

3 IP Battles To Watch As Drilling Frenzy Heats Up

By **Keith Goldberg**

Law360, New York (September 04, 2013, 7:01 PM ET) -- The U.S. oil and gas boom has sparked another boom within the industry: fights over the intellectual property that gets the drills spinning.

With the pressure on companies to drill more quickly and efficiently, they're increasingly seeking to protect the technologies they've developed that allow them to do so, attorneys say.

"If you simply look at the IP filings in the U.S. Southern District of Texas, you see a number of them involve the oil patch," said Lee Kaplan of Houston litigation firm Smyser Kaplan & Veselka LLP, who's handled several patent trials involving onshore and offshore oil and gas technology. "With the business becoming more computerized, you're going to see more litigation."

The IP battle is getting especially heated in the oil field services business, where technology advances are key to companies' survival, attorneys say.

"Finding new ways to do things in the oil patch has always been paramount to the services companies to stay ahead," said Glenn Ballard Jr., who heads Bracewell & Giuliani LLP's trial section. "In this time of enhanced and new activity, it has become even more important."

And with a wave of consolidation hitting the oil field services industry, expect the patent battles to increase, according to C. Erik Hawes, a partner in Morgan Lewis & Bockius LLP's litigation and intellectual property practice.

"Patent litigation is expensive, so smaller companies are sometimes unable or unwilling to incur the cost of enforcing a patent, even if it's clearly being infringed," Hawes said. "More and more of the patents in this area are winding up in the hands of the larger players who are in a much better position to pursue potential infringers."

Here, attorneys identify three areas of the oil and gas sector that figure to be major IP battlegrounds.

Offshore Drilling Technology

As more and more companies venture offshore in the search for oil and gas, as well as into deeper waters, they're also aggressively looking to protect the drilling technologies get them there, attorneys say.

"You always have the subsea patents going strong: anything that allows companies to drill deeper and transport the oil and gas," Ballard said.

In one recent example, a Texas federal jury awarded a unit of oil field services giant Schlumberger Ltd. \$106 million in August 2012 after concluding that Ion Geophysical Corp. infringed seismic surveying patents that are used in marine oil exploration. In June 2013, a Texas federal judge agreed to tack on an additional award of damages.

Offshore drilling patents take on even more importance when you consider that deepwater drilling is tremendously expensive and risky to carry out. Things such as new drill bit technology or safety devices can be especially lucrative, and therefore ripe for IP battles, attorneys say.

"When you're drilling 10,000 feet below the surface and have 5,000 feet of water to get through, everyone looks to cut costs through innovation," Kaplan said. "And, in the wake of the Deepwater Horizon tragedy and increased public awareness of spills and injuries, safety concerns also demand innovation. Innovation means patent protection, which means litigation."

Operations Software

Software has taken center stage in the global smartphone patent wars, and while attorneys question whether the oil and gas patent wars will command as much attention, they say any software that makes oil and gas operations more efficient will be a major driver of patent litigation.

"As we go from merely mechanical devices to devices that involve computerization and very complicated software, more litigation is inevitable," Kaplan said.

There's always room for improvement and further innovation when it comes to software used to operate drilling devices or oil and gas wells, according to Jim Klaiber, a partner in Pryor Cashman LLP's intellectual property group.

"Sensor technology, high-pressure technology that could be used in wells — that's certainly an area where you will see a lot of patent activity," Klaiber said. "If you're measuring things differently and more accurately, and can use it to extract more oil and gas, that's going to be very valuable."

Liquid Fuel Technologies

With the price of natural gas now at historic lows, companies are finding the most value in liquid fuels such as oil and natural gas. That means they will be more inclined to aggressively protect technologies that allow them to drill and produce those liquids more efficiently, according to Ropes & Gray LLP partner William McCabe, a former refinery startup engineer.

"[Gas production technology] doesn't seem to be as profitable as it could be, so it may not be as juicy a target as ... the liquid side," McCabe said. "On the oil side, I think what you see is tremendous value to liquid oil, whether it's deepwater or onshore. If oil sands go anywhere, you have key players who have invested a lot in developing technology and getting patents in that area."

--Additional reporting by Jeremy Heallen. Editing by Elizabeth Bowen and Chris Yates.