

Patent Infringement Royalty Damages: Lessons Learned Post-Uniloc

Implications for the EMVR and Alternatives to the 25 Percent Rule

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Patent Infringement: Calculating Damages After *Uniloc v. Microsoft*

June 19, 2012

Presenters

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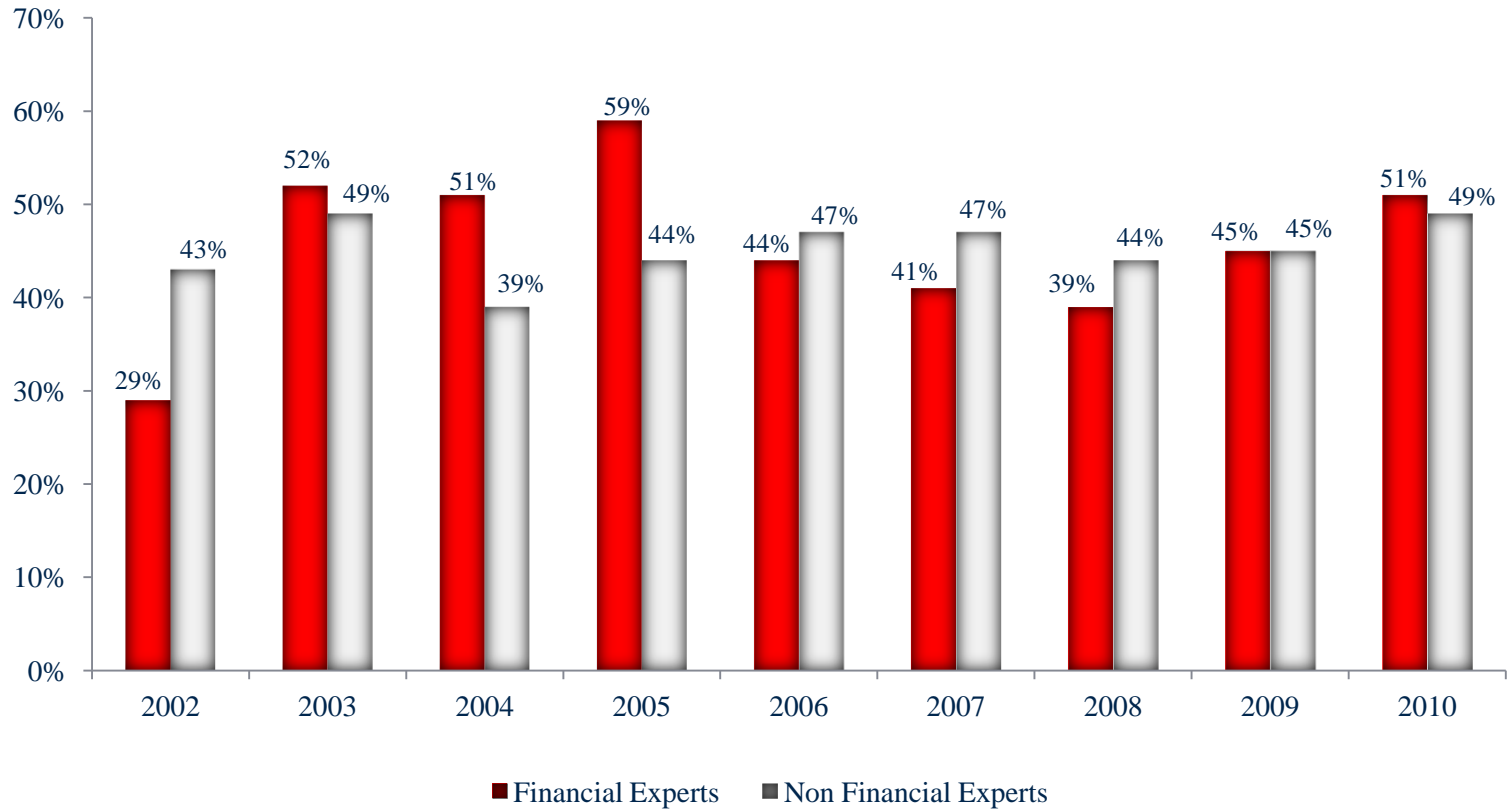
Krista Holt - Vice President, The Kenrich Group LLC, Washington DC

Agenda

1. Proving Damages
2. Issues And Recent Cases
3. New Tools To Consider

Proving Damages

Success Rates of Daubert/ Rule 702 Challenges

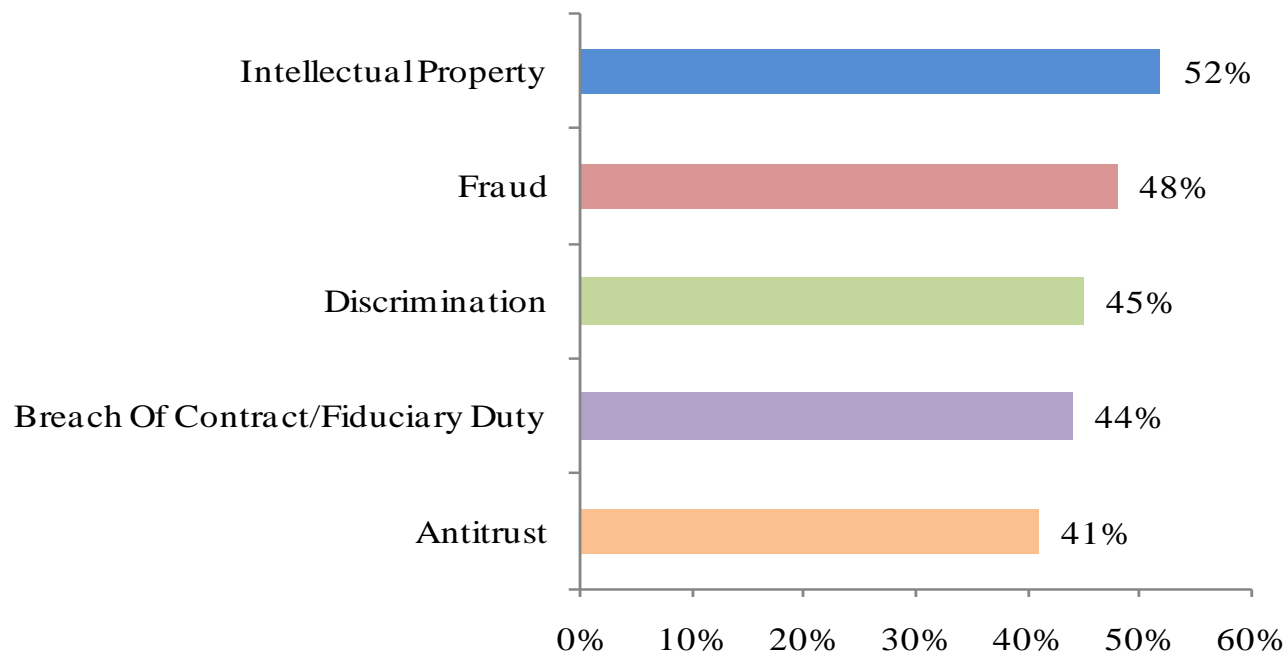


Source: PwC Daubert Challenges to Financial Experts, 2011

Proving Damages

Daubert Risks/Opportunities

Success Rate of *Daubert* Challenges To Financial Expert Witnesses, By Case Type (2000-2009)



Source: PWC, "Daubert challenges to financial experts: A ten-year study of trends and outcomes, 2000-2009"

Proving Damages

Statutory Guidelines For Royalties

“Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer...”.

35 U.S.C. § 284

Proving Damages

The Georgia-Pacific Factors

“We need not identify any particular Georgia-Pacific factor as being dispositive. Rather, the flexible analysis of all applicable Georgia-Pacific factors provides a useful and legally-required framework for assessing the damages award in this case.”

Lucent v. Gateway, 580 F.3d 1301 (Fed. Cir. 2009)

“A comprehensive (but unprioritized and often overlapping) list of relevant factors for a reasonable royalty calculation appears in Georgia-Pacific Corp. v. United States Plywood Corp.”

ResQNet v. Lansa, 594 F.3d 860 (Fed. Cir. 2010)

“This court has sanctioned the use of the Georgia-Pacific factors to frame the reasonable royalty inquiry. Those factors properly tie the reasonable royalty calculation to the facts of the hypothetical negotiation at issue.”

Uniloc v. Microsoft, 632 F.3d 1292 (Fed. Cir. 2011)

Proving Damages

The 15 Georgia-Pacific Factors

1. Royalties paid for the patents
2. Royalties for similar patents
3. Scope of the license
4. Established licensing policies
5. Relationship of the parties
6. Collateral or convoyed sales
7. Duration of the license
8. Established Profitability
9. Advantages of the patent
10. Benefits to the user
11. Evidence probative of value
12. Customary industry practices
13. Profits attributable to patents
14. Expert opinions
15. Construction of a hypothetical negotiation

Proving Damages

The Georgia-Pacific Factors

The *Georgia-Pacific* Factors Broadly Consider:

- Other Licenses For The Patent(s) In Suit
- What The Scope And Terms Of A License Would Be
- The Relationship Between The Parties
- The Functional Advantages Of The Patent(s)
- The Commercial Success Attributable To The Patent(s)
- The Ability Of The Patent(s) To Promote Sales Of Non-patented Products
- In The Context Of A Hypothetical Negotiation

Proving Damages

Federal Circuit Requesting Reliable Analysis

“...the Federal Circuit is very concerned about obtaining reliable economic evidence that really links the damages calculation to the scope of the claimed invention...”

...I’m beginning to make it clear that I want economic evidence, but then the other factor of that is I need you to show me how that’s going to be tied to the scope of the claimed invention.”

*Judge Rader, Trial Transcript,
IP Innovation v. Red Hat, 705 F. Supp. 2d 687 (E.D. Tex. 2010)*

Proving Damages

Patent Infringement But No Damages?

Plaintiff that can not prove damages should not expect a court to speculate on the proper award. Vastly different estimates of damages by the experts for the plaintiff and defendant is evidence that the damages amounts are nothing more than speculation and guesswork.

*“Apple's damages expert . . . estimates that a reasonable royalty (covering the period up until the trial) would be a lump sum of \$14 million. In other words, he differs with [defendants' damages expert] by a factor of 140. The size of the disparity is a warning sign. **Either one of the experts is way off base, or the estimation of a reasonable royalty is guesswork** remote from the application of expert knowledge to a manageable issue within the scope of that knowledge.”*

*“I am mindful that a degree of speculation is permitted in calculating damages . . . But if an expert witness fails to conduct a responsible inquiry that would have been feasible to conduct, his failure **cannot be excused by reference to the principle that speculation is permitted** in the calculation of damages”*

Apple, Inc. v. Motorola, Inc., 2012 WL 1959560 (N.D. Ill. May 22, 2012)

Proving Damages

Sound Logic and Reason Will Prevail

Judge Posner also rejected damages testimony for failing to consider alternative designs and found large royalties, simply because the defendant's revenues were extremely high, are inappropriate

“[Motorola’s expert] began her testimony at the Daubert hearing by explaining that \$347 million, while a seemingly large number, is nothing to Apple—a company that made some \$30 billion in revenue from the products that Motorola contends infringe the Motorola patents. The implication is that even if Apple could have saved, say, \$100 million by launching on Verizon, what's the difference to Apple of having to pay \$347 million versus \$247 million? Either figure is less than 1 percent of Apple's total profits during the damages period. Obviously a damages estimate cannot be based on such reasoning.”

Apple, Inc. v. Motorola, Inc., 2012 WL 1959560 (N.D. Ill. May 22, 2012)

Proving Damages

Get Your Damages Case In Order

On June 7, 2012, Judge Posner tentatively dismissed the jury trial, noting that neither party had put forward sufficient evidence establishing monetary damages:

“I have tentatively decided that the case should be dismissed with prejudice because neither party can establish a right to relief. I may change my mind.”

Judge Posner is still deliberating whether injunctive relief is a possibility, for which there could still be a bench trial

Apple, Inc. v. Motorola, Inc., (June 7, 2012 Order)

Lesson Learned: Get Your Damages Case In Order

Agenda

1. Proving Damages
2. Issues And Recent Cases
3. New Tools To Consider

Issues And Recent Cases

Whose Burden Is It To Support the Validity of Royalties?

Plaintiff's Burden To Determine The Value

A plaintiff cannot shift the burden to the defendant to produce sufficient evidence to determine the value of the claimed technology relative to other features of the accused products.

IP Innovations v. Red Hat, 705 F. Supp. 2d 687 (E.D. Tex. 2010)

“[A] court should not sustain a royalty award based on inapposite licenses simply because [the defendant] did not proffer an expert to rebut [Plaintiff’s expert].”

ResQNet.com, Inc. v. Lansa, Inc., 594 F.3d 860 (Fed. Cir. 2010)

Issues And Recent Cases

Rules of Thumb: “Not a Valuation Methodology”

*“Although technically **not a valuation method**, some valuation analysts use rules of thumb or industry benchmark indicators . . . in a valuation engagement. A rule of thumb is typically a reasonableness check against other methods used and should generally not be used as the only method to estimate the value of the subject interest.”*

AICPA, Statement of Standards for Valuation Services No. 1

Issues and Recent Cases

25% Rule of Thumb Now Inadmissible

*“This court now holds as a matter of Federal Circuit law that the 25 percent rule of thumb is a **fundamentally flawed tool** for determining a baseline royalty rate in a hypothetical negotiation. Evidence relying on the 25 percent rule of the thumb is thus **inadmissible under Daubert** and the Federal Rules of Evidence, because it fails to tie a reasonable royalty base to facts of the case at issue.”*

“...25 percent royalty had no relation to the facts of the case, and as such, was arbitrary, unreliable, and irrelevant. The use of such a rule fails to pass muster under Daubert and taints the jury’s damages calculation.”

Uniloc v. Microsoft, 632 F.3d 1292 (Fed. Cir. 2011)

Issues And Recent Cases

... Or Is Its Acceptance a Matter of Facts and Circumstances?

“There was evidence that in this field of commerce the customary royalty is one fourth to one third of the licensee’s profit on the licensed subject matter.”

ResQNet.com v. Lansa, 594 F.3d 860 (Fed. Cir. 2010)
Judge Newman dissenting from the majority’s remand decision

Issues And Recent Cases

Are Courts More Accepting of the Entire Market Value Rule?

“For the entire market value rule to apply, the patentee must prove that ‘the patent-related feature is the “basis for customer demand”.’”

*Lucent v. Gateway, Inc.,
580 F.3d 1301 (Fed. Cir. 2009)*

Issues And Recent Cases

THE Basis of Demand, a Hotly Contested Issue

The Entire Market Value Rule:

Allows damages based on value of the entire product, where product contains infringing and non-infringing elements.

Requires that the infringing components be the **basis for customer demand for the entire machine including the parts beyond the claimed invention.**
The infringing and non-infringing components must be sold together so that they constitute a functional unit.

Issues And Recent Cases

Is This Standard Universally Accepted?

“Plaintiff may base its reasonable royalty analysis on the entire value of the accused products, **despite not showing the accused feature provide the basis of customer demand...**”

It Still May Be ‘Economically Justified’

“...to base the reasonable royalty on the market value of the entire accused product” [where 16 comparable licenses are based on Entire Market Value Rule and Defendants use the same royalty base.]

Mondis Technology v. Top Victory Elecs. Co.,
2011 WL 2417367 (E.D. Tex. June 14, 2011)

Issues And Recent Cases

What Does “The Basis For Demand” Mean?

Compare

*“...the evidence does not provide a sound economic connection between the product’s desirability and any contention that [the allegedly infringing product] was **the basis** for public demand.”*

Inventio v. Otis Elevator, 2011 WL 3359705 (S.D.N.Y. June 23, 2011)

With

*Plaintiff need not establish that patented feature “creates the basis for customer demand” where plaintiff claimed feature was **a basis** for demand that was “vital to their competitive position in the marketplace.”*

Dataquill v. High Tech Computer, 2011 WL 6013022 (S.D. Cal. Dec. 1, 2011)

Issues And Recent Cases

What If the Entire Market Value Rule Does Not Apply?

Courts unwilling to wait for Congress --

“...less intrepid council would have wisely abandoned a royalty base claim encompassing a product with significant non-infringing components. The logical and readily available alternative was the smallest saleable infringing unit with close relation to the claimed invention”

Cornell University v. Hewlett-Packard, 609 F. Supp. 2d 279 (N.D.N.Y. 2009)

Issues And Recent Cases

Requiring An Apportionment Of Defendant's Profits

“... [a] glaring imbalance between infringing and non-infringing features must impact the analysis of how much profit can be properly attributed to the use of the [claimed invention]...”

Lucent Technologies v. Gateway

“[t]he Supreme Court and this court's precedents do not allow consideration of the entire market value of accused products for minor patent improvements simply by asserting a low enough royalty rate”

Uniloc v. Microsoft

Issues And Recent Cases

Can The Entire Market Value Rule Be Used As Reasonableness Check?

Experts may improperly use the Entire Market Value Theory to confirm the reasonableness of the proposed royalty rate. Courts may still require proof of demand.

Presenting royalty rates in tandem with Defendant's total profit margin on the accused products, as a reasonableness check, without evidence that the patent-in-suit is the basis of customer demand is unduly prejudicial

Lighting Ballast Control v. Philips Electronics North America, 2011 WL 7575006 (N.D. Tex. June 10, 2011)

Issues And Recent Cases

Application Of Entire Market Value Rule

Nevertheless, Numerous Cases Have Based Damages On Selling Price Of Entire Product Even Where Demand Not Proven

“However, even where the entire market value rule does not apply, it may nevertheless be proper to base a reasonable royalty analysis on the selling price of accused product so long as the royalty rate accounts for the fact that the patented feature is only one component of the overall product”

ActiveVideo Networks v. Verizon, 2011 WL 7036049
(E. D. Va. Jul. 15, 2011) (dicta, distinguishing from *Uniloc*)

Such As If Such Licenses (Based On Entire Value) Were Standard In The Industry so “Economically Justified”

Mondis Technology, Inc. v. Top Victory Elecs. Co., 2011 WL 2417367 (E.D. Tex. June 14, 2011) allowed an expert to consider licenses based on cost of the infringing product where there were “*16 comparable licenses . . . to the patents-in-suit that provide for a royalty based on the entire value of the licensed products.*”

Issues And Recent Cases

Types of Evidence That May Demonstrate Demand

Judge Rader is looking for “credible and economic proof,” which may be shown with Demand Curves or “market evidence” to show that the invention drove demand.

(Cornell University v. Hewlett-Packard Co.)

Other Courts have relied on:

- Comparable License Agreements (*Red Hat, Dataquill*)
- Customer Surveys (*Lucent, Mirror World, i4i*)

Issues And Recent Cases

Comparability of License Agreements

“...[P]atentee could not rely on license agreements that were ‘radically different from the hypothetical agreement under consideration’ to determine a reasonable royalty.”

*Uniloc v. Microsoft, citing ResQNET.com v. Lansa
Lucent Technologies v. Gateway, Inc. (Fed. Cir. 2009)*

“Plaintiff must establish comparability of the licenses before integrating their royalty rates into [an] analysis in front of the jury.”

IP Innovation v. Red Hat, 705 F.Supp.2d 687 (E.D. Tex. 2010)

Issues And Recent Cases

Comparability Of License Agreements

Damages awards rejected when comparable licenses were not sufficiently comparable

- *Lucent v. Gateway*, 580 F.3d 1301 (Fed. Cir. 2009)
- *ResQNet.com v. Lansa*, 594 F.3d 860 (Fed Cir. 2010)
- *IP Innovation v. Red Hat* (E.D. Tex. 2010).

Issues And Recent Cases

So, What Is The Standard Of “Comparability”?

In Boeing Company v. U.S., the court suggested six factors to consider when assessing comparability:

“[The expert] made little attempt...to analyze the comparability of these invention to that of the [] patent. There was no analysis of such common indicators as the [1] degree of innovativeness of the technology transferred, [2] how the particular invention stood in the marketplace, [3] the relationship between Boeing and the licensee, [4] the remaining duration of the patent, [5] the extent to which the licensee had actually used the patent, [6] and the impact of having multiple patents being covered by a single license.”

Boeing v. U.S., 86 Fed. Cl. 303 (2009)

Issues And Recent Cases

Comparability Of License Agreements

Factors of Comparability May Broadly Consider:

- Technology (e.g., hardware vs. software)
- Portfolio Size (e.g., one vs. many)
- Development Stage (e.g., patent vs. software code)
- Payment Style (e.g., running vs. lump-sum)
- Relationship
- Duration
- Degree of Innovativeness
- Others As Appropriate

Issues And Recent Cases

Can Industry Agreements Meet This Standard?

As a starting point of determining the royalty rate, Plaintiff's expert used a 2004 publication titled "Licensing Economics Review" ... and a 2004 study by Navigant Consulting. *"However, 'software industry' and 'computer and electronic products manufacturing industry' encompass much more than a desktop switching feature in issue in this case. [Plaintiff's expert] offers no evidence that the alleged industry agreements are any way comparable to the patents-in-suit."*

IP Innovation v. Red Hat, E.D.Tex (2010)
Judge Rader sitting by designation

Issues And Recent Cases

Are Settlement Agreements Comparable for Damages?

Yes

“This court observes as well that the most reliable license in the record arose out of litigation...”

ResQNet.com, Inc. v. Lansa, Inc.

“Defendants’ concerns about the reliability of litigation-related licenses are better directed to weight, not admissibility.”

DataTreasury Corp v. Wells Fargo & Co.

“Plaintiff’s business is to litigate and to license.” “Accordingly, the settlement communications will be a valid consideration in determining whether the settlement agreements themselves accurately reflect the patent’s value.”

Charles E. Hill & Associates, Inc. v. ABT Electronics, Inc., et. al.

No

“Thus, admission of these agreements would invite a ‘mini-trial’ on similarities and differences and the facts between this case and the settled claims. Such a diversion would cause unfair prejudice, confuse the issues, and waste time.”

Fenner Investments, Ltd. v. Hewlett-Packard Co.

Issues And Recent Cases

Scope of Patents In Settlement Agreements

Lucent Technologies v. Gateway, Corp.

- A license agreement covering multiple patents to broad technologies is not comparable to a hypothetical negotiation involving one patent on a narrow method claim.
- Testimony about comparable licenses must go beyond superficial recitations of the royalty rates and amounts paid in the agreements.
- Parties should introduce evidence about the subject matter of the patents covered in comparable licenses, how valuable or essential those patent rights are and how the technology in those patents is similar or dissimilar to the claimed invention.
- When offering cross-licenses, licenses of multiple patents or other complex agreements, a party must explain the value of the patent rights being cross-licensed and how a license to multiple patents is probative of the hypothetical license at issue.

Agenda

1. Proving Damages
2. Issues And Recent Cases
3. New Tools To Consider

New Tools To Consider

What Other Tools Are In The Tool Box?

The court has “blessed” the use of the Analytical Approach:

“Litigants routinely adopt several approaches for calculating a reasonable royalty. The first, the analytical method, focuses on the infringer’s projections of profit for the infringing product.”

Lucent v. Gateway (Fed. Cir. 2009)

New Tools To Consider

What Other Tools Are In The Tool Box?

The Analytical Method

- Based on the premise that any rate of return in excess of normal can be attributed to the patent and constitutes the profits to be divided between the negotiating parties.
- Takes profits from the infringer, subtracts the infringer's "normal" profit, and awards some portion of the remainder to the patent owner.
- Alternative to hypothetical negotiations for determining reasonable royalty damages.

New Tools To Consider

Hedonic Analysis

- Statistical method for estimating demand or value.
- Decomposes the item being researched into its constituent characteristics to obtain estimates of the contributory value of each characteristic.
- Requires that there is a market value for the constituent parts.

New Tools To Consider

Have The Courts Accepted A Conjoint Statistical Analysis?

Oracle America, Inc. v. Google, Inc., 2012 WL 850705 (N.D. Cal. Mar. 13, 2012)

- The court granted defendant's motion to exclude plaintiff's damages expert's use of another expert's conjoint analysis to determine market share.
- Consumer and market share surveys are not “inherently unreliable,” but may become so when the experts (as in this case) “artificially force” the participants or the data to a desired outcome.

New Tools To Consider

Have The Courts Accepted A Conjoint Statistical Analysis?

Oracle America, Inc. v. Google, Inc.

Specifically, the court stated –

"[Plaintiff's expert] had no reasonable criteria for choosing the four non-patented features to test; instead, he picked a low number to force participants to focus on the patented functionalities, warping what would have been their real-world considerations. . . . If the conjoint analysis had been expanded to test more features that were important to smartphone buyers (instead of the four non-patented features selected for litigation purposes), then the study participants may not have placed implicit attributes on the limited number of features tested"

New Tools To Consider

What Is Conjoint Statistical Analysis?

- Statistical technique used to determine how people value different features that make up an individual product or service.
- The objective of conjoint analysis is to determine what combination of a limited number of attributes is most influential on respondent choice or decision making.

New Tools To Consider

The Nash Bargaining Theories

A Nash Bargaining Solution (“NBS”) determines the licensing fees based on

- The total benefits (profits) available from the licensing agreement
- The other next best alternative available to each party, i.e., profits they can attain without an agreement
 - Allocate a portion of the profits to each party that equals the profits from their next best alternative
- Split the remainder according to the relative bargaining strength of the parties
 - Two parties with equal alternatives and equal bargaining strength will split the remaining profits 50/50

New Tools To Consider

The Nash Bargaining Theories

There are at least two challenging questions to answer:

What is each party's best alternative?

- Licensor: License to someone else? Commercialize alone?
- Licensee: Sell product without patented feature? Use another technology? Sell another product entirely?

What is each party's bargaining strength?

- Don't double count from alternatives or total profits
- Consider prior business policies, need for speed, etc.

New Tools To Consider

The Nash Bargaining Theories

For Further Research

Nash Equilibrium

- No party can improve its outcome by unilaterally changing strategy

Nash Bargaining Solution

- The outcome cannot be improved for both parties even through collaboration

See “Application of Game Theory to Intellectual Royalty Negotiations,” by John C. Jarosz and Michael J. Chapman in Licensing Best Practices: Strategic, Territorial and Technology Issues, edited by Robert Goldscheider and Alan H. Gordon

New Tools To Consider

The Nash Bargaining Theories

Oracle America, Inc. v. Google, Inc.

- Plaintiff's Expert report was rejected by Court
- Among many other problems, NBS method was criticized by judge as:
 - “It is no wonder that a patent plaintiff would love the Nash Bargaining Solution because it awards fully half of the surplus to the patent owner, which in most cases will amount to half of the infringer's profit, which will be many times the amount of real-world royalty rates.”*
- Not used before in litigation.
- The court also found it to involve too much mathematics.

New Tools To Consider

Demand And Usage Surveys

Surveys Can Be Used to Assess:

- What is the nature of demand for the product or feature? Which feature in a product is most important for generating sales? What is the relevance of the allegedly infringing feature?
- What value do customers attribute to the patented feature versus the same product without the patented feature? How much more would they be willing to pay? Would customers still purchase the product without the feature and at what price?
- What are customer attitudes, ratings, usage rates, and perceptions of specific design elements or features?

New Tools To Consider

Demand And Usage Surveys

Surveys Concerning Usage

i4i v. Microsoft (Fed. Cir. 2009) – Survey admitted, despite being challenged for:

- Hearsay concerns (admitted under Rule 703)
- Sufficiency of Data under Rule 702:
 - Low response rate (46 responses out of 988)
 - Use of logical imputation to correct inconsistent answers
 - Time lapse between usage and survey
- Unfair Prejudice under Rule 403

Applera v. MJ Research, 389 F.Supp.2d 344 (D. Conn. 2005) – survey admitted

Lucent Technologies v. Gateway Inc., 580 F. 3d 1301 (Fed. Cir. 2009) – survey recommended

“Consideration of evidence of usage... can... be helpful to the jury and the court in assessing whether a royalty is reasonable... Such data might, depending on the case come from sale projections based on past sales, consumer surveys, focus group testing, and other sources.”

New Tools To Consider

Demand And Usage Surveys

Surveys Concerning Demand

Advanced Medical Optics v. Alcon, 2005 WL 782809 (D. Del. Apr. 7, 2005)

- Litigation survey recommended:
 - *“His comments also reveal that he does not know whether other surgeons agree...nor has he conducted a survey to find out. Thus, his testimony on the viewpoints of other surgeons is purely speculative.”*
- A non-litigation survey was precluded:
 - The court also precluded testimony that relied upon a pre-existing survey that did not comply with litigation standards. The survey did not ask sufficiently precise questions about the patented feature.

New Tools To Consider

Demand And Usage Surveys

“In sum, Cornell did not provide any more evidence for its consumer demand argument than the type of evidence this court found insufficient during [Plaintiff’s Expert’s] Daubert hearing.... Cornell did not offer any customer surveys or other data to back these predictive claims.”

“Simply put, Cornell’s failure to connect consumer demand ...to the claimed invention...undermined an argument for applicability of the entire market value rule.”

Cornell v. Hewlett-Packard, N.D.N.Y. (2009)
Judge Rader sitting by designation

New Tools To Consider

Demand And Usage Surveys

Cornell is really about demonstrating evidence of demand.

“In sum, Cornell did not provide...evidence for its consumer demand argument...”

“Cornell did not offer any customer surveys or other data to back its...claims.”

Cornell v. Hewlett-Packard, , N.D.N.Y. (2009)
Judge Rader sitting by designation

New Tools To Consider

Demand And Usage Surveys

The survey failed to establish Entire Market Value Rule rule because it did not prove that the patented technology was the basis of demand for the software and hardware. The survey focused only on the software and ignored the hardware.

Mirror World, LLC v. Apple, Inc.,
784 F.Supp.2d 703 (E.D. Tex. 2011)

New Tools To Consider

Demand And Usage Surveys

“...the surveys do not measure the value of Plaintiffs technology [Multiband Functionality and small size] but merely measure the perceived consumer value of cell phones with any internal antenna.”

“ Surveys evidence perpetually demonstrating the value of internal antenna, not tied to Plaintiff’s [patented] technology...must be excluded.”

*Fractus, S.A. v. Samsung, et al., 2011
WL 7563820 (E.D. Tex. Apr. 29, 2011)*

New Tools to Consider

Litigation Survey Design Standards

- The Population Must Be Properly Chosen And Defined.
- The Sample Chosen Must Be Representative Of That Population.
- The Methodology For Gathering Data Must Be Established To Create Accuracy And Objectivity, And The Appropriate Use Of Controls Must Be Instituted.
- The Questions Must Be Clear And Developed So As To Be Result-neutral, Not Leading, And Not Suggestive Of Any Answer.
- The Survey Must Be Conducted By Qualified Persons Following Proper Interview Procedures.

New Tools To Consider

What Other Tools Are In The Tool Box?

Income Approach (Discounted Cash Flow Methods):

- Value is defined as expected income from the patented technology over its life
- The value is discounted to get present value
 - Where the discount rate is the rate of return the patent holder is looking to get in order to bear the risk associated with the future, expected income stream from the patented technology

New Tools To Consider

Discounted Cash Flow Methods

Income Approach:

The measure of expected economic income can be:

- Gross Sales
- Net Sales
- Gross Income
- Net Operating Income
- Net Income After Taxes
- Cash Flow
- Others

New Tools To Consider

Discounted Cash Flow Methods

Income Approach:

- Expected income should capture **ONLY** income expected from the patented technology
- Need to allocate income that is attributable to other assets – intangible and tangible

New Tools To Consider

Discounted Cash Flow Methods

Income Approach:

Expected economic income could be due to:

- Increase in income because of owning the patent
- Decrease in cost due to owning the patent
- Avoidance of costs such as royalty payments because of owning the patent
- Others – increase in enterprise value

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