

ENFORCEMENT OF INTELLECTUAL PROPERTY

Prepared for the Practicing Law Institute
for
Handling Intellectual Property Issues in Business Transactions 2005
in Chicago

by
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I. Summary

Enforcing intellectual property (IP) is a matter of a variety of issues, benefits, interests, risks, costs, complexities, and complications. Among the issues, the IP to be enforced must be selected. The targets of enforcement must be selected. Business interests must be determined. Budgets must be set and expenses monitored. Selecting the IP to enforce should involve a sophisticated effort of analysis. Selecting targets for IP enforcement involves another topic of sophisticated analysis, this time of the legal consequences of the IP owner's current and past activities, and of the business objectives of the enforcement. Determining the business objectives of the enforcement, once the legal situation is known, is a matter of an assessment whether the IP is to be licensed, market share is to be protected, competitive price advantages are to be preserved, respect is to be encouraged for all owned IP, and the like. Enforcing IP can bust even larger budgets, and consequently, budgets for enforcement activities can and must be set, monitored and satisfied.

II. Selecting the Intellectual Property to Enforce

Selecting IP to enforce should involve a sophisticated effort of analysis. A large universe of enforceable and potentially infringed IP may exist. Issues routinely checked include ownership and infringement. Ownership should be checked through the paper chain of title, and interviews of inventors, authors, and prominent co-workers. Infringement should be checked through an investigation of at least "Rule 11" quality under all applicable legal standards. Others matters to analyze include files of past enforcement efforts, files of U.S. and foreign prosecution in all related cases, files of existing licensing potentially requiring enforcement of specific IP against infringers, validity and enforceability of the IP, the potential for recovery, and possible equitable defenses such as laches, estoppel, and implied license. The validity and enforceability of patents should be reviewed on all grounds of defense available at law. For patents, as well, additional matters to analyze include the potential for design-arounds, and patent marking. A check list of potential subjects for analysis is attached at tab A.

Where a large universe of IP exists that is potentially enforceable and infringed, the universe may exist as a result of a highly organized effort to gain IP. Some technology-based companies gain thousands of patents each year. Many are actively “mapping” their patents as they are gained, through databases of patent summaries. Where these resources exist, they should be used for starting materials for IP enforcement.

Especially where corporate entities have blurred through rapid and frequent mergers, acquisitions, downsizings, and reorganizations, ownership of IP can be problematic. Paper chains of title must be carefully examined. Where there are gaps, documents of merger and acquisition transactions must be examined. The authors have had clients experience acquisitions that did not include valuable IP on included-asset lists or excluded-assets lists. Problems such as this must be solved with new papers. Further, inventors, authors and prominent co-workers should be interviewed to eliminate claims of missing co-inventors, and missing authors and co-authors of copyrighted materials. Some patents issue with patent claim limitations that mean that fewer or more than all appropriate people have been identified as inventors. Many computer programs are authored by outside programmers with whom supposed copyright owners do not have agreements of assignment of copyrights.

Infringement allegations must be based on positions warranted by existing law or nonfrivolous arguments for extension, modification or reversal of law, and on factual contentions having evidentiary support or likely to have evidentiary support after reasonable opportunity for further investigation or discovery. FRCP 11. Generally, for patents, the allegations should include a patent claim interpretation and examination of a specimen product as part of the analysis.

Past enforcement efforts can have beneficial and adverse consequences. Where the current IP owner was previously the accused infringer, as can have happened as a result of business acquisitions, the reversals of positions of the current IP owner can create issues. The same is true of statements made to avoid prior art in prosecution, in all

cases including re-examination and corresponding foreign cases, that may narrow the scope of claims.

Existing licensing, especially of patents, may force IP owners into IP enforcement. Existing licensees and the revenue streams they create should not be put at jeopardy.

Controversy exists about whether to examine IP for validity or not, when starting enforcement efforts. Many representatives of IP owners do not want their own investigative efforts to invalidate their IP. A better view, in the authors' opinions, is that a surprise should not come in litigation, and should not be driven by an alleged infringer who will seek attorneys fees and damages. A surprise, if it is to come, would be better coming before significant IP enforcement activities.

Patents more than any other IP suffer from allegations that the IP is not enforceable. Allegations of inequitable conduct have been famously called a plague in patent cases. Allegations of inequitable conduct and other enforceability issues cannot be avoided. Their potential should be examined. The same is true of potential equitable defenses.

Patent enforcement, especially patent litigation, can unfortunately drive potential licensees and competitors to design-arounds. Sometimes, these design-arounds result in product enhancements that can take sales from the IP owner and create valuable competitive IP. Potential design-arounds can never be fully foreseen, but their potential should be assessed.

Finally, among the selected topics here and at tab A, the absence of past patent marking can be a serious problem for patent owners. Patent marking must have been complete and continuous, or in the period in which it was not, and there was no other infringement notice from the patent owner to the infringer, there will be no recovery.

III. Selecting Targets

Selecting targets for IP enforcement involves a variety of interests beyond the issues of selecting the IP to enforce. Considering whether there is IP that is owned, infringed, valid, enforceable, free of equitable defenses, not easily designed around, and the like, will substantially focus the issue of selecting targets for enforcement. As an obvious example, if a major competitor has successfully avoided infringement with a design-around, that competitor is not a potential target. As a less obvious example, if the patent is directed to a method of use of a product for which there is a substantial non-infringing use, and the product seller does not induce infringement, the user, not the product seller, may be the only proper enforcement target. But beyond these considerations, there are a variety of interests that can determine which targets to select for enforcement.

The primary interest in selecting targets may be de-selecting the IP owner's valued customers. (Of course, customers would not get pursued for their purchase, use and sale of the IP owner's products. The issue is whether they get pursued for buying competitors' infringing products at the same time as they are customers.) The long-standing, traditional approach has been that customers do not get pursued or sued. The authors have seen that tradition break down, but have also seen the consequences as they have represented customers. The tradition of not suing customers should continue, and might sensibly include the customers of customers. For IP owners who are conglomerates, the customers of all divisions and subsidiaries of the involved parent company should also probably be off-limits. At a usual minimum, business managers of the other units with the targets as customers should be consulted.

Not all customers may enjoy a self-enforced immunity from pursuit, however. Every business has valued customers, less-valued customers, and some few customers who might better be non-customers. The latter customers can and should probably be pursued for IP infringement. They may actually become better customers.

Another principal subject in analyzing targets is whether one or more targets has any likely counterclaim against the IP owner. The authors believe that nothing ends a

patent infringement lawsuit like another patent infringement lawsuit. That is, if the target can expose the IP owner to as much or more potential liability to IP infringement as that to which the target is exposed, the situation will likely settle, by a money-free cross-license. As a result, targets should always be analyzed for potential counterclaims. This is true for conglomerates, again, across all business units of the parent companies involved.

A third principal subject in analyzing targets is whether to pursue a major infringer, and perhaps the largest infringer, or to pursue minor infringers, or a mix, or everyone at once. Suing a major infringer first runs the greatest risk of fatally damaging the IP. It also offers the greatest potential reward. A good outcome with a major competitor may change the marketplace significantly, and cause many smaller infringers to cease infringement or license. In contrast, a good outcome with minor competitors will likely mean nothing to a major competitor. Yet, there is value in a series of progressively more aggressive efforts with minor infringers. A “snowball effect” can be created, as success increases from forcing a design-around or license through getting consent judgments of validity and on perhaps as far as successfully gaining courts’ preliminary injunctions. The authors have experienced representing the nth alleged infringer after the patent owner has enjoyed a snowball effect. When the patent owner has a history of many granted preliminary injunctions, the patent owner’s offer of terms to avoid preliminary injunction can be compelling.

In contrast, some IP owners pursue all alleged infringers at once. This seems to happen most with IP owners who are disrespected as simply being in the business of bringing meritless lawsuits based on questionable patents. These suits, characterized as nuisance suits by the defendants, often result in numerous settlements. Frequently, industry competitors are not as concerned for their costs on an absolute cost basis, but are more concerned that all their competitors have the same costs, for an equal playing field among the competitors. The authors’ experience is that in a single, industry-wide lawsuit, many defendants will settle as long as they believe the other defendants will pay the same rate they pay, on a product volume basis.

Nuisance suits also seem to target product users, rather than product manufacturers. This illuminates another point. Picking the targets for IP enforcement may be a matter of determining which revenue streams are the better targets. Since users most likely have revenue streams associated with use that dwarf the revenue streams associated with product sales, the users may be better targets. To illustrate the point, if the user receives \$100 for each use of the product, and uses the product frequently, while the product sells to the user for \$100, n times \$100 is the revenue stream of the user, while \$100 is the revenue stream of the product seller. A recovery of a percentage of n times \$100 is n times better than a recovery of the same percentage of \$100. Product users may also not be as patent savvy, *i.e.*, jaded, and thus, may also be more likely to settle as a result.

Other interests in selecting targets may be such matters as venue. Some cases will remain in some courts because a local user of a product is a named defendant, where without the defendant, a case may not remain in the selected court. A checklist for selecting potential targets is attached at tab B.

No matter who is selected for enforcement, issues of notice to all infringers must be resolved. Just litigating with one infringer is no excuse for lack of activity with others.

IV. Determining Business Objectives (Licensing, Protection of Market Share, Price Advantage in Competition, Etc.)

In enforcing IP, business objectives need to be assessed among such possibilities as interest in licensing, interest in protecting market share, interest in preserving a price advantage in competition, and such others as encouraging respect for all the IP in the portfolio of the entity doing the enforcing. The authors believe business interests will be in the minds of business managers considering enforcing IP. The authors would only point out that the expectations of business managers must be adjusted to the realities of the factual and legal situations brought into focus through analysis.

V. Setting a Budget and Monitoring Expenses

Enforcing IP can bust budgets. A variety of systems exist for setting budgets and monitoring expenses. In all cases, budgets can be set. Urges otherwise should be rejected.

Where a separately billing licensing agency is engaged to manage licensing, that agency can draft a budget. Where a separately billing counsel such as lawyers at a law firm are engaged to enforce IP, counsel can draft a budget. Both a licensing agency and counsel, if used, *should* be asked to draft a budget. The days are long past when counsel can reasonably express that budgeting is not possible. A check list for litigation items to budget is attached at tab C.

Experience teaches that a budget should not assume minimal defense against enforcement efforts. Defense efforts sometimes actually are minimal, as with some Asian companies dealing with patent enforcement efforts by litigation in the U.S. Some such companies do not hire counsel and instead commonly send agents to quickly negotiate licenses. Most defense efforts, however, are substantial. Indeed, most are extreme, in patent litigation. The cost of defense is rarely considered in the decision whether to defend or not. If the offered license is to be paid up for less than seven figures, the situation may be different, but otherwise, defense typically begins and continues in a litigation mode. As well, the most common response to patent infringement litigation, in terms of the measure of defensive effort and focus, is extreme defense – defense that is extreme to the point of focus on proof the IP owner and its counsel have violated FRCP 11 in the bringing of the case, and similar efforts to recover defense costs and attorneys’ fees. Efforts to win by proof of spoliation of evidence are also routine. Everyone is fishing for that proof, in the authors’ experience.

Moreover, in patent cases, resolutions typical turn on patent interpretation. Defendants frequently continue cases through *Markman* proceedings, and into *Markman*-focused appeals, because half of patent appeals that are *Markman*-focused result in reversals. See tab D.

The American Intellectual Property Law Association Report of Economic Survey, issued every two years, provides reasonably accurate figures for costs for IP cases. An excerpt of a table from the most recent survey is attached at tab E.

Budgets for IP enforcement can not only be made, they can be met, through monitoring. Some IP owners set initial case budgets, monitor progress, and at any sign of

a budget being exceeded, require explanation and sometimes a new budget. Some IP owners do not set initial case budgets, but instead set calendar quarter-based litigation budgets. These owners sometimes stop outside counsel in their efforts in each quarter in which a maximum budgeted amount is met. That is, when counsel reaches the budget set for the calendar or fiscal quarter, the IP owner requires that outside counsel stop further case efforts until a new quarter begins. Other IP owners do not work from initial case budgets, or calendar based budgets, and instead require monthly and quarterly projections which are expected to be met.

Personnel who monitor satisfaction of budgets include supervising corporate counsel, and more and more frequently, corporate paralegals. Monitoring is also more and more frequently through computerized systems, including Serengeti.

Acting without budgeting in IP enforcement is acting at peril of major surprises. The authors have experienced watching opposing parties in court in dispute with their lawyers over case expenses. In one case, the opposing counsel billed a million dollars in a single and first month of effort, to the surprise of the opposing party, and to involvement of the court. The opposing party expressed it had understood that counsel's total case effort would be the million the counsel billed in the one, first month.

VI. Conclusion

Enforcing IP involves legal, factual, business, strategic and tactical issues. There are always benefits, interests, risks, costs, complexities, and complications. Selecting the IP to enforce and the targets of enforcement should involve a sophisticated effort of analysis. Determining the business objectives of the enforcement, once the legal and factual situation is known, is a matter of an assessment whether the IP is to be licensed, market share is to be protected, competitive price advantages are to be preserved, respect is to be encouraged for all owned IP, and the like. Since enforcing IP can bust even larger budgets, budgets for enforcement activities can and must be set, monitored and satisfied. All of this is possible, and will go well, when properly managed.

Tab A - Check List of Selected Items to Consider in Selecting the IP to Enforce

1. What is the universe of IP available to be enforced?
2. What entity owns the IP? What entity operates using the IP?
 - a. What is the paper chain of title?
 - b. Have inventors, authors, and prominent co-workers been interviewed?
3. Is there infringement, checked through an investigation of at least “Rule 11” quality under all applicable legal standards?
 - a. For patents:
 1. Does the infringement analysis include a claim interpretation?
 - 2.. Is the infringement analysis based on adequate factual analysis, such as analysis of an actual specimen of the infringing item?
 3. Has the infringing activity met standards of “making, using, selling, offering for sale, importing” and the like, as such standards are established in the case law? For example, for “offering for sale” has there been a definite offer for sale?
 4. Is there direct infringement by the alleged infringer, or direct infringement by someone and other infringement, such as inducement or contributory infringement?
4. Have there been past enforcement efforts? What are the consequences?
5. For patents, have the U.S. and counterpart foreign files been reviewed for prior art and prior statements made, in the whole chain of cases? Can additional claims be filed?
6. Is there existing licensing potentially requiring enforcement of specific IP?
7. Is the IP valid, on all grounds of defense available at law?
 - a. For patents:
 1. Are maintenance fees paid?
 2. Are the patent claims to be asserted valid over all known prior art?
 - A. Were any statutory bars violated in gaining the patents?
 - B. Is the item asserted to infringe not prior art?
 3. Are the patent claims to be asserted valid as to the adequacies of the patent specification?

- A. Was the best mode disclosed?
 - B. Is each limitation of each claim to be asserted supported by an adequate written description and enabled?
 - 4. Is there any issue of derivation of invention?
 - b. Other
- 8. Is the IP enforceable, especially for patents as to possible inequitable conduct?
- 9. What is the potential for recovery?
 - a. What is the volume of infringement through the past?
 - b. What is the volume of infringement projected into the future?
 - c. Are the infringers sufficiently solvent to pay damages, and will they remain solvent?
- 10. Are there possible equitable defenses such as laches, estoppel, implied license, and misuse?
 - a. What were the past communications to the alleged infringers about this IP, and has a defense of laches or estoppel been created?
 - b. What, if any, product of the patent owner is the alleged infringer using in the activity asserted to infringe, and does the use carry an implied license?
 - c. What have been the licensing practices for the IP and has they avoided misuse?
- 11. For patents, what is the potential for design-arounds?
- 12. For patents, has patent marking been complete and continuous?

Tab B – Check List of Selected Items for Selecting the Targets of IP Enforcement

1. Is there IP that is owned, infringed, valid, enforceable, free of equitable defenses, not easily designed around, and the like, as assessed as a matter of selecting the IP for enforcement?
2. Have the IP owner's valued customers been satisfactorily de-selected?
 - a. Have valued customers been distinguished from non-valued customers?
 - b. Have sister companies been considered, as to their customers?
3. Does one or more of the targets have any likely counterclaim?
 - a. Is a counterclaim for IP infringement likely?
 - b. Are there any other potential counterclaims of any kind?
 - c. Have potential claims against sister companies been considered?
 - d. Have the potential counterclaims been considered for the extent of exposure they present?
4. Have different approaches to numerous infringers been considered?
 - a. What are the likely consequences of suing a major infringer?
 - b. What are the likely consequences of suing minor infringers, in small groups, or in a series?
 - c. What are the likely consequences of suing a large group of infringers?
 - d. Is there value in suing product manufacturers, users (product customers), or others up or down the relevant supply chain?
 - e. Are there other considerations, such as venue for lawsuits?
5. Issues of selection aside, have matters of notice to all infringers been adequately resolved?

Tab C – Check List of Selected Litigation Expenses to Budget

- A. Investigation
 - 1. Review of relevant business documents
 - 2. Initial interviews with witnesses
 - 3. Initial legal research
 - 4. Preparation of litigation plan
 - 5. Preparation of litigation budget
 - 6. Telephone conference, meetings, etc.
 - 7. Electronic documents issues – planning handling and retention

- B. Expert Witnesses (time period spans from beginning of case through pretrial)
 - 1. Locate and hire expert witnesses
 - 2. Expert Number One: LIABILITY
 - a. Initial retainer
 - b. Additional fees
 - 3. Expert Number Two: DAMAGES
 - a. Initial retainer
 - b. Additional fees
 - 4. Expert Number Three:
 - a. Initial retainer
 - b. Additional fees
 - 5. Preparation of expert witness disclosure
 - 6. Expert testimony development

- C. Pleadings
 - 1. Complaint
 - a. Factual and legal research
 - b. Drafting
 - 2. Possible reply to Counterclaims
 - 3. Filing fees

- D. Initial Motions
 - 1. Research
 - 2. Draft motion
 - 3. Finalize Motion and file
 - 4. Review of response
 - 5. Prepare reply
 - 6. Prepare for and attend hearing
 - 7. Motion fee

- E. Discovery
 - E-1 -- Affirmative Discovery
 - 1. Witness interviews and preparation of signed statements (10 assumed)
 - a. Name:

- b. Name:
 - c. Name:
 - d. Name:
 - e. Name:
 - f. Name:
 - g. Name:
 - h. Name:
 - i. Name:
 - j. Name:
2. Interrogatories
 - a. Preparation
 - b. Response follow-up
 - c. Review of responses
 - d. Pre-motion efforts to obtain actual responses
 3. Document Requests
 - a. Preparation
 - b. Response follow-up
 - c. Review of responses
 - d. Pre-motion efforts to obtain responsive documents
 - e. Review of documents produced
 - f. Digital processing costs including imaging and indexing
 4. Requests for Admission
 - a. Preparation
 - b. Response follow-up
 - b. Review of responses
 - c. Pre-motion efforts to obtain actual responses
 5. Depositions (10 assumed) – preparation and taking
 - a. Name:
 - b. Name:
 - c. Name:
 - d. Name:
 - e. Name:
 - f. Name:
 - g. Name:
 - h. Name:
 - i. Name:
 - j. Name:
 - k. Court reporter and videographer costs including deposition transcripts, manuscripts, digital recordings, and digital processing costs

E-2 – Responsive Discovery

1. Responding to Interrogatories
 - a. Review of interrogatories
 - b. Investigate and draft responses
 - c. Finalize responses
 - d. Negotiate criticisms
 - e. Prepare additional responses

2. Responding to Document Requests
 - a. Review of request
 - b. Preparation of response
 - c. Pre-production review
 - d. Production
 - e. Negotiate criticisms
 - f. Additional production
 - g. Digital processing costs including imaging and indexing

3. Responding to requests for admission
 - a. Review of requests
 - b. Preparation of responses
 - c. Negotiate criticisms
 - f. Additional responses

4. Depositions (10 assumed)
 - a. Name:
 - b. Name:
 - c. Name:
 - d. Name:
 - e. Name:
 - f. Name:
 - g. Name:
 - h. Name:
 - i. Name:
 - j. Name:
 - k. Court reporter and videographer costs including deposition transcripts, manuscripts, digital recordings, and digital processing costs

E-3 Discovery motions – assume several, both offensive and defensive

1. Offensive motions
 - a. Formal meet and confer sessions
 - b. Motion preparation
 - c. Hearings
 - d. Follow-up

2. Defensive motions (similar to the above)

3. Confidential information protective order negotiation and motions (same)
- F. Opposing expert matters
1. Study of expert reports
 2. Investigation
 3. Depositions
- G. Summary Judgment Motions – assume several, both affirmative and defensive
1. Factual and legal research
 2. Draft motion
 3. Finalize motion, file and serve
 4. Review of responses
 5. Prepare replies
 6. Prepare for and attend hearing
 7. Follow-up
- H. Settlement
1. Informal
 - a. Meetings
 - b. Correspondence
 2. Mandatory settlement conferences, mediations, etc.
- I. Pre-Trial Activities
1. Pre-trial conference
 2. Preparation of issue lists
 3. Preparation of witness lists
 4. Preparation of jury instructions
 5. Preparation of motions in limine – assume several
 6. Preparation of jury statement
 7. Preparation of trial brief
 8. Preparation of trial exhibits
 9. Preparation of exhibit list
- J. Trial
1. Trial days (estimate 16 hours per day)
 2. Court reporter fees
 3. Jury fees
 4. Expert witness fees:
 5. Travel expenses – airfares, hotel with war room, meals, temporary Internet connection charges

K. Post Trial Motions

1. Motion for New Trial
 - a. Research
 - b. Draft motion
 - c. Finalize motion and file
 - d. Motion fee
 - e. Review of response
 - f. Prepare reply
 - g. Prepare for and attend hearing

2. Motion for Costs and Attorney's Fees
 - a. Research
 - b. Draft motion
 - c. Finalize motion and file
 - d. Motion fee
 - e. Review of response
 - f. Prepare reply
 - g. Prepare for and attend hearing

3. Other Motion:
 - a. Research
 - b. Draft motion
 - c. Finalize motion and file
 - d. Motion fee
 - e. Review of response
 - f. Prepare reply
 - g. Prepare for and attend hearing²

L. Incidental Expenses

1. Telephone charges
2. Fax charges
3. Photocopying charges
4. Delivery service charges
5. Travel expenses
6. Other:
7. Other:

Note: Appeal to be separately budgeted.

TAB D

Summary of Federal Circuit Opinions from District Court and ITC Patent Cases 1/1/03 to 8/30/04			
Non- precedential: 64 cases (26%)	Claim construction at issue: 41 cases (64%)	Claim construction reversed: 18 cases (44%)	Result impacted: 15 cases (83%)
			Result not impacted: 3 cases (17%)
		Claim construction not reversed: 23 cases (56%)	
	Claim construction not at issue: 23 cases (36%)		
Precedential: 180 cases (74%)	Claim construction at issue: 94 cases (52%)	Claim construction reversed: 56 cases (60%)	Result impacted: 48 cases (86%)
			Result not impacted: 8 cases (14%)
		Claim construction not reversed: 38 cases (40%)	
	Claim construction not at issue: 86 cases (48%)		

The bottom line: Out of 244 total opinions (both non-precedential and precedential) in appeals from district court and ITC patent infringement cases, 63 opinions contained reversals of claim construction where the reversal impacted the result. The 63 opinions represent 26% of the total of 244 cases.

The 63 opinions containing result-impacting claim construction reversals represent 47% of the opinions where claim construction was at issue on appeal (135 cases). ***Where claim construction is at issue on appeal, the effective reversal rate for 2003 and 2004 (through August 30) is 47%.***

Data compiled by Mark T. Banner, Banner & Witcoff, Ltd., Chicago, Illinois, with the assistance of William Allen, and Aseet Patel. A complete list of the cases analyzed and the analysis is available from Mark T. Banner.

Tab E - AIPLA Report of the Economic Survey 2003

ESTIMATE OF TOTAL COST, INCLUSIVE, IN A PATENT INFRINGEMENT SUIT	Less than \$1M at risk	\$1-\$25M at risk	More than \$25M at risk
	75 th percentile	75 th percentile	75 th percentile
	\$0.75M	\$3M	\$6M
	Median	Median	Median
	\$0.5M	\$2M	\$4M
	25 th percentile	25 th percentile	25 th percentile
	\$0.35M	\$1M	\$2.3M
IN A TRADEMARK INFRINGEMENT SUIT	75 th percentile	75 th percentile	75 th percentile
	\$0.4M	\$1M	\$2M
	Median	Median	Median
	\$0.3M	\$0.6M	\$1M
	25 th percentile	25 th percentile	25 th percentile
	\$0.2M	\$0.4M	\$0.6M
IN A COPYRIGHT INFRINGEMENT SUIT	75 th percentile	75 th percentile	75 th percentile
	\$0.30M	\$1M	\$1.65M
	Median	Median	Median
	\$0.25M	\$0.5M	\$0.95M
	25 th percentile	25 th percentile	25 th percentile
	\$0.1M	\$0.2M	\$0.5M
IN A TRADE SECRET MISAPPROPRIATION SUIT	75 th percentile	75 th percentile	75 th percentile
	\$0.5M	\$1.5M	\$3.5M
	Median	Median	Median
	\$0.35M	\$0.875M	\$1.75M
	25 th percentile	25 th percentile	25 th percentile
	\$0.22M	\$0.5M	\$0.97M