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Professional Affiliations

National Association of Certified
Valuation Analysts

Licensing Executives Society

Education

M.B.A., Texas A&M University, College
Station, TX (Academic Scholarship)

B.S. in Business Management (Finance
Emphasis),
Brigham Young University, Provo, UT

Lance E. Gunderson is a Managing Director based in Houston and the national leader of the firm's intellectual property practice. Mr. Gunderson is experienced in both financial and litigation consulting. He specializes in intellectual property damages though he has been involved in other quantitative analyses, including lost profit calculations, business interruption claims, cash flow and financial transaction analysis, business valuations, licensing negotiations and cost reviews.

Mr. Gunderson has significant experience in a wide variety of industries including airline, banking, chemical, computers/software, construction, consumer products, health care, nuclear power, oil & gas, pharmaceuticals, semiconductors and telecommunications.

Mr. Gunderson has testified extensively in trial proceedings, issued findings on matters under mediation and/or arbitration, and has documented analyses and conclusions for a variety of disputes and non-litigation consulting engagements. His experience involves intellectual property infringement/misappropriation, breach of contract, business interruption, valuation, and general damages analysis. He has assisted companies and law firms in the identification of relevant financial information, developed damage alternatives and related case strategies, and interacted with other experts and company personnel.

Professional Experience

Airlines

Applied Interact v. Continental Airlines

- Retained by Continental Airlines in a patent infringement suit for a patent on printing boarding passes. Analysis included an investigation of alternatives, sales, costs, and profits as well as a full Georgia Pacific analysis which culminated in a reasonable royalty opinion.

Butler v. Continental Airlines

- Retained by Continental Airlines in a Copyright infringement matter involving "hot keys" used in the Quickres system. Analysis included investigation of cost savings or other benefits of "hot keys" as well as costs associated with software design associated with the technology.

Consumer Products

Icon/Nautilus Litigation

- Retained by Icon for several cases in which Icon is/was both plaintiff and defendant in a multi-jurisdictional, multi-faceted intellectual property disputes involving trademark, patent, false marking, and false advertising claims. Work performed included analyses of sales, costs, profits, pricing, and licensing for multiple products including the Bowflex™, the Crossbow/CrossBar, and several other treadmills and home gym systems. The work included issuing multiple reports, testifying in several depositions, and testimony at trial.



Collins & Davanloo v. The Gillette Company

- Retained by the plaintiffs to offer testimony in a patent infringement matter involving Diamond-Like Carbon (“DLC”) used on the defendant’s razor blades. Analysis included a review and summary of defendant’s sales, costs, profits, pricing, and marketing of the Mach3™ razor as well as analyses of potential non-infringing alternatives and the strategic implications of the use of DLC and the timing of such use.

Primos, Inc. v. Hunters Specialties

- Retained by plaintiff to calculate damages and give opinion in a patent infringement dispute involving in-mouth diaphragm elk and turkey calls used by sportsmen. Opinion included both lost profits and reasonable royalties. Analysis involved pricing, sales, costs, and profits of, not only accused products, but also conveyed sales.

Creative Products v. Follmer

- Retained by defendant to assist with a lost profit and reasonable royalty analysis involving a non-stick cooking spray patent. Analyzed parties’ sales, costs, profits, and license agreements. Additionally, analyzed the non-stick cooking spray market including name brand and store branded products. Analysis was used to opine on a reasonable royalty based on availability of non-infringing substitutes.

Altech Controls v. E.I.L. Instruments

- Retained by defendant to give testimony regarding the reasonable royalty in a patent infringement matter. Technology involved an “oil speed-up” feature for the compressor on refrigeration units used by big box grocery stores. Analysis included a review of sales costs and profits associated with the accused technology licensing practices of the parties and within the industry and a review of the features and benefits of the technology in question.

Bryan Real v. Bunn-O-Matic

- Retained by the plaintiff in a patent infringement matter involving technology used in beverage dispensing units that allows for the automatic refill of powdered beverage dispensing machines. Analysis included a calculation of lost profits, including an incremental profit analysis, and a determination of a reasonable royalty.

Hester Industries v. Tyson Foods

- Assisted a large chicken products company in a trademark infringement case involving a trademark on chicken wings. Analyzed joint costs (breasts, thighs, wings, and bi-products) in order to allocate costs and determine product profitability. Applied the chicken wing profitability to the alleged infringing sales to determine trademark infringement damages.



Jumpsport, Inc. v. Jumpking, Inc., et al.

- Retained by defendant, a trampoline manufacturer, to calculate damages in a patent infringement matter related to trampoline enclosures. Analyzed plaintiff's and defendant's sales, costs, and profitability. Assignment included analysis of plaintiff's manufacturing and marketing capacity and working capital requirements. Additional analysis included a reasonable royalty calculation as well as a determination of false advertising damages claimed by the Plaintiff as well as the defendant in a counterclaim claim against the plaintiff.

Procter & Gamble v. Amway

- Assisted a household products company in defending a claim that it had participated in business disparagement, defamation, injury to trade name or mark, unfair competition, misleading advertising, and interference with business relations. The company was accused of spreading a false Satanism rumor about the plaintiff's trademark logo. The analysis attempted to determine whether or not the actions of the company affected the business of the plaintiff. Sales trend analysis for specific consumer products were completed as part of the damages calculation.

Blue Star Trademark Valuation

- Performed a valuation of a trademark for a first aid skin ointment. The trademark has been in existence for over 70 years and the trademarked product is sold in drug stores, grocery stores, and mass merchandiser 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.

Financial Services

Encore Bank v. TXU Corp., f/k/a Texas Utilities Company

- Retained by a large utility company to assist in a trademark infringement matter brought against a savings and loan institution relating to the parties' logos. Performed financial analysis covering various areas of trademark damages including reasonable royalty, corrective advertising, and infringer's profits.

Healthcare & Biotechnology

McKesson v. Bridge Medical

- Retained to provide testimony regarding damages in a patent infringement matter related to a patent covering a patient identification system for relating items (such as medication) with patients using bar code technology. Retained by one of the world's largest healthcare services company. Calculated the royalty base and determined the appropriate reasonable royalty.



Chiron/Ortho Clinical Diagnostics

- Conducted a Joint Venture and contract review based on a “right to audit clause” for diagnostic blood technology invented by Chiron and marketed by Ortho. Work included travel to Italy and England to review books and records to verify sales, costs, and profits reported for blood diagnostic equipment. Majority of work involved sampling and testing sales as well as confirming appropriate accounting of costs. Ultimately, the matter was resolved without the need for litigation.

Streck Laboratories v. Beckman Coulter

- Retained by the plaintiff in a patent infringement matter. Considered lost profits and determined a reasonable royalty on a white blood cell hematology control technology. Analysis included assessing the market and profitability of hematology instruments, reagents, and controls and an analysis of various licensing, technical, and business factors to determine an appropriate royalty rate. The dispute involved a manufacturer and processor of human blood controls against a leading hematology instrument manufacturer.

Idexx Laboratories, Inc. v. Abaxis, Inc. and S.A. Scientific, Inc.

- Assisted a manufacturer and a reseller of point-of-care blood analyzers in its defense of a patent infringement suit related to a one-step canine heartworm test kit used in the veterinary market. Analysis included a detailed review of the plaintiff's and defendant's sales and profitability information, the sales of competing products in the market, and a detailed review of a number of related industry license agreements.

RWM Kinetics v. Kinetic Concepts

- Retained by the plaintiff to compile the defendant's allegedly infringing sales of therapeutic hospital beds. Analyzed defendant's overall profitability as well as product line profitability, historical financial projections, existing license agreements, and marketing and sales literature. Analysis was eventually used to offer testimony before the court as to the appropriate reasonable royalty.

Oil and Gas/Chemical

Derrick Manufacturing v. Advanced Wirecloth

- Retained by the plaintiff, a high speed vibrating screen manufacturing company operating in the process industries, in a patent and trademark infringement suit to assess economic damages incurred by the plaintiff. The case involved multiple patents related to solids control screen technology used in the oilfield drilling services sector. Reviewed defendant sales records to determine revenue obtained from accused products, as well as analyzed plaintiff's incremental costs and profits related to products incorporating the patented technology at issue. Work performed also included database development related to defendant sales information and a calculation of pre-judgment interest.



MPR Services, Inc. v. Eco-Tech, Inc., et al.

- Retained by the plaintiff in a patent infringement matter involving allegedly infringing system of resin beds that remove Heat Stable Salts from Amine systems used to remove hydrogen sulfide from sour gas streams. Analysis included determination of lost profits, reasonable royalty, and price erosion.

Tri-River Chemical v. Pin/Nip

- Retained by the defendant in an infringement matter involving patents covering the application of a chemical to potatoes in long-term storage to prevent sprouting. Analysis included rebutting a lost profits claim proffered by the plaintiff, interviewing various potato farmers, distributors, chemical applicators. and determining patent design around costs. Analysis also included detail review of plaintiff's financial reporting and profitability.

Semiconductor and Electronics

Apple v. Wi-LAN/Wi-LAN v. Apple

- Retained by Apple to evaluate Wi-LAN's damages claim related to two asserted patents purportedly covering certain aspects of VoLTE. Also provided an alternative reasonable royalty damages opinion based on the SSPPU—the baseband processor. The affirmative damages analysis was primarily based on a comparable license analysis.

Cellular Communications Equipment LLC v. AT&T Inc., et al. (Apple)

- Retained by Apple to respond to royalty damages claimed by a patent holding company related to Apple's alleged infringement of patents covering certain aspects of LTE, including resource allocation between base stations and user equipment. Rebutted opposing expert's reasonable royalty analysis and conclusion based on the expert's conflation of the asserted patent's purported benefits with the overall benefits of LTE, failure to properly analyze FRAND considerations and non-infringing alternatives, and failure to appropriately analyze license agreements, among other issues.

Paice LLC and The Abell Foundation v. Hyundai and Kia

- Analyzed defendants' sales of Sonata and Optima hybrid cars containing the accused semiconductor involved in hybrid vehicle technology. Determined importance of technology in the car as well as importance within the chip vis-à-vis the other technology necessary for a successful hybrid vehicle. Analyzed issues including SSPPU and apportionment. Issued expert report and provided testimony at both deposition and trial.

Stephen Jewell, et al. v. General Electric Company

- Assisted in the analysis of the feasibility of calculating damages on a class wide basis for individuals that purchased service contracts for laptop computers. The individuals' claims related to not receiving in-home service for the service contracts that specified in-home or on-site coverage. Analyzed damages under three theories: (1) the difference in value between what was promised in the service contract and



what was received; (2) damages to class members who requested and did not receive in-home service; and (3) unjust enrichment.

ADCS v. Air Products and Chemicals

- Retained by the plaintiff in a patent infringement case involving the manufacture and delivery of ultra-clean chemicals used in the semiconductor manufacturing process. Work performed included a review and analysis of plaintiff's and defendant's sales, including ancillary sales, as well as analysis of plaintiff's and defendant's costs and profits. Damages claim included lost profits, convoyed sales, price erosion, and a reasonable royalty.

Aguayo & Tran v. Motorola

- Analyzed defendant's use of allegedly infringing technology involving "pick-and-place" machines used in the manufacture of printed circuit boards. Analysis included an extensive review of the cost savings provided by the use of the technology at issue, including the elimination of "wrong part" placement. Analysis used to provide a basis for a reasonable royalty claim.

Laitram v. Okidata

- Retained by a large regional technology company to analyze potential damages and provide settlement parameters for alleged infringement of a patent related to LED printer technology. Reviewed and analyzed multinational printer company's sales and profit information as well as sales and royalty rates of other large competing printer manufacturers.

Minnesota Mining and Manufacturing Company v. Molex, Inc. and Seiko Instruments USA, Inc.

- Retained to determine appropriateness of lost profits and opine on a reasonable royalty for fiber optic ferrules used to connect fiber optic cable. Royalty analysis included a review of allegedly infringing ferrule sales as well as an analysis of costs and profits associated with those sales. Analysis included review of existing licenses for plaintiff and defendant as well as licensing practices in the fiber optic industry.

Texas Instruments v. Hyundai

- Analyzed multinational defendant's U.S., inter-company, and international sales, costs, and profits as well as certain manufacturing capacities of RAM, DRAM, SRAM, and SDRAM. Also analyzed the transfer of products between U.S. and international manufacturers and sales subsidiaries. Analyzed and converted defendant's foreign financial statements and sales reports from electronic data and foreign documents. The plaintiff obtained a billion dollar settlement of all litigation after a favorable jury award on behalf of the plaintiff.

Software and Internet

Genband US LLC v. Metaswitch Networks Ltd and Metaswitch Networks Corp.

- Retained by the defendant/counter plaintiff to respond to reasonable royalty damages claimed by plaintiff and to offer affirmative reasonable royalty opinions on plaintiff's and counter plaintiffs' asserted patents. Patented technology covered



various aspects of software and hardware used to connect VoIP systems to PSTN/circuit-switched telephone systems.

Apple v. Motorola Mobility (Google)

- Retained by the defendant to calculate reasonable royalty damages in a patent infringement suit. The case involved multiple software technologies (four Apple asserted patents and four Moto asserted patents) and a very large production of documents from current and former cases. Three Apple asserted patents involved mobile handset software and one involved cable set top box software. The work included analysis of sales, cost and profits of accused technology as well as review of hundreds of license agreements produced in discovery and alternatives available to the defendant at the time of the hypothetical negotiation. Case settled prior to testimony.

Legato Systems v. Columbia Data Products, Inc.

- Retained by the Plaintiff to calculate reasonable royalty damages (lost profits was not appropriate) in a patent infringement suit. The two patents disputed pertain to technology to preserve a static “snapshot” of data as of a particular point in time (common application in creating a live data backup). Engagement involved analysis of plaintiff’s and defendant’s profitability, manufacturing and marketing capability, and a determination of the reasonable royalty, including a Georgia Pacific analysis. The defendant asserted damages counterclaims for antitrust, business interruption, and lost contracts and relationships. Analysis also included rebuttal of those damages claims. Provided expert testimony at deposition and at a Daubert hearing which resulted in the defendant’s damages expert being partially excluded.

Peck Road Ford v. Dealer Computer Services

- Retained by the defendant in a breach of contract dispute involving a contract for a hardware and software system used to manage the sales, parts, service, and accounting departments of automobile dealerships. The defendant filed a countersuit for breach of contract after being sued for false representations. Analysis included a study of the variables, such as micro and macroeconomic, marketing, operating, and financial variables that affect the success or failure of automobile dealerships.

Enron Software Valuation

- Performed a valuation of the 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.

Debra Jean Isaacs v. Mobil

- Retained by the defendant, a company involved in oil drilling operations, in a copyright infringement case related to software used in real-time oil drilling surveillance. Reviewed and analyzed plaintiff’s profit information, as well as



analyzed the overall market value of the software involved to determine an appropriate license fee or reasonable royalty for the use of this software.

National Instruments v. PPT Vision

- Retained by the defendant, a manufacturer of vision systems employed in the manufacturing process for quality control purposes, in a patent infringement suit related to software employed in the visioning process. Work included analysis of defendant and plaintiff sales, costs, and profits as well as analysis and research regarding existing licenses for similar technology using both public and private sources.

Vernon F. Minton v. National Association of Securities Dealers, Inc., et al.

- Retained by the Plaintiff, a sole inventor who developed a method of securities trading directed at a computerized network. The trading system allows individuals to electronically post offers to trade as well as to select and reply to posted offers in order to cause trades to occur. Work performed included analysis of Defendant's trading volumes, as well as revenues, costs, and profits of the allegedly infringing technology. Reviewed Defendant's pricing structure as well as the general regulatory environment related to electronic trading. Damages analysis included considerations related to a reasonable royalty claim.

Telecom

LunarEye, Inc. v. Independent Witness, Inc., BP America Production Company and BP America, Inc.

- Retained by Defendants to assess damages related to the use of GPS systems to track BP motor vehicle fleet in the field. Technology not only involved tracking vehicle location but also monitoring other vehicle aspects including seatbelt usage, acceleration/deceleration, mileage, and speed. Analysis included a review of existing licenses, sales, costs, profits, licensing policies and practices, benefits of the technology, and alternatives.

Robert Crowley v. McCaw Cellular et al.

- Retained by multiple large wireless telephone carriers to analyze cost of providing wireless phone services for a class action lawsuit. The allegations involved the propriety of "automatically" renewing contracts. Specific analysis involved "churn" and costs of acquisition that justified cancellation fees charged by the wireless providers.

Aerotel v. NACT

- Retained on behalf of defendant to consult and testify regarding damages sustained by the plaintiff as a result of the alleged infringement of a patent involving pre-paid calling card technology. Reviewed and analyzed defendant's sales, costs, and profits of the allegedly infringing technology and analyzed industry and company royalty rates.

Mahr Leonard Management Company v. Airtouch Communications, et al.

- Retained by Plaintiff to determine appropriate royalty base in a patent infringement case. Dispute involved two Harris Corporation patents, one related to



cellular CDMA technology and the other to cellular analog technology. Defendants included several of the major wireless communications service providers in the United States. Reviewed and analyzed Defendants' various financial reports such as income statements, revenue summaries (airtime, roaming, long distance, equipment), and billed and switched minutes of use reports. Identified an appropriate revenue base to apply a reasonable royalty in order to calculate damages. Testified in Federal Court regarding the appropriate royalty base.

John R. Gammino v. Southwestern Bell Telephone, L.P.

- Retained by Defendant to opine to the appropriate reasonable royalty directed to international call blocking technology. Work included analysis of sales, costs, profits, as well as analysis of alternatives.

TIP Systems, LLC and TIP Systems Holding Co., Inc. v. Phillips & Brooks/ Gladwin, Inc., et al.

- Retained by Defendant to opine to the appropriate reasonable royalty on patents for an inmate phone. Work included analysis of sales, costs, profits, as well as analysis of alternatives.

Articles and Presentations

"Where are the Costs in Patent Litigation? (And What Is the Value Being Received?)," Fourth International Symposium on Reduction of Patent Costs, The Hague, Netherlands, 1999

"Financial Consulting in Litigation," University of Houston, Houston, Texas, Guest Lecturer, February 2001

"Valuations in Litigation," University of Houston, Houston, Texas, Guest Lecturer, July 2001

"20 Years of Patent Damages Under the CAFC," Intellectual Property Section of the Utah Bar Association, Salt Lake City, Utah, Guest Speaker, August 2001

"MBA Technology Transfer Challenge," Texas A&M Mays MBA School, Judge, May 2003

"Intellectual Property Aspects of Bankruptcy," American Corporate Counsel Association (Houston Chapter), Houston, Texas, Guest Speaker, June 2003

"Patent Damages," J. Reuben Clark Law School, Brigham Young University, Provo, Utah, Guest Instructor, February 2004

"Calculating & Proving Patent Damages," Law Seminars International, Denver, Colorado, Guest Speaker, September 2004

"Case Study – Economics of Patent Infringement Damages," Southern Methodist University, Guest Instructor, Dallas, Texas, September 2004/2005

"Calculating & Proving Patent Damages, Getting the Data You Want from the Other Side through Discovery and 30(b) (6) Depositions," Law Seminars International, Guest Speaker, San Francisco, California, February 2006



“Patent Infringement Damages,” J. Reuben Clark Law School, Brigham Young University, Provo, Utah, March 2006

“Litigating Advertising Claims – Results May Vary,” American Conference Institute’s 17th National Advanced Corporate Counsel Forum on Advertising Law, Chicago, Illinois, June 2006

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

“Idea Challenge,” Texas A&M Mays MBA School, Judge, May 2009

“Recent Trends in Patent Damages,” Houston Intellectual Property Law Association, January 27, 2011

“Recent Trends in Patent Damages,” Tennessee Intellectual Property Law Association, May 6, 2011

“Significant Patent Damages Cases Will Lead to More Rigorous Damages Proof,” New York Intellectual Property Law Association, May/June 2011 Bulletin

“Recent Trends in Patent Infringement Damages,” Moderator of Panel, Utah Intellectual Property Summit (Utah Bar Association), February 17, 2012

“Patent Damages: Key Litigation and Expert Considerations,” Practical Law Intellectual Property & Technology, Webinar, October 28, 2014

“Damaged Goods: Overcoming IP Infringement,” Lawyer Monthly, Thought Leader Interview, August 2017 Edition

“Intellectual Property Valuation and Damages,” McCombs School of Business, The University of Texas at Austin, Management Program (New Venture Mechanics), Guest Lecturer, October 9, 2018