

Managing Costs in Patent Litigations

Opportunities for Intellectual Arbitrage



While large companies in the US have had a 72% incidence of patent litigation, public limited companies are close behind at 69%*. With the average cost of patent litigation through trial being \$3 to \$5 million per party#, what can law firms do to help corporations and in-house counsel reduce costs?

Reducing legal department expenses without any impact on results would figure prominently on the priority list of any in-house counsel. But litigations and associated costs### have always proved to be a stumbling block in this effort and patent litigations are no exception.

As law firms strive to win the confidence of the in-house counsel and establish themselves as the legal partner of choice, they realize that they must actively contribute to the corporate purse strings of their customers. To this effect, they have become receptive to alternate billing arrangements, e-billing and other mechanisms. But these cost-containment measures tend to hit a 'glass ceiling' after a point due to the high cost of services.

With mounting pressure to reduce cost, corporations are beginning to look at innovative operating models to limit the cost incurred in patent litigations.

Offshoring for Cost Arbitrage

One of the solutions corporations are embracing for cost efficiency is offshoring of few services. Traditionally, law firms have offshored only the low-end first level document review and other non-core legal services. However, it will be an added advantage, if law firms leverage the complementary technology expertise of offshore analysts and set up an extended 'technology arm' for themselves.

Offshoring for Intellectual Arbitrage

In the current era of globalization, organizations are utilizing a wider and more effective pool of smart resources for engineering, IT, product development and other business functions.

There is an increasing shift from cost arbitrage towards '*Intellectual Arbitrage*' where the fundamental premise is to get more and better outcomes at a lower price.

For patent litigations, an IP-trained team of experts can assist law firms with technology analysis in areas such as:

- Infringement scouting
- Invalidity searches
- Infringement/ Invalidity claim charts
- Specialized document review
- Source code review & product analysis
- Analysis & support for depositions
- Expert witness support
- Pre-trial support

Offshoring these activities serve to free the counsel's time, allowing them to focus on the legal aspects of patent litigations.

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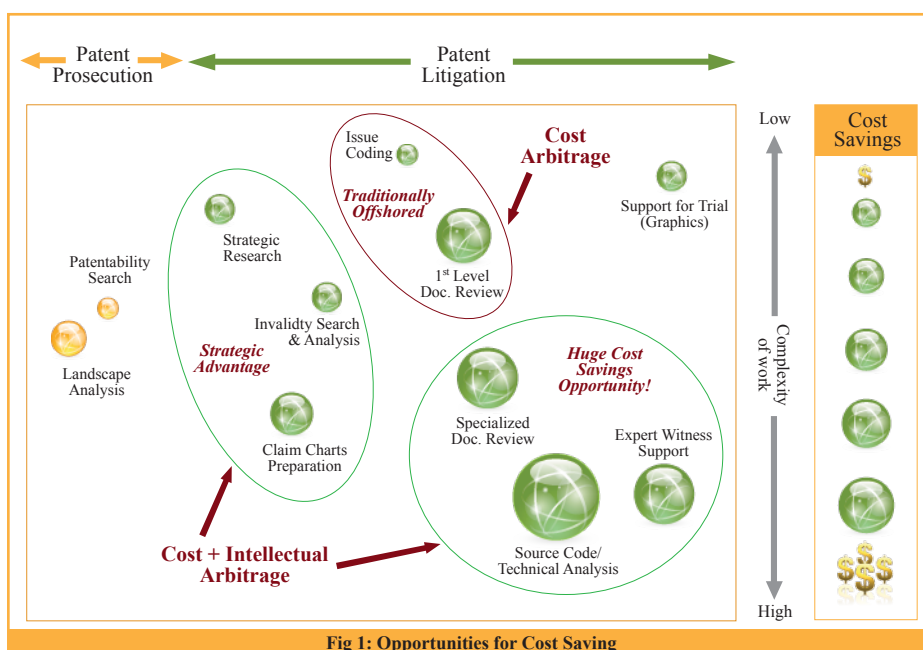


Fig 1: Opportunities for Cost Saving

Sources:

* - Fulbright & Jaworski, 5th Annual Litigation Trends

- AIPLA Report of the Economic Survey (2001 - 2007)

- BTI Premium Practices Forecast 2009

Add to this the significantly lower billing rates in an offshore scenario and this translates into serious cost savings for the law firm and eventually for the in-house counsel as well. The cost advantage of such a model is illustrated in Fig 1.

Law firms can also look at innovative engagement models to seamlessly manage the fluctuating resource requirements, typical to any IP litigation.

Making the Model Work

One of the key ingredients of a successful offshoring model is the ‘team’. In fact, this could be the principal factor that could make or break the model. Law firms and Corporations should assess potential offshore partners in the following areas:

- Technical expertise of the team
- Quality control processes & related investments
- Data security measures
- Onsite management, support & coordination
- Infrastructure to comply with stringent protective orders

Another critical success factor is avoiding the ‘assign-and-forget’ mindset. Law firms should work closely with the project managers of the offshore team to ensure effective coordination among all stakeholders. Regular feedback sessions, quality audits and continual process improvement go a long way in ensuring smooth execution.

Thus, if the outside counsel is wary of the above mentioned factors, using an offshore firm for technology research and analysis in a patent litigation can prove to be an extremely effective approach for achieving better outcomes at remarkably lower costs

Patent Litigation Case Study Cost Savings with Offshore Support

Litigation Activity with Offshore Involvement	Cost (USD)			Cost Savings (%)
	Traditional Model	...with Contract Attorneys	...with Offshore Support	
Pre-litigation analysis (Infringement/ Invalidity contentions)	150,000	150,000	50,000	60 – 80%
1 st level doc. review/ privilege review	1,500,000	700,000	500,000	25 – 40%
Technical document review	750,000	750,000	250,000	60 – 80%
Source code review/ Product analysis	850,000	850,000	350,000	60 – 80%
Total Cost	3,200,000	2,400,000	1,150,000	50 – 75%

A multinational IT conglomerate alleging patent infringement by a Fortune 500 software company had retained a leading trial law firm. They also retained iRunway to provide technology analysis and research services to support the law firm.

Services Delivered

iRunway was involved from the beginning of the lawsuit and supported the law firm with end-to-end services including:

- Pre-litigation analysis (assertion of infringement contentions)
- First level document review and coding
- Technical document review
- Source code review and product analysis

iRunway’s team supported the outside counsel during depositions with relevant research and analysis services. The team also assisted the expert witness in preparing the final expert witness report.

Highlights of the project

- The law firm reported an **overall cost savings of around 50%** for the in-house counsel as compared to working with the contract attorney
- Flexible **team ramp up and ramp down** ensured that all court deadlines were met without exceeding the budgets. The team **reviewed 5 million lines of source code** within a week to meet court deadlines
- A **dedicated team** worked on the case throughout the litigation lifecycle ensuring 100% retention of the tacit knowledge and the case context
- The in-house counsel had predictability of cost and complete visibility throughout the engagement

About iRunway

iRunway helps corporations and law firms unlock and protect the value of patents. We combine deep technology expertise with practical business insight to monetize patent portfolios and profoundly improve litigation outcomes. Our in-depth analysis has contributed to significant courtroom victories and favorable settlements for our clients.

- *Fourth-largest patent jury verdict in the U.S. in 2009*
- *A strategic cross-licensing deal with a Fortune 200 technology company*
- *Favorable settlement with a medical systems company in a copyright case*