Excerpt from:

Calculating Economic Damages in Intellectual Property Infringement Cases

Second Edition

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BVR
What It's Worth
In memory of my biggest cheerleader and the most powerful influence in my life...my dad.

NJF, 2016

To my parents, for their decades of support.

JMD, 2016
## Table of Contents

About the Editors ................................................................. xi
Acknowledgments ................................................................. xii
Author Biographies ............................................................... xv
Foreword ................................................................................. 1

### PART I. EXPERT TESTIMONY IN THE U.S. COURTS .................................................. 3

Chapter 1. Professional Standards for Experts ............................................................... 5
  1.0 Certified Public Accountants ........................................................................... 7
  2.0 Economists and Other Financial Experts (Non-CPAs) ................................ 10
  3.0 Conclusion ................................................................................................. 12

Chapter 2. The Process: A Brief Introduction to the U.S. Court Systems, From Filing to Appeal ................................................................. 13
  1.0 Introduction and Overview of U.S. Court and Trial System .......................... 15
  2.0 The Rules of Evidence .............................................................................. 35

Chapter 3. Spoliation of Evidence ........................................................................... 43
  1.0 Introduction and Overview ....................................................................... 45
  2.0 Spoliation: Defined and Explained ............................................................... 47
  3.0 Spoliation Issues Relating to Experts ........................................................... 57
  4.0 Spoliation Issues Relating to ESI ................................................................. 61

Chapter 4. A Guide to Electronic Discovery and Evidence ..................................... 73
  1.0 What Is ESI and Where Does It Reside? ...................................................... 75
  2.0 Under What Circumstances Must ESI Be Preserved and What Protocol Should Be Followed for Doing So? ................................................................. 76
  3.0 How Should ESI Be Produced? ................................................................... 80
  4.0 How Should ESI Be Managed During Litigation? ....................................... 83
  5.0 What Is Required for ESI to Be Admitted Into Evidence at Trial? ............... 85
  6.0 How Can Financial Experts Assist With E-Discovery? ................................. 87

Chapter 5. Expert Depositions: Accountants, Economists, and Appraisers .......... 91
  1.0 Expert Depositions, Generally ................................................................. 93
  2.0 Expert Depositions, Financial Experts ....................................................... 100

Chapter 6. The Reasonable Certainty Requirement in Lost Profits Litigation: What It Really Means ................................................................. 111
  1.0 Balancing the Competing Concerns ............................................................ 116
  2.0 The Factors Courts Consider ................................................................... 118
  3.0 Replacing Rules With a Standard ............................................................... 151

Chapter 7. Motions to Exclude Financial Experts ................................................... 153
  1.0 Basic Legal Predicate .............................................................................. 155
  2.0 Factors to Consider in Making a Motion to Exclude an Expert ................. 158
PART II. LOST PROFITS DAMAGES

Chapter 8. Motions to Exclude Expert Testimony

1.0 Expert Qualifications .......................... 168
2.0 Methodology .................................. 175
3.0 Data ........................................... 180
4.0 Assumptions .................................. 191
5.0 Failure to Deal With Inconsistent Facts .......... 204
6.0 Conclusion .................................. 208

Chapter 9. Context of the Lost Profits Damages Claim

1.0 How a Claim for Lost Profits Arises .......... 213
2.0 Common Elements of Lost Profits Damages Cases .. 218

Chapter 10. Performing Credible Lost Profits Analyses

1.0 Planning ........................................ 230
2.0 Proper Damages Period ......................... 234
3.0 Estimating the Relevant Lost Revenues and Associated Costs ... 236
4.0 Professional Standards ........................ 253
5.0 Summary .................................. 260

Chapter 11. Projecting But-For Profits

1.0 Methods for Determining Lost Revenue .......... 270
2.0 Whether and the Extent to Which Historical Information May Be an Indicator of the Future .... 276
3.0 Alternatives to the Average, Weighted Average, or Most Recent Year .......................... 281
4.0 Startup Companies, Businesses in a New Industry, and Businesses With Limited Operating Histories .................................................................. 281
5.0. Use of Projections Prepared in the Ordinary Course of Business .......................... 281
6.0 Consideration of Growth ........................ 283
7.0 Consideration of Industry and Economic Information ........................................ 286
8.0 Methods to Forecast Expenses ................. 287

Chapter 12. Establishing Evidence in Lost Profits Cases

1.0 Introduction .................................. 291
2.0 Establishing a Reliable Foundation for the Claim ...... 291
3.0 Data and Information Generally Available From the Parties ........................................ 292
4.0 Market and Demand for Plaintiff’s Product ......................... 299
5.0 Industry and Economic Data ...................... 301
6.0 Adequate Consideration of All Available Data ........................................ 304

Chapter 13. Calculating Damages for Early-Stage Companies

1.0 Legal Requirements: The Basic Parameters ........ 310
2.0 Methods for Proving Lost Profits for New Businesses .................................................................. 314

Chapter 14. Lost Profits Versus Lost Business Value

1.0 Introduction .................................. 331
2.0 Definition of Value in a Loss of Business Value Claim ........................................ 332
3.0 Considerations in Making the Claim for Lost Business or Lost Profits .......................... 334
4.0 Comparison of Lost Profits Versus the Lost Value of a Business ........................................ 335
5.0 Can Plaintiffs Recover Both Lost Profits and Lost Business Value? .......................... 346
6.0 Conclusion .................................. 348
7.0 Additional Resources .......................... 348
### Table of Contents

**PART III. INTELLECTUAL PROPERTY DAMAGES**

**Chapter 19. Intellectual Property Overview**

1. Overview: Comparing IP Valuation to IP Damages Measurements ............................................. 451
2. Summary .............................................................................................................................. 456

**Chapter 20. Patent Infringement Damages: Lost Profits and Royalties**

2. The Patented Technology at Issue ...................................................................................... 461
3. Lost Profits in Patent Infringement Cases ............................................................................ 463
4. Market Share Damages ......................................................................................................... 472
5. Price Erosion ........................................................................................................................ 474
6. Collateral Sales—Lost Profits .................................................................................. 476
7. Royalty Damages .................................................................................................................. 477
8. RAND Royalties—Standard Essential Patents ................................................................. 489
9. Post-Verdict Royalties ............................................................................................................. 490
10. Limitations on Damages ........................................................................................................ 490
11. Damages Against the U.S. Government Under §1498 ...................................................... 491
12. Prejudgment Interest ........................................................................................................... 491

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**Chapter 15. Discounting Lost Profits in Damage Measurements**

1. Introduction ............................................................................................................................. 353
2. Objective of Compensatory Damages: Making the Plaintiff Whole ........................................ 354
3. Interest Rates, Rates of Return, and Discount Rates ............................................................. 354
4. Conclusion .............................................................................................................................. 364

**Chapter 16. Discounting Damages: Case Law**

1. Cases Allowing a Risk-Free Rate ........................................................................................ 368
2. Cases Requiring a Risk-Adjusted Rate ................................................................................ 371
3. Cases Allowing a Reinvestment Rate .................................................................................. 377
4. Other Opinions Discussing the Discount Rate ..................................................................... 377
5. Alternatives to Challenging the Discount Rate .......................................................................... 378
6. Conclusion .............................................................................................................................. 381

**Chapter 17. Use of Forensic Evidence in a Lost Profits Case**

1. Introduction ............................................................................................................................. 385
2. Indicators That Forensic Evidence Is Needed ........................................................................ 386
3. Admissibility of Forensic Evidence ....................................................................................... 391
4. Cases Demonstrating the Use of Forensic Evidence ............................................................... 393

**Chapter 18. Financial Forensic Services for Internal Investigations**

1. Introduction ............................................................................................................................. 401
2. White-Collar Crimes and Associated Financial Forensic Services ........................................ 403
3. Distinguishing a Financial Audit From Financial Forensic Services ..................................... 405
4. Indicators of Fraud ................................................................................................................ 409
5. Financial Forensic Services and Internal Investigations ......................................................... 410
6. Internal Investigation Areas .................................................................................................... 433
7. Common Mistakes in Internal Investigations .......................................................................... 435

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Chapter 21. Lost Profits (and Other Damages) in
Trademark and Copyright Cases ........................................ 493
  1.0 Trademark Damages .................................................. 495
  2.0 Copyright Damages .................................................. 508

Chapter 22. Uses of Survey Research in Damages Estimation .......... 513
  1.0 Introduction ........................................................... 515
  2.0 Guidelines and the Impact of Daubert ......................... 516
  3.0 Federal Judiciary Guidelines ........................................ 516
  4.0 Industry Guidelines .................................................. 521
  5.0 Case Studies .......................................................... 523
  6.0 Special Topics ......................................................... 526
  7.0 Summary ............................................................... 529

Chapter 23. Using Internet Analytic Tools for Valuation and
Damages Calculations in Internet IP Infringement and Defamation Cases .... 531
  1.0 Introduction ........................................................... 533
  2.0 Key Concepts of Internet and Social Media Analysis ........... 534
  3.0 How to Use the Tools: Incorporating Internet and Social Media Data and Information
     Into Your Valuation and Damages Analyses ....................... 540
  4.0 Conclusion ............................................................. 549

PART IV. THE UNJUST ENRICHMENT REMEDY ............................. 553

Chapter 24. Introduction to Remedies in Equity ............................ 555
  1.0 Advantages ............................................................. 557
  2.0 Disadvantages .......................................................... 558
  3.0 Basis of Equitable Remedy ............................................ 559
  4.0 Variation by Jurisdiction .............................................. 563
  5.0 Discretion and Limited Jurisdiction ............................... 563
  6.0 Decline in Familiarity ................................................ 566
  7.0 Conclusion .............................................................. 567

Chapter 25. Counting the Beans: Unjust Enrichment and the
Defendant’s Overhead ........................................................ 569
  1.0 Introduction ............................................................. 571
  2.0 Relevance ............................................................... 575
  3.0 Semantics ............................................................... 578
  4.0 The Origins of Unjust Enrichment: Defendant as Quasi-Trustee .... 591
  5.0 The Origins of Unjust Enrichment: The Americanization of ‘Profit’ ... 610
  6.0 Remedy Measurement in Related Areas of the Law ............... 621
  7.0 The 2nd Circuit: An Uneven Commitment to Consistency? ........ 639
  8.0 Willfulness and Overhead ............................................. 651
  9.0 Survey by Circuit ...................................................... 654
  10.0 Incremental Versus Full Absorption ................................ 663
  11.0 Conclusions ........................................................... 670
Chapter 26. Restitution Rollout: *The Restatement (Third) of Restitution & Unjust Enrichment*: Counter-Restitution for Monetary Remedies in Equity. . . .673

- 1.0 Introduction. .................................................................................................675
- 2.0 Anti-Netting Doctrine as a Genetic Marker for Monetary Remedies in Equity .................................................................................................678
- 3.0 Monetary Remedies in 19th Century IP Case Opinions. ........................................680
- 4.0 Semantics ........................................................................................................681
- 5.0 Quasi-Trustee ..................................................................................................686
- 6.0 Counter-Restitution ..........................................................................................690
- 7.0 Disgorgement by Default ..................................................................................695
- 8.0 Gross Disgorgement Cases ...............................................................................699
- 9.0 FTC Claims for Gross Disgorgement ................................................................704
- 10.0 Conclusion ......................................................................................................722

PART V. APPENDICES ............................................................................................725

- Appendix A. Federal Rules of Evidence Pertaining to Expert Testimony ............727
- Appendix B. Federal Rules of Civil Procedure Pertaining to Expert Testimony ....734
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Acknowledgments

The ability to create a text with deep insights into the breadth of issues that affect financial damages requires the talents of many individuals, and there is no group more qualified than this group of contributing authors. They are specialists in the particular area they have written about. We thank each of them for the time and energy they put into helping others gain from their insights by participating in this book.

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Calculating Economic Damages in Intellectual Property Infringement Cases

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Udell is on the Panel of Experts of the *Financial Litigation and Valuation Expert* publication. She is a contributing author to this publication, as well as the *BVR/AHLA Guide to Healthcare Valuation, Family Law Services Handbook,* and *Financial Valuation: Applications and Models.*
“It costs us nothing to be just.”

This book is about financial evidence: how to gather it, interpret it, and tell its story in a lawsuit or litigation setting related to intellectual property or patent infringement. This is the task that the attorney typically retains the financial expert to accomplish. In this comprehensive guide, we bring together the financial expert’s knowledge of accepted methods and procedures with the attorney’s knowledge of legal issues and insights. This includes a summary of the applicable rules of civil procedure and of evidence. However, like any guidance, it is a tool and not a substitute for the professional’s knowledge of a particular case, the potential impact of local rules regarding discovery, and the jurisdictional nuances that may affect the damage calculations.

The attorneys and financial experts who have participated in putting together this text are among the best in the country in their respective areas of expertise. Our heartfelt thanks go out to all of them for their generous and substantial contributions. Each of their chapters served to make this a better, more comprehensive work covering a range of never-before-addressed topics—including extensive analysis of concepts and case law that lawyers and experts have to grapple with when faced with a damage analysis.

This third edition includes materials on a variety of damages measures, including lost profits or value and intellectual property damages. There is also comprehensive analysis of motions to exclude experts and an in-depth review of the concept of reasonable certainty, the result of significant research on the topic.

Much of the text’s material has been substantially enhanced for this edition, and we thank the continuing efforts of the panel of contributing authors for their efforts.

In addition to these expanded materials, new topics have been added to this edition, including the use of statistics in damage analyses; the use of surveys in intellectual property damages; and Internet tools for assessing intellectual property infringement. The expansion to include these and other topics is the reason this treatise is now titled Calculating Economic Damages in Intellectual Property Infringement Cases instead of Calculating Lost Profits in Intellectual Property and Patent Infringement Cases.

1  Henry David Thoreau, “A Plea for Captain John Brown” (1859).
Calculating Economic Damages in Intellectual Property Infringement Cases

Once again, Business Valuation Resources, LLC, has provided extraordinary support, and, in particular, we thank Sarah Andersen, publisher at BVR, whose assistance has been irreplaceable.

To all our new contributors to the guide, a warm welcome and to all who participated in this edition, a heartfelt thank you.

We hope you find this text to be a rich resource for your practice and welcome your suggestions and input for our continuing updates and for new topic areas that would benefit your work as an attorney or expert.

Nancy J. Fannon and Jonathan M. Dunitz
2016
About Business Valuation Resources

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