



What Fluctuating Oil Prices Means For Patent Infringement Lawsuits

July 6, 2016

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A notable trend has developed between the price of oil and gas and the prevalence of patent infringement lawsuits. As the price of oil plummeted, the number of patent infringement lawsuits in the oil business has increased dramatically. For example, oil prices hovered between \$80 to \$100 per barrel between 2009 and 2013, while the number of newly filed oil-related infringement actions ranged from about 10 – 20 actions per year during the same period. Oil prices, however, decreased substantially in 2013 and have remained historically low, while the number of infringements actions during the same period rose to more than 45 per year for 2014 and 2015.

Patent infringement cases can be extremely costly to litigate and can often take years to get to trial. As a result, it may seem counterintuitive for hard-hit oil service companies to pursue expensive lawsuits, particularly when the financial resources of such companies are low. But a correlation that makes sense exists here. First, companies struggling to find projects and sales in a tight market are hindered most by the presence of competitors vying for a dwindling amount of work. If those companies have one or more patents, then “investing” in infringement actions against weaker competitors can drive competitors out of the marketplace for specific products or services. If a settlement is reached, the result can often be an acquisition of the assets of the competitor or licenses to competitive technology that may not have otherwise been possible without the infringement lawsuit. Low oil prices have already resulted in many consolidations in the energy sector, and little doubt exists that patent infringement lawsuits may be serving as an additional catalyst for that phenomenon.

Furthermore, the rise in patent infringement lawsuits likely represents a side effect of the substantial increase in granted patents in the oil and gas categories of the U.S. Patent and Trademark Office (USPTO) classification system (Class 166 and Class 507). See our prior blog entry noting this trend here, wherein the annual number of granted patents has more than doubled since 2009.

Another theory may relate to the allocation of technical resources. During times of high oil and gas prices, engineers and other research personnel tend to be focused on solving problems in the field and developing new technology. They may not have time or interest to learn precisely what competitors are doing. When prices drop and field activity slows, however, engineers have more time to review claims of patent infringement that the marketing department has raised.

Whatever the reason, the above trends suggest that regardless of how low energy prices may be, oil service companies will continue to allocate resources to protect their intellectual property assets and market share.

About the author

Warner J. Delaune is a member of Baker Donelson’s Intellectual Property Group. He has extensive experience in the management of international patent portfolios and the development of licensing strategies. He is a registered patent attorney licensed to practice before the United States Patent and Trademark Office (USPTO) in patent cases.



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