Patent Litigation in Nevada (Part 2)

By Marketa Trimble, Associate Professor of Law

In 2014 I will follow my earlier blog posts about patenting in Nevada (here and here) and patent litigation in Nevada (here) and discuss detailed statistics about patent litigation before the U.S. District Court for the District of Nevada. I derived the data used in this blog post from the Lex Machina database (here), and the statistics that I compiled from the data reflect information available in the database as of January 2014.

Figure 1 compares the numbers of patent cases filed in the U.S. District Court for the District of Nevada in 2000-2013 (gray columns) with the numbers of patent cases filed in those years in U.S. district courts U.S.-wide, including in Nevada (orange columns, in hundreds of cases).

In 2013 the number of patent cases filed continued to rise after the growth in the numbers experienced in 2009-2012, and reached 6,112 cases filed U.S.-wide in 2013. This number was an increase of 13% from 2012 (when 5,420 cases were filed), an increase of 73% from 2011 (3,529 cases), and an increase of 125% from 2010 (2,714 cases). In other words, there were more than twice as many patent cases filed in the United States in 2013 than were filed in 2010.

The development in the numbers of patent lawsuits filed in Nevada was different although the numbers grew as well; the 2013 Nevada number (43 cases) was an increase of 34% from 2012 (when 32 cases were filed), an increase of 43% from 2011 (30 cases), and an increase of 54% from 2010 (28 cases). As Figure 1 shows, while the U.S.-wide numbers jumped substantially from 2011 to 2012, the Nevada numbers grew substantially from 2009 to 2010 (from 15 to 28 cases) and from 2012 to 2013 (from 32 to 43 cases).

Figure 2 shows the types of claims that were included in the patent lawsuits filed in the U.S. District Court for the District of Nevada in 2010-2013. Most of the cases were brought by patent holders who claimed that one or more of their U.S. patents were infringed (blue columns). A smaller number of cases were filed by pharmaceutical companies as actions for infringement against biotech companies who are accused to infringe the patents.

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The data in Figure 2 are rather typical for the U.S. patent litigation landscape, although the numbers of NDA/ANDA actions might be surprising because Nevada is not perceived as a center of the pharmaceutical industry. In 2012 NDA/ANDA actions represented 16% of patent cases filed in Nevada, while this type of action represented, for example, only 5% of all patent suits filed in 2012 in the U.S. District Court for the District of Delaware. However, it is important to remember that the percentage in Nevada translates into only a handful of cases (compared to 51 cases in Delaware). In 2013, four out of six NDA/ANDA actions filed in Nevada that year were filed i.a. against Watson Laboratories, Inc., which is a Nevada corporation and a subsidiary of Watson Pharmaceuticals, Inc. (now Actavis, Inc.) with its global headquarters in Ireland. Note that plaintiffs do not have to file patent lawsuits where defendants reside, are incorporated, or have their principal place of business, and one of my upcoming blog posts will analyze the origins of defendants who have been sued in Nevada.

Figure 3 confirms another general trend in the patent litigation landscape — that most patent cases settle (see, e.g., here). Frequently they do not enter the trial phase and settle either after the claim construction hearing (in which the meaning of a patent is clarified) or even earlier. Figure 3 shows that in Nevada the typical types of terminations of patent cases that were filed in 2010-2013 (of the cases that were terminated by January 2014) were voluntary dismissals by the plaintiff or stipulated dismissals. By January 2014, 96% of patent cases filed in Nevada in 2010 were terminated, 67% of cases filed in 2011, 63% of cases filed in 2012, and 40% of cases filed in 2013.

The charts in this blog post were prepared based on data available in the Lex Machina database as of January 2014.

Professor Trimble welcomes any citing or quoting of this blog post or reposting of the entire blog post and/or the figures; however, she requests that you cite the author and title of the blog post and include a link to this page.