

Determining Royalty Damages in Patent Litigation

A Practical Guidance® Practice Note by Christopher C. Smith, Brooks Kushman P.C.



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The practice note “Determining Royalty Damages in Patent Litigation” provides guidance on calculating reasonable royalty damages under 35 U.S.C. § 284. It addresses application of the Georgia-Pacific factors, comparable-license analysis, royalty base selection, apportionment, and the role of technical and economic experts. The note explains how attorneys should evaluate comparable licenses, market demand, economic conditions, standard-essential patent licensing, FRAND obligations, royalty stacking, and the patented technology’s contribution to the accused product. It also discusses determining the

smallest salable patent-practicing unit, applying the entire market value rule, selecting a running royalty, lump-sum payment, or hybrid structure, and deriving royalty rates from agreements with incomplete or redacted terms. The note additionally discusses the 2025 Federal Circuit decisions in *EcoFactor* and *Rex Medical*, which caution against unsupported expert damages opinions, including reliance on unilateral settlement-license recitals and unapportioned portfolio licenses. Practitioners are advised to coordinate early with technical and economic experts, develop evidence-based apportionment, account for geographic and economic context, pursue discovery on comparable licenses, and avoid overreaching damages theories. Effective royalty analyses require careful preparation, reliable expert testimony, and case-specific evidence tying the proposed royalty to the patented invention’s proven value.

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Christopher Smith is a distinguished intellectual property attorney specializing in patent litigation, IP counseling, licensing, and patent and trademark prosecution, with extensive experience representing Fortune 500 companies and startups across diverse industries.

Christopher Smith is a highly regarded intellectual property attorney, recognized for his work in IP litigation, especially in patent litigation. His practice encompasses patent and trademark prosecution and the preparation of complex invalidity and infringement opinions. In 2024, Chris was honored with the prestigious Law360 MVP Award, an accolade awarded to only six IP attorneys nationwide, highlighting his exceptional influence and impact within the IP law community.

Chris is a registered patent attorney authorized to practice before the U.S. Patent and Trademark Office. He represents clients ranging from Fortune 500 companies to startups, leveraging a comprehensive understanding of industries including automotive (notably infotainment), medical devices, internet technologies (such as content delivery networks), and telecommunications (including fiber optics).

Chris’s background in patent prosecution deepens his litigation acumen, enabling him to analyze patent file histories with precision, which is invaluable in shaping claim construction and invalidity arguments. His litigation success is rooted in both his technical expertise and extensive experience with trial teams, previously honed during his time at Kirkland and Ellis in Los Angeles. Chris is an active speaker at a number of major IP conferences, frequently sharing his insights on emerging issues in intellectual property law, offering valuable perspectives on cutting-edge topics and best practices.

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