

**PATENT DAMAGES**  
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**CENTER**

# THE CONTEXT

- 2700 PATENT SUITS FILED PER YEAR
- 86% SETTLE BEFORE TRIAL
- 8% SUMMARY JUDGMENTS [USUALLY FOR ACCUSED INFRINGER]
- 1% SETTLE AT JURY TRIAL
- 3% JUDGMENTS ON JURY VERDICT [ 50 VERDICTS PER YR. – 3/4 FOR THE PATENTEE]
- 2% JUDGMENTS ON BENCH TRIALS





# **DAMAGE AWARDS**

## **[POSTED ON [patstats.org](http://patstats.org)]**

- **WE COLLECT AT THE JURY LEVEL**
  - **FINAL JUDGMENTS ARE OFTEN HIGHER DUE TO INTEREST AND ENHANCEMENT**
  - **FINAL JUDGMENTS ARE SOMETIMES LOWER DUE TO REMITTITURS**
- **WE UPDATE EVERY 2-3 MONTHS, SINCE 1/1/2005, LISTING CASE NAMES AND COURTS**



# VERDICTS ARE MODEST

- **PATENTEES WIN ABOUT 75% OF VERDICTS**
- **COUNTING ONLY THE WINS, THE**



- DISTRICT-BY-DISTRICT LOOK:
  - NOT MUCH BETTER

- YEAR-TO-YEAR TREND: MODEST





# THE RULES OF LAW ARE PRETTY SIMPLE

- **FOR LOST PROFITS: “SON OF PANDUIT”**
  - **CAUSALITY AND AMOUNT ARE ALL THAT IS NEEDED**
  - **SPLIT AWARDS (PROFITS FOR SOME INFRINGING SALES, REAS. ROY. FOR OTHERS, LOST ROYALTY REVENUE FOR OTHERS) ARE COMMON**



# **TIME TO ABANDON THE *GEORGIA-PACIFIC* GRAB-BAG**

- **NEVER INTENDED FOR JURY CARTE-BLANCHE**
- **RULE SHOULD BE SIMPLY: PORTION OF THE VALUE ADDED**
  - **AS COMPARED TO NEXT-BEST ALTERNATIVE**
  - **THE JUDGE SHOULD SUPERVISE THE AWARD**

# WHERE ARE WE IN DAMAGES DOCTRINE?



- ***CORNELL UNIV. v. HEWLETT-  
PACKARD***

# ENTIRE MARKET VALUE RULE:

- ~~DS0~~ ~~192~~ ~~SM~~



# ENTIRE MARKET VALUE RULE:

- IS ARTIFICIAL
- IS A RULE WHOSE TIME SHOULD BE *GONE*
- VALUE ADDED IS ALL WE NEED, WITH JUDICIAL SUPERVISION





# BUT . . .

- **PATENT DAMAGES AWARDS ARE MODEST**
- **ON AVERAGE, THEY DON'T JUSTIFY THE EXPENSE AND INTRUSION OF PATENT LITIGATION**
- **THE INJUNCTION MIGHT JUSTIFY IT**
  - **70% GRANT RATE AFTER *eBAY***

