

Statistics For Adversarial PTAB Proceedings for FY 2013

By Rick Neifeld, Neifeld IP Law, PC¹

I. INTRODUCTION

The Patent Trial and Appeal Board (PTAB) or Board has traditionally acted to decide a large number of ex parte appeals and a small number of inter partes adversarial cases. These included patent interferences, and later in time "determinations" for atomic energy inventions. The America Invents Act (AIA): expanded the Board jurisdiction to validity trials involving issued patents (in the IPR, PGR, and CBM) proceedings, shrunk the Board jurisdiction by removing the legal basis for interferences and replacing that with the much more limited legal basis for derivation proceedings (DERs) for patent applications filed after 3/16/2103. It is interesting to see how this has affected the adversarial cases handled by the Board.

Interference proceedings may be reviewed using the patent interference web portal. PGR, IPR, CBM, and DER proceedings may be reviewed using the PRPS portal. From the patent interference web portal and PRPS I assembled rudimentary statistics to see the work load trend for adversarial cases before the Board. I do not include inter partes reexamination appeals, because it would be difficult to do so, and because those cases are based upon examination but also because these are not adversarial cases.

II. STATISTICS AND TRENDS

The government fiscal year ended 9/30/2013. PRPS therefore started numbering cases "2014" as of today, 10/1/2014. There are 2 IPRs, having "2014" case numbers, both filed by Intel 9/30/2013, but given case numbers IPR2014-00001 and-00002. There was one CBM, CBM2014-0001, filed today, and entered into PRPS today. I exclude those from the 2013 counts below.

2013 IPRs

2013 IPR filings, per month, follow.

8/31-9/30 - 75

7/31-8/31 - 64

6/30-7/31 - 69

5/31-6/30 - 68

4/30-5/31 - 47

3/31-4/30 - 27

2/28-3/31 - 39

1/31-2/28 - 30

12/31-1/31 - 26

The trend is that IPR filings continue to accelerate.

2013 PGRs

There was one improvidently filed PGR in 2013 that shows up in PRPS. That proceeding was not instituted.

2013 DERs

There are no DERs appearing in PRPS. However, we have heard from PTO officials that at least some DER petitions were filed and do not show up in PRPS.

2013 CBMs

There were 48 CBMs filed and docketed as "2013" CBM cases. CBMs filed, per quarter, follows:

10/1/2012 to 1/1/2013 - 7

1/1/2013 to 4/1/2013 - 2

4/1/2013 - 7/1/2013 - 19

7/1/2013 - 10/1/2013 - 20

The trend is that CBM filings continue to accelerate.

2013 Interferences

The interference web portal is less useful than PRPS. However, from 10/1/2012 to 10/1/2013, I count only 53 allocated PTAB docket numbers, 105914 to 105967, for interferences. And some of those allocated numbers did not result in declared interferences available in the interference web portal. The statistics below assume however that all numbers in the sequence 105914 to 105967 correspond to declared interferences.

Interferences declared, per quarter, follow:

10/1/2012 - 1/1/2013 - 1

1/1/2013 - 4/1/2013 - 7

4/1/2013 - 7/1/2013 - 31

7/1/2013-10/1/2013 - 13

No trend is apparent in interference declarations. We can however expect interference declarations to trend down to zero over the next 19 years.

1. I can be reached via telephone at 7034150012 or via the firm website: Neifeld.com