

Part III

Patent Litigation

Managing Patent Litigation Projects

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“Hi, this is Brad from the law firm of Res Ipsa Loquitur. We’re handling a large patent infringement case involving hyperfragnated flumgats. We have 10 boxes of foreign documents. Can you translate them all by Friday?”

This is where most discussions of patent translation end. By the time you get this call, the patent probably has already been translated, for good or ill. Even some of the most brilliant translators in the business—people who can dash off complex technical patents without breaking a sweat—will run screaming at the mind-numbing prospect of sorting through 10 boxes’ worth of material.

This kind of work is not for everyone. To do it well and without losing your sanity, you must be willing to cultivate strong relationships with both your client and your colleagues, as it is nearly impossible to handle a project of this scope without forming a well-organized team of translators and interpreters. Although this approach may be counterintuitive for many translators, who often prefer the solitude that the profession normally provides, we have found that it is extremely satisfying to work as an active part of the litigation process and to see the whole picture rather than simply sending isolated documents out into cyberspace. Even more important, we are convinced that taking such a comprehensive approach creates a better product and adds significant value for the client.

Although we do translate patents, LinguaLegal’s main specialty is patent litigation. Therefore, this chapter will focus not on the translation process itself but on the project management strategies that we have developed over 10 years of doing litigation work together. First we will provide a brief overview of the litigation process, and then we will discuss how to cultivate relationships with clients, build teams, organize projects, balance quality against time, and use resources effectively. Our method is still a work in progress, however, so we advise you to take what you like and leave the rest.

UNDERSTANDING THE LITIGATION PROCESS

When we understand the logistics that are involved, linguists can add significant value to litigation work by asking the right questions and by helping the legal team approach foreign-language document review intelligently and efficiently. Toward that end, we will begin with a brief translator’s-eye view of the sequence of events in the Res Ipsa Loquitur case from start to finish. Even when your involvement is limited to a smaller universe of documents or a less active role in the litigation, it is extremely useful to keep this process in mind.

Discovery and production. Brad’s 10 boxes of foreign-language documents may represent only a small fraction of the material involved in the case. During the early phases of litigation, the law firm often has to manage a staggering

number of documents as each party seeks to get as much evidence as possible from its adversary while revealing as little of its own case as possible. The situation can be even worse when the opposing parties deliberately overwhelm one another with documents in a “paper war.”

During this stage, translators are often asked to review and analyze foreign-language documents so that attorneys can sort them on the basis of relevance (whether they need to be produced to the other side) and privilege (whether they can be withheld on the basis of attorney–client relationship). As a result, the bulk of the language services work occurs during this phase, as the litigation team sifts through the material and begins to identify critical documents for summary or full translation.

These boxes will often contain a broad range of material, including laboratory or inventor’s notebooks; discussions of legal and technical issues with in-house attorneys or outside intellectual property counsel; filing and prosecution records from a smorgasbord of countries; financial projections of the invention’s profitability; technical analysis of related patents and prior art; minutes of product development meetings; licensing, secrecy, and joint development agreements; standard business correspondence; and internal correspondence covering everything from hotel reservations to internecine power struggles to orders for supplies.

Depositions. Once the documents have been reviewed and summarized or translated, there is usually a lull in the need for language services, but the case may heat up again as depositions begin. Frequently, the client will need an interpreter for deponents with limited skills in English, and deposition testimony may turn up new documents that need to be translated, often on short notice and at irregular intervals. The client may also need translations of memos and pleadings drafted by foreign attorneys, especially if parallel proceedings are involved.

Trial. If foreign-language documents are selected as exhibits, there is usually a flurry of activity immediately before trial as the client asks the translation team to review and certify translations of key documents, which may have been drafted months earlier.

CULTIVATING A RELATIONSHIP WITH THE CLIENT

Regardless of the nature and timeline of the case, *handling a large patent litigation project is a fluid and inherently imperfect process*. Attorneys’ priorities shift as their strategies change, and yesterday’s burning issue may become irrelevant overnight. Although we cannot make litigation any less unpredictable, cultivating a strong relationship with the client and taking a big-picture approach can help us anticipate problems and make the case run more smoothly.

Listen before you talk. When you get the first phone call from Brad at Res Ipsa Loquitur, it is imperative to get several key pieces of information. Here are some of the things that we like to find out at the outset of the project:

- What are the law firm’s real and immediate translation needs? What is

driving the timeline: Does the firm have a hard deadline or an arbitrary one? How much do the attorneys know about the documents in the 10 boxes: Does it all need to be translated, or would sorting and summarizing be more time- and cost-effective? How soon can we get a look at the material?

- What does the law firm already know about the case? Can we get the background materials that the attorneys will be using to analyze and sort the documents? At a minimum, we need to ask for the patent at issue and any available translations of it.
- Has the firm ever worked with translators before?
- What knowledge of the foreign language and foreign culture does the law firm have?

Be prepared to manage your relationship with the client. When translators become actively involved in document review, we often find ourselves in a delicate position. The legal team must rely on our expertise in order to understand the documents and build a case, yet many attorneys fail to grasp the knowledge-intensive nature of translation and the added value we can offer when they are willing to work closely with us. To make matters worse, foreign-language documents almost always create additional complexity and stress for attorneys and paralegals. We have encountered a wide variety of responses from our clients, ranging from a high-powered, micromanaging partner who tried to reorganize our carefully structured team in the middle of a case to an inexperienced associate who wanted us to manage the document review process for him. In our experience, the best strategy in every situation is to win the client's trust and to set clear boundaries as to what we can and cannot do.

We are convinced that the best way to win trust is to demonstrate an unfailing commitment to quality. When attorneys and paralegals see how carefully and thoroughly we approach our task, they are much more willing to rely on us and to make us a part of the litigation team. Strict adherence to deadlines is essential, as failure on our part can cause attorneys to miss their own filing or production deadlines. Being available, reliable, and accountable encourages the client to have confidence in us and treat us as a partner in the litigation process rather than simply multilingual clerical support.

Setting boundaries means putting realistic limits on the law firm's expectations in the often crazed world of litigation. In short, say yes when you can, say no when you need to, and don't be afraid of the client. This doesn't always save us from working under less than ideal circumstances, but it is essential to be able to say no when the client's demands are simply impossible to meet. One bad translation can ruin a relationship that has taken years to cultivate. If it is impossible to produce quality translation work, there is nothing to be gained—and plenty to be lost—from attempting the impossible and ending up with a work product that no one is happy with. Our best clients have come to trust our judgment, and they listen to alternative solutions to the perennial problem of too many documents and too little time.

Make sure your own expectations are realistic, too. What can you reasonably accomplish? Do you need to outsource work beyond your immediate team?

It is never a good idea to take on more than you can handle, no matter how good the client is. When deciding whether to take a large case, consider your existing commitments and acknowledge that your availability to other clients may be limited for weeks at a time, especially during discovery and later during the pre-trial crunch. Your rates should reflect this by providing you with adequate compensation for the opportunity cost involved. In our experience, an hourly rate is the best—and often the only—solution for document review and the last-minute translating, researching, editing, reviewing, and certifying that is required right before trial.

Never stop thinking about the big picture. Our ultimate goals are to give Res Ipsa Loquitur a good work product and to make sure that we have done everything we can to help them avoid unpleasant surprises in depositions and at trial. The more we know about the broad outlines of the case, the more intelligently we can do our job and the more likely we will be able to recognize and point out potential problems in the documents that we review and translate. Here are some of the questions that we like to ask:

- What are the key issues in the case?
- Is there anything specific we should be looking for as we review the documents?
- May we have any background material or memos that you have provided to your legal team to get them up to speed on the case?

Taken as a whole, the documents almost always paint a larger picture: If we can connect the dots from one document to the next and give the legal team a more sophisticated understanding of the big picture, we will be able to do a better job, and so will they. Naturally, it is important to respect attorneys' time, but in our experience, asking these kinds of questions at appropriate intervals actually boosts the firm's confidence that it is getting the information it needs to build a case.

This is an area in which the translation team's institutional memory can be invaluable to the client firm. For example, in one case that we handled, the attorneys were unable to determine whether a sensitive report was discoverable, and they asked our senior translator whether she knew anything about its origin. Because she had reviewed hundreds of documents from many sources over the course of the yearlong litigation, she knew that in-house counsel had asked the patentee's researchers to draft the report for their use in responding to the national patent office, and she was even able to direct them to a separate set of files in which another copy of the report was attached to the researchers' cover memo and the attorney's original request. The added context enabled the attorneys to make an informed decision on discovery.

Suggest ways to save time and resources. In many cases, the law firm has earmarked thousands of documents for translation when all it really needs to do is inventory them and identify the most important documents for translation. To save the client time and money, translators can sight-translate and summarize the

material to allow the attorneys to make a first cut and then do full translations of documents that are identified as important. In addition to making the project more manageable for everyone, this strategy enhances our credibility and builds the client's confidence that we are contributing real value.

Stay in touch and ask about the timeline and the progress of the case regularly. Most attorneys and paralegals operate under extreme time pressure. Even when they know they will need translations, contacting their language services provider is not necessarily their top priority. A polite inquiry on Monday morning can remind them that they have been meaning to call you—and it may head off a panicked request for a costly rush translation at 4:00 on Friday afternoon.

Obviously, we must strike a delicate balance between being helpful and being a nuisance, and we cannot always protect our clients from themselves. In one case, for example, we were contacted by a prospective client about translating a box and a half of material; after the initial conversation, we called the attorney four times over three weeks to set up a time to review, sort, and assign the material for translation. By the time she returned our call, she needed all of the material translated in less than five days, and we declined with thanks. “Unfortunately, this is just the way things are at law firms,” the attorney said. Happily, she was only partly right: In our experience, many clients are willing to let us help them avoid unnecessary crises.

In one long-running case, for example, our on-site translator realized that a particular lab notebook would be a key piece of evidence at trial. She also recognized that the existing translation, which had been drafted more than a year earlier by an outside translator during the first months of the litigation, was not adequate for use in court. We alerted the law firm, which cleared us to review the translation based on our accumulated knowledge of the case. Out of hundreds of pages of translations that we prepared over the course of two years, that notebook was one of two documents used in court during trial. The law firm had not anticipated this development, but because we were working closely with the litigation team, we did—and thanks to the attorneys' trust in our judgment, we were able to complete the painstaking review work carefully over the course of 10 days rather than in a panic on the eve of trial.

In short, working in partnership with the client and keeping an eye on the big picture makes for more satisfying work and often better pay, but it also expands our role from simply translating documents to *solving the client's problem*. When our relationship with the litigation team works well, we are really acting as consultants: Project management, detective work, and big-picture thinking are our value-added services. The challenge is to walk the fine line between serving as a trusted, committed partner and yet remaining detached from the law firm's internal dynamics so as to be clear about the limits of our role and what we can do in the time available.

WORKING AS A TEAM

Often, the best way of living with your limitations—and getting to “yes” when Res Ipsa Loquitur contacts you about a large litigation project—is to form a team with a group of trusted colleagues.

The Benefits of Working as a Team

- **Benefit No. 1: Broader skills, better product.** Given the broad range of document types, subject areas, and languages that come up in patent litigation, we believe that a team approach is essential to delivering the best possible product. In most instances, each team member can focus on what he or she does best, and usually a knowledgeable editor is available to review translations. We find that when we work closely as a group, we arrive at better solutions than we could have come up with alone. For example, the chemistry specialist may have worked on a technical document that sheds light on a passage that is baffling the legal translator, or someone else may decipher at a glance the handwritten scrawl that one of us has been struggling with for half an hour.
- **Benefit No. 2: Efficiency.** When working with a team, the client can make one call and get the whole package of skills. Because each member of the team is doing what he or she does best—legal or technical, French or German, glossary management or client management—everything can be done better and more quickly than any of us could manage as solo freelancers. The maddening variety of documents can be sorted by one or two lead translators, which means that each section of the work can be distributed intelligently to the team member who is best able to handle it rather than randomly assigning the work. Finally, at least one member of the team will have seen *all* of the documents, making it much easier to eliminate duplicates and connect the dots around obscure turns of phrase.
- **Benefit No. 3: Institutional memory.** Over time, the documents in a case tell a story, and all of the knowledge accumulated from the team’s past translations helps to make sense of the next one. It is not unusual for a law firm to turn up an urgent document that needs to be translated quickly. If our team has already been working on the case for six months, our existing glossary and collective knowledge will almost certainly produce the best translation that the client could get from anyone in the time available. What is more, it is far safer to divide rush documents into sections when the translators are used to working with each other and already know the case.
- **Benefit No. 4: Professional development.** Working closely with colleagues increases everyone’s expertise, builds our professional network, and often produces referrals for additional work down the line.
- **Benefit No. 5: Sanity.** Teamwork is often the best and sometimes the only way to get rush work done in the time available. Even when deadlines are reasonable, the ability to distribute work among a trusted group of colleagues makes it easier to balance work and life, and a clash between two projects is less likely to result in frustrated clients and a stressed-out, sleep-deprived translator.

Strategies for Team Building

When we form a team of translators, our first priority is to find people whose skills and character we trust; the ability to rely on each other in a pinch

is paramount, and it is even better when we all enjoy working together. We try to use each team member's strengths to their best advantage and strike a balance between diversity of talent and manageable size. Here are the primary areas that we consider when putting together a team:

- **Languages.** Taking a quick look at the documents—even before you accept the project—is critical. Case files that are written primarily in French may be sprinkled with German; most filing and prosecution records have at least one file in Japanese; and it is not unusual for pharmaceutical cases to contain a series of documents in Hebrew. It is helpful to think about the languages you are likely to encounter based on the nature of the case, the subject area, and the parties involved. Ideally, each member of the team will be able to work in more than one language: Once the core terminology and basic concepts of the case are mastered, it is faster and easier to decipher the terminology in another language.
- **Translation and interpreting.** In addition to a competent translation team, it is useful to have at least one skilled interpreter who can assist the client during the deposition and trial phases of the litigation. A properly prepared interpreter can gather an enormous amount of useful terminology and background information during depositions and funnel that information back into the team's knowledge base. With the law firm's permission, the interpreter can even use breaks in depositions to ask the key players in the case about problematic terms. In our work, we have found that cross-pollination between translators and interpreters has contributed to our professional development and brought us more business.
- **Subject-area knowledge.** Here again, an early inventory of all the available material is critical. Try to match your team's expertise with the types of documents that you are likely to run into: patents and contracts, production records, pleadings, and laboratory or inventor's notebooks. No one can do everything, so it is helpful to specialize in a limited number of related areas. For example, chemicals, cosmetics, and pharmaceuticals all have chemistry in common. In a highly specialized area such as firearms or vinyl flooring, the team may have to learn the specifics of the case along with the attorneys, but at a bare minimum, the technical translators on the team should have a general aptitude for the subject area of the case. Having at least one team member with some knowledge of business or accounting is useful, as case documents often include business and financial documents.
- **On-site document review.** Although there is a growing trend toward reviewing scanned documents on secure Web sites, there are still many occasions when documents need to be reviewed in a client's office. That means someone—and sometimes a whole group—must be willing to leave the cozy home office, put on pantyhose or a tie, sit in a workroom, and interact directly with the client. What is more, document review demands the ability to see the forest and the trees at the same time: Each document must be assessed both in its own right *and* in light of the key issues in the litigation.

Many translators abhor this kind of work, so it is useful to have at least one person on your team who does not.

On-site work is certainly a departure from the usual freelance routine, but we view it as a valuable opportunity to establish credibility, build a relationship with the client, and gather information that is critical to both translation quality (What exactly is the difference between *hyperfragnated* flumgats and *hypofragnated* flumgats?) and project management strategy (Do you still have the same trial date? How are the settlement talks going?).

- **Project management.** Typically, we have one translator who acts as the main project manager and another who serves as a backup for every litigation project. The project manager handles the big picture, assessing incoming work, negotiating deadlines, assigning work appropriately, acting as a coordinator both within the team and between the team and the client, and tracking the team's progress to ensure that deadlines are met.
- **Terminology.** We have found it essential to have one person who coordinates research and terminology. We generally set up an e-mail list and send a master glossary to the entire team at the beginning of a project, encouraging everyone to post terminology problems and solutions for the team to see and discuss. As new terminology is identified, entries are sent to the glossary coordinator, who enters them into the master glossary and sends the updated file out to the team. Even as the profession moves increasingly into translation memory, bitext tools, and terminology databases, it is still useful to have one person who is responsible for resolving terminology problems, arriving at working and final decisions, and keeping everyone on the same page.
- **Reinforcements.** We work almost exclusively with people whom we know and trust, and being able to draw on this network of confidence puts us in a strong position to meet our clients' needs. Occasionally, however, a regular client needs work done in a language that we cannot handle or on a deadline that the team is simply too busy to meet. If we decide to accept the additional work, we outsource it very selectively to other translators or to reputable translation companies or agencies—ideally, people and entities that are respected in the profession and come well recommended. We are constantly looking for like-minded translators, companies, and agencies so that we can test-drive new prospects before the next crunch.

GETTING ORGANIZED

We generally follow a few guiding principles to minimize chaos and keep the project on track.

Inventory the material thoroughly as soon as possible. Even if you took a quick look at the documents before you accepted the job, it is critical to do a thorough inventory of the material as soon as possible. Brad's boxes may contain numerous duplicates, useful background documents in English, or large quantities

of wholly irrelevant material. Having a clear idea of the whole universe of documents will allow you to budget your own time and resources—and help Res Ipsa Loquitur manage the project more effectively as well.

Set up a system for tracking and storing the documents you handle off site.

This is absolutely critical to avoid getting buried in a mountain of documents, and it may even be necessary to prevent your work from being lost. Large law firms usually have support staff to copy, distribute, and file documents, but those staff members are all juggling multiple cases and may be reassigned during the case. In an ideal world, the attorneys will have one highly organized paralegal tracking and filing all foreign documents and translations, and nothing will ever get lost. In the real world, it is not unheard of for Res Ipsa Loquitur to call you six months later and ask for a copy of the *source text*, in addition to your translation.

Ask about the timeline early and often. When the law firm says that it will need you for two months, this usually means “a long time.” If the case settles, it could mean two days. It almost never really means two months. What is more, the client’s deadline is sometimes arbitrary and may not be based on a realistic assessment of the translator’s task. Often, there is more time available than the deadline would suggest, and it may be possible to negotiate a more reasonable schedule once you know the status of the case. Find out whether the deadline is hard or soft and what is driving it:

- How will the translations be used?
- Is there a court date?
- Do the attorneys have a hearing or a deposition coming up?
- Is there a filing or production deadline?
- What will happen next?
- What is the firm’s experience with the other party or the opposing counsel?

Never stop thinking about the next phase of the case. This point bears repeating: The litigation team may have useful information, but often they won’t think to tell you unless you ask. Take every reasonable opportunity to stay in touch and ask what the calendar looks like. Here are some useful questions to ask:

- Will you be doing depositions that will require translation or interpreting?
- When are they likely to be held?
- Is the litigation team planning to visit the client to collect documents? When are they planning to come back, and how much material do they expect to find?
- Are the parties in negotiations? Are they likely to settle out of court?
- When will the other side produce documents, and is the production likely to include foreign-language documents?

The answers to these questions will help you anticipate and organize your workflow, making it easier to manage big crunches and reducing the likelihood that you will land with a bump on the sidewalk if the case suddenly peters out.

Fight mission creep. Although there is sometimes pressure to provide other services, we are better off focusing strictly on our core language and analytical skills and relying on the law firm’s resources to provide ancillary services whenever possible. In one case, for example, our translations had to mirror handwritten technical documents exactly, down to the last symbol, doodle, and marginal note. It was extremely time-consuming work: Handling it ourselves would have been a waste of our time (because it diverted us from our primary area of expertise) and the client’s money (because it could be done far more efficiently and cost-effectively by a word processing specialist). Ultimately, we found a crack data processing technician in Res Ipsa Loquitur’s graphic services department who was able to create the appropriate graphics and paste in our translated text intelligently, freeing us to focus on our real expertise of translation and document analysis. In the end, fighting mission creep boils down to efficiency: The client saves time and money by letting everyone on the litigation team do what they do best.

DELIVERING A QUALITY PRODUCT ON TIME

During discovery and production, when there are large numbers of documents and attorneys are still in the process of identifying key issues, we provide clients with high-quality drafts for in-house use rather than labor over the fine points of documents that may become irrelevant tomorrow. We define a “high-quality draft” as a translation that is complete and accurate and reads well in English but may contain an occasional pair of brackets or translators’ notes when there is not enough time to do exhaustive research for a perfectly idiomatic translation. Above all, when there is any question as to meaning, we alert the client in a footnote. We also make sure that all drafts are clearly marked as such in our header, which might read,

Draft translation from the French by Alison Carroll
DO NOT FILE WITHOUT FURTHER REVIEW [date]
Confidential—Attorney Work Product

Although most translators are driven to provide a perfect translation every time, the reality of wading through huge quantities of material on a tight schedule forces us to adopt good working solutions in the interest of getting the job done. The high-quality draft is a fair compromise between quality and expediency, allowing us to avoid wasting time and to focus our time and energy where it will be most effective.

Sometimes, this is not only the best but the only option. In one lengthy suit involving parallel proceedings in the United States and Europe, for example, Res Ipsa Loquitur received a 50-page draft pleading in French that its European counterparts had to file within three days. That meant that Res Ipsa’s attorney absolutely had to have a translation in two days in order to review it for a transatlantic teleconference. In a case like this, it is pointless to deliver a perfect translation three days later; it is far better to give the client an excellent draft when the attorney can use it—and odds are, our team’s institutional knowledge of the case gave him the best translation he could have gotten in the available time (which, naturally, was immediately before a major holiday).

Occasionally, law firms object that even this approach goes too far and tell us that we should just give them “an idea of what it says.” However, we have to hold the line here consistently because we have seen time and again that “what it says” is only good enough for sight translation and summaries. In one memorable instance, an attorney called around noon one day to say that he was in depositions and had decided to use a document drafted a year earlier, meaning that the translation had to be finalized, certified, and faxed to Delaware by the close of business that day. Because we had drafted it carefully, the translation was ready, with the exception of two bracketed terms. Our team had already found a solution to one of them in the intervening year, and an hour of research was enough to nail down the remaining term. As a result, we were able to deliver the certified translation by the deadline—an impossible task if the draft had been any less polished.

Finally, we make it very clear to our client that any translation that goes beyond the draft stage *must* be reviewed by another translator. Again, an actively managed relationship with the client is crucial. Although attorneys do not always understand the review process that many translators take for granted, they do understand that anyone can make mistakes under time pressure and that correcting mistakes is much more costly than preventing them in the first place. In our experience, a quality-conscious client—the only kind of client we really want to work for—eventually understands and appreciates our commitment to quality and will call back. Besides, it’s no fun doing work that is just okay.

USING RESOURCES EFFECTIVELY

Although patent translators usually have a general background in the law, science, or technology area they are dealing with, it is rare that we walk into a large litigation project with highly specific knowledge of the invention at issue. In fact, one of the charms of long-term litigation projects is that they give us an opportunity to deepen our subject-area expertise into a thorough mastery of an area and to leverage that knowledge over time. But because we may be dealing with plastics terminology in one case and pharmaceutical terminology in another, the learning curve must be as steep as possible. Here are some ideas that have helped us get up to speed quickly:

Patents. It goes without saying that you should immediately ask for a copy of the patent in suit in any relevant languages, plus any related patents that Res Ipsa Loquitur can provide. Make sure that you have a full set of drawings, which all too often are left out of PDF files. If the drawings are missing, do not rest until you have them. Bear in mind that foreign-language patents almost never correspond exactly to U.S. patents: Given the nature of the filing and prosecution process, even if the U.S. patent started out as a translation of the foreign-language patent, it may have been modified considerably by the time it issues. In fact, we have been asked more than once to translate a French priority document precisely because the attorneys wanted to compare it to the U.S. patent and zero in on the differences.

It also goes without saying, alas, that the English- or foreign-language patent—or both—can be astonishingly error prone even after issue. (Real-life example: “X is the square *route* of Y...”) In short, existing patents can be a valuable resource, but they are by no means infallible and should be used with caution.

Once you have the U.S. patent number, you can pull up the text (but not the drawings) on the Web site of the U.S. Patent and Trademark Office (USPTO), print it, and copy it into a Microsoft Word document, allowing you to search the text and copy and paste from it as needed.¹ This function can save a great deal of time, for example, when foreign-language documents quote at length from a U.S. patent or make detailed references to its content or terminology. You can also use the USPTO's advanced search feature to find related patents, which can be invaluable sources of concepts, terminology, and usage (e.g., is it bioequivalent to or bioequivalent with?) in the area of technology at issue in the case.²

Glossaries. Consistency is not a human trait. Glossaries are an important resource for solo translators, but they are absolutely critical for a team tackling a big project that may span months or even years. They are also valuable for sight translation, which can involve a wide range of document types. Glossaries are also indispensable when we need reinforcements: We routinely share our glossaries with trusted subcontractors, helping them to improve consistency and save time and effort.

Case documents. Although we may be not versed in the fine points of hyperfraginated flumgats at the beginning of the litigation, we are not alone. Most of the attorneys have to get up to speed, too. Ask Res Ipsa Loquitur for any supporting material on the concepts, terminology, and issues in the case, as well as any background material that may be available—a complaint, a key pleading, an opinion letter, or parallel texts of any kind. Junior attorneys are often given memos and lists of key terms to help them approach document review more intelligently, and these resources can be invaluable for translators and interpreters as well.

Brad's 10 boxes may also contain a number of English-language documents about the invention that can help you. If you do any sight translation, stay alert for useful resource materials: These might include documents that contain expansions of product codes or in-house abbreviations, lists of key personnel with their roles and titles, parallel texts in both the foreign language and (native-quality) English, and information about key equipment or protocols. Tab the useful documents as you review them, and ask the attorney or paralegal whether they can be copied for the translation team's reference. And when the client sends out a batch of documents for translation, ask them not to remove any related material in English.

Productivity tools. One of the most frustrating aspects of litigation work is that most of our source text is, for all practical purposes, in hard copy. In our experience, law firms are not early adopters of technology. Though our clients are increasingly sending source text electronically, in most cases the documents are image PDFs that cannot readily be searched or reduced to usable soft copy. It is not unusual for litigation to involve a 10-year-old copy of a fax of a copy of a fuzzy original with illegible handwritten notes in the margin—or barely legible copies of an inscrutable lab notebook that is entirely handwritten. Although

¹ To search for a U.S. patent by number, go to <http://patft.uspto.gov/netahtml/PTO/srchnum.htm>.

² To use the advanced search function and to read tips for using it effectively, go to <http://patft.uspto.gov/netahtml/PTO/search-adv.htm>.

optical character recognition programs are improving, we have yet to find a quick, easy solution for the messiest kinds of source text.

For that reason, we must get the most out of the productivity tools we *can* use. For example, we have already adopted or are exploring terminology management software, bitext tools, alignment tools, project management software, and accounting software. In addition, we have learned from bitter experience that working with a team makes efficient e-mail management even more critical than when we work alone. (For useful tips, see David Allen's *Getting Things Done* and Peggy Duncan's *Conquer Email Overload*.)

The rest of the team. Although e-mail has its drawbacks, it is a useful resource when working with a team. If we set up an e-mail list at the beginning of the project, everyone can exchange questions and answers and benefit from one another's work. The chemistry expert can query the legal translator. The legal translator can check terms with the pharmaceutical specialist. And someone else on the team, regardless of expertise, may be able to solve a problem term simply because he or she has happened across an explanation in another document. It is also useful to be able to consult the interpreter on the case, if there is one. Because the interpreter usually has ample access to the attorneys and witnesses in the case, he or she may know offhand which of several acceptable translations is most appropriate.

The staff at Res Ipsa Loquitur. We try to use any contact with the attorneys and paralegals to ask questions, collect reference documents that might help the team, and pick senior attorneys' brains for answers to translation problems. On several occasions, we have e-mailed queries about terminology to attorneys who were willing to address them. Again, there is a fine line between gathering the information we need and being a nuisance, but if we choose the right moment, attorneys are often surprisingly willing to help. This is especially true when we are also willing to share information with *them*—a helpful URL or an outside reference that sheds light on one of the issues in the case, for example. On one occasion, we provided the junior attorneys with copies of an ATA conference handout that outlined standard practice in the industry involved in the case. It proved so helpful that the senior paralegal requested a copy as well.

Res Ipsa Loquitur's client. On more than one occasion, we have drawn up lists of problem terms and consulted the end client's in-house counsel, technical experts at its U.S. subsidiary, or even the inventor. The team's interpreter can use downtime during depositions and prep sessions to query end-client sources, though both of these moves need to be cleared with the attorneys at Res Ipsa Loquitur first.

Sometimes the end client is the best and only source of information for a translation problem. During one long-running case, for example, we were completely unable to find any information on a handful of French technical terms that appeared repeatedly in memos from the testing department of Res Ipsa's client. After months of frustration, the head of the department came to the United States for depositions; we seized the opportunity and sent in our interpreter with a list of questions. As it turned out, Monsieur Machin had so much natural talent that he had risen through

the company's ranks without ever getting a degree. Because he had never been formally trained in the terminology of his field, he had simply *coined his own terms* and used them in his reports! That explained why all our research had led to nothing: The only resource for information on Monsieur Machin's terminology was Monsieur Machin himself. The moral of the story is that it never hurts to ask.

Other resources. Although there are many papers and glossaries on translating *patents*, so far we have found very little material that specifically addresses patent *litigation*, and virtually all of it is monolingual. The annotated list of references at the end of this chapter is far from exhaustive, but these sources have been useful for us and may help you as well.

We hope the ideas presented here will be useful to you in working with your own clients. It is important to remember that Res Ipsa Loquitur is taking a risk whenever it entrusts a case to a language services provider, and the costs of failure can be high. Poor translation or interpreting services can result in missed filing deadlines, loss of face with Res Ipsa's client, and even bad decisions about litigation strategy. However, combining strong relationships with a big-picture mind-set is the best way to minimize these risks for the law firm and to make the project successful and fun to work on for the translation team.

More and more, we are convinced that this is a plausible business strategy, as services move offshore and translation becomes commoditized. Good relationships with clients and among the translation team build trust and powerful institutional memory that cannot be easily replaced or outsourced. Similarly, a broader, value-oriented approach tends to attract like-minded clients who know how much poor translation can cost and understand that getting it right the first time is often less expensive than going to the lowest bidder.

REFERENCES AND FURTHER READING

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- Muir, Ian, Matthias Brandi-Dohrn, and Stephan Gruber. 2002. *European Patent Law: Law and Procedure Under the EPC and PCT*. New York: Oxford University Press.
- Overview of European Patent Office procedures, including filing, examination, opposition, and appeal, as well as information on international intellectual property treaties.

Internet Resources

- View the full text of the European Patent Convention and related documents in English, French, or German at <http://www.european-patent-office.org/legal/epc/e/contents.html#INDEX>.

- Download a searchable PDF of the European Patent Convention in English, French, or German at http://www.european-patent-office.org/epc/pdf_e.htm.
- View the full text of the English version of the Patent Cooperation Treaty and related documents at <http://www.wipo.int/pct/en/texts/>. Links to the corresponding French, German, and Spanish texts can also be found at this site.
- Access a variety of Patent Cooperation Treaty forms in English, French, German, Spanish, or Russian at <http://www.wipo.int/pct/en/forms/#OfficeForms>.
- Join the Legal Translators discussion group on Yahoo! by visiting <http://groups.yahoo.com/group/legaltranslators>, or send a blank e-mail to legaltranslators-subscribe@yahoo.com and follow the instructions in the confirmation e-mail that you receive from Yahoo! Groups.