

The Greening of Patent Litigation

Issued patents are one indicator of innovation in clean energy technology, and recent litigation in this sector indicates the technology is becoming financially viable to justify patent enforcement. Several cases filed in the federal courts reveals the increasing importance of clean energy patents.

A significant case involving one of the largest wind turbine manufacturers in the world, Enercon, emerged ten years ago. In *Enercon v. ITC*, the ITC excluded Enercon's variable speed wind turbines from entering the US after Kenetech Windpower filed a complaint alleging that Enercon's wind turbines infringed its patents for controlling AC power output. The Federal Circuit affirmed the ITC's decision, prohibiting Enercon from importing its wind turbines into the US until 2010. In *Southwest Windpower v. Aeromax*, Southwest, a manufacturer of small wind turbines, claimed that Aeromax's wind turbines infringed its patent. An Arizona court issued an injunction prohibiting sales of Aeromax's wind turbine. In *Gamesa Eolica, v. General Electric*, Gamesa claimed that GE infringed its patent directed to a speed wind turbine that converts variable frequency AC to fixed frequency AC and maneuvers turbine speed to increase efficiency. A Wisconsin court found no infringement in favor of GE.

In *Paice v. Toyota*, Paice claimed that Toyota's hybrid vehicles included a drive train similar to one covered by its patents. A Texas court held that Toyota infringed Paice's patent, but denied an injunction and allowed Toyota to continue selling its hybrid cars for a royalty payment of \$25 for each car sold during the life of the patent. The case was affirmed on appeal. In *Ovonic v. Matsushita*, in Michigan, Ovonic claimed Matsushita's hybrid electric vehicles infringed its patents covering nickel metal hydride batteries. The parties ultimately entered



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into a settlement agreement that included a cross-license and a combined license fee of \$30 million. In *Maxwell Technologies v. NessCap*, a California case, Maxwell, a manufacturer of ultracapacitors for hybrid cars and renewable energy sources, filed a complaint against Nesscap, a Korean competitor, to enforce its patents related to electric double layer capacitors. The court entered a preliminary injunction enjoining NessCap from selling its prismatic ultracapacitor products. Then, in January 2007, Nesscap filed its own suit against Maxwell, alleging that Maxwell's ultracapacitors infringe a NessCap patent. Both cases remain pending.

Other pending cases include, *ReliOn, Inc. v. Hydra Fuel Cell*, in which ReliOn claims Hydra infringed its patent directed to fuel cell power systems, and *Quantum Catalytics v. Ze-gen*, in which Quantum alleges its waste service competitors infringe numerous patents directed to gasification methods for creating compounds from waste, such as hydrogen and carbon monoxide, that can be used to generate electricity.

The existence of clean energy patent cases throughout the country is evidence of the substantial value of these patents and, if the market for clean energy continues to grow, the number of patent cases is likely to increase as more patents are granted.