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US patent litigation surges in February, driven by software cases

The number of patent lawsuits being filed in 2015 so far is higher than that seen in 2014. This has been driven by a surge in software patent cases, which last month had the largest number of lawsuits filed since April last year. **Michael Loney** reports

US district court patent lawsuit filing has been surging so far this year, when compared to the same period last year as well as a slump in filing in the second half of 2014. This year's level is below that seen in 2013, however.

According to the Docket Navigator database, 499 patent litigation cases were filed in February this year. This was the third straight month-on-month increase in patent lawsuit filing.

February's figure was up 11% on the 451 cases filed in January. The January figure had been up 2.5% on December's 440 cases, which was itself up 32% on November's 334 cases.

Litigation is not only up when compared month-on-month – the filing numbers so far this year are also up when compared with the same month in the previous year.

February was up 11% on the 448 cases in February 2014, while January was up 36% on the 332 cases in January 2014. This followed a more modest 3% increase in December 2014 over December 2013's 427 cases filed.

These figures are in contrast to a trend of declining patent liti-

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Overall patent lawsuits filed

Month	2013	2014	2015
January	486	332	451
February	550	448	499
March	405	500	
April	605	683	
May	504	390	
June	485	416	
July	476	423	
August	522	395	
September	554	321	
October	515	342	
November	580	334	
December	427	440	
Total for year	6109	5024	

Source: Docket Navigator

Lawsuits filed including patent classes 700-720 and 725

Month	2013	2014	2015
January	243	153	196
February	294	244	290
March	216	244	
April	261	388	
May	250	195	
June	229	189	
July	191	171	
August	245	137	
September	247	120	
October	280	138	
November	277	149	
December	217	188	
Total for year	2950	2316	

Source: Docket Navigator

gation in the second half of 2014. The number of cases filed in every month from May 2014 to November 2014 was down when compared with the same month the previous year. This drop had been attributed to the effect of the Supreme Court's *Alice v CLS Bank* ruling in June 2014 and the effect Patent Trial and Appeal Board proceedings was having.

Two newcomers, and a familiar face

February's figures included an especially busy day on February 6, when 75 cases were filed. This included 30 cases filed by Avioniqs against Airlines, alleging infringement of a patent for a lightening detection system. These were the first ever patent lawsuits filed by the company.

That same day Rothschild Connected Devices filed 15 patent lawsuits against electronics companies, alleging infringement of a method of enabling a user to customise products containing solids or fluids by allowing a sever communicating over a computer network. It followed it up with three more suits on February 9. These were also the first ever patent lawsuits filed by the company.

While these two companies may be newcomers, February also saw action from a familiar non-practicing entity. ArrivalStar continued to ramp up its litigation activity after taking a pause for most of 2014.

It filed three lawsuits on February 19 (against zulily, Linea, and Oriental Trading) and two more on February 23 (against MGN Logistics and Solmar-Universal Tanker Chartering).

This followed four lawsuits in January – against Demandware, Urban Outfitters, L'Oreal and Pizza Hut – bringing its total for 2015 to nine lawsuits so far.

ArrivalStar filed its first six lawsuits of 2014 in November and followed up with one more in December. In the recent cases, the company alleges infringement of three patents that have been the subject of hundreds of previous case.

ArrivalStar//Melvino was the third-biggest NPE lawsuit filer of 2013, according to RPX figures, filing 137 cases. The company attracted attention for suing public transport entities, alleging infringement of patents covering live transit alerts.

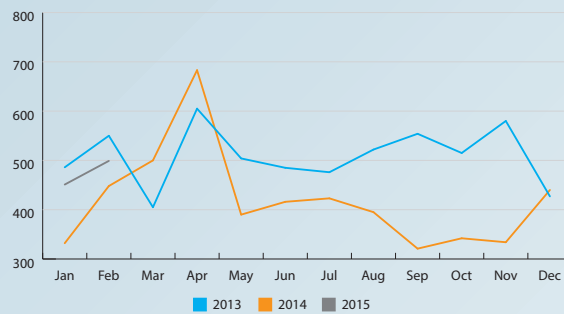
Software suit surge

The Supreme Court in *Alice* held that merely claiming an abstract idea is insufficient to establish patent eligibility. This has led to many patents being invalidated in district court litigation under 101 challenges since.

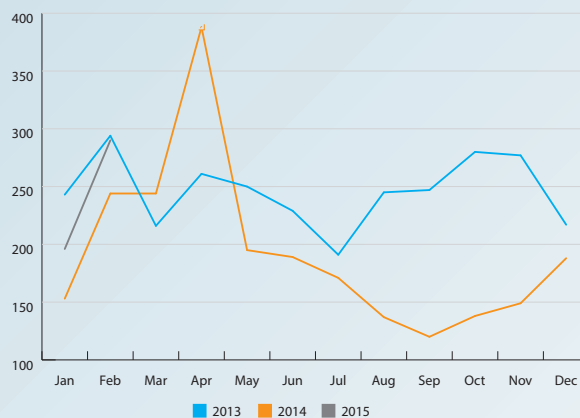
It also seemed to deter filing of new lawsuits. We used Docket Navigator's database of litigation to analyse lawsuits being filed that include patent classes 700-720 and 725, recognised as total US software patents by class of invention as of 2004. We realise using these classes as a proxy for software patents may not provide an exhaustive list of patent litigation but we believe it does allow us to see how patent software patent litigation is changing.

According to Managing IP's analysis using Docket Navigator, software patent litigation was down in every month from

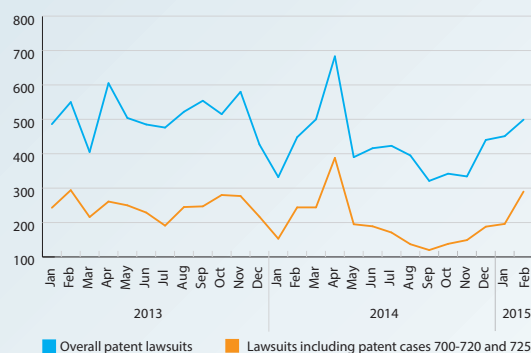
All patent lawsuits filed



Software patent lawsuits filed



US patent lawsuits filed 2013-2015 ytd



June 2014 to December 2014 compared with the same month in 2013.

Software patent lawsuit litigation fell 35% in the period from July 1 to December 31 compared with the same period in 2013. This is much higher the 24% drop in all patent lawsuits in that period.

But a surge in software patent lawsuits appears to be driving the increase in overall litigation since the turn of the year. According to figures from the Docket Navigator database, 290 software

patent cases were filed in February. This was the biggest figure since the 388 filed in April 2014.

The February figure was a 48% increase on the 196 software cases filed in January 2015, which was a 4% increase on the 188 cases in December, itself a 26% increase on the 149 cases in November.

Compared by calendar month, the February figure was a 19% increase on the 244 software patent cases filed in February 2014, while the January figure was a 28% increase.