



## District of Delaware Issues a Bellwether Decision on Bellwether Trials

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In Intel, Intel Corporation (“Intel”) filed for declaratory judgment of noninfringement and invalidity on nine patents owned by Future Link Systems, LLC (FLS). In response, FLS filed counterclaims for infringement against Intel on 15 patents. In the pleadings, “FLS contends that it is entitled to approximately \$10 billion in reasonable royalties, while Intel counters that it was liable for only around \$10 million, a disparity of about 1,000 times.” (emphasis is original).

Characterizing the case as an “oversized patent case,” Judge Stark considered two alternative strategies for narrowing the issues and promoting settlement. The first approach considered was an “unusual” “reverse bifurcat[ion]” of the case, where a trial would be conducted on only damages for a subset of six of the 15 patents, “solely to obtain a verdict on the parties’ competing damages theories, on the assumption that all asserted patents are valid and infringed by all accused products.” The second approach considered was a “well-worn . . . ‘bellwether’ trial on liability and damages relating to just three patents.” Ultimately, Judge Stark adopted the “bellwether” approach, reasoning that it would “giv[e] the parties a near-term opportunity to obtain certainty . . . as to the value of a substantial subset of their disputes,” especially given that FLS placed one-third of the total value (\$2.9 billion) on the three representative patents.

Balancing the “totality of circumstances” in favor of the bellwether approach, the court maintained, “obtaining clarity on the value of one third (even a nonrepresentative one-third, if that is what it is) of the case is at least as likely to promote settlement as would an advisory damages verdict on the entirety of the case,” which is “all that could be accomplished by a reverse bifurcation.” The court further reasoned, “Should, in a subsequent trial, even a single [infringement or validity] assumption with respect to any patent fail, the damages-only

verdict with respect to (at least) that patent would become a nullity.” Finally, the court recognized the potential for portions of the case to carry on “for many, many years to come,” but offered to be “receptive to reasonable suggestions as to how to manage this case most efficiently, in light of its overwhelming size and complexity.”

The parties are set to go to a bellwether jury trial in September of this year, the outcome of which should significantly influence at least one party’s disparate valuation of the case.

Intel Corporation v. Future Link Systems LLC, 1-14-cv-00377 (DED July 31, 2017, Order) (Stark, USDJ)

## Categories

District Court

Invalidity

Non-Infringement

District of Delaware

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