

Trends disrupted—patent information in an era of change [☆]

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Abstract

Patent analysts predict trends in research and the business environment by studying the numbers and classifications of patents issued to companies around the world. Those attempts are often affected by the changes taking place in international treaties, governments, patent laws, patent classification systems, and corporate mergers and acquisitions. This paper describes some of the changes in the patent information environment that have disrupted the trends predicted by patent analyses in the past.

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1. Introduction

Patent analysis is very trendy these days. We look for trends because we believe that knowing what has happened in the recent past will help us predict what will happen in the future. Patenting trends are no exception. We look at the numbers of patents applied for or published in recent years by a company or in a technology to find trends in research and development. We look at patenting trends in a country to predict future economic development. Looking for patent trends is much more convenient that it used to be. Patent information is now widely available and relatively inexpensive, and there are increasing numbers of simple tools that can be used to analyze patents. In 2003 the Patent Information Users Group Annual Conference took Patent Analysis as its theme and had a record breaking number of exhibitors, most of them promoting software for patent analysis.

Patent data is subject to a great many forces that have little or no connection to trends in research and development or economics. Events that disrupt patenting trends, or disrupt the observation of those trends, can be international, for example, changes in international treaties and patent classification systems; national, for example, changes in patent laws and regulations; corporate, such as mergers and acquisitions or modifications in patenting policies; or simply changes in available data as databases change their coverage of countries or technologies. The last 10 years have been particularly disruptive to patenting trends. At the same time, patent analysis depends on data released by patent offices and provided by patent databases, each of which has its own standards for selecting and formatting data. Trends illustrated by analysis of the data often fail to account for the changes that disrupt technical and economic behavior. It is important to note that the era of cheap patent data and easy-to-use statistical software coincides with an era of unprecedented change in the patenting environment, as the combination often leads to facile analyses that can mislead as well as inform.

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2. Patenting trends in India

A dramatic illustration of disrupted patenting trends appears in a study published by Prabuddha Ganguli in World Patent Information in early 2004 [1], discussing the publication of patents in India over the period from 1979 to 2004. India was slow to introduce modern patent laws after it emerged from the shadows of the British Empire. In 1970 India amended its patent laws, and the new laws restricted the coverage available to patentees. Pharmaceutical, food and agricultural chemical products were declared unpatentable except through process claims. For most other inventions, the law introduced a term of 14 years from filing [2], but patents claiming food, drug and insecticide processes were given a term of only 7 years from filing or 5 years from sealing, whichever was shorter [3]. In view of the change in patent terms, it is not surprising that the number of patents in force, shown in Fig. 1, dropped severely: patents granted under the older law expired, the term of newer patents was shorter, and many companies were discouraged from filing Indian patent applications because claims for chemical compounds and medicines were excluded from coverage.

The effect of the 1970 law is evident in Fig. 2, which shows the number of patent applications filed in India over the years and the number of patents granted over the same period. There is always a lag of a number of years between filing of a patent application and grant, and the number of granted patents in any country will be lower than the number of applications filed, because applicants abandon some applications and patent examiners reject others. Indian patent applications settled in at a low level until about 1995, when the trend was suddenly disrupted by the passage of the General Agreement on Tariffs and Trade (GATT), which required that any country that wanted the advantages of membership in the World Trade Organization allow patenting of pharmaceutical compositions and patent terms of at least 20 years from their filing dates by January 2005.

India had a long way to go to meet the GATT requirements and patent applicants' expectations. India

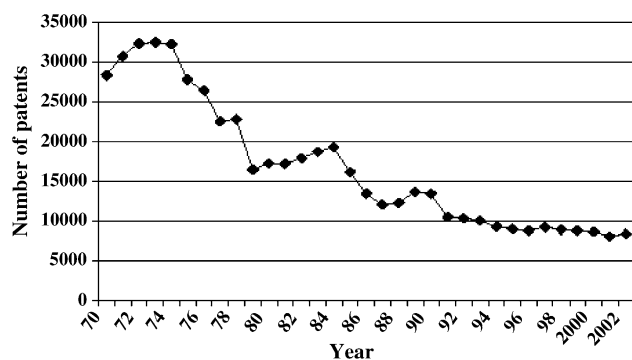


Fig. 1. Patents in force in India (1972–2002). (Reproduced with permission from Ref. [1]).

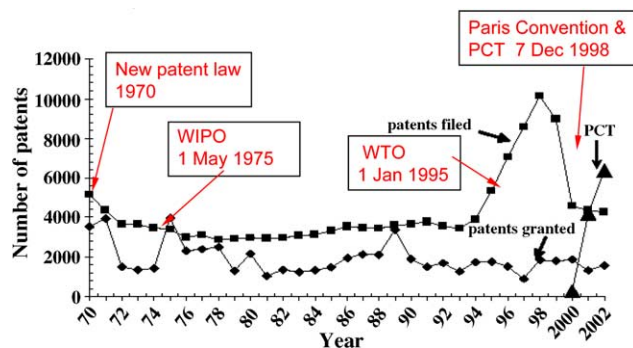


Fig. 2. Patents filed in India 1970–2002. (Adapted from Ref. [1]).

was not even a member of the World Intellectual Property Organization until May 1, 1975[4]. Joining WIPO did not change the provisions of the patent law, so the behavior of patent applicants did not change much at that time. The number of patent applications filed remained steady at 4000–5000 a year until the General Agreement on Tariffs and Trade took effect, establishing the World Trade Organization. India became a member of the WTO in January, 1995 [5], but it announced in 1996 that it would take advantage of the provision of the GATT treaty allowing less developed countries to postpone amending their patent laws until 2005. The number of patent applications filed in a year doubled after India joined the WTO, as applicants expected that more favorable patent laws to take effect in the immediate future, but the lower line on the graph shows that the number of patents granted did not increase because the law and patent office procedures had not yet changed. Patent applications covering pharmaceutical and agricultural products were accepted for future processing and kept in a “mailbox” until such time as the law would allow them to be examined. The new law was finally enacted on December 26, 2004, and information on the numbers of mailbox applications and the names of applicants began to be released in March, 2005 [6–8].

India finally acceded to the Paris Convention on December 7, 1998, and joined the Patent Cooperation Treaty on the same day. The number of Indian *national* patent applications immediately fell to its old level, while the number of PCT applications filed in India rose from zero to around 8000 by 2002. We can expect that increased numbers of Indian national patent applications will be filed under the 2005 laws and PCT applications filed after 1998 enter the national phase, but it is impossible to know what the future will look like until the publication of data reflecting the new laws.

3. Patenting trends in the United States

The situation in India is not unique to third world countries. Trends in patenting in the United States have

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