

Calculating Lost Profits in IP and Patent Infringement Cases

2009 Edition

Nancy J. Fannon,
ASA, CPA, ABV, MCBA



What It's Worth

Business Valuation Resources, LLC
1000 SW Broadway St. Suite 1200
Portland, OR 97205

(503) 291-7963 Fax (503) 291-7955 www.BVResources.com

TABLE OF CONTENTS

Introduction	Intro-1
Context of the Lost Profits Damages Claim <i>By Jonathan M. Dunitz, Esq.</i>	1-1
Professional Standards for Experts <i>By Michael Crain, CPA, ABV, ASA, CFA, CFE</i>	2-1
The Process: A Brief Introduction to the U.S. Court Systems from Filing to Appeal <i>By Jonathan M. Dunitz, Esq.</i>	3-1
Spoilation of Evidence <i>By Jonathan M. Dunitz, Esq.</i>	4-1
Lost Profits Calculations—Methods and Procedures <i>By James O’Brien, CPA, CFF and Robert P. Gray, CPA, ABV, CFF, CFE, FACFEI</i>	5-1
Establishing Evidence in Lost Profits Cases <i>By Tom Burrage, CPA, ABV</i>	6-1
Use of Forensic Evidence in a Lost Profits Case <i>By Michael Kaplan, CPA/ABV, CVA, CFFA</i>	7-1
Lost Profit versus Lost Business <i>By Thomas Burrage, CPA/ABV</i>	8-1
Practical Considerations: Collection of Electronically Stored Information <i>By Michael A. Cunniff, Esq.</i>	9-1
Discounting Lost Profits in Damage Measurements <i>By Michael A. Crain, CPA, ASA, ABV, CFA, CFE</i>	10-1

<i>Discounting Damages: Case Law</i> <i>By Robert M. Lloyd</i>	10-13
<i>Intellectual Property Overview</i> <i>By Michael Crain, CPA, ABV, ASA, CFA, CFE</i>	11-1
<i>Lost Profits Damages in Patent Infringement Lawsuits</i> <i>By Richard F. Bero, CPA/ABV, CVA, CLP, CFF</i>	12-1
<i>Lost Profits in Trademark and Copyright Cases</i> <i>By Rick Hoffman, CPA/ABV</i>	13-1
<i>Business Interruption Insurance and Damage Claims</i> <i>By Stephen D. Bowden, CPA</i>	14-1
<i>Motions to Exclude Financial Experts</i> <i>By Jonathan M. Dunitz, Esq.</i>	15-1
<i>Appendix A</i> <i>Selected Readings</i>	App-4
<i>Appendix B</i> <i>Links to ethical guidelines published by member organizations</i>	App-58
<i>Appendix C</i> <i>Links to requirements for certifications, by organization</i>	App-60
<i>Appendix D</i> <i>Links to Litigation Studies</i>	App-62
<i>Appendix E</i> <i>Applying AICPA Professional Standards</i>	App-63
<i>Appendix F</i> <i>Comparison of AICPA Standards to FRE</i>	App-64
<i>Appendix G</i> <i>Federal Rules of Evidence pertaining to Expert Testimony</i>	App-65
<i>Appendix H</i> <i>Federal Rules of Civil Procedure pertaining to Expert Testimony</i>	App-71

***Appendix I
Sample Court Scheduling Orders***

App-73

***Appendix J
Case Summaries***

App-103

Full text of most of the significant lost profit damage calculation cited cases, as well as selected others, is available on the online version of this Guide.