In my last blog post (here) I presented general data about patent cases filed in the U.S. District Court for the District of Nevada. In this post I will present data describing parties that were or are still involved in patent cases filed in the District Court in 2010-2013.

Because of the current nationwide interest in the “patent troll” phenomenon, which even featured in President Obama’s State of the Union Address last week (although disguised under the more general “innovation, not costly, needless litigation” theme), it is appropriate to begin an analysis of parties through the prism of this phenomenon. Patent trolls are persons or entities that own one or multiple patents and enforce their patent rights aggressively, sometimes using objectionable enforcement practices. Patent trolls are what “non-practicing entities” are often regarded as, because these entities own patents but do not manufacture any products or provide any services (other than the enforcement of patent rights). The latest term used to describe these kinds of entities is “patent-assertion entities.” In fact, no term captures well what the phenomenon represents, which remains subject to disagreements among commentators. Generally, critics accuse patent trolls of burdening “practicing” entities and the U.S. court system by filing suits against multiple defendants and enforcing patents of questionable validity. Patent troll defendants point out that trolls serve some positive functions in the patent landscape, that the U.S. patent system does not require patent owners to practice their own patents, and that the system does allow patent owners to enforce their own patents. Nevertheless, the phenomenon is a burden on the economy, and experts, industry representatives, the White House, and Congress are seeking ways to limit patent troll activity.

One way to search for patent trolls is to focus on “repeat plaintiffs” – parties that have filed multiple patent cases. For example, I looked for plaintiffs who filed patent cases in Nevada in 2010-2013 and were involved as plaintiffs in ten or more patent cases filed in any U.S. district court in 2000-2013. Based on these criteria I identified 22 plaintiffs; they filed 52 patent cases in Nevada in 2010-2013. Figure 1 shows that in 2010-2013 these repeat plaintiffs filed between 10 and 18 cases in Nevada each year, which was 50%, 33%, 31%, and 42%, respectively, of patent cases filed in Nevada in those years.

It would be a mistake to conclude that all repeat plaintiffs in Nevada are “patent trolls.” Out of the 22 different repeat plaintiffs, 16 (73%) were practicing entities that typically are not considered to be patent trolls: seven were pharmaceutical companies and nine were other practicing entities, such as Nike, Inc., Koninklijke Philips N.V., and Robert Bosch LLC. Six out of the 22
Repeat plaintiffs do appear to fit some definition of patent troll—they seem to be non-practicing entities that specialize in patent enforcement. These six plaintiffs filed a total of nine lawsuits in Nevada in 2010-2013, meaning 7% of all patent cases filed in Nevada during that period.

Repeat plaintiffs are not always patent trolls, and patent trolls are not always repeat plaintiffs; new patent trolls may emerge that have not yet filed many lawsuits, and old patent trolls may have changed their names or spun off different subsidiaries. Depending on the definition of patent troll, patent trolls filed between 20 and 27 lawsuits in Nevada in 2010-2013, which is 15-20% of all patent suits filed in Nevada during that period. These percentages are substantially lower than the nationwide percentages suggested by various empirical studies; for example, according to some studies, in 2012 “patent assertion” or “non-practicing entities” filed between 50% (here) and 62% (here) of patent cases in U.S. district courts (cf. 25% in Nevada in 2012).

As for the domicile of parties that are involved in patent litigation in Nevada, Figure 2 shows that not all cases filed in the U.S. District Court for the District of Nevada involve parties that reside, are incorporated, or have their principal place of business in Nevada. In 2010, 50% of cases filed that year did not involve any parties from Nevada, and only 25% of cases were filed against a Nevada party (including cases in which multiple parties were sued and a Nevada party was one of them). Of the cases filed in 2013, 84% involved Nevada parties, and 30% were filed against a Nevada party or multiple parties that included a Nevada party.

Figure 3 shows foreign-country domiciles. For the purposes of the statistics reported here, each case was coded for the domicile of the parties involved in the case; each case was coded only once for each country represented among plaintiffs and among defendants. Green columns represent countries’ appearances on the plaintiffs’ side and red columns represent countries’ appearances on the defendants’ side. Parties from 18 foreign countries were involved in patent cases filed in Nevada in 2010-2013. Most of the cases (72%) had U.S. parties involved on both sides of the dispute—either U.S. parties only or U.S. parties together with foreign parties. In 26% of the cases one side of the dispute involved only foreign parties, and in two cases there were only foreign parties on both sides of the dispute. Of course it is important to note that the statistics in Figure 3 do not provide a perfectly accurate picture of the global nature of patent litigation because some parties with a global presence were acting through their U.S. subsidiaries.

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.