

## Intellectual property disputes.



“What damage have I suffered as a result of my patent being infringed?” “How much would my brand have been worth?”  
“What is a reasonable royalty for use of my copyright?” “Have we received our full royalty entitlement from our licensees?”

If you are faced with similar questions, you'll want to appoint experts who understand the assessment of damages in intellectual property disputes. It will be important to appoint an expert team who can clearly and concisely explain the issues and their implications. You will need your expert to reach robust conclusions grounded in an independent, objective and thorough analysis of the evidence.

Increasingly, commercial disputes relate to issues over the value of intellectual property rights. Our team has experience in answering these types of questions and in valuing intellectual property rights in a range of contexts – transactions, licensing, tax planning, financial reporting, regulatory reviews, as well as disputes.

We also have expert economists that employ economic methodologies and statistical techniques, particularly in the context of cases that require extensive or complex market analysis.

As well as acting as an expert witness or an independent expert appointed by both parties, we can provide commercial advice and assist in settlement negotiations.

In the context of intellectual property disputes, our specialists provide advice on:

- the different financial remedies available in the UK and other jurisdictions. Typically, a claimant may elect either for an enquiry as to damages (the claimant's losses) or an account of profits (the infringer's gain). Based on the commercial position of each party, the impact of the infringement and the governing legal principles, we can advise which remedy to choose, and why;
- the assessment of damages – we look at the full economic impact of an infringement, based on a structured assessment of the market, commercial, financial, and accounting issues;
- licensing theory and practice, and the associated case law, in assessing a reasonable royalty; and
- conducting royalty audits – we identify potential under-payments under the terms of a licence agreement.

We bring practical experience of a wide range of intellectual property matters, together with a commercial perspective, across all forms of intellectual property.

### Expert witnesses

Our team includes credible and experienced people who have been instructed as an expert witness, and who have prepared reports on a wide range of issues for courts and tribunals in the UK and overseas. We are fully conversant with our duties under the UK's Civil Procedure Rules. We work together with instructing solicitors, members of the IP Bar, witnesses of fact and experts in other technical disciplines.

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### Alternative dispute resolution

In addition to our experience before the Patents Court, the Patent Office and the Copyright Tribunal, we have experience of alternative dispute resolution processes such as arbitration and mediation. For example, we advised on the level of a royalty for an automobile engine patent in a licensing dispute and subsequently assisted negotiations at a WIPO-convened mediation.

### Case studies

#### Dyson v Hoover

We acted for Dyson in its long-running patent dispute with Hoover in respect of cyclonic vacuum cleaner technology. The case settled for a reported £4 million plus interest and costs, substantially above a previous sum which Dyson offered to accept from Hoover in settlement.

#### Multinational licensing dispute

We provided commercial advice in a dispute as to the level of royalties to be paid under a licence in the pharmaceutical industry. Our advice was used as a basis for settlement discussion and successful re-negotiation of the licensing terms.

### Patent entitlement dispute

We provided advice on the royalty under a compulsory licence in a patent action in the manufacturing industry, as well as advice in respect of damages in an associated breach of confidentiality claim.

### Confidential information breach

We provided advice on the losses suffered as a result of breach of confidential information in the support services sector.

### Media licensing dispute

We worked with an international media client to investigate allegations of significant royalty underpayments and to quantify the extent of any claim for use in settlement discussions.

### Cross-undertaking as to damages

After it had been found that our client had been wrongly kept out of the market for a certain drug, we helped assess the profits lost under a cross-undertaking as to damages. The matter settled out of Court.

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Designed and produced by The Creative Studio at Deloitte, London.