



David G. Clarke, ASA

Expert Witness Testimony Regarding Patent Infringement Damages

The Griffing Group (“TGG”) was retained by the defendants in a patent infringement case heard in the U.S. District Court. The defendants, a small distributor of packaging equipment, were sued for infringing upon a patent held by the plaintiffs, a Fortune 500 company.

The plaintiffs’ expert claimed the economic damages exceeded \$3.0 million. TGG calculated economic damages of \$50,000, and David Clarke testified to our findings. The ruling of the Court, which included damages for willful infringement and pre-judgment interest, totaled only \$150,000, a sum very near our opinion of the damages.

Why did the Court find this damages amount?

The Panduit Factors – The first area in which we prevailed was in the application of the Panduit factors. In determining damages from patent infringement, one of the most important assessments an expert must make is whether economic damages will be assessed by measuring lost profits or by the application of reasonable royalty. The Panduit case provides tests to aid in this determination.

In one test, TGG surveyed the plaintiffs’ competitors and discovered that non-infringing substitute products existed in the marketplace before the patent in question was issued. In another test, TGG demonstrated that there was not sufficient financial information available to calculate profits lost by the plaintiffs. This evidence led the Court to concur with The Griffing Group and conclude that the proper measure of economic damages was the relief from royalty method.

Convoyed Sales – The plaintiffs’ experts attributed lost revenue to all three components of the product in question (a shrink packaging system). TGG demonstrated to the Court that the patent infringement occurred only in one component, and since a consumer could purchase the three components from different manufacturers it was not appropriate to include revenue lost from the sale of the two non-infringing components in calculating royalty damages. As a result, the Court considered a more limited amount of lost revenue when it assessed royalty damages.

The Griffing Group: Experienced, Thoughtful and Respected – The Griffing Group is regularly chosen as an expert for litigation matters in the Delaware Court of Chancery and other jurisdictions because of our experience and ingenuity. Our well-supported written reports and experience in testimony add tremendous value to complex cases. Our areas of expertise include determination of fair value and fair market value, economic damages, intellectual property damages, and contractual issues such as material adverse effect clauses.

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