

Patent Law Historical Observations: Oil and Gas

By Steven Tanner and Timothy Ellam on April 1st, 2014

We recently posted an article reviewing the year past in oil and gas patent litigation. We analyzed new Federal Court cases and issued decisions and provided commentary on future implications. You can read that article [here](#).

This article continues that analysis by looking backwards in time; specifically to oil and gas patent litigation for the years 2009-2012. What conclusions can be drawn if we look at a 5-year window of time?

The short answer is that 2013 was as busy a year for oil and gas patent litigation as the previous four years combined.

For the 2009-2012 timeframe there were twelve patent cases filed in the Federal Court and Federal Court of Appeal relating to oil and gas patent litigation. Six oil and gas patent infringement decisions were rendered by the Federal Court and Federal Court of Appeal in that same timeframe.

What kinds of cases are being filed? As was the case in 2013, there was a mix but the largest concentration (five) dealt generally with downhole tool technology. Other cases involved wellbore treatment, oil containment, pipelines, fracking, and pumping. Related cases include mining technology, and gas scrubbing from trucks.

What cases were decided? In 2009-2012 there were two lines of cases which accounted for all six decisions rendered by the Federal Courts. They are the Weatherford line of cases (4 cases, including appellate decisions) and the Wenzel line of cases (2 cases, including the appeal). As is typical in most areas of patent litigation, the percentage of cases that proceed to trial is much smaller than the percentage of cases that are filed.

The remaining question is whether the sharp rise in oil and gas patent litigation in 2013 is an aberration or foreshadows an increase in such cases in the future. There seems to be no legislative triggering event to account for the rise. This is unlike the situation in 1993 when legislative changes ushered in a sharp rise in pharmaceutical patent litigation. In the absence of such triggering events we cannot speculate on 2014 and beyond without more data. However, we will be monitoring these cases in 2014 to identify any trends.

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Tim Ellam and Steven Tanner will be presenting on Oil and Gas Patent Infringement in our Calgary office on Wednesday, April 23rd, 2014. The seminar is titled "Your Patent Has Been Infringed: Now What?" If you would

like to attend the seminar, please [click here to register](#). For more information on this particular seminar, please contact Alison Rannelli.