

Emerging Patent Issues In Cleantech

Friday, Aug 03, 2007 --- Last year, venture capital investments in clean technologies within North America and Europe exceeded \$3.6 billion, making it the third largest investment sector after software and biotechnology.

While some venture capitalists, such as Randy Komisar, of Kleiner Perkins Caufield & Byers have predicted that there will soon be a rush of billion dollar cleantech IPOs, recent successful IPOs from companies such as Enernoc Inc. and Comverge have been more modest.

Whether the interest in clean technologies is well-grounded or based, in part, on irrational exuberance, companies continue to seek breakthroughs which allow their products or services to be more competitive regarding pricing and performance.

Some companies have found success leveraging technologies outside of the cleantech sector (such as telecom and nanotechnology) while other companies have dedicated research and development teams which are seeking to devise wholly new solutions to tackle some of the major issues in the industry.

As a result, both early stage and mature companies within such sectors are increasingly seeking patent protection for their innovations.

According to a report by Lux Research, the number of cleantech patents issued in the United States has increased at a rate twice that of the overall average over the last ten years with 4,093 cleantech patents being issued last year.

The energy subset of cleantech had the largest percentage of issued patents followed by sustainability. A smaller number of patents were issued in the water and waste subsets.

With any industry in which there is a rapid and focused emphasis, multiple companies will be working on solving the same problems.

Although solar has been an area of interest since before the Carter administration, numerous companies, both venture-backed and larger conglomerates, are working on advanced thin film technologies utilizing copper-indium-gallium selenide, or CIGS, with the hope that such thin film techniques will provide needed breakthroughs.

As of the date of this writing, there are a 87 issued U.S. patents and 137 pending U.S. patent applications that relate to solar devices and processes

using CIGS with assignees ranging in size from Matsushita and Honda on one end of the spectrum, with well financed companies such as Energy Pholtovoltaics, Nanosolar, and Solyndra in the middle of the spectrum, and smaller start-ups and governmental and university laboratories also addressing similar issues.

It is likely that some of these companies will have overlapping product offerings based on similar processes which in turn infringe one or more third party patents.

Until companies reach significant revenues making CIGS-based solar cells, there will unlikely be any patent infringement lawsuits amongst various solar players as the costs for patent litigation and the associated business disruption are often too great to justify the effort (especially for smaller companies focusing solely on solar products).

Moreover, in an effort to minimize the likelihood of a lawsuit, as indicated by the recent patent filing trends, companies are creating a broad portfolio of patents which can be cross-licensed to competitors seeking to assert their patents.

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