

International

Data Collection and Foreign Language Review

By John Herzig and Eric Elting
TransPerfect Legal Solutions



As a result of a recent patent infringement case involving overseas entities that may have copied proprietary technology, your legal team and outside counsel has identified custodians in Korea, China and Japan for forensic collection and data review. Knowing that Safe Harbor will not address all of the privacy issues you are likely to encounter, how can your team efficiently manage an international data collection and non-English review within a specific budget?

Communication is Key:

Discovery is rarely as evasive abroad as it is in the United States. Educating those outside the US on commonly accepted discovery practices can be very challenging, but it is necessary to ensure efficiency throughout the collection process. Thoroughly interview your custodians and think outside the box. Many of them may not realize that they have valuable information, and if they do, it may not reside on their work computer. For example, a lot of relevant data will be found on PDAs outside of the US.

Best Approaches to Foreign Language Materials:

Typically, a first pass review utilizing native language attorneys is in a client's best interest from both a cost control and quality viewpoint. The document review process will enable the firm to identify key documents for translation, while also helping craft search terms for opposing counsel. Knowing the language and colloquialisms will prove to be a

valuable investment and is far greater than what you will be able to do alone or with only English speakers.

Once the review is complete, the client then has multiple options for producing English language documents, ranging from machine translation to full human translation by qualified linguists.

While these solutions are well known to any corporation that has been involved in international litigation, the management of multiple external resources has continued to pose an ongoing challenge. Many corporations have left the vendor management piece to outside counsel who may rely on a combination of staff attorneys and external service providers to handle the translation. With hourly billings ranging from \$250 - \$450, staff attorney review can and will be very expensive. If outside counsel is managing multiple service providers, the client is at the mercy of the pricing that has been negotiated.

A new model is available whereby the corporate client has negotiated preferred pricing with one or more service providers who can provide multiple options for service delivery. By negotiating costs for multiple services with one provider, the corporation gets the direct benefit of leveraged costs savings for services without altering its workflow. A reliable service provider will be able to leverage multiple production options under one roof, thereby saving time and money and expediting the process.

Be realistic with the expectations on the pro-

iciency and speed of in-house attorney resources. Instead, create a game plan that will address this from the onset. Understanding and planning for foreign data collection and non-English document reviews and translations is the fundamental key to success.

John Herzig is the Regional Director of Business Development for TransPerfect based in Chicago. His work focuses primarily on supporting Fortune 500 corporate legal departments manage global IP and litigation issues. He holds a BA in International Relations from St. Joseph's University in Philadelphia.

Eric Elting is the Director of Global Legal & Patent Business Development for TransPerfect Legal Solutions. He regularly speaks on patent-filing issues at legal conferences around the world, such as the EPO Patent Information Conference, and gave a talk at the 43rd DIA Annual Meeting entitled "Strengthen and Secure your Global and Intellectual Assets." His articles have appeared in leading industry trade publications such as Executive Counsel and Patent World. Under his tutelage, TransPerfect Legal Solutions has provided services to all of the Am Law 200 and Global 100 law firms, as well as to virtually every Fortune 500 corporate legal department. He graduated from California State University, Sacramento with a BA in Communications.

