

HOT TOPICS PANEL

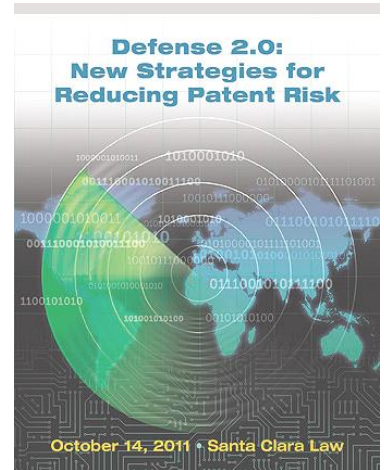
Paul Roeder, Hewlett-Packard

Karen Boyd, Turner Boyd

Michael McCoy, Appsterdam Legal Defense Fund

Douglas Luftman, CBS Interactive

Lisa Buccino, SAP



Damages Aspects of Defense

- The law of damages calculations after *Uniloc*
 - Apportionment based on sound economic evidence
 - Prior licenses must be analogous
- Litigating damages pre-trial
 - Attack damages from the start
 - Reverse bifurcation
 - Discovery
 - Motions for summary judgment
 - *Daubert* motions
- Presenting damages evidence at trial
 - Proving apportionment
 - Resisting prior licenses
- Call to action:
 - Revive the Domestic Industry and Public Interest requirements in the ITC

Smaller Company Options

- Don't be afraid to lead
- Don't be afraid to follow
- Don't be afraid to ask for something "weird"
 - What in the world is "reverse bifurcation"?
- Remember your first year of law school
 - Is there personal jurisdiction?
 - Is there subject matter jurisdiction?
- Be proactive about indemnification

App Maker Aspects: Fear & Loathing in the Patent System

- Appsterdam
 - A Haven for Indie App Makers — Developers, Innovators, Creatives and Businesses
- Appsterdam Legal Foundation — The Legal Center of Appsterdam
 - The Power of the Collective
 - Education, Cooperation & Partnership
- Cost of NPE litigation (Allison and Lemley 1998)
 - Nearly half of all patents litigated to judgment are ultimately found invalid
 - 2,600 New Patent Lawsuits Per Year
 - 345% Increase in Litigation from Non-Practicing Entities
 - Cost of Non-Practicing Entity Litigation – \$400M
 - Median Annual Damages – \$2.2M-\$10.6M
- Strategy
 - Open Sourced Prior Art & Collaborative Research
 - Proactive Business Structuring & Product Design
 - Gaining a Voice in the Legislative Process
- Legislative Reform
 - “If your enemy’s forces are united, separate them.” – Sun Tzu
 - 1,500 App Maker Members & Counting
 - Exclusions & Limitations for Non-Practicing Entities

Fee Arrangement Aspects of Defense

- Hourly billing is the most typical type of fee arrangement
- However, companies are looking for alternatives and law firms are eager to accommodate. Why?
 - Companies want predictable costs; surprises are disfavored
 - Clients want firms to share the pain for poor results or cost overruns
 - Frequent NPE litigation means companies are looking for ways to eliminate the pressure to settle
- What are some of the ways we can use fee arrangements to address these issues?
- Litigation docket retainer agreements
 - Outcome based billing / contingency agreements
 - Fixed fees and capped fees
 - Volume discounts
 - Efficiency bonuses
- What are the pros and cons of these? Other considerations?

Collaborative Defense Issues and Tactics

- Reexaminations revisited
 - Retrospective
 - Today
 - Future
- Multi-defendant litigation
 - Reducing transaction costs
 - Things to do before calling your outside counsel
 - Joinder dynamics
- Other collaborative defensive solutions
 - Patent purchasing entities
 - Prior art crowd-sourcing
 - Reexamination entities
 - Captive insurance pools