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Certifications

Certified Licensing Professional
(CLP)

Professional Affiliations

Licensing Executives Society

Utah State Bar Intellectual
Property Section CLE Committee

Education

M.B.A.
Brigham Young University

B.A., Communications
University of Utah

Consulting History

Echelon Analytics
2013-Present
Salt Lake City

FTI Consulting
2002-2012
Houston, Salt Lake City

Technology & Financial
Consulting
1998-2001
Houston

Scott W. Cragun is a Director based in Salt Lake City. Mr. Cragun has over twenty-five years of experience in financial and litigation consulting. His area of expertise is intellectual property damages analysis and calculations including lost profit calculations, reasonable royalty determinations, and other intellectual property quantitative analysis such as valuations.

Mr. Cragun has provided financial analysis and provided expert witness testimony regarding patent, trademark, trade secret, and copyright issues as well as regarding false advertising, unfair competition, and breach of contract issues. He has assisted in license negotiations and conducted royalty compliance reviews.

During his career, Mr. Cragun has had significant involvement with company and law firm personnel in the identification of relevant market, financial, and economic information, and the development of damages scenarios. His industry experience includes the agriculture, automotive, computer, consumer products, electronics, healthcare, software, semiconductor, and telecommunications sectors.

Mr. Cragun has given presentations to the Utah State Bar and guest lectured at Brigham Young University, Salt Lake Community College, Southern Methodist University, the University of Houston, the University of Texas, and the University of Utah on intellectual property topics. He holds an M.B.A. from Brigham Young University and a B.A. in communications from the University of Utah.

Professional Experience

Examples of Mr. Cragun's professional experience include:

Patent Infringement

Consumer Products

- Retained as an expert to determine damages in a patent infringement matter related to technology covering the design of an animal collar used for training. Analysis included the review of license agreements related to animal collar and animal training technology. Analysis also included the examination of the entire market value rule and the determination of a reasonable royalty.
- Retained as an expert to determine damages in a patent infringement matter related to technology covering glides used with carpet cleaning equipment that provide enhanced removal of liquid from carpet. Analysis included the review of marketing and promotional materials regarding the glide products, analysis of profitability, and the determination of a reasonable royalty.



- Assisted in the calculation of damages in a patent infringement matter involving blender technology. Analyzed license agreements related to blender technology, blender retail distribution channels, and costs to design around the patent. Analysis also included the calculation of royalty base and determination of a reasonable royalty as well as the calculation of trademark infringement damages.
- Assisted in the calculation of damages in a patent infringement matter related to collapsible instant canopy technology. Work included an analysis of instant canopy retail distribution channels and sales processes. Analysis also included the calculation of instant canopy profitability and a determination of a reasonable royalty.
- Assisted in the calculation of damages in a patent infringement matter related to an exercise machine that is controlled and or monitored by a local computer connected to the internet. Work included an analysis of the extent of use of the patented technology by the alleged infringer and its customers. Work also included the calculation of the royalty base and the determination of a reasonable royalty.
- Assisted in the calculation of damages in a patent infringement matter related to collapsible pet carriers. Work included the analysis of consumer research reports for the pet carrier market and the cost required to design around the patent. Analysis also included the determination of a reasonable royalty.
- Assisted in the calculation of damages in a patent infringement matter involving trampoline enclosures. Analyzed trampoline enclosure sales, distribution channels, pricing, and profitability. Assignment included analysis of manufacturing and marketing capacity and working capital requirements. Additional analysis included a reasonable royalty calculation as well as a determination of false advertising damages.

Chemical/Oil and Gas

- Retained as an expert to determine damages in a patent infringement matter related to technology covering the continuous heating of water used in the hydraulic fracturing process. Analysis included examination of the licensing practices of the owner of the patent, including a review of license agreements for the patent at issue. Work included an evaluation of the costs to design around the patented technology. Analysis also included the calculation of a royalty base and the determination of a reasonable royalty.
- Assisted in the calculation of damages in a patent infringement matter involving a toxin bait method and system for detecting and controlling termites. Analysis included the calculation of lost profits and a reasonable royalty. Work included an examination of pest control distribution channels and sales processes as well as pest control alternatives available in the market.



- Assisted in the calculation of damages in a patent infringement matter related to the aerosol treatment of potato storage facilities with chlorpropham, which inhibits sprout development. Work included the analysis of lost profit and price erosion damages by examining alternatives available in the market. Analysis also included the analysis of the profitability resulting from sales of the patented method and a calculation of a reasonable royalty.
- Assisted in the calculation of lost profits, price erosion, and reasonable royalty damages related to high purity chemicals and high purity chemical delivery systems used in the semiconductor manufacturing process. Work involved detailed analysis of multiple sales databases and detailed review of client's financial reporting system including sales, costs, and profits.

Software

- Assisted in the calculation of reasonable royalty damages in the security software industry. Work included the examination of ownership transfers of the patent at issue, industry licensing practices, competition between the licensor and licensee, and the importance of the patented technology compared to other technology embodied in the products at issue. Work also included an analysis of the commercial success of the technology covered by the patent at issue.
- Assisted in the calculation of damages in the operating system software industry. Accused products were a worldwide software company's operating system for computers as well as operating systems for tablets and mobile phones. Analysis included an examination of offers to purchase the patent at issue and related patents. Analysis also included a review of the marketing and promotion of the patented feature and studies ranking the importance of the patented feature compared to other operating system features. Work included a profit apportionment as part of the determination of a reasonable royalty.

Electronics/Telecommunications

- Retained as an expert to determine damages in a patent infringement matter related to four patents covering keyboard, video display monitor, and mouse switching devices. Work included the analysis of acceptable non-infringing alternatives in the determination of lost profits. Work also included the analysis of prior license agreements granting rights to the patents in the determination of a reasonable royalty.



- Assisted in the calculation of damages in a patent infringement dispute between two major smartphone providers involving several patents asserted by each party. Patented technology included smartphone user interface features and cellular standards essential technology subject to Fair, Reasonable, and Non-Discriminatory (“FRAND”) licensing terms. Analysis included the review of numerous cross license agreements, apportionment of profits, and the determination of a reasonable royalty for each patent.
- Assisted in the calculation of damages in a patent infringement matter involving five patents related to thin film transistors used in devices such as flat panel liquid crystal displays used in a variety of electronic video display products, including notebook computers, mobile phones, personal digital assistants, and digital cameras. Work included the analysis of accused sales that entered into the United States and the determination of a reasonable royalty.
- Assisted in the calculation of reasonable royalty damages in a patent infringement matter involving a patent related to website “build your own” sales proposals and a patent related to a computer-assisted parts sales method. Patents were asserted against large automobile manufacturers. Analysis included the determination of a reasonable royalty.
- Assisted in the calculation of damages in a patent infringement matter related to a system for assembling multiple components, such as integrated circuits, upon a printed circuit board. Work included the analysis of costs savings resulting from the use of the patented technology and the determination of a reasonable royalty.
- Assisted in the calculation of damages in a patent infringement matter involving operation of electronic gaming systems that provide a predetermined number of winning and losing draws in order to adhere to state laws requiring Indian tribe casino electronic games to function similar to state lottery games. Analyzed plaintiff’s and defendant’s sales, costs, and profitability as well as equipment purchase and lease agreements setting forth licensing and participation fees. Additional analysis included a determination of a reasonable royalty for the plaintiff’s and defendant’s patented technology.

Healthcare

- Retained as an expert to determine damages in patent infringement matter involving a patent covering biometric belt connectors. Analyzed lost profits, including an analysis of the acceptability of non-infringing biometric belt alternatives. Also determined a reasonable royalty which included the analysis of the profit differential between the patented biometric belt and prior biometric belts available in the market.



- Assisted in the calculation of damages in a patent infringement matter involving four patents covering methods and apparatuses related to the fixation of fractures of osteoporotic bones, including vertebral compression fractures. Patent infringement damages analysis included the calculation of lost profits and a determination of a reasonable royalty. Analysis also included a calculation of trade secret misappropriation damages.
- Assisted in the calculation of damages in a patent infringement matter involving a patent covering an improved method for the delivery of antibiotics to patients with lung infections, such as patients affected by cystic fibrosis, by inhalation through an inhalation device. Analysis included the calculation of a royalty base and a reasonable royalty determination.
- Assisted in the calculation of damages in a patent infringement matter related to a patent covering patient identification system for relating items, such as medication, using bar code technology. Client was a large, worldwide healthcare services provider. Work included calculating the royalty base and determining the appropriate reasonable royalty.
- Assisted in the calculation of damages in a patent infringement matter regarding patents covering white blood cell hematology control technology. The dispute involved a manufacturer and processor of human blood controls against a leading hematology instrument manufacturer. Calculated lost profits and determined a reasonable royalty. Analysis included assessing the market and profitability of hematology instruments, reagents, and controls.

Trademark Infringement

- Retained as an expert to analyze damages claimed for trademark infringement and trade secret misappropriation. Trademarks at issue included business name and logo used for lawyer education services. Trade secrets at issue included customer lists. Work included analysis of revenue related to donations, memberships, and scholarships.
- Retained as an expert to determine damages resulting from trademark infringement, false advertising, and breach of contract related to interlocking floor tiles for the modular flooring industry such as garage floors, dance floors, sports floors, and event floors. Damages analysis included determining unjust enrichment based on profit disgorgement and actual damages based on lost profits.
- Assisted in the calculation of damages in a trademark infringement matter involving universal exercise machines that use resilient rods. Work included the analysis of various market factors that contributed to lost sales and the profit attributable to the use of the trademark. Work also included the calculation of false advertising damages.



- Assisted in the calculation of damages in a trademark infringement matter involving the use of an orange ball design with banking services. Work included the analysis of unjust enrichment, including determining costs and deductions related to defendant's accused revenue, lost profits, and corrective advertising.

False Advertising

- Retained as an expert to determine damages resulting from false advertising and deceptive trade practices. The dispute involved in-store and online advertising related to ladder safety standards reported by the American National Standards Institute. Work included analyzing costs to determine the appropriate amount of profit disgorgement.

Trade Secret Misappropriation

- Retained as an expert to determine damages resulting from trade secret misappropriation, copyright infringement, and breach of contract. Trade secrets and copyrights related to warehouse management software for the third-party logistics industry. Damages analysis included determining actual damages based on a reasonable royalty and unjust enrichment based on profit disgorgement.
- Retained as an expert to determine damages resulting from trade secret misappropriation, false advertising, and breach of contract. Trade secrets related to product formulations and manufacturing information in the agricultural nutrition products industry. Damages analysis included the determination of unjust enrichment based on profit disgorgement as well as the analysis of avoided development costs.
- Retained as an expert to determine damages resulting from misappropriating of trade secrets, copyright infringement, intentional interference with prospective economic advantage, and unfair competition. Copyrights and trade secrets related to lamp designs and analysis included the determination of the profit from lamps sold with the lamp designs.
- Assisted in the calculation of damages in a trade secret and misappropriation of confidential information dispute between a university and a large Japanese telecommunications company. Technology involved the discovery of a new cathode material for lithium-ion batteries. Work included the analysis of cost savings resulting from the technology at issue and the determination of a reasonable royalty. Developed financial damages model based on various forecasted markets for lithium-ion batteries.



Trade Dress Infringement

- Retained as an expert to provide opinions related to profits attributable to trade dress infringement, false designation of origin, and unfair competition. Trade dress related to packaging elements of ice cream pints sold in grocery stores and specialty retailers. Analysis included consideration of ice cream purchase drivers reported in surveys of ice cream consumers, ice cream manufacturers and sellers, ice cream retail buyers, and ice cream retail distributors.

Intellectual Property Valuation

- Retained as an expert to provide a valuation of a portfolio of intellectual property that included United States patents and patent applications, foreign patents and patent applications, software code, and trade secrets. Intellectual property covered technology in the communications industry. Intellectual property valuation analysis considered the cost approach, the income approach, and the market approach, which included a relief from royalty calculation.
- Retained as an expert to provide a preliminary analysis of the potential value of an invention related to display technology and related display software. The technology was covered by patent applications. The display technology provided potential applications for the computer monitor and laptop computer worldwide markets.
- Assisted in the valuation of a trademark involved in a dispute that included an alleged fraudulent transfer of the trademark. The trademark is used with cosmetic dentistry teeth whitening and on products offering dentist-based treatments and at-home products. Analysis included applying different valuation dates to the valuation.
- Assisted in the analysis of a mobile phone trademark involved in license negotiations. The trademark was licensed to a global leader in wireless and broadband communications and the trademarked mobile phone had experienced significant market success. The term of the licensed trademark was nearing its end. Analysis included estimating the trademark licensee's revenues and profits resulting from trademarked mobile phone sales and reviewing licensee public statements related to the trademark.
- Assisted in the valuation of a trademark for a first aid skin ointment. The trademark has been in existence for over 70 years and the trademarked product sold in drug stores, grocery stores, and mass merchandisers throughout the United States. The purpose of the valuation was to provide an independent economic opinion of the value of the trademark for its contemplated purchase. Valuation included a review of product profitability and advertising expenses incurred in marketing the trademark.



- Assisted in the valuation of proprietary software of a major energy company involved in bankruptcy. The company had developed software to assist in its business of exploration, production, transportation and wholesale marketing of natural gas, crude oil and refined petroleum products in the United States and internationally. The purpose of the valuation was to assist in determining the value of a security interest in the software. Valuation included an analysis of historical software development costs incurred by the company.

Royalty Compliance Review

- Retained as an expert to conduct several royalty compliance reviews on behalf of a billion-dollar manufacturing company with multiple technology segments. Performed desk audits and on-site audits at licensee locations. Discovered several million dollars in underreported royalties across multiple licensees.
- Retained as an expert to conduct royalty compliance review on behalf of a leading content developer in the gaming industry. Reviewed records of the gaming industry's leading manufacturer, which licensed client's gaming products and trademarked concepts. Analysis included review of various license payment arrangements, including per machine, recurring revenue, and network and online gaming.

Presentations and Publications

"Recent Trends in Intellectual Property Damages," - Panel Overview, Utah State Bar Intellectual Property Summit, February 2022

"Apportionment in Determining Reasonable Royalty Damages" - Speaker, David K. Winder Intellectual Property American Inn of Court, March 2021

"Intellectual Property Valuation and Damages" - Guest Lecturer, The University of Texas at Austin, Management Program (New Venture Mechanics), October 2018

"Intellectual Property Valuation and Damages" - Guest Lecturer, The University of Texas at Austin, Management Program (Entrepreneurship Practicum), October 2018

"Patent Infringement: Practical Guide and Best Practices to Prove Royalty Damages" - Speaker, The Knowledge Group, Webcast, December 2016

"Recent Trends in Patent Infringement Litigation and Damages," - Panel Overview, Utah State Bar Intellectual Property Summit, February 2012

"Recent Trends in Patent Infringement Damages," - Speaker, Utah State Bar Intellectual Property Section, June 2011

"Patent Infringement Damages and Expert Reports," - Guest Lecturer, Brigham Young University, Law School, March 2010



“Patent Infringement Damages,” - Guest Lecturer, Brigham Young University, Law School, March 2008

“Patent Law Remedies & Patent Damages,” - Guest Lecturer, University of Utah, Law School, November 2007

“Recent CAFC Decisions Affecting Damages in Intellectual Property Cases” - Speaker, Utah State Bar Intellectual Property Section, June 2006

“Intellectual Property Law” - Guest Lecturer, Salt Lake Community College, Law Program, March 2006

“The ‘Analytical Approach’ as a Technique to Determine a Reasonable Royalty” - Co-Author, Chapter 11 in *Economic Damages in Intellectual Property - A Hands-On Guide to Litigation*, Wiley, 2006

“Intellectual Property Law” - Guest Lecturer, Salt Lake Community College, Law Program, November 2005

“Patent Infringement Damages Case Study” - Guest Lecturer, Southern Methodist University, Economics Program, September 2005

“Economics of Patent Infringement Damages” - Guest Lecturer, Southern Methodist University, Economics Program, September 2004

“Twenty Years of Damage Decisions under CAFC” - Speaker, Utah State Bar Intellectual Property Section, August 2001

“Valuations in Litigation” - Guest Lecturer, University of Houston, MBA Program, July 2001

“Financial Consulting in Litigation” - Guest Lecturer, University of Houston, MBA Program, February 2001

Testimony

Van Leeuwen Ice Cream LLC v. Rebel Creamery LLC, Case No. 1:21-cv-02356, E.D. New York

Her Majesty the Queen in Right of Canada as Represented by the Minister of Agriculture and Agri-Food v. Van Well Nursery, Inc., Monson Fruit Company, Inc., Gordon Goodwin, and Sally Goodwin, Case No. 2:20-cv-00181, E.D. Washington

Wing Enterprises, Inc., d/b/a Little Giant Ladder Systems v. Tricam Industries, Inc., Case No. 0:17-cv-01769, D. Minnesota

Softketeers, Inc. v. Regal West Corporation d/b/a Regal Logistics, Vu Ho Inc., Thai Tran Inc., Don Mai Inc., Randy Neeves, Vu Ho, Thai Quoc Tran, Don Mai, and Trung Ngoc Doan, Case No. 8:19-cv-00519, C.D. California

The Trial Lawyers College v. Gerry Spence Trial Institute, Gerald L. Spence, John Zelbst, Rex Parris, Joseph H. Low, Ken Spence, John Joyce, and Daniel Ambrose, Case No. 1:20-cv-00080, D. Wyoming



Snap Lock Industries, Inc. v. Swisstrax Corporation, Case No. 2:17-cv-02742, D. Nevada

Balchem Corporation and Albion Laboratories, Inc. v. Daniel Todd Edwards and Mil Agro, Inc., Case No. 7:18-cv-02677, S.D. New York

Parah, LLC and Ozonics, LLC v. MoJack Distributors, LLC d/b/a Scent Crusher, Case No. 6:18-cv-1208, D. Kansas

Anthony California, Inc. v. Fire Power Co., Ltd., New Bright Jet Lighting (Shenzhen) Co., Ltd., Interest Plus Investments Limited; Chien Tsai Tsai, Chien Ho Tsai, James Moran, M & M Sales, Inc., and Direct Lighting LLC, Case No. 5:15-cv-876, C.D. California

Nox Medical ehf v. Natus Neurology Inc., Case No. 1:15-cv-00709, D. Delaware

ATEN Technology, Co. Ltd. v. Uniclass Technology Co., Ltd., Electronic Technology Co., Ltd. of Dongguan Uniclass, Airlink 101, Phoebe Micro Inc., and Broadtech International Co., Ltd. d/b/a Linkskey, Black Box Corporation, and Black Box Corporation of Pennsylvania, Case No. 2:15-cv-04424, C.D. California

Radio Systems Corporation and Innotek, Inc. v. Tom Lalor and Bumper Boy, Inc., Case No. 2:10-cv-00828, W.D. Washington

Mytee Products, Inc. v. Harris Research, Inc., Case No. 3:06-cv-01854, S.D. California