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*California Assembly Select Committee on
High Technology: Informational Hearing on
Patent Assertion Entities*

October 30, 2013

What is a “Patent Assertion Entity”?

An “entity that uses patents primarily to obtain license fees rather than to support the development or transfer of technology”

(F.T.C.; Chien, *From Arms Race to Marketplace*)

- Patents don't **support** its business.
- Patents **are** its business.

What is a “Patent Assertion Entity”?

Non-Practicing Entities “NPEs”

Universities

Early Stage

Start-ups

Tech Co.’s Patent-
Licensing Subsidiaries

“PAEs”

Acquirer

Monetizers

Inventor

Monetizers

How can PAEs be problematic?

PAEs are uniquely able to:

- Reduce the cost of patent assertion
- Increase the cost of defense

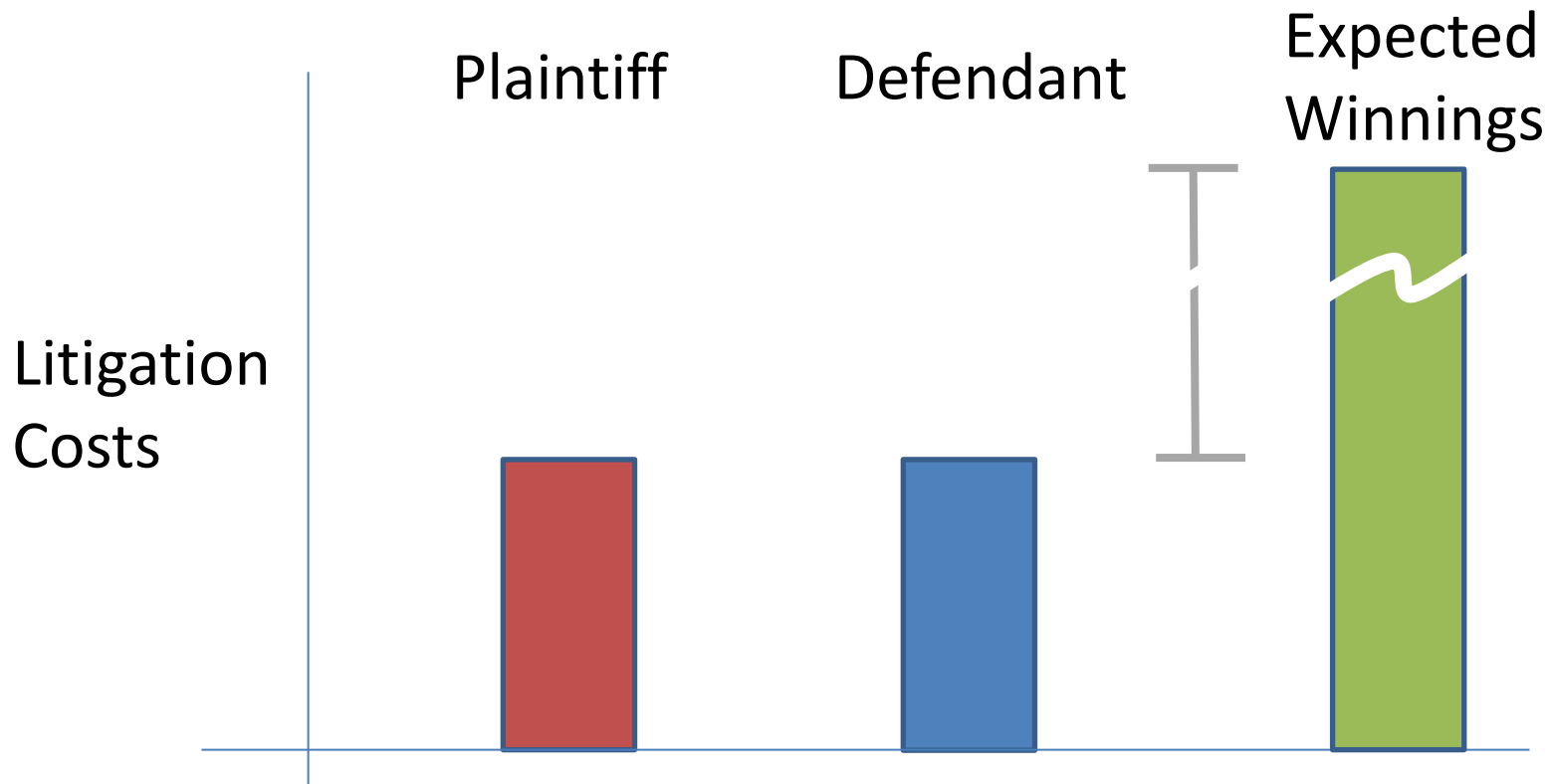
And thus:

- Extract large settlements
- Even when their claims are extremely weak

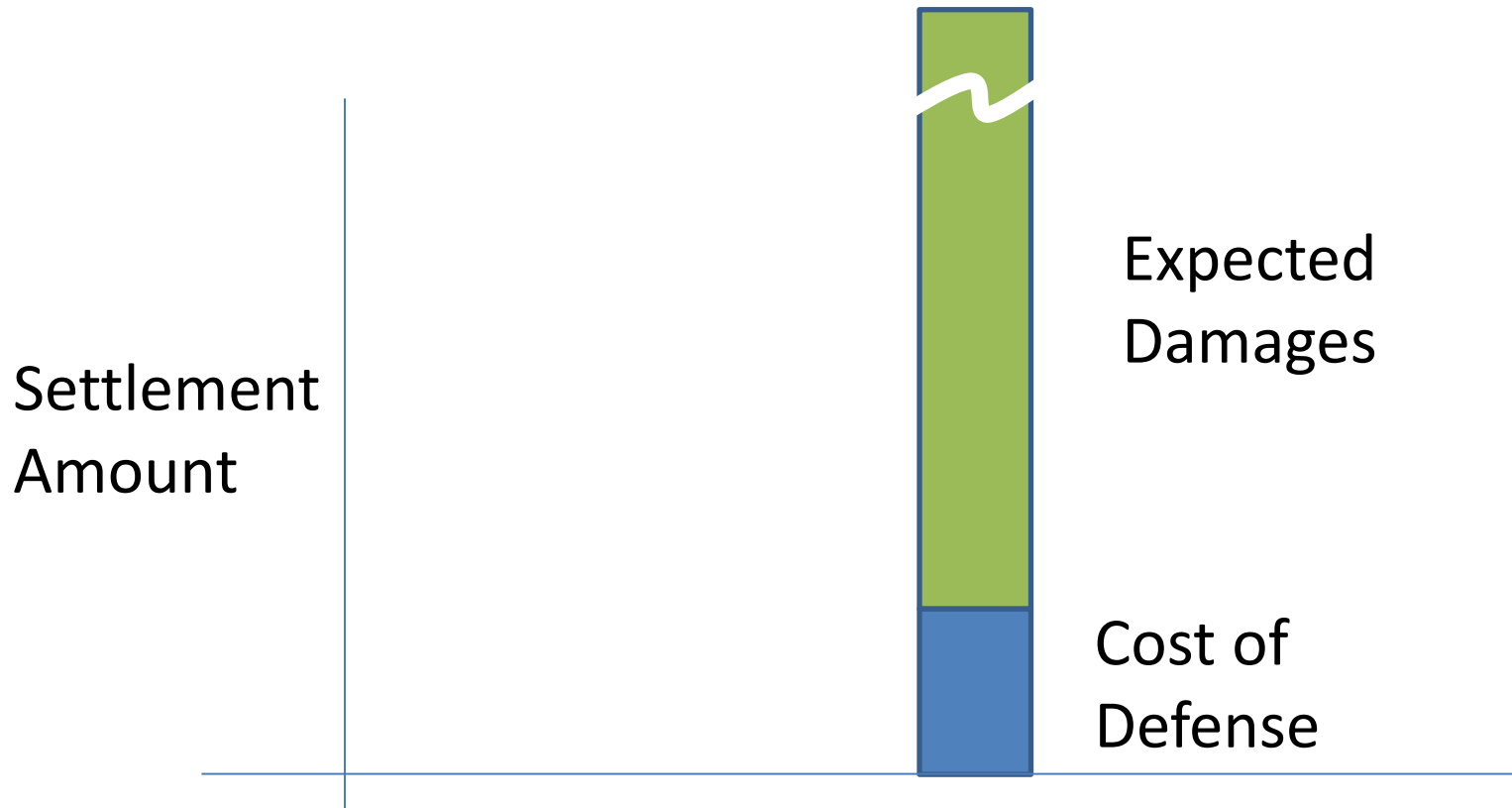
Majority of NPE/PAE suits settle for < cost of defense

(Chien, Dec. 2012 DOJ/FTC Workshop on PAEs; RPX survey of 78 tech companies involved in 900 NPE/PAE suits)

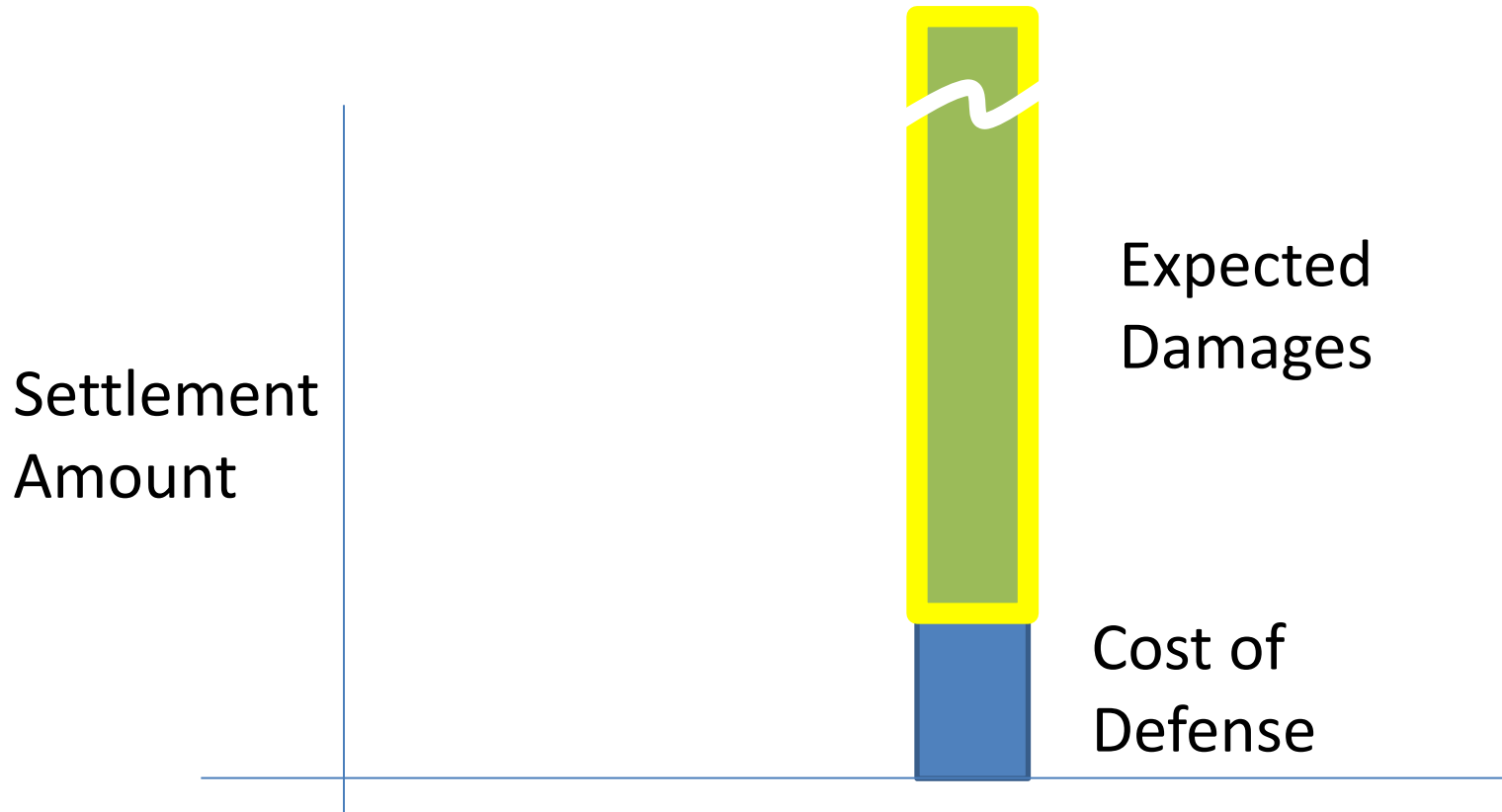
Typical Litigation



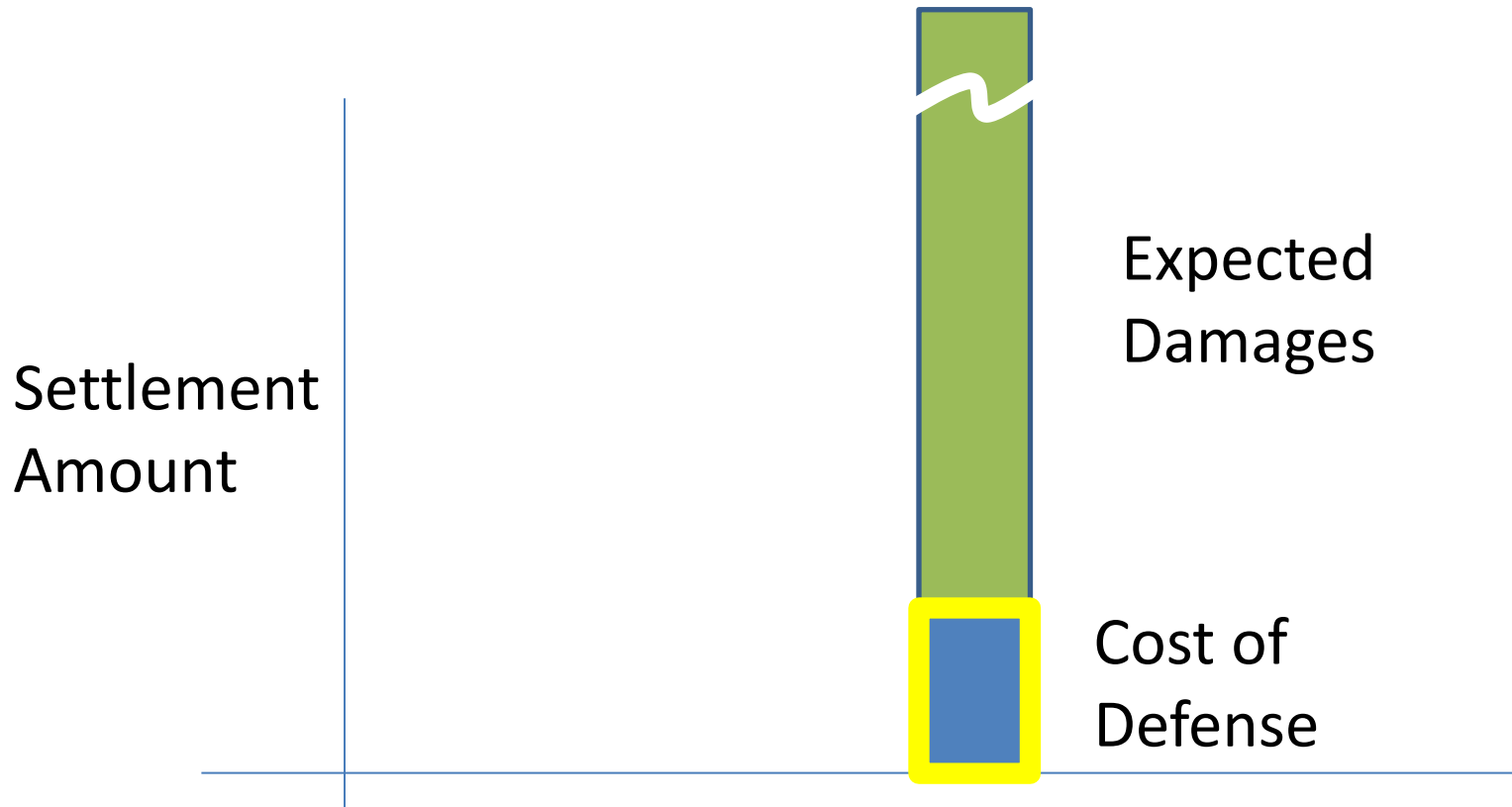
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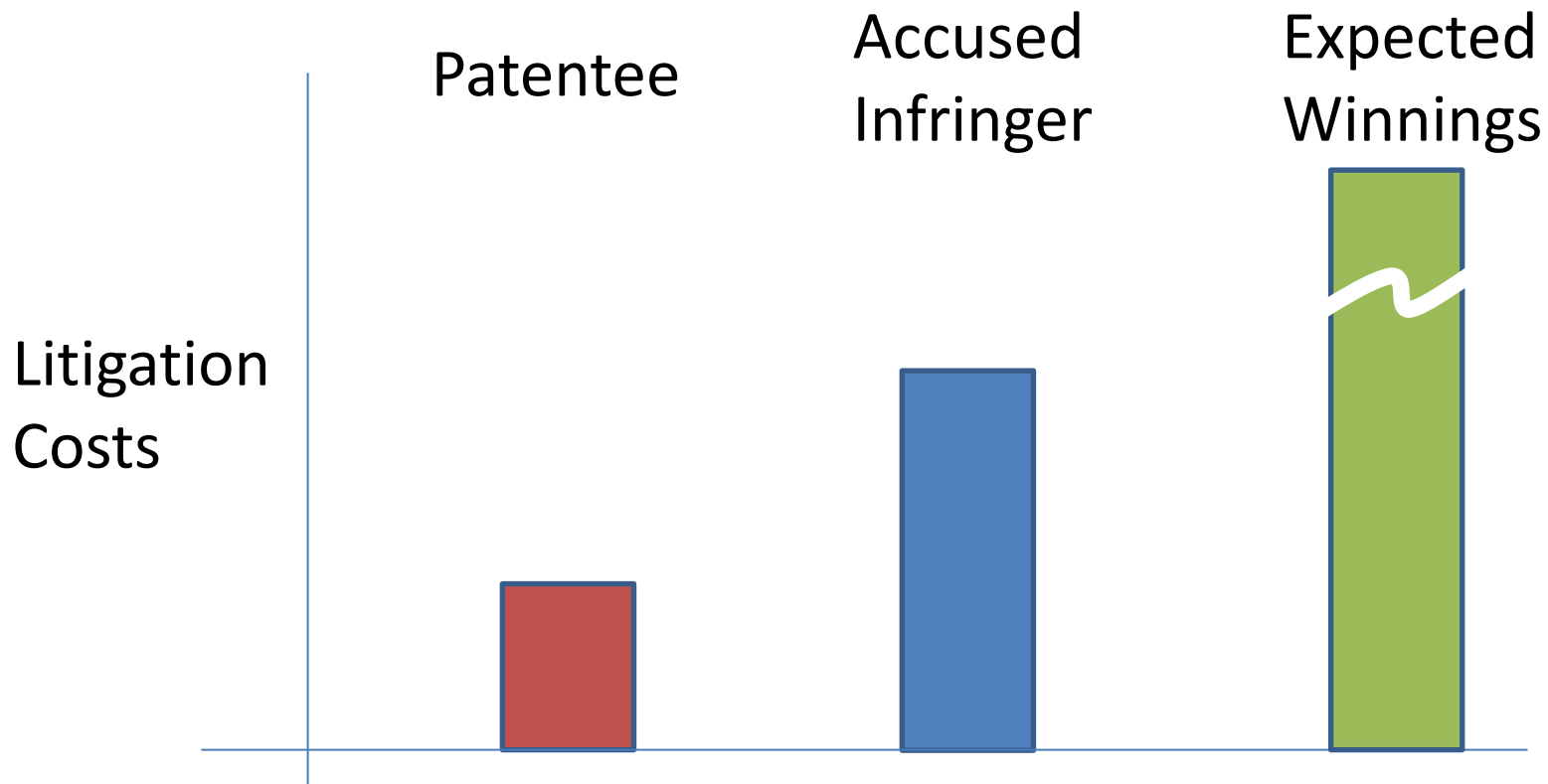
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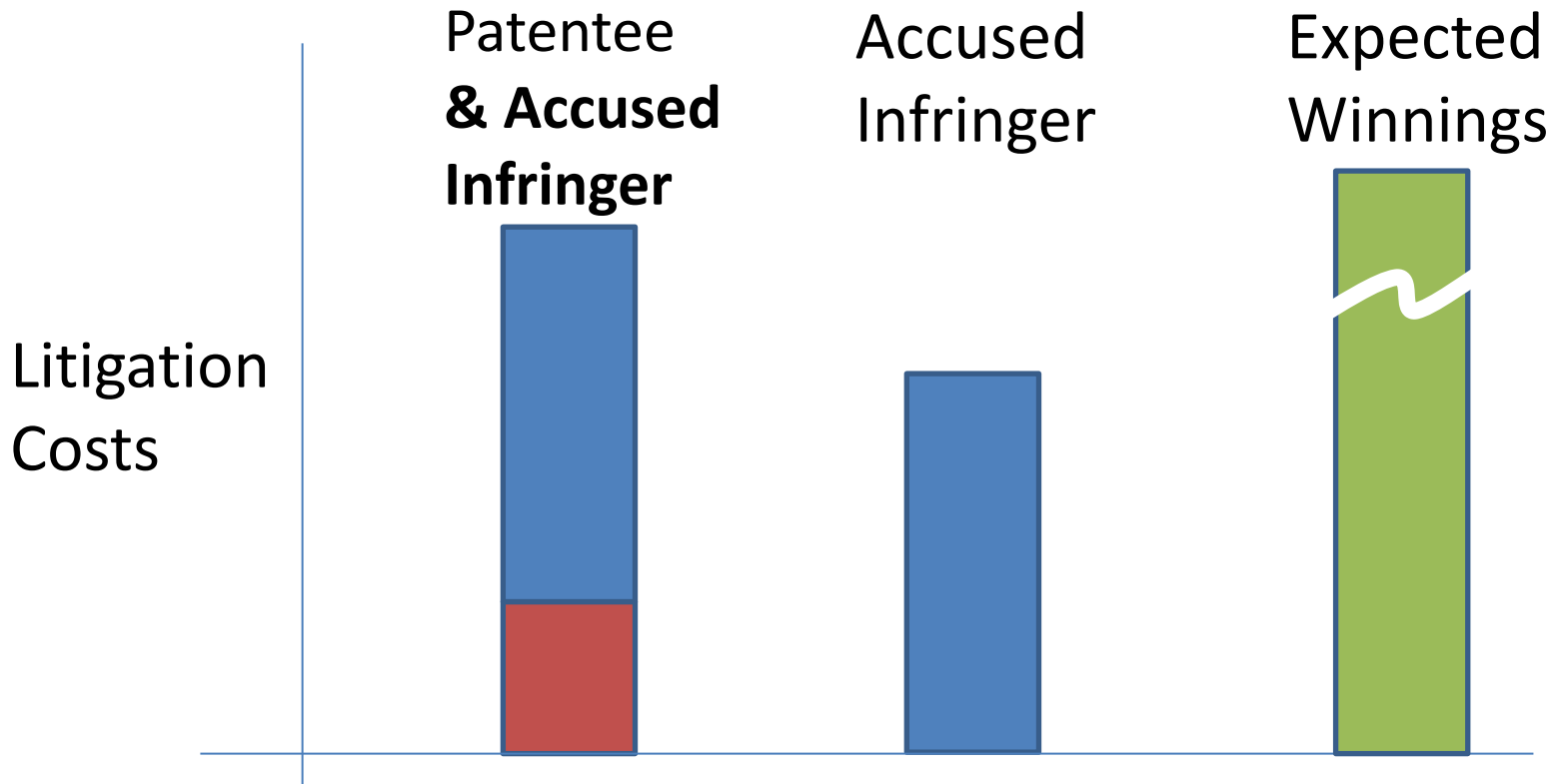
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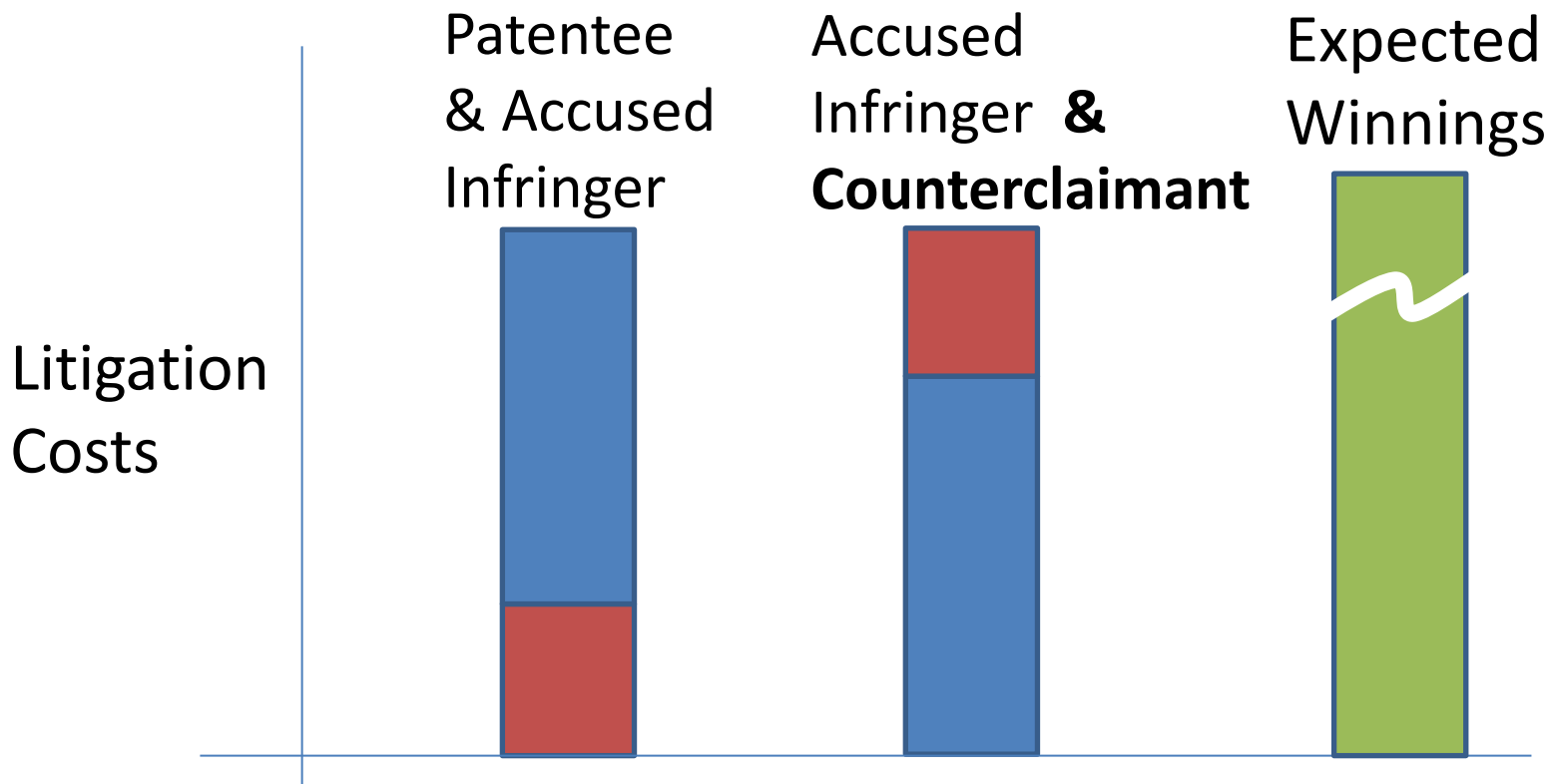
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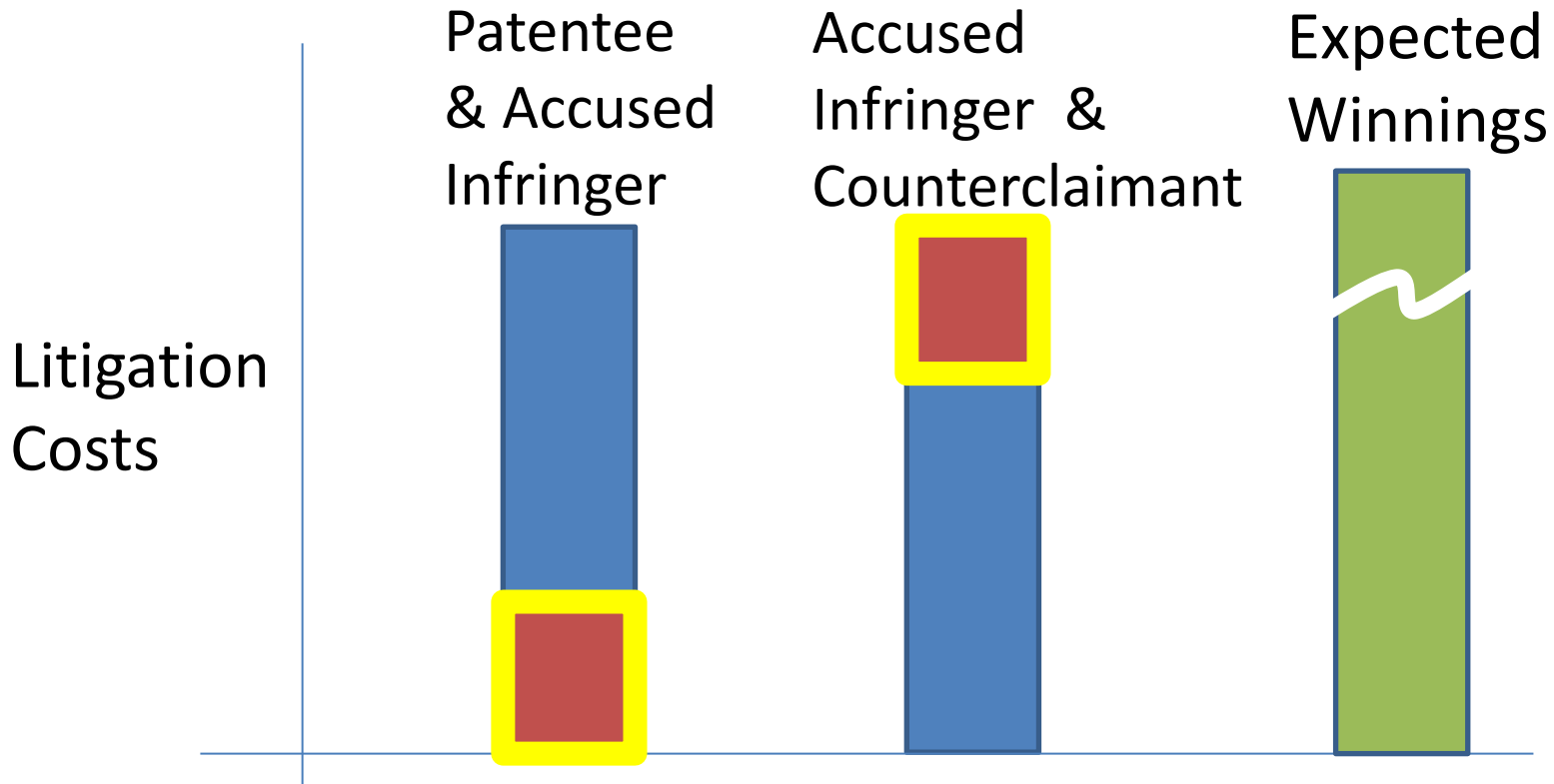
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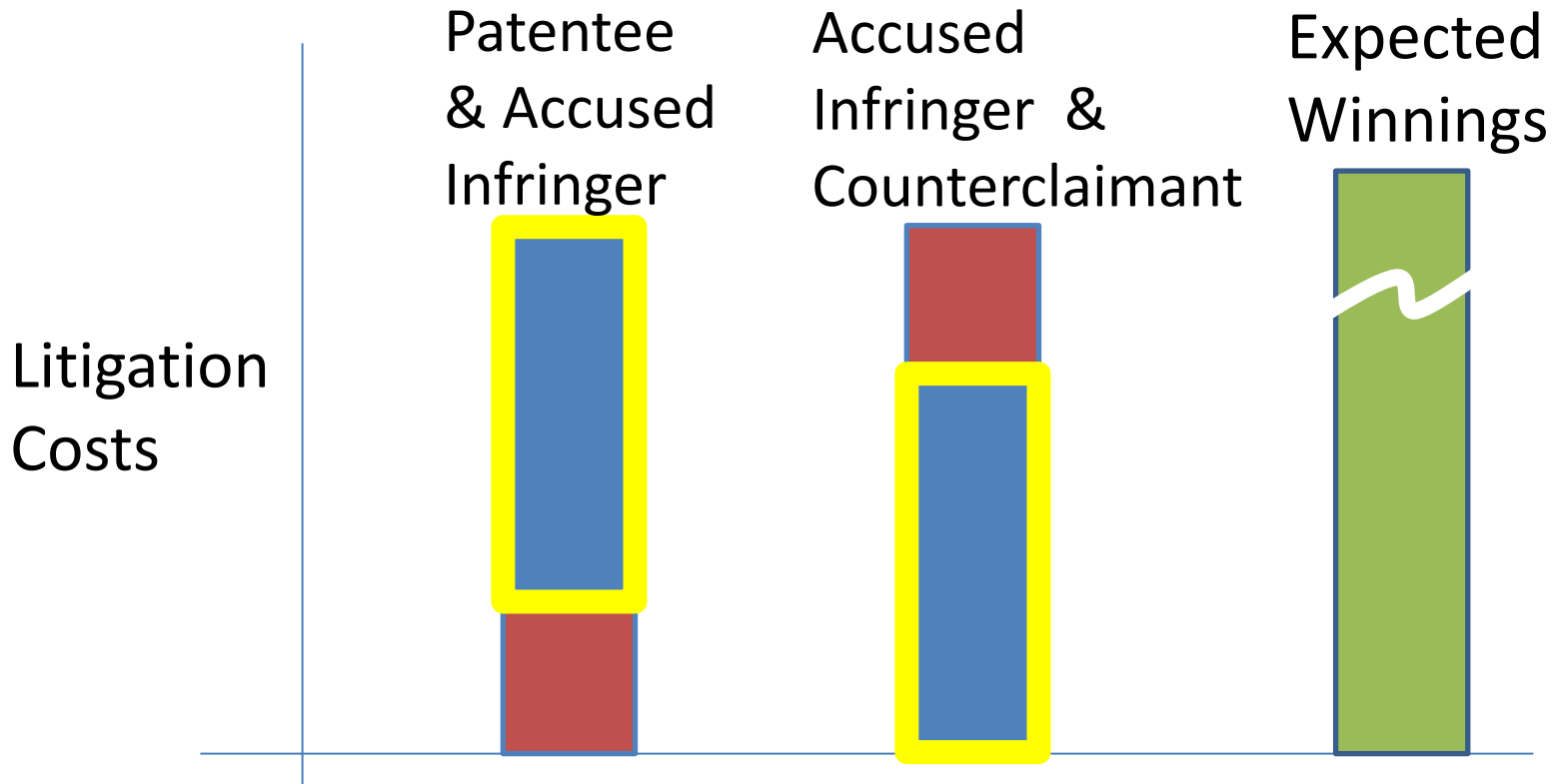
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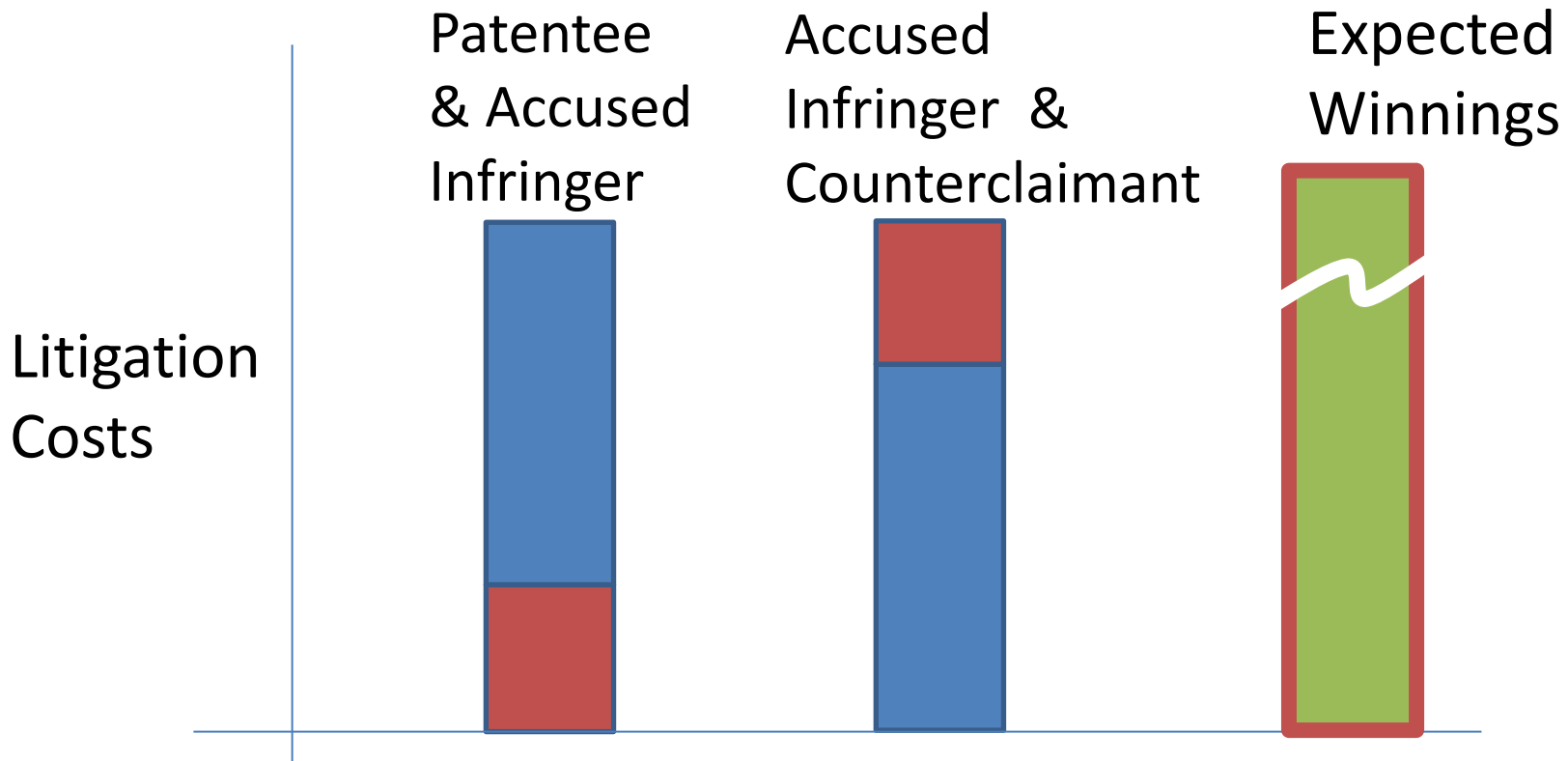
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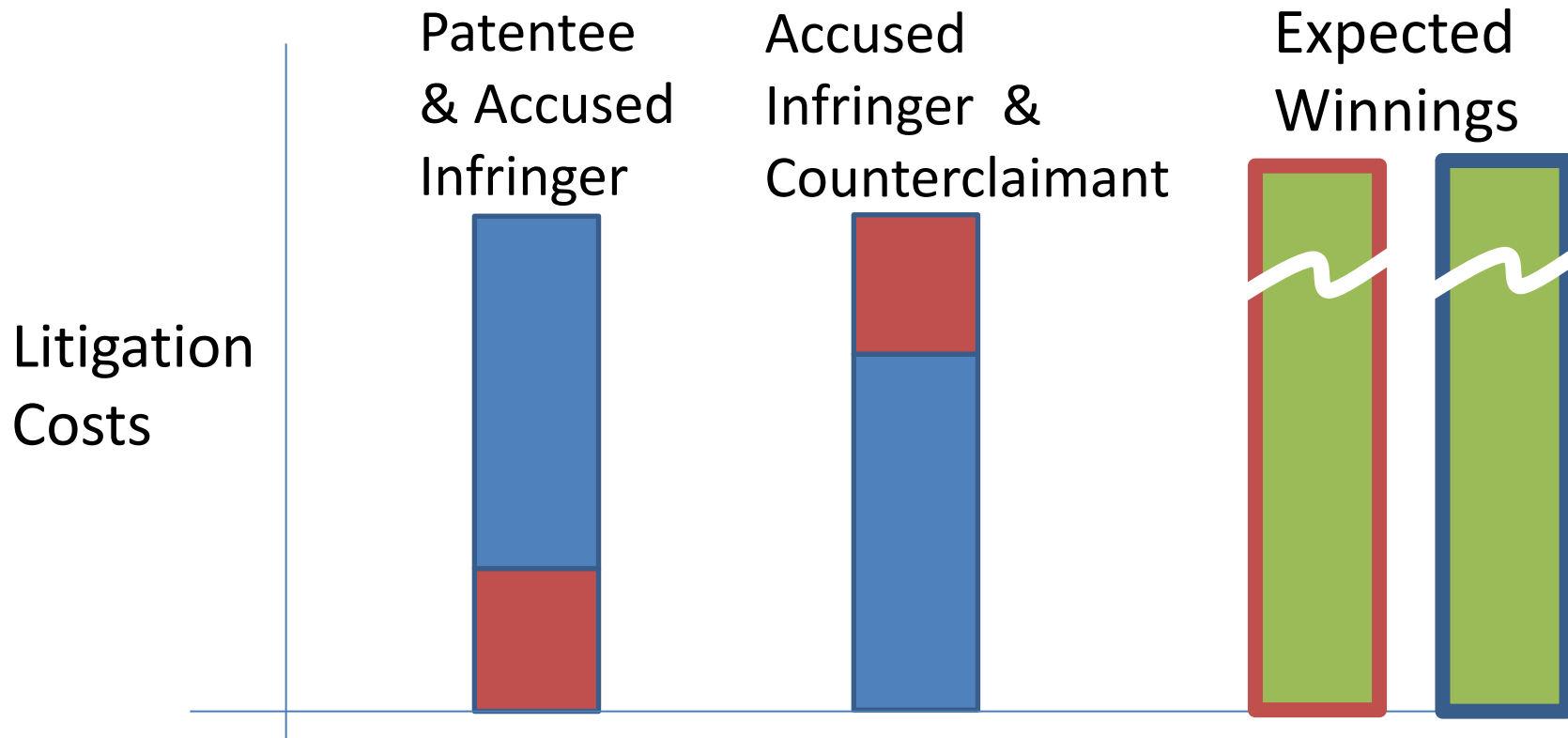
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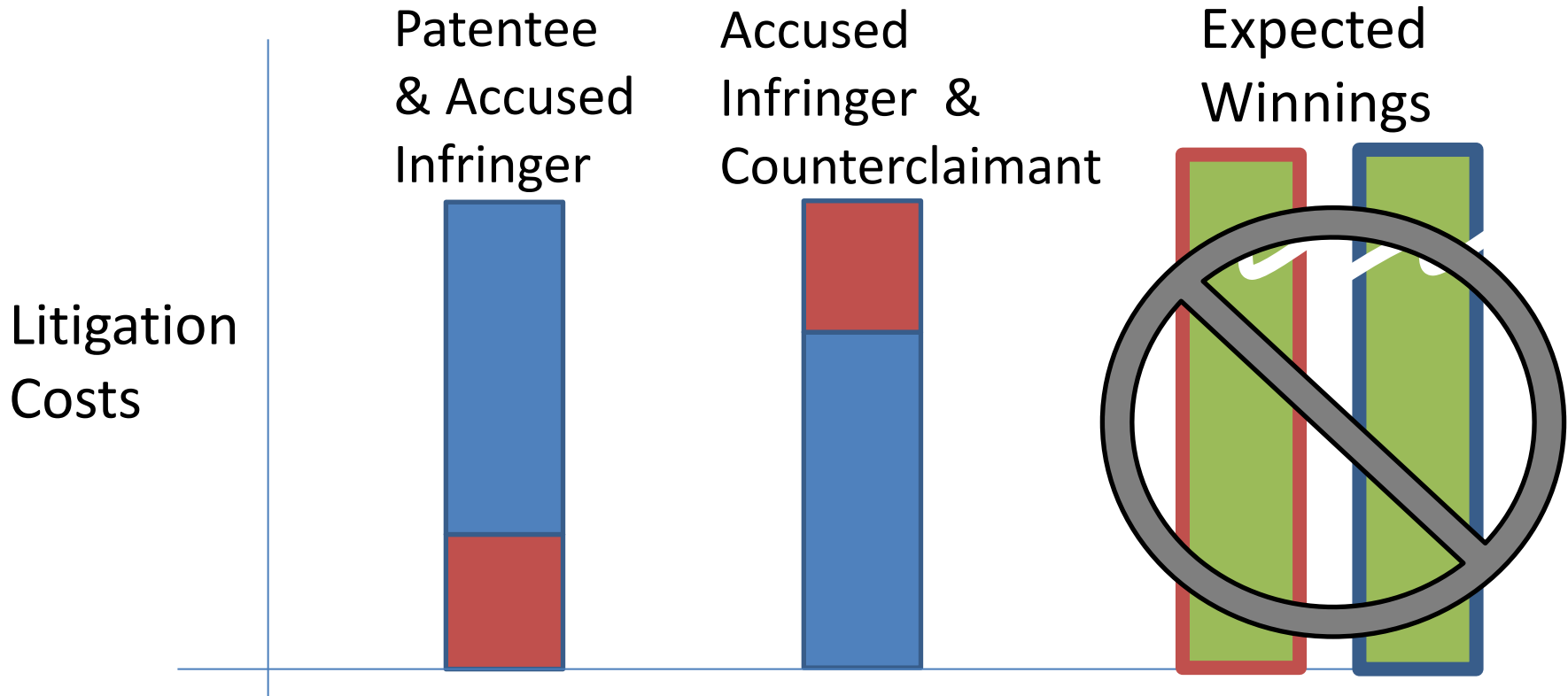
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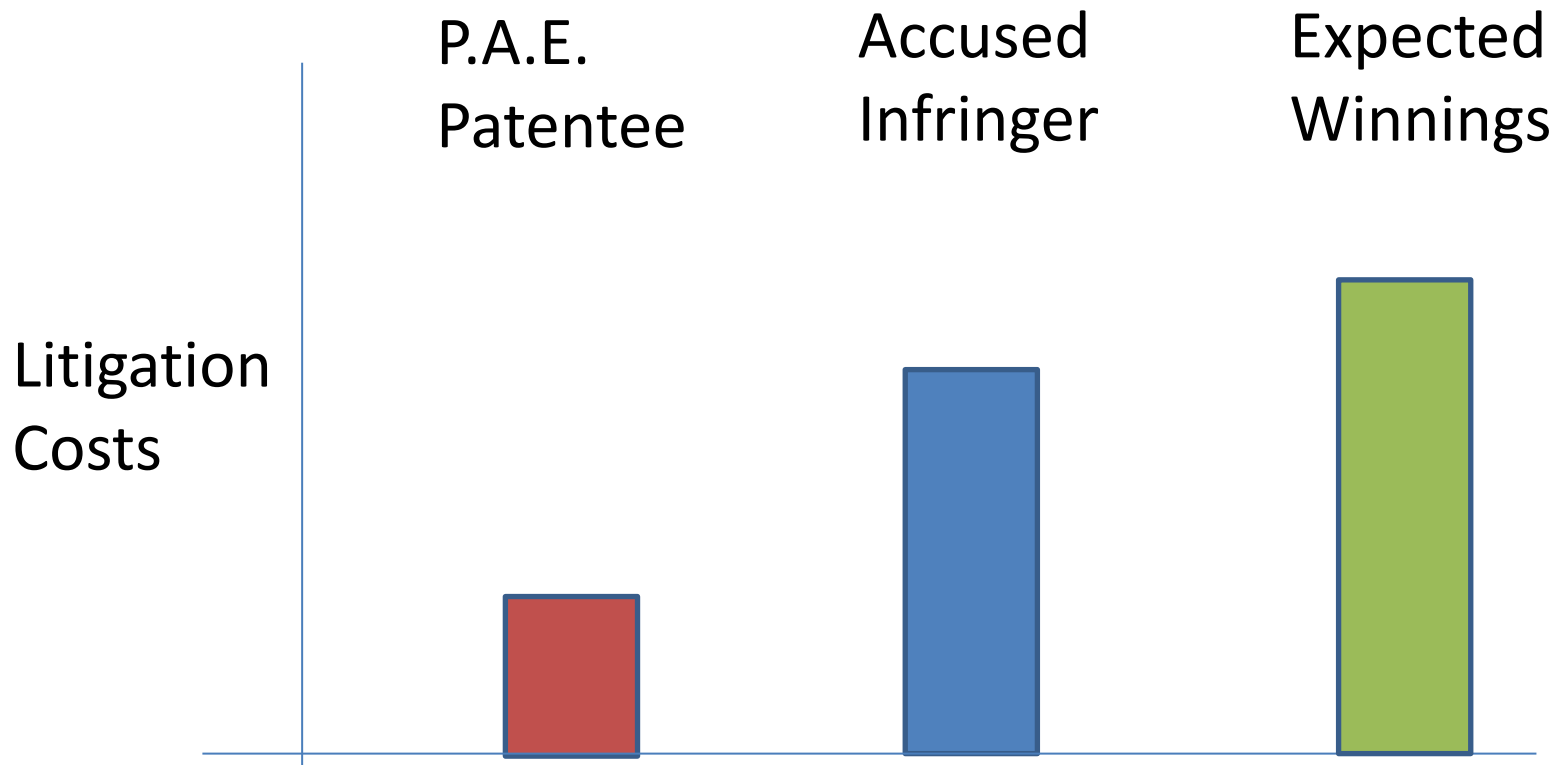
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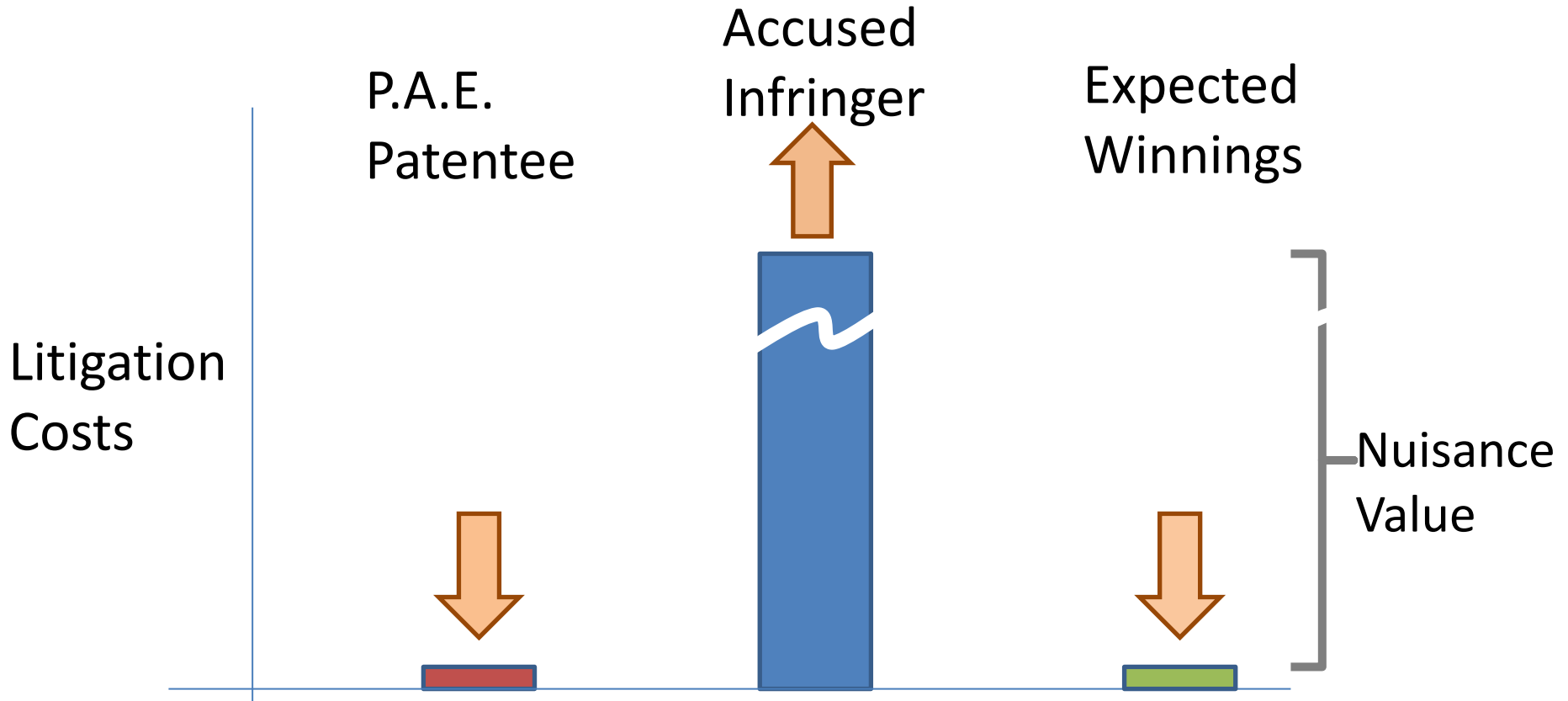
Typical Patent Litigation



Typical PAE Litigation

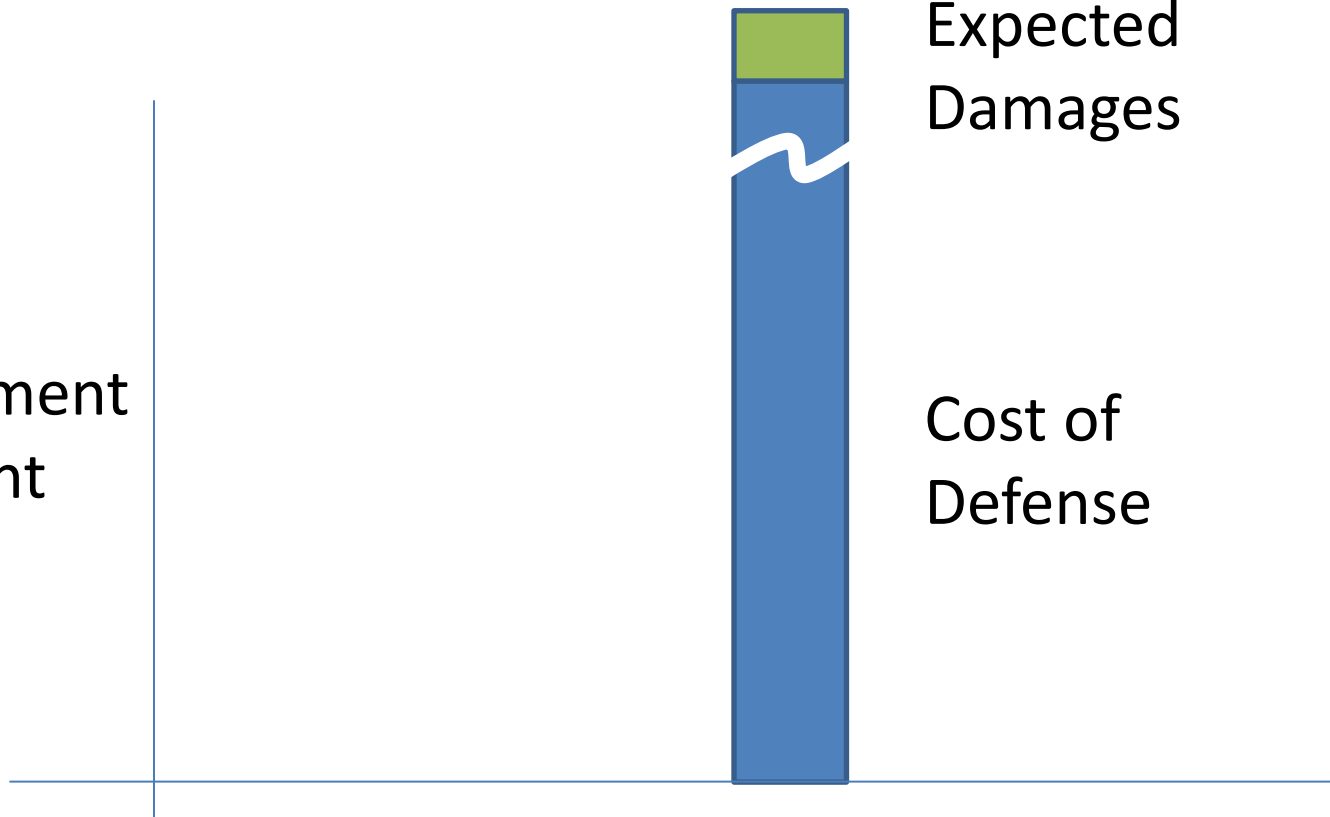


Typical PAE Litigation

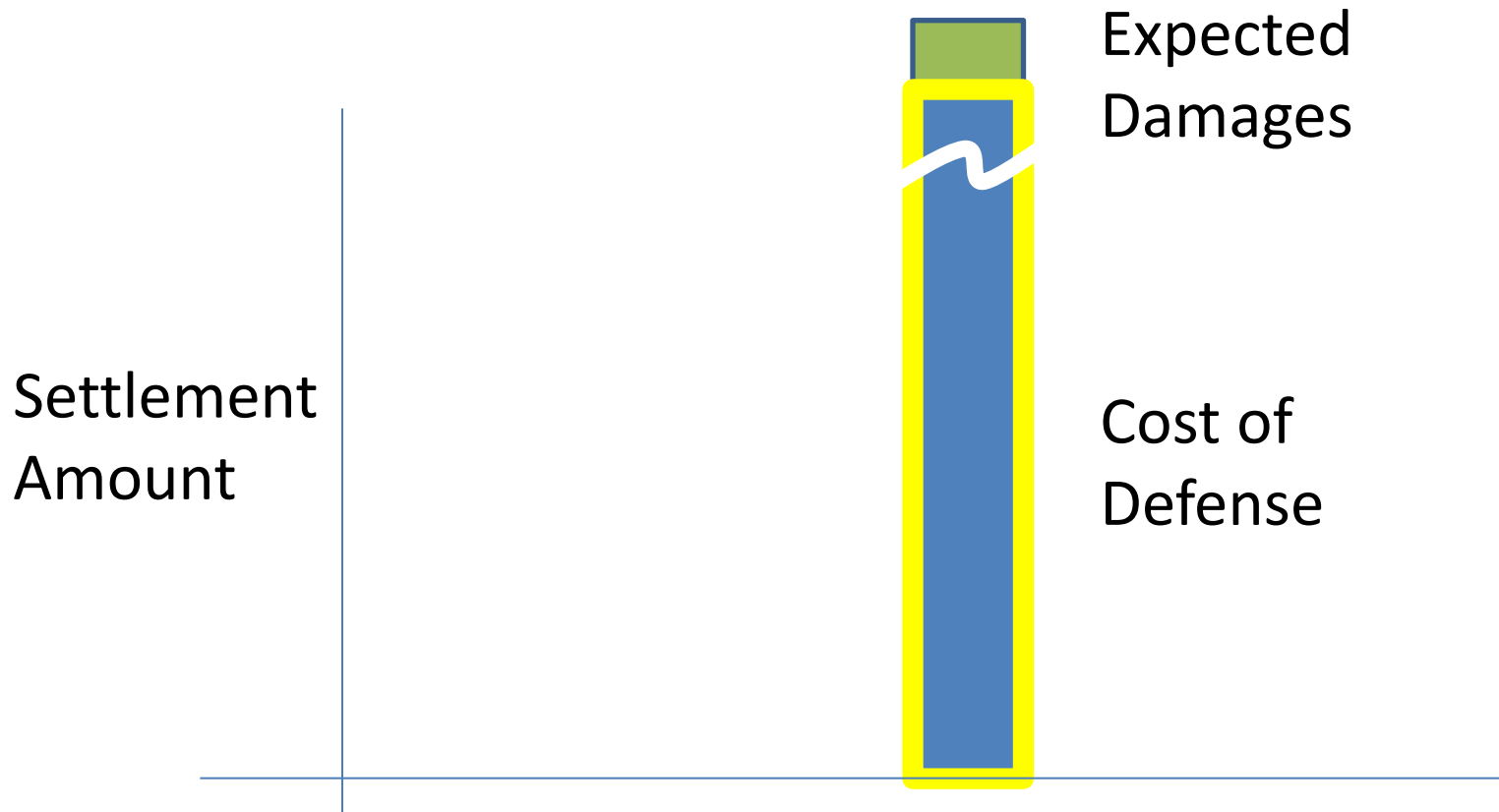


Typical PAE Litigation

Settlement
Amount

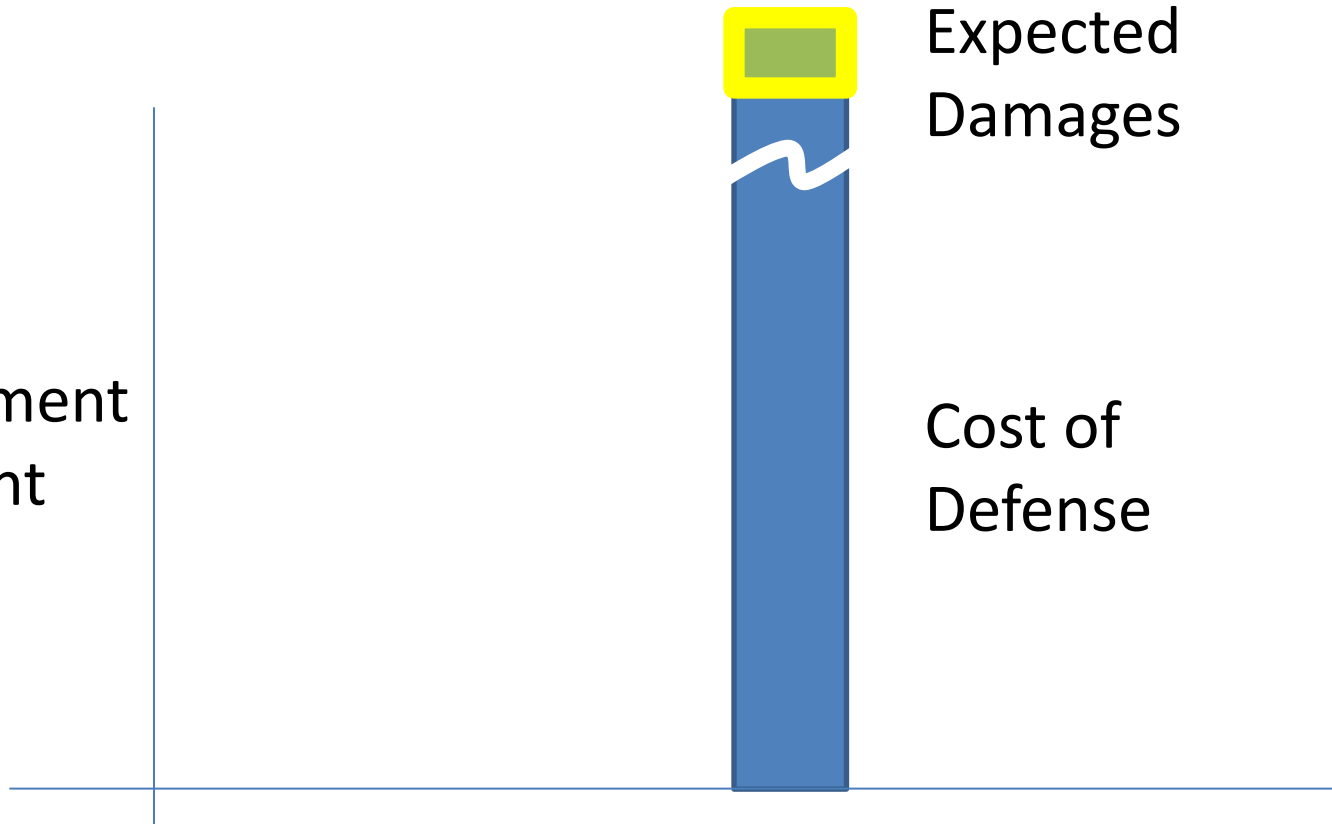


Typical PAE Litigation



Typical PAE Litigation

Settlement
Amount



Mass Patent Assertion

	Tech Companies	PAEs
Suits per litigated patent	1.5	4.1
Accused infringers per litigated patent	2.9	16.1

Mass Patent Assertion

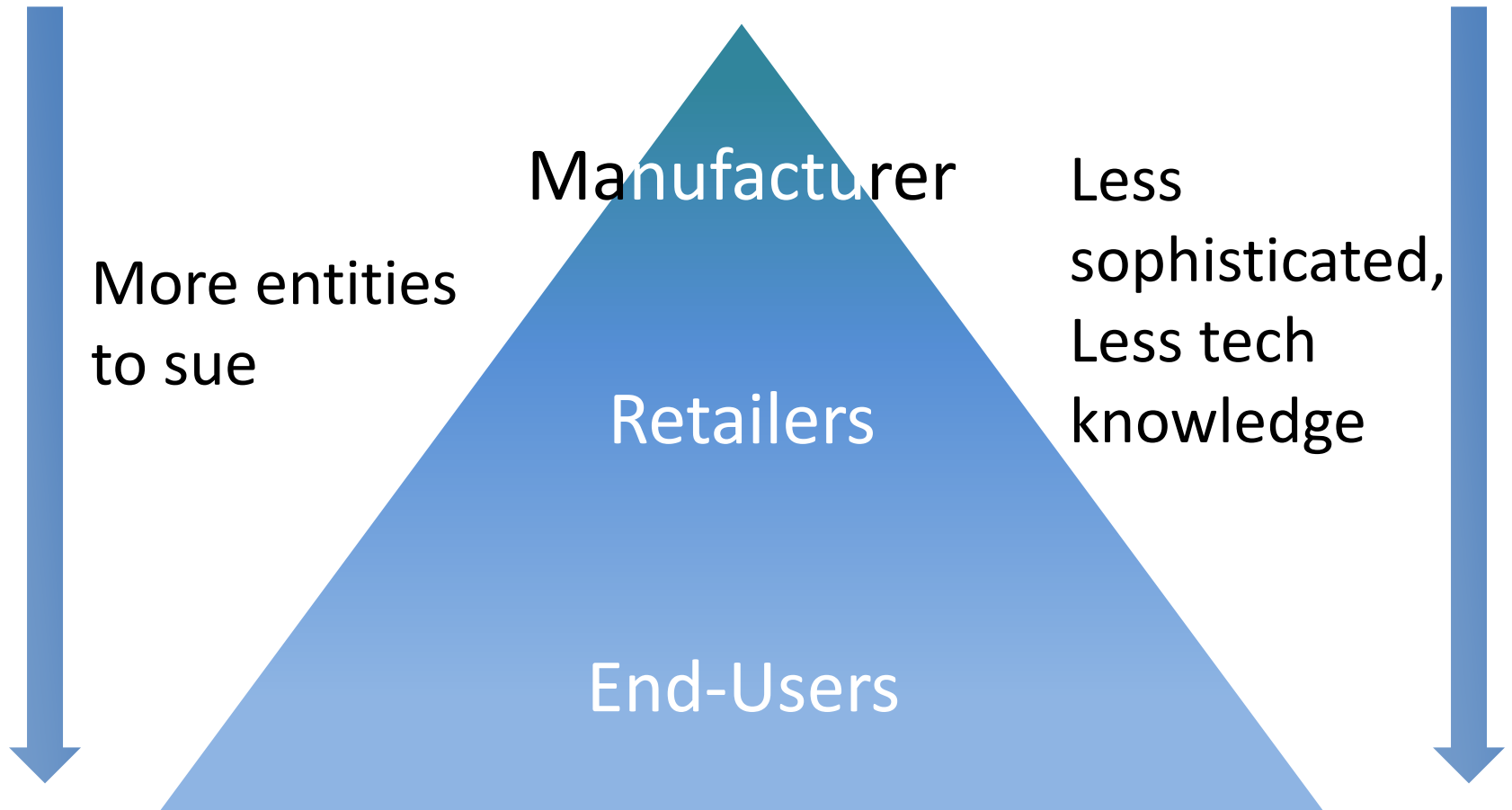
Overall Rank	Tech Co	# NPE Suits Defended (2009-June 2013)
1	Apple	171
2	HP	137
10	Google	103
21	Cisco	59

Mass Patent Assertion

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1	Apple	171
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10	Google	103
11	Amazon.com	102
20	Best Buy	60
21	Cisco	59
24	Wal-Mart	53

Mass Patent Assertion

Patent Act permits suit of . . .



Mass Patent Assertion

PAE	# Accused Infringers	# Law Suits	# Patents	Tech at Issue
GeoTag	435	115	1	Store locator maps on webpages
ArrivalStar / Melvino	326	211	16	Using GPS to track vehicles
PJC Logistics	281	44	1	”
Lodsys	106	36	4	Purchasing via a mobile app

Source: Patent Freedom (numbers current only as of Feb. 2013)

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Most PAE targets are:

- Small businesses:

- 55% make < \$10 million in annual revenue (Chien, *Startups and Patent Trolls*)
- 82% make < \$100 million (Bessen & Meurer; compare with Chien finding 66%)

- Not “tech companies”

- In 2011 and 2012 alone, PAEs sued
 - 929 retailers
 - 616 transport/transit companies
 - 524 financial services providers (Patent Freedom)

Mass Patent Assertion

Median cost to defend a patent suit:

- **\$650,000** (AIPLA: among suits with < \$1M at stake)
- **\$560,000** (Bessen & Meurer: survey of 82 NPE/PAE targets in >1100 suits)

Not to mention indirect, non-economic costs:

- Distraction of executives and engineers
- Delays in hiring and product launches/updates

Total cost might be 2-3 times higher than legal bills
(Bessen & Meurer)

Mass Patent Assertion

For every lawsuit there appear to be **many** more licensing demands . . .

Estimated at 25-50 letters per PAE suit filed

- (Chien, Dec. 2012 DOJ/FTC Workshop on PAEs)

Some send 500 letters per suit or more

- Innovatio sent 14,000 letters, filed 26 cases (Cisco)
- E-Data sent as many as 75,000 letters (Meurer)

Leveraging Weak Claims

PAE patents are more likely to be **narrow incremental improvements**:

	Tech Co Patent Suits	PAE Patent Suits
% High-Tech	37%	75-80%
% Software	22%	62-65%

Leveraging Weak Claims

PAE patents are more likely to be **narrow incremental improvements**:



5 patents (Ouellette)



250,000 patents (RPX)

Leveraging Weak Claims

PAE patents are more likely to have been **erroneously-issued by the PTO:**

	Tech Co Patent Suits	PAE Patent Suits
% ending in judgment of invalidity	~19%	28%

Leveraging Weak Claims

PAEs are more likely to **exaggerate the breadth of their patent rights**:

	Adjudicated Tech Co Patents	Adjudicated PAE Patents
% found not infringed in court	29%	56%

Overall win rate for NPEs/PAEs?

9% (Allison, et al.)

14% (Feldman, et al.)

Even so . . .

- Vast majority of NPE/PAE cases settle
 - 88% (Allison et al.)
 - 76% (Feldman, et al.)
- Sanctions are extremely rare
 - Courts award fees in < 2% of patent adjudications (Chien, *Reforming Software Patents*)

Bottom Line: Many PAEs . . .

- File large number of suits (16+ accused per PAE patent)
- Often against unsophisticated targets (55% are small businesses)
- That face extreme expense to fight (~\$600,000 median)
- Even when victory is highly likely (~90% of the time)
- Thus, usually settle for < defense costs (~80% settle)

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- RPX, <http://www.rpxcorp.com/key-patent-market-trends>