

# Intellectual Property Dispute Advisory Services

*Helping our clients handle IP-related conflicts*

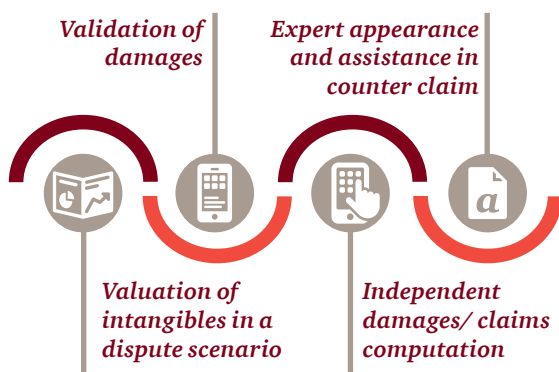
The IP life cycle, encompassing the creation, protection, enforcement, commercialisation and awareness of IP, has become increasingly crucial to business success. Quantitative economic analysis of these IP rights during each phase of the life cycle plays an essential role and both business owners and courts are recognising the true value of IP and the loss caused to right holders due to IP infringement.

Recent announcements by multinational companies reveal the complexity and massive scale of damages and claims involved in the areas of patent infringement, copyright and design disputes, royalty payment disagreements, and technology disputes.

## ***What are the early signs of IP disputes?***

- Are you involved in a disagreement involving valuation of an intangible asset?
- Does your claim involve computation of reasonable royalty under fair, reasonable and non-discriminatory (FRAND) terms?
- Is there a conflict between the legal versus economic owner of the IP asset?
- Do you notice any material loss of your revenue due to patent misuse or infringement?
- Is your relationship with your technology partner turning hostile?
- How do you determine lost profits and price erosion as damages?
- Is the licensor of the technology attempting to abuse its monopoly power?
- Is the existing royalty rate for the use of the brand or technology fair and reasonable?

## ***How we can assist you***



## a. Valuation of intangibles in a dispute scenario

Approach	Market approach	Income approach	Cost approach
Methods	Market price on active markets	Relief from royalty method	Reproduction costs method
	Analogy method	Multi-period excess earnings method	Reproduction costs method
		Incremental cash flow/profit premium	
		Greenfield/ discounted cash flow (DCF) method	
	Preferred approach, but not commonly used due to lack of comparable transactions of individual assets	Preferred approach	Ignores future financial benefits

## b. Validation of damages

- Carry out an independent validation of damages to strengthen the legal position of the patent holder
- Make the court or arbitrator understand the methodology of computing IP damages
- Understand the negotiations of the parties at the time infringement began
- Consolidated look at the complete set of various events and facts that occurred thereafter and that could not have been known to or predicted by the hypothesised negotiators

## c. Independent computation of damages and claims

### *Computation of reasonable royalty under FRAND terms*

- A reasonable royalty is the floor below which any award of damages should not fall.
- The Georgia-Pacific factors serve as a starting point for determining reasonable royalty.

### *Determination of lost profits as damages*

- The Panduit test is usually the starting point for determining whether profits have been lost as result of the infringement.
- Factors we take into consideration for detailed computation of lost profits include collateral sales, the entire market value rule and infringer's profits.

### *Determination of price erosion damages*

- The patent holder can also recover additional damages if it can establish that it is more likely than not that, if there had been no infringement, the patent holder would have been able to charge higher prices for some of its products.

## d. Expert appearance and assistance in counterclaims

- We appear as independent experts to challenge the infringing party's theories and assumptions.
- Factors to be considered in such cross-examination and counterclaims include their expert's methodology, presence of analytical gaps between the data and the expert's opinion, comparable licences and sufficiency of the evidence.

## Contact us

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