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## Utility Patent Highlights from the IPO's 2013 IP Record

By Mark W. Rygiel

The Intellectual Property Owners Association (IPO) releases an annual report containing statistics on patent activity in the United States and in the top five patent offices around the world. The 2013 IP Record draws on sources such as the USPTO Performance and Accountability Report FY 2012, U.S. District Courts Annual Report 2012, WIPO Statistics Database, WIPO 2012 World Intellectual Property Indicators, and international patent offices to provide a broad overview of the global patent landscape. Using these sources and comparing annual statistics to those of past years' reports, we can learn about trends in patent prosecution and litigation as well as in research, innovation and business development.

### Top Patent Holders

The IPO compiles a list of the year's top utility patent owners and compares growth and decline in patent filings year-to-year. IBM held onto to its #1 ranking, securing 6,457 patents in FY 2012, a 5% increase from 2011. Samsung returned as the second-highest ranking company, securing 5,043 patent issuances in 2012, which is 175 more than it did in 2011. The third spot was filled by Sony, the #8 company of 2011, which saw a 59.3% increase in patent issuances to reach a total of 3,608 secured utility patents in 2012. The top ten list of grantees was completed with Canon (3,307 patents), Panasonic (2,829), Hitachi (2,723), Microsoft (2,704), LG Electronics (2,682), Toshiba (2,601), and G.E. (2,040).

The majority of the top entries are multinational, conglomerate companies with substantial holdings by their subsidiaries. Year to year, these companies fluctuate in the rankings of top patent grantees. The IPO notes that "the percent change for an individual organization could be affected by mergers, acquisitions, divestitures, inconsistent treatment of subsidiaries in 2011 and 2012, and many other factors." Not surprisingly, only two of the top 150 patent owners of 2012 are new entities on the list, one of which is a subsidiary of Samsung. Even considering these factors, there are interesting findings of note. More companies are securing more patents. In 2011, 23 companies obtained over one thousand patents. In 2012, the top 34 companies all successfully registered over one thousand patents. Many of the top 25 patent owners of 2012 made large increases in patent registration volume to secure their space in the upper rankings. Perhaps the most notable entrant is Google, which made a 170.2% increase in patent registrations, moving from #74 in 2011 to #23 in 2012. Only four out of the top 25 companies decreased in the number of patents obtained, and all decreases were under 5%. All but six companies in the top 50 increased their patent registrations in 2012.

### The USPTO

Patent applications for utility patents at the United States Patent & Trademark Office (USPTO) have been on the rise since 2009. In 2012, an all-time high of 530,915 applications for utility patents were filed and 246,464 patents were granted.

With the passage of the America Invents Act and the introduction of new methods to challenge patents, the USPTO aimed to change (and improve) the existing patent regime. Since 2011, both patent pendency time and first office action times for utility, plant, and reissue patent applications have decreased. Patent pendency time has decreased from 33.7 months to 32.4 months. The average number of months before first office action decreased from 28 months to 21.9 months. Since 2009, there has been an increase in requests for continued examination. The increase has been accompanied by an increasing backlog (as of January 2013, the backlog was at 109,000 pending requests).

The decline of *ex parte* requests for reexamination of utility patents from 2010 onward suggests that patent holders and petitioners are increasingly turning towards new contested proceedings such as *inter partes* review (IPR) and covered business method (CBM) review. This year's report notes that requests for IPRs continue to increase since its implementation last year.

## District Courts and the Federal Circuit

At the end of FY 2012, there were 5,189 patent lawsuits filed in the U.S. District Courts in 2012, a 1,174 increase from the previous year. 5,399 patent lawsuits are pending. At the U.S. Court of Appeals for the Federal Circuit, 45% of cases in FY 2012 were patent lawsuits (2% were trademark). 471 patent infringement cases were filed in 2012 compared to the 426 filings in 2011. By the end of the fiscal year, 100 patent infringement cases originating at the USPTO were pending. By December 2012, 88 cases were pending. Statistics for lawsuits (utility and design) originating in the U.S. District Courts or at the ITC are available but do not account specifically for intellectual property cases.

Median times to disposition of appeals increased since 2011 for suits originating in all venues including the USPTO, United States District Courts, and the International Trade Commission (ITC). Section 337 ITC investigations, which saw a sharp increase from 2009 to 2010 and a sizeable increase from 2010 to 2011 (perhaps from the influx of smartphone-related cases handled before the ITC), decreased from 2011's 69 investigations to 2012's 40.

## Worldwide

While the USPTO and Korean Patent Office (KPO) saw modest yearly increases in application filings, the Chinese Patent Office (SIPO) saw a significant 135,235 patent application increase from 2010 to 2011. Despite this sizeable 35% rise in patent filings, a smaller proportion of those applications were filed by non-residents.

The Japanese Patent Office (JPO) and European Patent Office (EPO) saw modest declines in patent filings from 2011 and 2012. The JPO has experienced a pattern of decline in patent application filings since the early 2000s. However, Japan has increased its PCT filings by 20.9%, submitting 38,874 applications in 2012. This accounts for the second-highest number of PCT filings (behind the United States with 49,501 filings). The next top international filers are Germany (18,852 applications), China (16,402), Korea (10,477), and France (7,438). Despite decreasing growth starting in 2006 and a -4.8% decline in 2009, international filings are again on the rise—PCT filings increased 11% in 2011.

## About the Author

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