



Expert Testimony Stricken for Failure to Adhere to Entire Market Value Rule

Nov 7, 2017

Reading Time : **2 min**

This dispute began in October 2014, when Sonos asserted eight patents against D&M and one of its customers, Denon. The asserted patents cover features in D&M's networked wireless speaker products. D&M challenged the opinion of the plaintiff's expert in two respects, including that his reasonable royalty opinion was "unreliable because it fail[ed] to apportion damages to the accused features and instead use[d] the full sales price of the accused HEOS devices as the royalty base."

In his report, the plaintiff's expert attempted to determine Sonos's reasonable royalty damages. He analyzed the 15 Georgia Pacific factors and relied on a KPMG report that concluded that royalty rates in the consumer audio industry ranged from 2 percent to 25 percent of revenue, with a medium of 6 percent. The plaintiff's expert concluded that a 6 percent royalty rate was appropriate for one group of patents, and at least a 2 percent rate was appropriate for another group of patents. The plaintiff's expert multiplied these royalty rates by the total revenue of all of the accused products included in Sonos's reasonable royalty damages theory.

D&M argued that the plaintiff's expert's opinion was unreliable because he failed to apportion damages to the accused features under the well-established standard that a patentee must provide "evidence tending to separate or apportion the defendant's profits and patentee's damages between the patented feature and the unpatented features' or demonstrate that 'the entire value of the whole machine, as a marketable article, is properly and legally attributable to the patented feature.'" The court noted that it is difficult to assign value to a feature that was never sold separately but that the patentee has a duty to do more than estimate what portion of the value is attributable to the technology at issue. A patentee can base damages on the entire market value of the product only when the patentee can

establish that the technology at issue drove demand for the entire product. Judge Bryson held that the plaintiff's expert's opinion did not satisfy the patentee's burden.

The evidence that the plaintiff's expert relied on was (1) praise that Sonos received for the technology, (2) Sonos's advertising and marketing of the technology, (3) D&M's desire to include the patented features, (4) consumers' demand for the patented features, and (5) D&M's advertising and marketing of the technology. However, the fact that the patented features are desirable and important is not enough to show that they drive the market for the accused products. The plaintiff's expert's opinion was undermined by the fact that at least half of the accused products' owners could not use one aspect of the patented technology, which he failed to consider. Further, Sonos did not demonstrate that other aspects of the technology were central enough to justify the use of the entire market value rule—the technology was optional, and Sonos did not show that it motivated customers to buy the product. For these reasons, Judge Bryson held that the plaintiff's expert cannot testify as to his reasonable royalty theory at trial.

Sonos, Inc. v. D&M Holdings Inc. et al., 1-14-cv-01330-WCB, Dkt. 427 (D. Del. Nov. 1, 2017).

Categories

District Court

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