There has been a steady increase in patent litigation in India over the last few years, as Rahul Vartak explains.

The overall perspective of innovators has changed dramatically from the mere creative aspect of inventing to gaining patent protection for inventions. Businesses are now well-positioned in the realm of patent litigation, with patent owners adopting an aggressive approach for enforcing their patent rights and technology rivals not hesitant to challenge the validity of patent rights. The attitude of courts in India in understanding complex patent infringement and validity issues has also gradually changed.

Enforcement

There has been a significant rise in patent litigation in India in the last few years. Pharmaceutical companies are very active in litigating their patents in India and enforcing their patent rights.

The Indian Patents Act provides for an appeal to the Intellectual Property Appellate Board (IPAB) to any decision, order or direction of the Controller under certain sections of the Indian Patent Act. Revocation petitions are also filed at the IPAB.

For a decisive analysis on patent enforcement in India, it is essential to consider that there have been 260 patent cases received by the IPAB as of December 31, 2011, out of which 69 have been disposed. These records have been published by the Department of Industrial Policy and Promotion (DIPP) in its annual report 2011–12. Table 1 provides detailed information on the patent cases received and disposed by the IPAB.
Patent litigation trends in Indian courts

The various High Courts in India have decided 64 relevant patent matters from January 2007 to October 2012. The total of 64 relevant decisions includes injunctions as well as decisions on patent infringement and disposal of writ petitions. Table 2 shows the judgments on patent matters given by the different High Courts from January 2007 to October 2012.

Table 3 clarifies the annual patent cases decided by various High Courts from January 2007 to October 2012.

The analysis of High Court decisions in the last five years suggests that 48.43 percent of the total 64 patent suits were decided by the Delhi High Court (Figure 1). The Mumbai High Court decided 12.50 percent of patent suits; 25 percent of the patent cases were decided by the Chennai High Court and only 14.07 percent of the patent suits were decided by all other High Courts including the Kolkata High Court.

After detailed analysis, however, it can be seen that out of the 31 patent decisions given by the Delhi High Court, only eight decisions were in favour of the patentee (Figure 2).

Out of the total of 16 patent decisions by the Chennai High Court, five were decided in favour of the patentee. Similarly, five of the total eight patent decisions by the Mumbai High Court were in favour of the patentee. It should be considered that there are various factors which could result in the decisions being given in favour or against the patent owner.

Conclusion

With the gradual growth in patent oppositions led at the Indian patent office as well as the cases received by the IPAB, it would not be surprising to find a significant rise in patent litigation in India in a few years. A study of the patent litigation trends at various Indian High Courts could provide valuable information for facilitating tactical decisions regarding investment in India.

The patent litigation trends also show that the Supreme Court of India had decided only two patent matters from January 1950 to December 2004, but has decided seven matters from January 2005 to October 2012. The Supreme Court does not entertain all the appeals against the High Court decisions. Appeals lie with the Supreme Court if the High Court concerned certifies that the case involves a substantial question of law of general importance and that this question needs to be decided by the Supreme Court.

However, any aggrieved party can approach the Supreme Court challenging the order of the High Court by way of a special leave petition. If leave is granted by the Supreme Court, then the matter will be heard and adjudicated by the Supreme Court. The patent issues at the doors of the Supreme Court, implies that India has finally stepped into the arena of patent litigation, akin to countries in the West.

Table 3

<table>
<thead>
<tr>
<th>Year</th>
<th>Delhi</th>
<th>Chennai</th>
<th>Mumbai</th>
<th>Others</th>
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<tr>
<td>2007</td>
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<tr>
<td>2012</td>
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</tr>
</tbody>
</table>

Figure 1

Number of Patent Cases

- Mumbai: 31
- Delhi: 16
- Chennai: 8
- Others: 9

Figure 2

% Cases Pro-Patentee

- Mumbai: 62.5%
- Delhi: 55.5%
- Chennai: 25.8%
- Others: 21.2%

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Rahul Vartak’s practice areas include patent drafting, patent prosecution, providing patentability opinions and assisting in patent litigation. He advises on freedom to operate, infringement and the validity of patents related to chemical, pharmaceutical and agrichemical inventions. Vartak specialises in Indian, US, international and comparative patent law.