
Kluwer Patent Blog

Fordham Conference 2015 – Patent Valuation

Daniel Byrne (Bristows) · Thursday, April 9th, 2015

Adam Mossoff (Professor of Law, George Mason University) states that much of the focus in the USA is around litigation, but patents are not simply tools for litigation, they are commercial assets. Litigation is more public than confidential private transactions and therefore has disproportionate focus. He remarked that the ‘sewing machine wars’ of the 1850s in the USA introduced a ‘patent pool’ as a solution.

At the time of any work toward innovation, a prediction of value has to be made and is a driver for innovation. How should the innovation be defined and what are the knock-on commercial factors? These are questions for business and transactional lawyers. Litigation is a backstop and the remedies do affect market reactions.

Patricia A Martone identifies a disconnect between the reasonable royalty damages calculations and real-world licensing negotiations. The legal test from the case of *Georgia Pacific* is a background to negotiations and litigation is the ultimate back-stop. Factors include previous range of rates paid for similar licences and typical rates in a given industry. The patent itself will be relevant and factors of validity and infringement will feature as will issues of definitions. She notes that the case of *Laser Dynamics* has held that the only comparable licenses are those to the patents in suit themselves. The patent is unlikely to be the sole basis for demand in the market place for the product which is covered and the smallest saleable unit must be taken so as to control the jury (in the USA) from giving inflated damages awards. However, this is a complex calculation and is likely to confuse juries and lead to mistakes. She believes that evidence of relevance to licence negotiations should not be excluded by courts seeking to set a royalty.

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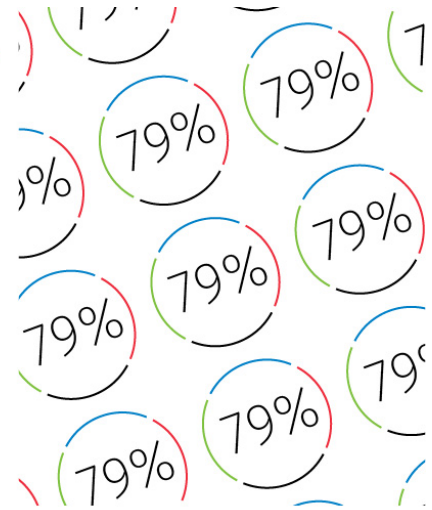
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