

Emerging Remedies Issues with Multicomponent Products

Advanced Patent Law Institute, Silicon Valley
December 2013

Moderator:

Tamara Fraizer, Fish & Richardson P.C.

Panelists:

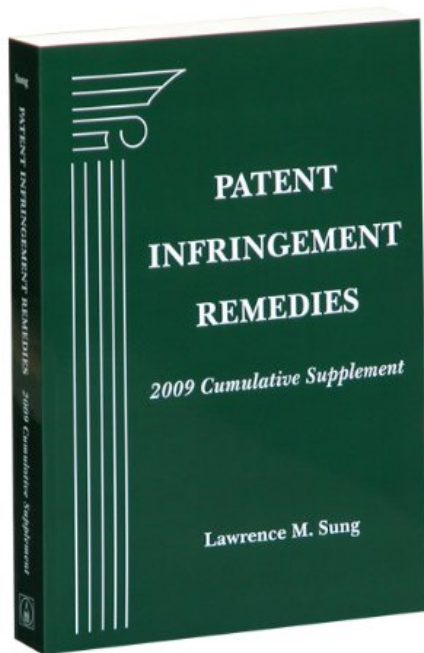
Eric R. Lamison, Kirkland & Ellis LLP

James Pampinella, Navigant Consulting, Inc.

Bijal Vakil, White & Case LLP

Siddhartha Venkatesan, Orrick, Herrington & Sutcliffe LLP

Patent Infringement Remedies



Damages (\$\$)

- Lost Profits
- Reasonable Royalty

Equitable Remedies

- Injunction

Multicomponent Products



The Entire Market Value Rule (EMVR)

Allows recovery of damages based on sales/profits of the entire product – not just the patented part or features of the product

Patentee Must Prove . . .

- Infringing features are basis for *customer demand* for product
- Infringing and non-infringing components sold together as “functional unit” or “single assembly”

Otherwise . . .

- “Analytical Approach” required
- Royalty base is the *incremental value* of the infringing features over the next best non-infringing alternative
- Must separate out (“apportion”) from sales of total device defendant’s profits and patentee’s damages

Emerging Issues with Multicomponent Products

- **Smallest Salable Patent Practicing Unit (SSPPU)**
- **Is the Entire Market Value Rule (EMVR) Being Avoided?**
- **Injunctions & Multicomponent Products**

Timeline of Key Federal Circuit Case Law

RiteHite v. Kelley
Jun 15, 1995

Lucent v. Gateway
Sept. 11, 2009

LaserDynamics v. Quanta
Aug. 30, 2012

Cornell v. HP*
March 30, 2009

Uniloc v. Microsoft
Jan. 4, 2011

* *Cornell v. HP* was a District Court decision by Judge Rader of the Federal Circuit, sitting by designation. The decision helped launch a new wave of Federal Circuit damages law.

Emerging Issues with Multicomponent Products

- **Smallest Salable Patent Practicing Unit (SSPPU)**
 - What is the SSPPU and where did it come from?
 - How to discern the SSPPU?
 - Is further apportionment of the SSPPU required?
- Is the Entire Market Value Rule (EMVR) being avoided?
- Injunctions & Multicomponent Products



Emergence of the SSPPU

***Cornell University v. Hewlett-Packard Co.*, 609 F. Supp. 2d 279 (N.D.N.Y. 2009) (J. Rader, sitting by designation).**

- Judge Rader rejected the patentee's use of CPU bricks as the proposed royalty base where the patent-in-suit applied only to a feature of an instruction buffer in the processor. (*Id.* at 289.)
- Judge Rader reaffirmed stringent requirements, including “the basis for demand,” for using the entire market value of a multi-component product as a royalty base. (*Id.* at 286.)
- Judge Rader introduced the “**smallest salable patent-practicing unit with close relation to the claimed invention**” for use in the royalty base analysis for multi-component products. (*Id.* at 288.)

Emergence of the SSPPU

***LaserDynamics Inc. v. Quanta Computer USA, Inc.*, 694 F.3d 51 (Fed. Cir. 2012).**

- Embraces *Cornell* decision and smallest saleable patent-practicing unit as appropriate royalty base in multi-component product:
 - “[I]t is generally required that royalties be based not on the entire product, but instead on the ‘smallest salable patent-practicing unit.’ . . . The entire market value rule is a narrow exception to this general rule.” (*Id.* at 67.)
- Rejects “practical and economic necessity” argument for using entire laptop computer as royalty base. (*Id.* at 69–70.)
 - Case involved Optical Disc Drives and optical disc discrimination technology
 - Royalty base should not have been entire laptop as compared to “a patent practicing ODD alone”
 - (Interesting – No discussion of whether to apportion the ODD)

Interesting Evolving Issues

- How to discern the SSPPU in relation to the claimed invention?
 - Need it be something that is actually or potentially sold?
 - To what extent does language of patent claim drive analysis? Must SSPPU practice every claim limitation to qualify?
- Is apportionment required (does EMVR apply) where SSPPU is itself a multi-component device?

Something Actually or Potentially Sold?

- ***Broadcom v. Emulex*, 2011 WL 11025895 (C.D. Cal. Dec. 13, 2011).**
 - Rejects assertion that cores were SSPPU as compared to chips.
 - “Allegations that SerDer cores are sold individually by other merchants at this point do not change the analysis because it was reasonable for a jury to rely on the fact that the chips here were smallest unit sold by the infringer, as the processors were in *Cornell*, and had been used as the base in other agreements.” *Id.* at *7.
- ***Cornell*, 609 F. Supp. 2d at 292.**
 - “Although the accused processors were the smallest salable units incorporating [the] invention, Hewlett-Packard’s primary business did not include a la carte processor sales.” (*Id.*)
 - “Accordingly, because this court finds that Hewlett-Packard’s *hypothetical processor revenue calculation* represents the only reliable evidence in this record of adequate compensation for infringement of the claimed invention, [summary judgment is granted].” (*Id.* at 290.)

Impact of Language of Patent Claim

- ***VirnetX*, 925 F. Supp.2d at 841.**
 - “There are instances when the smallest salable patent-practicing unit is the entire product. *Depending on the claim language of a patent*, it is foreseeable that an entire product is required to practice the invention.” (*Id.*)
- ***Summit 6*, No. 3:11-CV-367-O at FN 11.**
 - “Because only the device can practice the patent and no other smaller component is even able to practice the patent, Benoit properly [found that] the entire device was the “smallest salable patent-practicing unit.” (*Id.*)
- Should it matter whether SSPPU itself practices every limitation of the claim? Does that give windfall for claim drafting of system claim for minor improvement to a system?

Impact of Language of Patent Claim

- Does the law of patent exhaustion inform this issue?
- ***Quanta Comp., Inc. v. LG Elecs., Inc.*, 553 U.S. 617, 625 (2008).**
 - “The longstanding doctrine of patent exhaustion provides that the initial authorized sale of a patented item terminates all patent rights to that item.”
 - A component of a product may qualify as “patented item” the sale of which results in exhaustion ***even if it does not practice every element of the claims***, so long as it “embodies essential features of [the] patented invention” (*Id.* at 618) (citing *Univis Lens Co., Inc. v. U.S.*, 316 U.S. 241 (1942)).

Impact of Language of Patent Claim

- ***Quanta Comp., Inc. v. LG Elecs., Inc.*, 553 U.S. 617, 625 (2008).**
 - “Like the *Univis* lens blanks, the Intel Products constitute a material part of the patented invention and all but completely practice the patent. Here, as in *Univis*, the incomplete article substantially embodies the patent because the only step necessary to practice the patent is the application of common processes or the addition of standard parts. ***Everything inventive about each patent is embodied in the Intel Products.***” (*Id.* at 632.)
- This reasoning may help guide apportionment analyses.
 - Can SSPPU be something that does not practice every claim but has everything inventive about the patent?

When SSPPU is itself a multi-component device

- **Starting Line:** Several district courts apply EMVR / apportionment to SSPPU itself composed of multiple non-patented components.
 - EMVR test must be met to use multi-component SSPPU as base; if EMVR is not met, patentee must further apportion the base.
 - One district court did not necessarily apply the EMVR, but came to similar result by rejecting argument that a “close relationship” existed between the patent claim and the multi-component SSPPU.
- **Finish Line:** Some district courts suggest that EMVR does not apply SSPPU royalty base.
 - Did not require patentee to show that patented feature was the basis for consumer demand for SSPPU. Did not require further apportioning.

Starting Line

- “The entire market value rule can apply to a smallest saleable patent practicing unit when the smallest saleable patent practicing unit is itself made up of multiple components.”
 - *AVM Techs., LLC v. Intel Corp.*, 2013 WL 126233, at *2 (D. Del. Jan. 4, 2013).
- “When using a multi-component product as a royalty base, even if it is the smallest salable unit, a patentee must *still show* that the patented feature drives demand for the entire product.”
 - *Network Protection Sciences, LLC v. Fortinet, Inc.*, 2013 WL 5402089, at *7 (N.D. Cal. Sept. 26, 2013).

Finish Line

- “[I]f the smallest saleable unit is the product itself, then the entire market value rule should not be considered, since the rule is an exception that allows a jury to consider the entire revenues of a multicomponent product when the patented feature is only a small aspect of the product.”
 - *VirnetX Inc. v. Apple Inc.*, 925 F. Supp. 2d 816, 841 (E.D. Tex. 2013).

Finish Line

- “Whether [EMVR] is implicated thus turns on the question of whether the 3DS constitutes the [SSPPU]. . . .”
 - *Tomita Techs. USA v. Nintendo Co., Ltd.*, 2013 WL 4101251, at *8 (S.D.N.Y. Aug. 14, 2013).
- “Using the entire device as the royalty base is proper ... the device itself is the ‘smallest patent-practicing unit.’”
 - *Summit 6 LLC v. Research in Motion Corp.*, No. 3:11-CV-367-O, at *20 (N.D. Tex. June 26, 2013).
- “The requirements of the entire market value rule must be met only if the royalty base is not the smallest saleable unit with close relation to the claimed invention.”
 - *Broadcom Corp. v. Emulex Corp.*, 2011 WL 11025895, at *6 (C.D. Cal. Dec. 13, 2011).

When SSPPU is itself a multi-component device

- “. . . with proper proof, a plaintiff may invoke the entire market value rule to include within the royalty base both infringing and non-infringing elements. For example, in this case, application of the entire market value rule *might* enable Cornell to obtain royalties not only on the claimed features of the [instruction reorder buffer] but also on sales of processors which include features beyond the scope of the claimed invention.”
 - *Cornell*, 609 F. Supp. 2d at 286
- Suggests that EMVR still applies to SSPPU
 - Interesting question: Did Judge Rader (a) apply standard EMVR to the SSPPU (processor), or (b) find that SSPPU was the proper base because of its “close relation to the claimed invention”?

When SSPPU is itself a multi-component device

- Does *Cornell* instruct courts to evaluate whether the SSPPU is “closely related” to the patented feature?
- ***Dynetix Design Solutions, Inc. v. Synopsys Inc.*, 2013 WL 4538210, at *3 (N.D. Cal. Aug. 22, 2013).**
 - “Contrary to [the patentee’s] assertions, the [*Cornell*] court did not hold that no further apportionment is ever necessary once the smallest salable unit is determined. . . This Court sees no logical basis to depart from an apportionment requirement in a case, such as the present one, ***where the alleged smallest salable unit is not closely related to the patented feature.*** Here, DLP is an optional feature in the VCS product, and the patented feature is just one component of DLP.” (*Id.*)
 - “This language [in *Laserdynamics*] affirms that the smallest salable unit must be closely tied to the patent to suffice.” (*Id.*)

When SSPPU is itself a multi-component device

- ***Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d 1301 (Fed. Cir. 2009).**
 - Applies EMVR to Microsoft's Outlook software program (not just to the computer that has the program) and rejects using Outlook as royalty base.
 - “And when we consider the importance of the many features not covered by the Day patent compared to the one infringing feature in Outlook, we can only arrive at the unmistakable conclusion that the invention described in claim 19 of the Day patent is not the reason consumers purchase Outlook. Thus, Lucent did not satisfy its burden of proving the applicability of the entire market value rule.” *Id.* at 1338.
- ***Lucent* did not use the SSPPU language. But, it is apparent that in *Lucent*, the SSPPU actually sold was MS Outlook, and the Court *still applied EMVR and required apportionment*.**

Emerging Issues with Multicomponent Products

- Smallest Salable Patent Practicing Unit (SSPPU)
- **Is the Entire Market Value Rule (EMVR) being avoided?**
 - By use of comparable licenses for overall product?
 - By use of “per-unit royalty”? Lump sum royalties?
 - Did *Lucent* leave an opening?
- Injunctions & Multicomponent Products

The Federal Circuit And Comparable Licenses

- ***Lucent v. Gateway*, 580 F.3d 1301 (Fed. Cir. 2009)**
 - Reversed \$368M lump sum based on 4 lump sum and 4 running royalty licenses
 - Lump sum licenses rejected – “it is doubtful that the technology of those license agreements is in any way similar to the technology being litigated here.” *Id.* at 1330.
 - Running royalty rejected – “some basis for comparison must exist in the evidence presented to the jury.” *Id.* at 1330.
- ***ResQNet v. Lansa*, 594 F.3d 860 (Fed. Cir. 2010)**
 - 12.5% royalty based on “rebundling” licenses rejected in favor of litigation license, although “litigation itself can skew the results of the hypothetical negotiation.” *Id.* at 872.

ResQNet cited over 120 times

■ **Discovery / Admissibility**

- *Compare Software Tree, LLC. v. Red Hat, Inc.*, 2010 U.S. Dist. LEXIS 70542 (E.D. Tex. 2010) (inadmissible), *with ...*
- *DataTreasury Corp. v. Wells Fargo & Co.*, 2010 U.S. Dist. LEXIS 25291 (E.D. Tex. 2010) (admissible) *LaserDynamics, Inc. v. Quanta Computer, Inc.*, 694 F. 3d 51 (Fed. Cir. 2012) (examine circumstances of settlement)

■ **Daubert / JMOL**

- *Compare Broadcom v. Emulex*, 2011 U.S. Dist. LEXIS 154416 (C.D. Cal.) (Selna, J.) (different technologies but permitted), *with ...*
- *Tyco Healthcare v. Applied Med.*, 2011 U.S. Dist LEXIS 15685, 10-11 (E.D. Tex. 2011) (reject royalty based on expert's experience in the field)
- *IP Innovation v. Red Hat*, 705 F. Supp. 2d 687 (E.D. Tex. 2010) (Rader, J.) (reject studies)
- *Lighting Ballast v. Philips*, 2011 U.S. Dist LEXIS 154682 (N.D. Tex. 2011) (O'Connor, J.) (exclude litigation license with high royalty rate & 2nd patent)

Licenses “Comparable,” No EMVR?

- “This is a case where it is ‘economically justified’ to base the reasonable royalty on the market value of the entire accused product. . . . If [the entire market value rule] were absolute, then it would put Plaintiff in a tough position because on one hand, the patented feature does not provide the basis for the customer demand, but on the other hand, the most reliable licenses are based on the entire market value of the licensed products.”
 - *Mondis Technology v. LG Electronics*, 2011 WL 2417367, at *2-3 (E.D. Tex. June 14, 2011).

Licenses “Comparable,” No EMVR?

- “In other words, the royalty rate and the base are simply variables to be determined based on the evidence presented and in accord with proper apportionment regarding the value of the patented feature. *Consistent with the statements in [Lucent], district courts have permitted license agreements based on the entire product value as evidence of a reasonable royalty rate despite a lack of showing that the patented feature formed the ‘basis for customer demand.’* . . . Thus, the court declines to adopt a *per se* rule that a royalty rate may never be applied to the entire product price without satisfaction of the entire market value rule.”
 - *Microsoft Corp. v. Motorola, Inc.*, 904 F. Supp. 2d 1109, 1119 (W. D. Wash. 2012).

Per-Unit Royalties, No EMVR?

- “[Plaintiff’s damages expert] seeks a royalty rate of \$1.50 per unit . . . This \$1.50 minimum per unit rate does not depend on the accused products’ revenues or profits, and therefore the entire market value rule is not applicable.”
 - ***Multimedia Patent Trust v. Apple Inc.*, 2012 WL 5873711, at *5 (S.D. Cal. Nov. 20, 2012).**
- “[Plaintiffs’ damages expert’s] analysis calls for a per unit royalty on all sales of accused products. As a per unit royalty, it does not fluctuate with the price of the end product. Regardless of the ultimate sale price of the end product, the royalty rate remains constant. . . This further illustrates that [the expert] did not rely on the value of the end products in his analysis.”
 - ***Ericsson Inc. v. DLink Systems, Inc.*, 2013 WL 4046225, at *15 (E.D. Tex. Aug. 6, 2013).**

Lump Sum Royalties, No EMVR?

- “In *Lucent*, the Federal Circuit at least suggested that so long as an expert does not openly invite the jury to ‘speculate’ about the future, she may opine on the magnitude of the lump sum payment by ‘estimating’ what the total royalty would be based on a running royalty on the accused product as a whole. The Circuit did not suggest, and has not since suggested, that such an estimate is appropriate only where the demand requirement of the EMVR is satisfied.”
 - ***HTC Corp. v. Tech. Properties Ltd.*, 2013 WL 4787509, at *2 (C.D. Cal. Sept. 6, 2013).**

Opening in *Lucent*?

- *Lucent* left uncertainty about whether it is appropriate to use the EMV as royalty base if royalty rate is low enough.
 - “[T]he base used in a running royalty calculation can always be the value of the entire commercial embodiment, as long as the magnitude of the rate is within an acceptable range. . .” ***Lucent*, 580 F.3d at 1338–39.**
 - “[E]ven when the patented invention is a small component of a much larger commercial product, awarding a reasonable royalty based on either sale price or number of units sold can be economically justified.” ***Id.* at 1339.**

Opening in *Lucent*?

- Subsequent Federal Circuit panels do not appear to accept that language in *Lucent*.
 - “The 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*, 632 F.3d at 1320.**
 - “[T]he requirement to prove that the patented feature drives demand for the entire product may not be avoided by the use of a very small royalty rate.” ***LaserDynamics*, 694 F.3d at 67.**

Opening in *Lucent*?

- “After clarifying the statement in *Lucent*, however, the Federal Circuit in *Uniloc* explained that the law regarding the entire market value rule had not changed in *Lucent* or subsequently.”
 - *McDavid, Inc. v. Nike USA, Inc.*, 2013 WL 1749805, at *4 (N.D. Ill. April 23, 2013).
- “NPS’s reliance on *Lucent* [] is misplaced. NPS contends that *Lucent* stands for the proposition that using the entire market value of a multi-component product is permissible ‘as long as the proportion of the product represented by the infringing feature is taken into account.’ [] Yet, in *LaserDynamics* the Federal Circuit used the *Lucent* fact pattern as an example of the high bar set by the entire market value rule.”
 - *Fortinet*, 2013 WL 5402089, at *8.

Emerging Issues with Multicomponent Products

- Smallest Salable Patent Practicing Unit (SSPPU)
- Is the Entire Market Value Rule (EMVR) being avoided?
- **Injunctions & Multicomponent Products**
 - Identification of the causal nexus in a multi-component part to support a claim for injunctive relief

Current Case Law for EMVR/Permanent Injunction

- Requirements to invoke the Entire Market Value Rule
 - There are stringent requirements, including that the patented component is “the basis for demand” (*Cornell*)
- This allows a patentee to potentially use the value of the multi-component market as a royalty base
- SSPPU is the appropriate base to consider in multi-component product where EMVR does not apply (*LaserDynamic*)
 - Patentees cannot use the entire market value of an entire product as a royalty base “if the royalty rate is low enough” (*Uniloc*)
- For a permanent injunction, Plaintiff must demonstrate (*eBay* factors):
 - 1) Irreparable injury;
 - Patentee must establish:
 - A. Absent an injunction, it will suffer irreparable harm; and
 - B. A sufficiently strong causal nexus relates the harm to the infringement
 - 2) Remedies at law, such as money damages, are inadequate to compensate for injury;
 - 3) Considering a balance of hardships between plaintiff and defendant, a remedy in equity is warranted; and
 - 4) The public interest would not be disserved by a permanent injunction

Injunctive Relief for Multi-Component Products Requires Closer Scrutiny

The Unique Problem that Multi-Component Products Present

- Non-Infringers Caught in the Injunctive Crossfire
- Apportionment: An Inherent Problem with Multi-Component Products
- SEP's and the Patent Holdup Problem

Uncertainty in Permanent Injunctions

- The Difficulty of Determining Who is Bound
- The Tension Between Courts and the PTO – Who Wins?

Non-Infringers Caught in the Injunctive Crossfire

Apple v. Samsung (Fed. Cir. 2013)

- **Apple appealed district court's denial of permanent injunction for Samsung's infringement of design and utility patents**
 - Apple failed to persuade the district court that the *4eBay* factors warranted a permanent injunction against Samsung's allegedly infringing products
- **Federal Circuit reviewed the district court's analysis of the 4 *eBay* factors for abuse of discretion**
 - Upheld denial for Apple's design patents; vacated/remanded for utility patents
- **Irreparable injury – Is there a causal nexus relating the alleged harm to the alleged infringement in terms of demonstrating irreparable harm?**
 - The patented feature does not have to be the sole reason that consumers purchased the allegedly infringing product
 - You simply need a “connection” between the feature and the product demand
 - Despite proving to district court that it had suffered harm as a result of Samsung's products, Apple failed to show that the harm resulted from Samsung's infringement

Non-Infringers Caught in the Injunctive Crossfire

- **Inadequacy of legal remedies – what constitutes inadequate?**
 - Ability to pay?
 - Inability to pay can show inadequacy of damages
 - Ability to pay ***does not*** defeat a claim of inadequacy of damages
 - Simply means you look at other considerations
 - Past licensing activity?
 - How important is it that the patentee has previously chosen to license the patent?
 - This is only one factor such that a finding that the patent is not “*priceless*” is not dispositive (*Apple v. Samsung*, 2013 WL 6050986 at *18-19 (Fed. Cir. 2013))
 - Instead, the court should then turn to various other aspects of the patentee’s past licensing in order to determine if legal remedies are adequate
- **What if patentee previously offered to license to the infringer?**

Non-Infringers Caught in the Injunctive Crossfire

- Federal Circuit agreed with the District Court's consideration of how a permanent injunction will also affect non-infringing phone components
 - Part of the Court's balancing of public interests under *eBay*
 - This is a stronger factor “when the infringing components constitute such limited parts of complex, multi-featured products”
- The question remains as to what weight is to be given to an injunction's effect on non-infringing components
 - Should the weight of the public interest vary depending on how many non-infringing third party components will be subject to the injunction?

Apportionment: An Inherent Problem with Enjoining Multi-Component Products

- After taking the smallest saleable unit to calculate damages, you may still need to apportion revenue to the patented vs. unpatented features
 - The smallest salable unit may be the entire multi-component product
 - Thus, the royalty base is the entire product revenue
 - You must still apportion this revenue base among the patented and non-patented features
 - Failure to apportion is grounds alone to exclude an expert's opinion
- When a patentee seeks an injunction, how does the idea of apportionment translate to equitable relief?
 - This problem arises when the smallest salable unit includes multiple non-infringing components
 - When issuing an injunction, courts should be cognizant of its effect on the non-patented features

Injunctive Relief for Multi-Component Products Requires Closer Scrutiny

The Unique Problem that Multi-Component Products Present

- Non-Infringers Caught in the Injunctive Crossfire
- Apportionment: An Inherent Problem with Multi-Component Products
- SEP's and the Patent Holdup Problem

Uncertainty in Permanent Injunctions

- The Difficulty of Determining Who is Bound
- The Tension Between Courts and the PTO – Who Wins?

Hooray, you have an injunction! But wait, there's more...

***Aevoe v. AE Tech* (Fed. Cir. 2013)**

- Non-parties can be bound by an injunction
 - Federal Circuit held that a third party was also bound by the injunction, despite not being added as a defendant until 14 months after the injunction issued
- This decision hinged on the relationship between the third party and the named defendant in the case
 - The relationship between the original defendant (AE Tech) and prior non-party (S&F) was that S&F was the sole distributor of AE Tech products
 - Court held that it was “beyond debate” that S&F was also “within the express language of the original injunction” since it applied to any party who had notice of the injunction and S&F had been put on notice
 - Thus, the third party could be bound under FRCP 65(d)(2) since it was effectively in cahoots with the named defendant
- Throws a wrinkle in the ordinary rule that non-parties are not subject to court injunctions
 - Injunctions can go beyond typical parent-subsidary relationships

Federal Circuit Remains Interested in Remedies

- “Now the main purpose of my address today is to suggest that our patent law confidence crisis and litigation abuse are related in another way: they share the same preferred remedy, namely JUDICIAL CORRECTION.”

* * *

- “Section 285 of the Patent Act permits the court to “reverse” fees and make a losing party pay the litigation expenses of a winner in “exceptional cases.” When a judge perceives that a case exhibits litigation abuse, that case should be “exceptional” on that basis alone. *The litigation abuse can take the form of asserting damages far beyond the value of the intellectual property.* It can also take the form of litigation blackmail where the party asserting the patent seeks to extort a royalty less than the cost of defense from a great number of small retail outlets.”
 - **Chief Judge Randall R. Rader’s Keynote Speech, Eastern District of Texas Bench & Bar Conference (Nov. 1, 2013) (emphasis added)**

Areas Ripe for Clarification by the Federal Circuit

- What is the standard for ascertaining the smallest salable patent-practicing unit with close relation to the claimed invention?
 - Can it be a smaller unit that is not sold, but could be sold?
 - How does the patent claim language impact the analysis?
 - What if the SSPPU does not practice the claims but has all the alleged novelty?
- Is further apportionment of the SSPPU required?
- May allegedly comparable licenses be used to trump EMVR?
- When, if ever, is the EMVR not required after *Lucent*?
- When are injunctions appropriate for multi-component products?

Thank you!

Tamara Fraizer, Fish & Richardson P.C.

Eric R. Lamison, Kirkland & Ellis LLP

James Pampinella, Navigant Consulting, Inc.

Bijal Vakil, White & Case LLP

Siddhartha Venkatesan, Orrick, Herrington & Sutcliffe LLP