

Third Edition

Excerpt from

Intellectual Property Valuation



Case Law Compendium

BVR
What It's Worth

Intellectual Property Valuation Case Law Compendium

THIRD EDITION



What It's Worth

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Introduction

Intellectual property litigation has received remarkable attention lately. Headlines and the notion of billion-dollar damage awards have captured the imagination of patent owners and potential defendants alike. With billions of dollars at risk, the implication for expert witnesses focused on valuation is acute. In large cases, it is not unheard of for one side to designate many experts on various topics from market analysis to technical analysis to economic analysis. For example, in Apple and Samsung's protracted litigation in California, each proffered at least eight experts to opine on various litigation-related matters.

Federal Rule of Evidence 702 allows admission of scientific, technical, or other specialized knowledge by a qualified expert if it will help establish understanding of evidence or to determine a fact in issue, provided that the testimony is relevant and reliable. What constitutes the measures of relevance and reliability is subjective. As a result, reports and testimony proffered by experts is often subject to a high degree of inspection and protest by opposing counsel. This high degree of inspection has raised the bar for admissibility of opinion in litigation.

In many ways, the higher bar is desirable because it helps filter out a lot of junk science that might otherwise make its way into the courtroom. Some remarkably horrid value conclusions have made their way into recent cases, which both enables charlatans and hinders the efforts of credible valuation experts. However, that same higher bar provides opposing counsel with a variety of means to attempt to exclude experts on trivialities. Opposing counsel may now attempt improperly to shoehorn protests regarding issues of sufficiency of evidence into issues of admissibility of evidence in proving economic damages.

Proving economic damages carries with it a higher degree of uncertainty than that encountered in the physical sciences. A scientist can measure a blood sample for the concentration of a particular chemical (e.g., alcohol) and come to some exact measurement with a high degree of confidence. Two competing experts can measure the coefficient of friction for rubber on tires on dry pavement and calculate the estimated speed of a car based upon the length of the skid marks. Moreover,

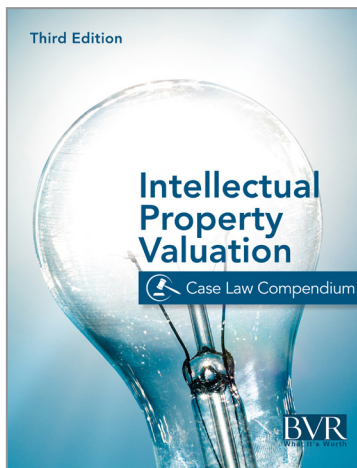
competing experts will generally be able to take the same exact physical samples, apply physical sciences, and come to the same results. Such conditions do not necessarily exist for economic analysis. Empirical evidence suggests that valuation experts may rarely agree on even the most basic of factual matters or the weight to give to various factual matters. The dissonance of competing experts creates challenges and opportunities for producing credible, objective analysis that survives admissibility challenges and cross-examination.

This compendium provides a concise overview of many topics of interest to expert witnesses that testify on intellectual property matters. An overview of intellectual property and key analysis topics, written by many of today's leading valuation educators, address complexities in risk analysis, brand valuation, and discount rate development. Several chapters focus on the seminal *Uniloc v. Microsoft* case that invalidated the venerable 25% rule, the Alamo for valuation experts, and other lessons learned from contemporary litigation. Nearly 200 case digests of interest to intellectual property valuation in litigation round out the third edition of BVR's *Intellectual Property Valuation Case Law Compendium*.


Mike Pellegrino

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Intellectual property (IP) litigation has received remarkable attention lately. Headlines and the notion of billion-dollar damage awards have captured the imagination of patent owners and potential defendants alike. With billions of dollars at risk, the implication for expert witnesses focused on valuation is acute. Confidently navigate your next IP engagement with new thought leadership in *BVR's Intellectual Property Valuation Case Law Compendium, Third Edition*.

Highlights of the compendium include:

- Insight and advice from top business valuation experts on valuing brands, copyrights, patents, and more
- Key business valuation issues related to intellectual property with in-depth analysis on nearly 200 cases
- A handy chart that organizes the cases by name, state, and date, and includes a short summary of each
- The top 20 questions to ask when completing due diligence for an IP valuation

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