination for prior art becomes much faster and more comprehensive. The hope is that an expanded screening exercise of this kind, will lead to fewer patents that are granted incorrectly and reduced litigation over patent grants.

For the US, an obvious case where a 'Peer to Patent' approach would have been useful, is the case of the turmeric patent. The grant of the patent on turmeric derived properties by the USPTO, became the subject of litigation between India and the US. The Haldi Patent was successfully challenged by the Indian government but at some cost to the public exchequer. Perhaps if this patent application had been subjected to scrutiny on a public review website like Peer to Patent, an opposition would have surfaced during the patent review process and the patent would never have been granted. This would have certainly saved India a lot of money.

Indian patent offices would do well to emulate the US initiative. They are more overstretched than most patent offices partly because India has had a history of knowledge creation in the public domain so patenting is new business. The 'patent everything in sight' culture is only beginning now. Our patent offices are notoriously short of trained manpower to deal with the sudden increase in applications arising out of new legislation like the amended Patent Act and the Act on Geographical Indications.

Regardless of the merits of the patent-at-all-costs approach that is being promoted in Indian research institutions, we need to be equipped to deal with the surge in patent applications. Instead of the expensive and time consuming process of routing applications through patent examiners, a first round evaluation through the public review process will identify the cases that do not qualify on grounds of novelty, distinctness and utility. These

are the essential benchmarks of patentability. After this filtering, only those patent-worthy applications need go up for critical examinations.

The public review process is welcome from another perspective. It introduces an open source approach as a contrast to secret government procedures, secrecy being the hallmark of the Indian government's performance in all sectors. Opening up the patent sector will also help to demystify the still new patent culture in this country and get more people involved in discussing its merits or otherwise. It will also help to introduce greater vigilance with respect to old problems like biopiracy and the misappropriation of indigenous knowledge. One impediment could come up though. For this process to succeed, the patent applicants must be willing to go along with the process.

So far, in the US it is only software and hardware applicants that are willing partners in this novel exercise. It remains to be seen whether the biotechnology patent applicants, largely the Life Science corporations are as enthusiastic. These corporations have been notoriously reluctant to share any information, even with government agencies, unless absolutely necessary. India should quickly begin discussions to set up a similar system in the patent offices here. Any fears that the public scrutiny can lead to frivolous interference should be dealt by vetting the registered users and ensuring that oppositions to the proposed patent claims are accompanied by well researched and properly backed up evidence. Since the patent application is put on a publicly accessed website, there should be no fear of misuse by competing interests since such would be quickly detected by the same examination process.

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