US patent grants and complaints both fell in 2015, finds PwC study

The number of patents granted by the US Patent and Trademark Office (USPTO) and infringement cases filed in district court both declined in 2015, according to PwC's Patent Litigation Study.

PwC's annual study found a modest 2 percent decrease in patents granted by the USPTO, the first drop since 2008.

The number of patent infringement cases filed in district courts also declined in 2015, continuing from a downward point in 2013.

Roughly 5,600 patent infringement cases were filed in 2015, according to the study.

The study blamed the declines on various factors, including the US Supreme Court's 2014 Alice Corp ruling, which negatively affected software patents.

Non-practicing entities (NPEs) were found to receive damages awards three times greater than those practicing entities receive.

Universities and non-profits led in both median damages awards and overall success rates, but they only comprise a minority of NPE cases.

"Universities/non-profits do not litigate as often as other NPE types; however, when they do, they have both higher success rates and median damages," the study explained.

NPEs were awarded an average of $10 million, while practising entities’ damage awards were typically less than $5 million.

Practicing entities found greater success in bench decisions than NPEs, but both practicing entities and NPEs were more successful when juries decide their case.

Kudelski Group and Yahoo agree to end patent infringement litigation

The Kudelski Group and Yahoo have settled their patent infringement dispute.

They entered into a licensing deal on 19 May and have agreed to settle all pending litigation.

Yahoo will make a one-off licence payment to Kudelski as part of the deal.

Further details of the settlement were not disclosed by either company.

Kudelski and Yahoo have been engaged in litigation since January, when Yahoo sought a declaratory judgement that it hadn’t infringed seven OpenTV patents.

But in response Kudelski subsidiary OpenTV accused Yahoo of infringing 10 of its patents with its TV services, interactive video adverts, fantasy gaming business and Screen product.

Kudelski has been actively asserting OpenTV's patents since it bought the digital TV company in 2010. It has managed to secure multiple licensing deals.

Biosimilar company eyes up Humira in inter-partes review proceedings

An inter-partes review petition to invalidate AbbVie's dose regimen patent for rheumatism treatment Humira (adalimumab) has been approved in the US.

Coherus BioSciences confirmed on 17 May that its inter-partes review, which was filed in January, has been instituted by the Patent Trial and Appeal Board (PTAB).

Denny Lanfear, CEO of Coherus, said he was “confident” that the institution will lead to a final decision nullifying the patent.

AbbVie’s patent covers a dosing regimen in which 40 mg of Humira is administered subcutaneously every 13 to 15 days to treat rheumatoid arthritis.

Coherus is pursuing biosimilar drugs for the treatment of rheumatoid arthritis and has secured US patents for various embodiments of its adalimumab formulation technology.

Lanfear added: “We view this successful inter-partes review institution, along with the US patent office’s recent decisions to award patents to Coherus for various embodiments of its adalimumab formulation technology, as clear validation of Coherus’s leadership in biosimilar intellectual property and the effectiveness of our platform. We will continue to aggressively press forward with the development and commercialisation of our Humira biosimilar consistent with our corporate strategy.”

AbbVie has said in a statement that it will vigorously defend its patents.

Coherus is not the only company pursuing biosimilar drugs linked to adalimumab.

Last year, Amgen submitted an application to the US Food and Drug Administration for a biosimilar candidate to adalimumab.

The anti-TNF-a monoclonal antibody is already approved in many countries to treat inflammatory diseases.

The likelihood of AbbVie's patent being invalidated is high, with almost 60 percent of patent claims challenged in inter-partes review proceedings being cancelled or found unpatentable during 2014 and 2015, according to Fitzpatrick, Cella, Harper & Scinto.
High Court refuses Samsung CAT transfer in case against Unwired

Samsung’s attempt to transfer competition law features of its patent dispute with licensing company Unwired Planet has been tossed by the UK High Court of Justice.

Justice Colin Birss of the High Court denied Samsung’s petition to transfer competition law claims to the Competition Appeal Tribunal (CAT) for adjudication.

Unwired Planet sued Samsung and Huawei in March 2014 for infringing its 2G wireless technology. They counterclaimed, arguing that the licensing company breached European competition law by not issuing licences on fair, reasonable and non-discriminatory (FRAND) terms.

Samsung then asked the court to transfer the competition law claims in the case to the CAT, but Justice Birss denied the request, ruling they are too closely linked with other aspects of the case to merit a transfer.

“The transfer would give rise to very serious problems because of the connection between the transferred issues and other issues, which cannot or should not be transferred,” Justice Birss ruled.

“The competition law issues in this case arise in the context of a patent infringement claim and are closely connected with patent law and patent licensing.”

“All three approaches advanced in this case in evidence for how to arrive at a FRAND royalty rate ... call for expertise in patents, the technology to which those patents relate and patent licensing.”

“Thus, the Patents Court [within the High Court] is the appropriate forum for the case.”

The rejection marks another win for Unwired Planet, which won the third of six trials after the High Court found both Samsung and Huawei infringed its European patent in March.

Unwired Planet announced in April that it is selling its intellectual property licensing business for $30 million.

India hands patent for hepatitis C treatment to Gilead Sciences

Gilead Sciences has had its patent application for hepatitis C treatment Sovaldi (sofosbuvir) accepted in India.

The Indian Intellectual Property Office (IIPO) granted Gilead’s application for the patent, after rejecting its initial application in January last year.

The IIPO initially rejected the application on the ground of evergreening, ruling that the mere discovery of a new form of a known substance, which does not result in the enhancement of the known efficacy of the substance, is not eligible for patent protection.

Gilead appealed against the decision, with the IIPO approving the formulation and describing it as novel and inventive.

Gilead faced opposition from the Initiative for Medicines, Access and Knowledge (I-MAK) over access to the drug in certain countries. I-MAK said the treatment was too expensive. The recommended 12-week course of treatments costs $84,000 in the US, or $1,000 per pill.

But Gilead is engaged in voluntary licensing programmes with 11 generic drug makers in India. As of 26 April, the cost of Sovaldi was $384 per bottle, or around $14 per pill, in India, according to the Asia Pacific Network of People Living with HIV.

A spokesperson for Gilead commented: “We welcome news that the [IIPO] of New Delhi has granted our patent application.”

The spokesperson added: “[Our current] licensing programme enables the manufacture and distribution of high-quality, low-cost versions of the company’s medicines for HIV, hepatitis B and hepatitis C.”

NASA sends patent rights for space technology into public’s orbit

NASA has released 56 patented technologies into the public domain, making them freely available for commercial use.

The technologies were developed to advance space missions, but may have non-aerospace applications and can be used by commercial space ventures and other companies freely.

Some of the technologies include advanced manufacturing processes, sensors, propulsion methods, rocket nozzles, thrusters, aircraft wing designs and improved rocket safety and performance concepts.

NASA said the release is part of its long tradition of extending the benefits of its research and development into the public sector.

The space agency hopes the release will familiarise commercial companies with NASA tech and aid in the launch of new collaborations with the private sector.

Daniel Lockney, NASA’s technology transfer programme executive, said: “By making these technologies available in the public domain, we are helping foster a new era of innovation.”

Brexit Discussion

The referendum on the UK’s EU membership is fast approaching. How could an exit affect the unitary patent system?

People Moves

New appointments at the PTAB, Marathon Patent Group and more
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entrepreneurship that will again place America at the forefront of high-tech manufacturing and economic competitiveness."

NASA’s patent portfolio, managed by its technology transfer programme, includes more than 1,000 technologies in optics, sensors and manufacturing, and is available through licensing agreements.

**Infringement notices due in Russia**

Patent owners must notify alleged infringers of their suspected activity before filing an action in court under new changes due to be implemented in Russia in June.

President Vladimir Putin signed the new federal law on 2 March.

It stipulates that patent owners must send a notice to alleged infringers prior to a lawsuit complaint or action.

As of 1 June under the new Russian Federal Law 47-FZ, which amends the Arbitration Code, patent owners must provide alleged infringers with 30 days to respond to the notice before they can file a lawsuit.

After the period, patent owners can proceed with any litigation.

The mandatory notification requirement does not apply to corporate disputes, trademark non-use cancellation actions, and arbitration award challenges.

Vladimir Biriuin, partner at Gorodissky & Partners, said the new pre-trial procedure is a means of minimising unnecessary and expensive litigation.

He added: “We are not clear how parallel import seizures will work. In this case, only a civil action is possible and we shall probably have little time for a turnaround between a cease and desist letter and filing a suit."

“Practice will show the best line of action.”

Bayer to license sought after CRISPR-Cas9 portfolio from ERS Genomics

Bayer and ERS Genomics have signed a patent licensing deal for CRISPR genome patents.

Under the deal, Bayer will gain access to ERS’s CRISPR-Cas9 genome-editing patents for certain cross-divisional applications in its core strategic areas.

ERS holds rights to the foundational CRISPR-Cas9 patent portfolio from Dr Emmanuelle Charpentier, an inventor of the breakthrough gene-editing technology.

“We are pleased to include Bayer into our portfolio of licensees”, said Shaun Foy, CEO of ERS Genomics.

The agreement is an investment of the Bayer Lifescience Centre.

The centre recently created a joint venture with CRISPR Therapeutics to develop and commercialise new breakthrough therapies to cure blood disorders, congenital heart disease and blindness.

Alex Bouchon, head of the Bayer Lifescience Centre, said: “This is perfectly suited to fully leverage the tremendous potential of CRISPR-Cas9 gene editing within Bayer.”

“[The agreement] serves as an ideal addition to our partnership with CRISPR Therapeutics,” added Bouchon.
Life sciences examples to assist users in new guidelines from USPTO

The US Patent and Trademark Office (USPTO) has offered life sciences examples in its newest subject matter eligibility guidance for patent rights.

Under the new guidance, which was published in the Federal Register in May, life sciences examples of hypothetical cases are included to illustrate analyses for subject matter eligibility in light of the Supreme Court’s decisions in Alice Corp, Mayo and Myriad.

The examples are aimed at illustrating how patent claims can be drafted for eligibility and assist patent examiners in resolving subject matter eligibility issues in life sciences areas.

Also included in the guidance is an examiner memorandum, which seeks to improve the quality and consistency of subject matter eligibility determinations and rejections.

The memorandum also reinforces that examiners must carefully consider all of an applicant’s arguments and evidence, and either withdraw the rejection when the response is persuasive, or provide a rebuttal when the rejection is maintained.

The USPTO said that the memorandum should lead to greater consistency throughout the patent examination stages.

The new guidance was issued following a period of consultation last year. The new proposals have no deadline for fresh comments from interested parties.

Valipat and Envoy combine to boost IP administration services

Intellectual property administrative service providers Valipat and Envoy International have decided to combine.

IP renewal and annuity service company Envoy and European validation provider Valipat are combining their assets to be in a better position to answer new challenges and provide solutions that offer self-service, cost prediction, transparency and integration.

The combined company will boast more than 100 employees. The newly joined management team intends to launch a phased 18-month plan, which will result in seamless integration between the services.

Patrice Durand, CEO of Valipat, commented: “Envoy and Valipat have always been considered as companies with similar DNA, sharing a common vision about the special care that is required when it comes to providing IP administrative services.”

“The preparation of the merger has certainly confirmed this view and we are most delighted at the prospect of working with David and his team in this amazing project.”

Both companies will continue to operate from their offices in Belgium and the UK.

“This is an exciting time for Envoy,” added David Kennedy, Envoy CEO. “With the help of Valipat we will be able to offer these additional services sooner, while continuing to offer the same high level of customer care and service on which we have built our reputation.

Database patents pass Alice Corp test

Database patents deemed invalid as abstract under the Alice Corp v CLS Bank decision have passed the test, according to the USPTO.

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been reinstated by the US Court of Appeals for the Federal Circuit in Microsoft’s lawsuit with software company Enfish.

In the 12 May decision, the Federal Circuit vacated the District Court for the Central District of California’s finding of invalidity, but confirmed that Microsoft hadn’t infringed.

Enfish originally accused Microsoft of infringing two patents for a self-referential database with its data-sharing software product Ado.Net.

But the California district court issued a summary judgement finding all of the claims invalid under Section 101 and some invalid as anticipated under Section 102. It also ruled that Microsoft did not infringe.

Section 101 of the Patents Act stipulates that abstract ideas cannot be patented.

The Supreme Court’s Alice decision clarified in 2014 that implementing an abstract idea using a computer does not make it eligible for protection.

Any patent claims must satisfy a two-part transformation test, according to that ruling. Enfish appealed against the California district court’s decision, challenging its summary judgement findings. Backing Enfish, the Federal Circuit that the claims at issue are not directed to an abstract idea within the meaning of Alice.

“Rather, they are directed to a specific improvement to the way computers operate, embodied in the self-referential table,” the Federal Circuit ruled.

The Federal Circuit also affirmed the summary judgement finding of non-infringement.

Indian government releases new policy on intellectual property

A new policy aimed at promoting and developing intellectual property in India has been released.

The National Intellectual Property Rights Policy was approved on 12 May.

Seven objectives were proposed under the new policy, including raising awareness about IP, so that the public understands its economic, social and cultural benefits.

India also aims to strengthen its enforcement and adjudicatory mechanisms for fighting IP rights infringement.

India also wants to encourage generation, use and commercialisation, and invest in the skills necessary to create a viable IP ecosystem in the country.

The Department of Industrial Policy & Promotion will coordinate, guide and oversee implementation of the policy in India.

US ITC agrees to hear hybrid patent complaint against VW

The US International Trade Commission (ITC) has agreed to launch an investigation into Volkswagen’s hybrid electric vehicles.

The investigation centres on Volkswagen, Audi, and Porsche vehicles imported into the US, where Volkswagen is under significant scrutiny and was forced to suspend sales of its diesel vehicles last year.

Paice, which co-owns the three asserted hybrid technology patents with the Abell Foundation, a start-up investment charity,
filed the complaint in April. The ITC has the power to block imports of goods found to have infringed US patents.

The company claims that Volkswagen ended a collaboration in 2004 that saw Paice engineers share patented hybrid technology.

Volkswagen management also reportedly promised to put the technology into production before ending the partnership and refocusing on ‘clean diesels’ that would later be found to have been tampered with to meet US emissions targets.

“Now that the Volkswagen Group has been forced to stop selling its current diesel vehicle models in the US, it has recommitted to focusing a large part of its development on hybrid vehicles for the Volkswagen, Audi and Porsche brands,” Paice claimed in a statement.

“It’s clear that the ITC takes our claims seriously and believes a full investigation is warranted,” commented Paice CEO Robert Oswald.

“This investigation will prove that Volkswagen, Audi, and Porsche are using our patented hybrid vehicle technology without a licence and should not be allowed to import these vehicles into the US.”

Paice currently has global licensing deals with Toyota, Hyundai and Kia, and previously licensed portions of its technology to Ford.

It has also won previous patent infringement lawsuits against Toyota, Hyundai and Kia, and is currently involved in litigation against Ford.

Volkswagen has not commented publicly on the ITC investigation.

Tech company Patent purchase programme launches in the US

Technology-based companies including Facebook, Microsoft and Google have teamed up to create a marketplace for purchasing patents.

The industry patent purchase programme, known as IP3, will allow patent owners to sell their patents through a portal, which opened on 25 May and runs until 8 June.

If a participating member is interested, it will inform the owner of an offer by the end of July.

Defensive patent aggregator Allied Security Trust will run IP3 on behalf of members, which also include Cisco, Ford, IBM, Adobe, SAP, Honda, Hyundai, Kia Motors, Verizon and Arris.

As part of IP3, participating members are required to pledge not to sue each other.

“Allied Security Trust is always looking for innovative ways to make the patent marketplace work better for our members and patent sellers,” commented Russell Binns Jr, CEO of Allied Security Trust. “Our IP3 programme is a first of its kind industry programme designed to give sellers an easy way to access the secondary market by streamlining the process of selling patents.”

IP3 is modelled on Google’s Patent Purchase Promotion marketplace, which was set up last year to enable patent owners to sell their patents directly to the internet company.

Binns added: “IP3 goes a step further, giving sellers the ability to reach across multiple industries and make the patent marketplace operate more efficiently for everyone.”

Huawei accuses Samsung

Huawei has filed infringement complaints against Samsung in China and the US over the use of smartphone software and cellular communications technology. The company filed suits in Shenzhen and the Northern District of California, asserting 12 patents.

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The referendum on the UK’s EU membership is fast approaching. How could an exit affect the unitary patent system?

The UK’s position within the upcoming unitary patent system is unclear as the referendum on jurisdiction’s EU membership looms ever closer. With Brits going to the polls on 23 June, the opposing sides are pushing their arguments as to why the UK should stay in or leave the EU. But an EU-wide patent is far from top of the agenda.

“The unitary patent system and the UK being in [the EU] are heavily linked,” argues Edward Nodder, partner at Bristows. “UK participation in the Unified Patent Court (UPC) is pretty fundamental—there is an expectation that English judges will be important and the English language will be dominant, and common law parts of the rules are critical.”

Adam Cooke, partner at DLA Piper, says: “If the UK were no longer to participate in the unitary patent system/UPC, the viability of the whole project could well be at stake as about half of European patents are only validated in the UK, France and Germany.”

The economical argument for the UK’s continued membership of the EU has been front and centre for the Remain camp, with the Treasury predicting that the country would lose at least £2,600 in GDP per household after 15 years.

The monetary value of the unitary patent system should not be underestimated either, according to Paul Chapman, partner at Marks & Clerk.

He says: “If the UK votes to leave the EU, it will increase costs for companies wanting to obtain patent protection in the UK.”

The unitary patent system is primarily aimed at reducing the cost of securing patent protection in Europe, so that EU member states can compete with the US.

Without EU-wide protection and a court in which to protect it, that aim is being forgotten.

Nodder says: “At the highest level, it was thought that obtaining patents and enforcing them in Europe was currently too expensive, slow and complicated, compared to the US (and how things were likely to become in China and other rising economies). Not having the unitary patent and UPC will perpetuate those disadvantages.”

There is also a chance that a UK exit could put the whole project at risk. The agreement behind the UPC will not be ratified until 13 signatories give their approval and, as it currently stands, the UK, France and Germany must be among them.

Nodder says: “It’s more likely people would say that the UPC just does not make legal or economic sense without the UK, and maybe countries won’t bother ratifying, and the unitary patent system and UPC will just die.”

Not all negative

There are some who would prefer the UK to stand outside of the unitary patent system, given the size of the market.

Nodder says “For companies that expect to be attacked under patents like generic drug companies, I think they would prefer a system where the UK was separate and the attacking party had to bring two lots of proceedings—one via the UPC and one in the UK Patents Court.”

This also probably true of licensing companies whose patents are their only business. Costly and repetitive litigation makes invalidating patents more than most can stomach. A standard European patent must be litigated in every jurisdiction it has been validated in, so a finding of invalidity in one country does not affect the patent in another. The UPC and unitary patent, on the other hand, offer the opportunity to knock out a patent in one fell swoop.

“It’s probably going to be more patent-friendly compared to the UK courts (some give the UK the nickname of the patent killing field). So for those who are worried about having valuable patents cancelled, being outside the UPC would not be a problem,” says Nodder.

But the UK would be much better off if it could participate in the unitary patent system, argues Cooke.

He summaries: “If the UK votes against Brexit and remains in the EU, the unitary patent system/UPC could well become a reality by early May next year. As the UK is one of the largest markets in the EU, its participation in the unitary patent/UPC is not only crucial for the project but also represents an invaluable opportunity for businesses, whether located in the UK or elsewhere.”

“Brexit would also be bad for UK lawyers as they would not be able to represent clients before the UPC. And the UPC would also be deprived of the participation of UK judges.”
David Ruschke has been appointed as chief judge of the Patent Trial and Appeal Board.

He took up his new role at the US Patent and Trademark Office (USPTO) on 23 May.

Ruschke previously managed the intellectual property portfolio of Medtronic’s coronary and structural heart business. He participated in numerous patent appeals and post-grant reviews.

Michelle Lee, director of the USPTO, said: “Ruschke’s breadth of experience in global patent opposition proceedings and his deep understanding of IP positions him perfectly to lead our board well into the future.”

Ruschke’s appointment allows Nathan Kelley to return to his position in the USPTO’s office of the solicitor to serve as the deputy general counsel for IP law.

Kelley served as acting chief judge for 10 months.

Marathon Patent Group has appointed Erich Spangenberg as director of acquisitions, licensing and strategy.

He will primarily focus on acquisitions, licensing, alliances and strategy for Marathon, with an emphasis on the company’s expansion into Asia and Europe.

Doug Croxall, CEO of Marathon, said: “Spangenberg is well known in the IP industry and was always my top choice to advise on strategy.”

Spangenberg previously founded IP Navigation Group, and is the founder and former CEO of patent licensing company nXn Partners.

Spangenberg said: “The patent market is in turmoil and under incredible pressure, so this is exactly the time I want to jump back in and join Doug Croxall and the rest of the Marathon team at what I believe is a historic point of opportunity in the patent market.”

Andy Culbert, previously associate general counsel at Microsoft, has joined Perkins Coie as partner.

As associate general counsel at Microsoft, Culbert managed all of company’s worldwide IP litigation, including supervising outside counsel and directing cases.

He also led several landmark patent cases and represented Microsoft in patent policy matters.

Culbert will split his time between Perkins Coie and teaching IP law at the University of Washington School of Law.

Fox Rothschild has recruited Brian Rothery as partner in the firm’s IP department.

Rothery provides plaintiffs and defendants with insight in patent issues involving diverse technologies such as medical devices, robotic devices, mechanical equipment and semiconductors.

He also counsels clients on the development and management of international and domestic IP portfolios for patents, trademarks and trade secrets.

Michael Slapo, managing partner of the New York office, said: “Rothery bolsters our already strong IP practice in New York, and his experience with patent issues for life sciences companies and other businesses will be an asset for clients regionally and nationally.”