Computers in the Practice of Patent and Trade-mark Law

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This presentation will cover how computers may be used in the practice of law in general as well as how they are employed in the law practices of specialists in the field of patents and trade-marks.

Legal Research

Lawyers access four types of data in performing legal research: collections of reported judicial decisions, statutes, journal articles, and research material produced for other cases.

Lawyers are increasingly relying on commercial data bases in order to search for relevant case law. Traditionally, court decisions are reported in series of legal reports dealing with a particular specialization (tax law, for example) or a particular jurisdiction (reports from Alberta, or from the Supreme Court of Canada). Commercial data bases now offer many of these reports on-line.

There are two competing Canadian data base services: CANLAW and QL Systems. Each of these services offers a different set of case reports. Each service has a monopoly with respect to the cases which it offers. In the case of CANLAW, the electronic data base service is being offered by the publisher of the legal reports.

Keeping a set of federal or provincial statutes up to date is a tedious and time consuming task. QL Systems Limited offers access to statutes on-line for federal statutes and the statutes for Alberta, British Columbia, Manitoba, New Brunswick, Ontario and Saskatchewan. There are also no electronic data bases commonly available in a law office to obtain Canadian journal articles or indices on-line. American data base services are sometimes used by Canadian lawyers where applicable.

Law firms are now beginning to use local area networks and to develop internal data bases of precedents. These contain memoranda that may be pertinent for research on a similar point of law.

Litigation Support

It is now commonplace for large pieces of litigation to involve teams of lawyers and reams of documents. Computers are used to index documents, annotate transcripts and generate material to be used in evidence. Systems which permit documents

to be scanned are now also being used to handle large numbers of documents.

Trade-mark Searches

Trade-mark searching is an area which is ideally suited for computers. The Trade-marks Act sets out the criteria to be applied in determining whether a trade mark is confusingly similar to another mark, and therefore unregistrable. Traditionally a searcher was employed to manually search the files of registered marks at the Trade-marks Office in Hull, Quebec, in order to uncover potentially confusing marks.

There are several data base services which give on-line access to the register of trade-marks. One service provides reports generated by an algorithm which is intended to locate confusingly similar trade marks as defined in the Trade-marks Act. The user specifies the trade-mark to be searched and the class of goods or services with which the mark is to be associated. There is little ability to custom tailor the search.

Other data bases operate strictly as text-matching systems. The user is able to approximate the sort of search performed by the searcher working in the Trade-marks Office.

None of the trade-marks data bases can handle graphics and so searches for logos and trade marks which contain graphical material must be accomplished by hand.

Patent Searches

Patents are searched in order to discover if a particular person owns patents, if a patent applied for in one country has been applied for in other countries, or whether the subject matter of an application has been the subject matter of a patent in another country. The first two types of searches are relatively straightforward while the third is more difficult.

Because, in general, patents are not granted if the invention has been disclosed anywhere in the world, it is important to be able to search for the above information in a number of countries.

There are a number of data bases which offer the ability to make the above type of search. In addition, there are services which provide data regarding issued or published patents on optical disks. The disks are issued each month.

Usually the full text of a patent is not capable of being accessed by the patent data bases. Searches for patents on a particular subject matter are possible, however, as many countries require an abstract be included in patents and both abstracts and the main claims of the patents may be searched.

Many patent agents and lawyers are now relying on patent data bases in order to determine if a particular invention is patentable.