THE LANGUAGE BARRIER WHEN SEARCHING AND UNDERSTANDING PRIOR ART

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There is high demand for better translation tools to improve the understanding of prior patent art in languages other than the official languages of the European Patent Office.

On September 4, the EPO and the State Intellectual Property Office of China (SIPO) signed a mutual agreement in order to make China's prior art documentation more easily available for patent searching by building improved English-Chinese and Chinese-English dictionaries to be used for machine translation.

There are numerous Chinese patent and utility models that may constitute prior art relevant to the patentability of many inventions. However, the language of the prior art often becomes a barrier to the patent attorney, the applicant and even to the patent examiner, who needs to understand the content of such a Chinese-worded document in order to advise, evaluate infringement of patent, make decisions, make searches and issue communications. So the relevance of such prior art can be difficult to establish and therefore many Chinese patent documents are ignored not only when making prior art searches before filing patent applications and during examination of the application, but also when starting production in China and when putting products on the Chinese market.

Many pieces of prior art are drafted in Asian or Eastern European languages, such as Japanese, Korean, Chinese or Russian, which most people outside these areas find difficult to understand. If we don't understand the language, we have to rely on the drawings or translations of abstracts made by various providers of search machines. Some of them make their own summary of the content of a patent application, while others just retrieve the abstract appended to the patent application as published by the patent authority.

There are various Internet tools, such as Google translate, and other commercially available translation tools, but all lack quality.

Some patent offices offer full-text, machine translations, which are helpful to some extent; in the absence of other verbal aids, they can be used to construe the scope of the drawings better. Often such machine translations can be obtained in several languages to be compared in order to improve understanding of the scope of the prior art. Construing content based on a machine translation, however, leaves the reader somewhat uncertain as to whether or not the interpretation is correct. Moreover, it is difficult to ensure that all the relevant prior art has been found. The EPO search machine Espacenet® offers such full-text machine translations between English, German, French, Italian and Spanish, provided the text is available in an editable format. The Japanese patent office offers machine translations

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of newer patent applications into English, but translations of older Japanese applications, which may be just as important, are not available.

Although machine translation is a step in the right direction, the best solution currently is to obtain a translation from an official translator or other person sufficiently acquainted with the language and technical area in question to get a full and comprehensive knowledge of the prior art.

One example of the improved co-operation between the EPO and other patent offices worldwide is that examiners at the EPO have had access to India's Traditional Knowledge Digital Library (TKDL), since February 2009. TKDL is a database covering knowledge of traditional Indian medical herbs and uses of such herbs. Some of it is in ancient languages such as Sanskrit, Hindi and Persian. This literature has been transcribed and translated into English.

The aim of the co-operation is to reduce bio-piracy in the pharmaceutical sector by providing EPO patent examiners with a tool to avoid granting patents on ancient medicines. Since the agreement entered into force, India's Council of Scientific & Industrial Research has filed third-party observations based on TKDL information against at least 35 EP-applications. More information can be found at: www.tkdl.res.in. The information on this web page must be considered carefully, and the disclosed status and outcome of the filed third-party observations are not always correct, especially when applications have been abandoned. Only in a few of the 35 EP applications has the applicant actively withdrawn the EP-application. Some applications have been deemed withdrawn for reasons such as not paying renewal fees or not replying to a communication.

In one particular case, the applicant contested the validity and dating of the prior art. Serious attempts to verify the validity of the prior art were unsuccessful and the translation from Persian into English was incorrect. This may encourage other applicants to critically relate to third-party observations based on TKDL.

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