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Passage To India

Will this be the year that legal
offshoring breaks through?

By David Hechler

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Microsoft associate general counsel Martin Shively

BY DAVID HECHLER

Passage to India

Some companies see big savings in “offshoring” legal work. But how’s the quality?

Martin Shively directs the worldwide IP operations of Microsoft Corporation. But he doesn’t commute to the company’s campus in Redmond every day. The associate GC works in a remote office in New Delhi, where he’s been based for 18 months overseeing not call centers, but outsourced patent work. And his operation is saving Microsoft millions on its legal bills.

Shively’s Indian experience dates back to 2004, when he took over budget responsibility for Microsoft’s patent group. There was a lot of buzz about outsourcing legal work to India; corporations like General Electric Company were doing it, and slashing their legal bills. So Shively figured why not Microsoft? He started with the most basic task he could think of—proofreading patent applications. Instead of paying high-priced associates to do this work at a dozen U.S. law firms that drafted Microsoft’s filings, he hired one vendor in New Delhi to do them all. It was, he says, “a safe place to have a failure.” If it flopped “we just wouldn’t tell anyone,” he laughs.

But it didn’t flop. “We went there to save money,” he acknowledges. “We stayed and expanded because we liked the quality of the work.” It wasn’t just okay, it was better.

Shively began to fly to India once or twice a year to discuss plans, review the work, and build relationships. More than satisfied with the results, he pushed the volume and complexity of the tasks and hired a second firm. Soon the Indian companies had 35 people working exclusively on Microsoft projects. In July 2007, at the suggestion of his bosses, Shively moved to India himself. He points to the Indian operation’s numbers: In fiscal 2005, patent work there amounted to less than \$150,000. In fiscal 2009 the tab will probably come to around \$4 million. The work product continues to meet Microsoft’s standards, and the cost is never more than 40 percent of what he’d pay in the

United States; in some instances, it’s a mere 10 to 15 percent, he says. In fiscal 2008, which ended last June, his company saved \$6.5 million outsourcing its patent work. He’s confident the savings will hit \$10 million this year.

Offshoring, as it’s often called, has been widely adopted by many companies when it comes to back-office operations like accounting and information technology (including call centers). These fall under the category of business process outsourcing, or BPO, and for big companies the savings makes the move a no-brainer—even though last year some companies took political heat for exporting American jobs abroad. India is the most popular destination, though companies have shipped work to other countries where labor is cheap and English is spoken, like the Philippines and Australia.

But LPO—legal process outsourc-

ing—is different. Despite the early hype, companies have not been as quick to sign up. Why not? Fear is part of the reason. Some are worried about the quality of the work, and cite cultural differences and security concerns as reasons for the reticence of some legal departments to send work abroad. Many of their outside law firms hate it; offshoring is a threat to their business model, taking away work they’d rather give to their associates. Firm partners are commonly consulted when a company is considering shipping tasks overseas because, whether it’s patent research or litigation support, they have to work with the product that offshore shops like UnitedLex Corporation or Pangea3 LLC deliver.

What about 2009? Will recessionary pressure to reduce legal costs push more companies to ship work overseas? Perhaps; despite the doubts, companies are spending more on LPO every year. A recent report by the Indian business research company ValueNotes estimates spending on legal offshoring to India doubled from \$62 million in 2006 to \$124 million in 2007. Still, that’s well below the optimistic projections of a few years ago. Even some vendors concede that no more than 10 percent of the Fortune 500 are offshoring.

Yet interest among the in-house bar is high. At the Association of Corporate Counsel’s annual meeting in October, there were two sessions on offshoring and few empty seats. And the practice has received professional approval: the



American Bar Association issued an opinion in August blessing outsourcing, as long as U.S. attorneys take responsibility for the final work product. Susan Hackett, ACC's general counsel, says moving work abroad seems almost unavoidable for large companies with a large amount of repetitive legal work. "For me," she says, "offshoring is just another kind of outsourcing." And after all, sending work to outside firms is outsourcing. With the ABA approval, it comes down to cost. If the savings in India were marginal, she says, offshoring might not be worth it. "But 80 percent less? It's kind of hard not to at least check it out."

Business outsourcing to India began in the late 1980s. Texas Instruments Incorporated was a lonely pioneer back then, joined a few years later by GE. *New York Times* columnist Thomas Friedman described some of those early ventures in his 2005 book *The World Is*

Flat. Many of the earliest companies to delve into legal outsourcing had already begun using Indian labor for back-office work. India has a key advantage when it comes to legal work for American clients: The country has a common law legal system, like the U.S., and it churns out about 80,000 new lawyers a year.

Some pioneers, like GE, started out by creating captive legal units. General Electric Capital Corporation started a business process operation near New Delhi in 1997. As early as 2001 it began performing basic legal functions like checking trademarks for renewal dates and reviewing warranty agreements, according to GE associate general counsel Janine Dascenzo. Even though the tasks were routine, sending out legal work was new and unsettling for the lawyers. That's why "having the employees be GE people was huge," Dascenzo adds.

But in those days there weren't many choices; now more than 100 vendors offer legal processing in India. Companies

About 240 lawyers work out of UnitedLex's Gurgaon office, just outside New Delhi.

and law firms looking to cut costs while maintaining security no longer have to start their own firms. A report published last year by Capgemini, the French IT services and consulting company, says that captives (not limited to LPOs) are being released—literally. Though Capgemini as a competitor has an obvious bias, it cites an analysis by Forrester Research which found that the cost of starting and maintaining captives far exceeds the cost of hiring third-party alternatives, and that 60 percent of the captives in India are struggling. Many of the companies that created them later sold or dissolved them, the report notes.

GE is Exhibit A. It spun off its captive in 2004. Now a public company called Genpact, the independent outfit is doing quite well, with 2007 revenues of \$823 million. GE still uses Genpact for some legal work, and retains a 19



Huron's Robert Rowe tours UnitedLex offices with colleague Shahzad Bashir and UnitedLex CEO Daniel Reed, trailing.

percent stake in the company, but also plays the field.

Last year GE hired Pangea3 to handle some of its bigger assignments in India. GE sold most of its stake and began using independent companies, Dascenzo says, because "it's not what we're in the business of doing." They want

UnitedLex, founded three years ago, is a rapidly growing shop that for months had been discussing a possible partnership with Huron that would give the two the onshore/offshore capability that their competitors offer. The company's top brass already has a foot on both continents (as virtually all leading LPOs do). Reed is based in the U.S. and leads the consulting/marketing team that meets with clients back home. The company's cofounder, Ajay Agrawal, who was a

ing a three-year post-graduate degree, as in the U.S., or a five-year program following secondary school. But there's no bar exam. And some of the prized talent at the offshoring companies are engineers trained at the renowned Indian Institutes of Technology. UnitedLex has 40 (70 percent of whom are IIT grads) along with four MDs who work on medical litigation.

Agrawal recounts the challenge of hiring the right lawyers. Without a bar exam, the execs can't be sure of the skills candidates possess. So they test applicants themselves. From each pool of 100 to 200 candidates they winnow five to 10 new hires—lured by the chance to join a growing company and acquire stock options (rare for employees in India).

Even after they're hired, Agrawal continues, extensive training is essential. For starters, new employees have to get accustomed to such concepts as punctuality and appropriate office attire. UnitedLex also brings in two U.S. patent attorneys to train the lawyers and review their work. One attorney spends six months a year working with them. According to Kanti Prabha, the company's 27-year-old IP team manager (and a nonlawyer), his pres-

If the savings in India were marginal, ACC's Susan Hackett says, offshoring might not be worth it. **"But 80 percent less? It's kind of hard not to at least try it out."**

their lawyers focused on the big stuff. At the same time they don't want to pay their outside firms lawyers' rates for paralegal work.

What does an Indian legal services provider look like from the inside? In November Daniel Reed, CEO of UnitedLex, invited two executives to tour his company's new offices in Gurgaon, a fast-growing city just outside Delhi. The execs were from the Chicago-based Huron Consulting Group Inc., which processes document reviews, but didn't have an offshore presence.

senior associate at Simpson Thacher & Bartlett and Jones Day before joining the structured finance team at NM Rothschild & Sons, is the mainstay in India—along with COO Anup Bhasin, whom the firm snagged from IBM.

The offshore vendor has leased two floors in Gurgaon, with offices full of 20-somethings pecking at computers. Reed says his company employs about 240 lawyers. They may look little different from their U.S. counterparts on a casual Friday, but their education and training aren't quite the same. In India, lawyers earn their degrees by complet-

ence is crucial. At her previous offshoring company, Prabha says, when attorneys performed invalidity searches, they were often able to find documents that seemed to prove elements of a patent invalid. But clients never told them what happened, so they never knew if their work stood up in court. "We never knew the laws the way we needed to," she says. Now they're trained by an expert who answers those questions.

UnitedLex's lawyers are evaluated regularly. The company keeps performance statistics on both the speed and accuracy with which they complete assignments.

Law firms are horrible at process and training, Reed tells Robert Rowe, one of the visiting Huron executives. Rowe, who runs his company's four document review centers, and was previously a lawyer at three Am Law 100 firms, nods enthusiastically. It would be interesting, Rowe responds, to take the processes the Indian companies use and apply them to U.S. firms. It isn't outsourcing that's costing legal jobs in the U.S., adds his fellow Huron exec, Shahzad Bashir. "Poor business models are losing jobs."

Offshoring companies may boast about their performance, but they say they know their limits. They aren't qualified to replace law firms. As the ABA opinion made clear, U.S. lawyers must review and take responsibility for the Indian firms' work. And the prudent providers avoid getting in over their heads. David Perla, co-CEO of Pangea3, said at the most recent ACC conference that the best vendors are those willing to turn down assignments. "A provider who says yes to everything may be hiding their unwillingness to say they can't do something well, or can't save you money," he explained.

What they're qualified to do is process mostly low-level work: repetitive tasks that can be taught on the front end, and measured for accuracy on the back. Not all companies have it, or have it in sufficient volume to justify offshoring.

The selling point isn't just savings, however; it's quality, too. Savings are a given in a country in which a billable hour of \$40 is high, and fees of \$20 and \$30 are common. But the key focus at UnitedLex, according to team manager Prabha, is delivering work that's "exactly equivalent to, or better than, what is being done in the U.S."

LPOs say they are able to deliver for two reasons. Their employees are highly motivated. Associates at big American firms may view coding discovery documents or reviewing them for relevance



Daniel Reed (left) showing Shahzad Bashir and Robert Rowe (rear) the layout of his company's new offices in Gurgaon, India.

as demeaning drudgery on the path to "real" work, but young Indian lawyers are happy to have the work. And unlike the big U.S. firms, the offshoring companies treat the tasks for what they are: commoditized operations they roll out with assembly-line efficiency.

That could change. Microsoft has been moving up the value chain—feeding its vendors increasingly sophisticated jobs. Working with one called Computer Patent Annuities Limited (CPA), headquartered in the U.K., Shively, who had begun by giving it proofreading assignments, asked a team of the company's engineers to perform prior art searches. He started with ten, got good results, and repeated. Now Microsoft does "the vast majority" of its prior art searches in India. CPA also does invalidity analyses of claims filed against Microsoft, and patent landscape analyses when, for instance, the folks in Redmond want to know which companies hold patents for mobile devices in Scandinavia.

But developing a successful partnership doesn't happen by itself. It takes a lot of hand-holding, Shively says. CPA has a U.S. attorney who works full time on Shively's projects training and evaluating employees in India—half of whom



are engineers. And even though most CPA employees work for multiple clients, those who work on Microsoft projects work for no one else. To reinforce the bond, Microsoft periodically flies small groups of CPA employees to Redmond to get to know the people they work with. In addition to formal meetings, dinners and hikes are thrown in.

In recent years the larger, more ambitious vendors have looked to provide services onshore and off because that's what their clients want. E. I. du Pont de Nemours and Company's primary offshoring partner is Office Tiger (now a di-



The group, including Microsoft's Martin Shively (second from left) toured such Delhi monuments as Humayun's Tomb.

vision of Chicago-based RR Donnelley). And one of its selling points, according to Andrew Schaeffer, DuPont's managing counsel for operations and partnering, is that the vendor works with his company's legal team in the U.S. as well as abroad. Office Tiger helps manage DuPont's discovery process, doing everything from training DuPont employees to reviewing and coding documents to hosting Web-based litigation databases. Bottom line? The company saves between 25 and 40 percent, Schaeffer says. "And often the quality is better than you're going to get out of a law firm."

Yet skeptics of offshoring abound. When Dan Reed dropped by the Miami office of Greenberg Traurig a few months ago to talk about life at UnitedLex, he

visited his old mentor, a longtime corporate practice leader. Reed had been an associate in that office for six years, and he expected a supportive reception. But his old colleague thought offshoring was a terrible idea, until Reed mentioned that his company also does accounting—and can reduce a company's costs by 30 to 50 percent. Suddenly, Reed says, the lawyer was very interested in outsourcing.

The offshoring industry has endured much worse than law firm skepticism. The recent presidential campaign demonstrated that outsourcing in general has become a potentially explosive topic. Microsoft's Shively says that the in-house grapevine buzzes with stories about offshoring projects gone wrong.

Intel Corporation, for example, tried offshoring one project and quickly pulled back. A couple of years ago, re-

calls general counsel D. Bruce Sewell, the company had a batch of patent applications the lawyers were handling in-house. They noted common issues, and decided these could be bundled and assigned out in common packages. So they put the jobs up for bid in an online auction. Among the firms Intel selected, one was in Australia and another in India. They did the work, but the quality "was lower than what we were willing to put up with," Sewell says. "We're not doing it anymore." Intel dropped the auctions and stuck with its domestic firms—but managed to negotiate better prices, he says.

Despite the doubts about offshoring, however, there's a sense of inevitability about it. Boosters of offshoring argue that legal work, like IT before it, naturally flows to the locations where it's cheaper. In fact, some law firms have embraced

Associates at big American firms may view coding documents as a demeaning step on the way to “real” work. But Indians are happy to have the jobs.

what they can't prevent. The most notable example is the British firm Clifford Chance, which has created its own captive unit in Delhi for research, analysis, and document reviews.

Even companies like Axiom are looking for ways to align themselves with the LPOs. The San Francisco-based Axiom provides temporary attorneys to work at in-house departments that might otherwise hire a law firm. And cost-cutting is part of its pitch. “We’re definitely seeing work pulled from law firms and given to us,” says Mehul Patel, a corporate development executive.

Patel’s company might perceive the LPO shops as the competition, but he prefers to consider partnerships. Perhaps because he predicts the tipping point for offshoring will arrive within 12 months, Axiom has been thinking about offshoring, too. “Our clients will want us to be project-managing folks in India,” he says. Why would the vendors sign on? “LPO firms want to work with us because they don’t have the brand recognition that we have,” he responds.

So 2009 seems sure to bring more growth for LPO firms. And that could force law firms to continue to adjust. Glo-

balization, which has already changed the practice of law so much, is doing it once again—forcing law firms, and the law departments that hire them, to speak English with an Indian accent. ■

In fast-growing Gurgaon, skyscrapers seem to sprout daily. The second floor of UnitedLex’s new office was still under construction in November.



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