



CEG Intellectual Property

Measurement of Damages and Intellectual Property Valuation

INTELLECTUAL PROPERTY

Expert economists at CEG have been actively involved with intellectual property (IP) issues across the globe. Our work has included preparing a large number of analyses and giving testimony in infringement litigation, performing valuations of intellectual property, and preparing and presenting papers on IP issues, especially in high-tech industries. We have also analysed IP matters for clients, particularly as they relate to antitrust in Europe, e.g., where there is an abuse of dominance and the dominant position is created by IP protection.

In this regard, CEG's IP capabilities and practice are closely related to its commercial litigation practice, as in those cases in which the claimed damages stem from allegations of IP infringement; and to its

competition practice, as in those cases where claims of anticompetitive behaviour stem from alleged misuse of dominant positions created by IP protection. Because of the somewhat different state of IP laws in the US and Europe, most of the IP infringement and damages cases have taken place in the US and most of the IP-related antitrust issues have arisen in Europe.

Therefore, much of CEG's damages and valuation experience has been gained in the US and its antitrust and policy work in Europe. There is, nonetheless, a growing body of IP cases in Europe involving infringement litigation with commensurate damages claims. CEG economists have the knowledge and experience to assist clients in the European litigation as well as in the more common US litigation.

INTELLECTUAL PROPERTY DAMAGES

The framework for estimating damages in an IP infringement case is essentially the same as for any other commercial damages case, as discussed in our brochure, “CEG International Arbitration and Litigation: Establishing and Measuring Damages in Commercial Litigation.” It involves properly characterising the claimant’s position “but for” the infringement, with the claimant’s position with the alleged infringement, and then performing a valuation of the differences to the claimant.

However, while the basic approach may be the same, there are many aspects of this analysis that are very specific to IP litigation. In IP litigation, damages generally take the form of lost profits or lost royalties over time, which are then discounted to a present value.

Determining appropriate royalties is an economic art form of its own that requires knowledge of general valuation principles combined with a specific knowledge of particular valuations techniques, data bases and legal precedents peculiar to IP issues. CEG’s expert economists have the training in economics and finance, the experience with valuation issues that arise in IP infringement cases, and the awareness of differing legal requirements for analysing damages from IP infringement to enable them to assist clients in a wide variety of jurisdictions. They are also capable of providing stand-alone valuations of IP.

Recent IP damages cases for which CEG economists have consulted:

- Broadcom Corporation v. Qualcomm Incorporated Case No. SACV05-467 JVS (RNBx) (Patent Infringement)
- Dey, L.P. v. IVAX Pharmaceuticals, Inc. and Eon Labs, Inc. Case Nos. SACV 04-00079 CJC (FMOx) and SACV 04-00243 CJC (FMOx) (Commercial Success)
- Kalitta Air, LLC, as assignee of American International Airlines, Inc. v. Central Texas Airborne Systems, Inc. Case No. 96-2494CW and 97-0378CW (Breach of Contract)
- Advanced Neuromodulation Systems, Inc. v. Advanced Bionics Corporation Civil Action No. 4:04cv131 (Brown) (Patent Infringement and Theft of Trade Secrets)
- Timeline, Inc. v. Proclarity Corporation and Microsoft Corporation Case No. CV05-1013JLR (Patent Infringement)
- Cardiac Pacemakers, Inc., Guidant Sales Corporation, Mirowski Family Ventures, LLC, and Anna Mirowski v. St. Jude Medical, Inc. and Pacesetter, Inc. Civil No. 1:96-CV-1718-DFH/TAB (Patent Infringement)

- In re 3dfx Interactive, Inc. and William A. Brandt, Jr., Trustee v. nVidia Corporation and nVidia Investment Company Case No. 02-55795 RLE (Fraudulent Transfer)
- Semiconductor Energy Laboratory Co., Ltd. v. Chi MEI Optoelectronics Corp., International Display Technology Co., Ltd., International Display Technology USA, Inc., Westinghouse Digital Electronics, LLC and CTX Technology Corp. C04-4675 RS (Patent Infringement)
- 911Notify.com v. Verizon Delaware, Inc. Case No: 71Y1810072202 (Breach of Contract)
- Semiconductor Energy Laboratory Co., Ltd. v. Chi MEI Optoelectronics Corp., International Display Technology Co., Ltd., International Display Technology USA, Inc., Westinghouse Digital Electronics, LLC and CTX Technology Corp. C04-4675 RS (Patent Infringement)
- Mallinckrodt, Inc., et al. v. Masimo Corporation Case No. CV 00-6506 MRP (Patent Infringement)

Recent involvement of CEG economists in IP-related antitrust and policy work:

- Prepared paper for EICTA on patents on computer implemented invention



- Prepared report for European Commission on multiparty licensing
- Provided an article in European Law Review on changes in EC licensing guidelines
- Presented lectures on the interface between IP and competition issues ■

CEG's team of experts includes:

Michael K Dunbar
Prof Bruce Grundy
Nils von Hinten-Reed
Tom Hird
Prof Robert C Lind
Paul Muysert
Jason Ockerby
Paul Reynolds

The professional biographies of each expert can be found on:

www.ceg-northamerica.com

Competition. Regulation. Damages.

BRUSSELS

Avenue LeGrand 61
B-1050 Brussels
Belgium

Phone: +32 48579 3457
Fax: +32 27919203
nvhr@ceg-europe.com

LONDON

20 Garrick Street
London WC2E 9BT
United Kingdom

Phone: +44 20 3178 6692
Fax: +44 20 7664 7878
pmuysert@ceg-europe.com

SILICON VALLEY

622 Park Road
Emerald Hills, California 94062
United States

Phone: +1 650 299 9339
Fax: 1+ 650 299 9299
mdunbar@ceg-northamerica.com

SYDNEY

Suite 6, 21 Mary Street
Surry Hills NSW 2011
Australia

Phone: +61 2 9282 0450
Fax: +61 2 9282 0499
jason.ockerby@ceg-ap.com