



# Intellectual Property

Intangible assets often represent a significant proportion of the total value of a business. One of the main types of intangible assets is intellectual property (IP), which includes patents, trade secrets, trademarks, and copyrights. It is critical for businesses to assess the value of, and protect, their IP because it provides the competitive advantage that keeps them operating profitably.

HKA's IP practice provides economic, financial, accounting, valuation, licensing, and damages consulting on a wide range of IP infringement and misappropriation matters. Our consultants have provided expert testimony on damages at trial in some of the largest and most complex IP infringement and misappropriation disputes in recent decades. Some examples of these disputes are *Qualcomm v. Apple*, *Oracle v. SAP*, *MGA Entertainment v. Mattel*, *Ravgen v. LabCorp*, *Lontex v. Nike*, and *InterDigital v. Lenovo*.

Our IP services include:

- Damages analysis and quantification
- IP valuation, including standard essential patent (SEP)/fair, reasonable, and non-discriminatory (FRAND) analysis
- Licensing strategy and support
- Royalty compliance investigations
- U.S. International Trade Commission (ITC) Section 337 investigations

HKA consultants have significant experience in a variety of matters addressing IP damages and valuation including but not limited to:

- software
- semiconductor
- pharmaceutical and life sciences

- air interface technologies, including Wi-Fi
- dynamic random-access memory (DRAM)
- flash memory
- encryption
- power management
- audio processing
- routers and switches
- search engines
- cellular communications
- graphics chips
- gaming
- networking equipment
- food and beverage products
- cardiovascular stents
- medical equipment
- athletic footwear and equipment
- toys

We also have extensive experience in FRAND matters and the determination of reasonable royalties for SEPs. HKA engagement teams comprise consultants with deep knowledge of FRAND licensing issues (including those specific to cellular technologies, such as 2G/3G/4G/5G) and the evaluation of FRAND royalty rates based on the analysis of comparable



licenses and other approaches (e.g., the “top down” approach). We have provided expert analyses and testimony in SEP/FRAND-related matters in the ITC, U.S. District Court, and the High Court of England and Wales. Our consulting team provided evidence in the High Court of England and Wales addressing FRAND in the *InterDigital v. Lenovo* matter, where for the second time in history the court set a global FRAND rate.

HKA consultants have prepared and assessed claims for lost profits, price erosion, reasonable royalties, unjust enrichment, and other measures of economic damages. We are experienced in analyzing the multitude of issues required to assess IP damages, such as apportionment of profits, manufacturing and sales capacity, available alternatives, customer demand, company and product profitability, competition, and cost savings and enhanced earnings related to licensing IP. Our experts have evaluated and determined reasonable royalties for a broad range of products and industries, reviewing and analyzing thousands of license agreements. HKA consultants also value IP related to its transfer, licensing, and disposition. We consult with clients regarding factors that influence licensing opportunities, including assessing potential royalties, reviewing licensing strategy, evaluating proposals and risk exposure, and assisting with settlement and licensing negotiations. In addition, we investigate licensing and royalty compliance disputes, and assess compliance with license terms and the accuracy and completeness of royalty payments.

We have also assisted clients with ITC Section 337 investigations. In this context, we have analyzed the economic prong of the domestic industry requirement, as well as evaluated the commercial success of articles covered by the subject patents and FRAND licensing issues.

## Medical Device Patent Infringement

HKA consultants were retained by a large international medical device company in two separate patent infringement matters related to external insulin pump systems. We analyzed the insulin pump market and determined the plaintiff’s lost profits on sales of insulin pump systems due to the defendant’s infringing product. HKA consultants also determined a reasonable royalty for defendant’s use of the patent technology based on prior licensing history and financial, competitive, and other factors.

## Telecommunication Technology SEP/FRAND Analysis

HKA consultants assisted a multinational U.S.-based technology company on defense in a significant SEP litigation in District Court in Southern California related to alleged infringement of 2G/4G SEPs. Our assignment was to determine (1) whether licensing offers made by the plaintiff and defendant were consistent with FRAND licensing terms; and (2) whether historical royalties charged by the plaintiff to the defendant and its contract manufacturers were consistent with FRAND licensing terms. The parties reached a global settlement after opening arguments during trial proceedings.

## Biopharmaceutical Licensing Dispute

HKA consultants assisted counsel representing the plaintiff, an American multinational biopharmaceutical company, in a decade-long licensing-related dispute. The dispute related to the licensing of EPO, an invention that stimulates the body’s production of red blood cells. Our scope of work involved evaluating the marketing programs and sales incentives, including contracts, invoices, discounts, rebates, marketing program reports, strategic plans, company and industry data regarding sales and cost data, and U.S. Food and Drug Administration (FDA) reports, that resulted in sales into unlicensed indications. HKA also analyzed various levels of pharmaceutical prices, including average wholesale prices and list prices for a variety of drugs such as biopharmaceuticals, drugs heavily reimbursed by government entities, and drugs in a monopoly pricing environment, as well as those facing differentiated and undifferentiated competition. We made use of 10 years of company-supplied data (including electronically stored sales, discount and rebate data, and information developed directly from contracts with providers) to develop extensive analyses and reports on the company’s average selling (or net effective) price under various marketing programs and sales incentives. HKA consultants provided deposition testimony and testimony in two separate private arbitrations.



## ITC Section 337 Investigation Regarding Oil Vaping Technology

HKA experts were retained by a joint defense group comprising many respondent companies engaged in the manufacture and sale of personal vaping cartridges. HKA's expert evaluated and responded to the complainant's claimed satisfaction of the economic prong of the ITC's domestic industry requirement and the associated opinions offered by the complainant's economic expert. As part of the investigation, HKA's expert identified numerous methodological weaknesses and errors in the complainant's expert analysis and report. The detailed and thorough rebuttal analysis conducted by HKA's expert was so devastating that the complainant ultimately abandoned its economic expert before trial and attempted to present its domestic industry case exclusively through fact witnesses. The opinions of HKA's expert on domestic industry were accepted and adopted by the Administrative Law Judge and the ITC – both agreeing with HKA's expert that the complainant failed to demonstrate the presence of a domestic industry. By prevailing on this dispositive issue, HKA's clients avoided exclusion orders and were permitted to continue with business as usual.

## Software Copyright Infringement

HKA consultants were retained on behalf of a major software company to analyze damage issues related to the misappropriation and improper use of enterprise application software and support materials and database software by a competitor. Our assignment included the calculation of the defendants' "value of use" of the copyrighted materials on the basis of a hypothetical license negotiation. Our analyses included an understanding of the unique dynamics of the application software market at the time of infringement and analyzing the financial and economic expectations of the parties related to the use of the copyrighted materials at issue. HKA consultants also calculated the defendants' profits from the infringement and the client's lost profits and additional costs incurred resulting from the defendants' alleged misuse of the client's IP. Prior to trial, the defendants stipulated to liability for the alleged copyright infringement, and the trial proceeded for the determination of damages. One of our experts provided deposition and trial testimony, resulting in the largest jury verdict in history in a copyright infringement case.

## Telecommunication Technology Patent Infringement

HKA consultants were retained by a multinational U.S.-based technology company on the defense to determine reasonable royalty damages in an alleged patent infringement matter related to 3G/4G telecommunication standard-related technology incorporated into its smartphones and tablets. Our analyses included a Georgia-Pacific analysis and determining a royalty amount based on a "component royalty stack approach" (similar to the "top down approach"), which comprised analyzing the smallest saleable patent practicing unit (SSPPU) and patents declared essential to relevant cellular standards. Although the jury returned a non-infringement verdict, upon post-verdict polling, seven of eight jurors stated that they were ready to accept HKA's exact damage number of \$750,000, and the other juror was "around \$1.5 million." The plaintiff claimed \$95 million. Pretrial, in assessing our methodology the presiding judge ruled that the baseband processor was the SSPPU.

## Toy Industry Copyright Infringement

HKA consultants were engaged on behalf of a privately held toy manufacturer that sold a line of fashion dolls to analyze economic damages claims related to alleged copyright infringement asserted by one of the largest toy companies in the world. The analyses largely focused on claims for unjust enrichment and apportionment. We analyzed the profits related to the thousands of toys and dozens of associated product lines potentially at issue, as well as for derivative sources of revenue such as entertainment and licensing. After determining profits from the alleged infringed products, HKA calculated and applied apportionment factors based on various approaches and concepts, such as dollars expended to develop the IP at issue, royalty rates, sales patterns, interviews with industry experts, and research and surveys conducted by third parties regarding purchasing decisions. Additional analyses were performed apportioning the copyrighted properties across many different themes of the accused fashion doll sales.



## Software Trademark Infringement

HKA consultants were retained by the defendant in a trademark infringement matter related to the use of the mark by a leading search engine company to brand a suite of software applications. Our analyses included determining historical sales and costs related to the applications, performing benchmark analysis before and after rebranding efforts, conducting regression analysis to evaluate the relationship of sales to various factors, and evaluating apportionment factors contributing to the success of the applications' sales. HKA submitted initial and rebuttal expert reports, and one of our experts provided deposition testimony.

## Biotechnology Trade Secret Misappropriation

HKA consultants were retained on behalf of a biotechnology company that developed lab-on-a-chip technology for drug research. Our efforts involved analyzing the value of misappropriated trade secrets by, among other things, considering comparable agreements for the acquisition of pioneering microfluidics patents and assessing the unjust gains of the defendants attributable to the trade secret information. We testified on damages in California State Court in Santa Clara County.

## ITC Section 337 Investigation Regarding Solar Panel Technology

HKA experts were retained by a multinational publicly traded solar company respondent in an ITC Section 337 investigation. With the client facing the threat of an exclusion order, HKA's expert evaluated and responded to the complainant's claimed satisfaction of the economic prong of the domestic industry requirement. HKA conducted a thorough investigation, including a site inspection of the complainant's facility, and identified numerous weaknesses in the methodology employed by the complainant. HKA documented its findings in a comprehensive expert report and ultimately testified that the complainant failed to meet its burden to demonstrate that it met the ITC's standards for satisfaction of the domestic industry requirement. The case settled very favorably for HKA's client shortly before trial.

## Sports and Footwear Industry Trademark Infringement

HKA consultants were retained by a U.S.-based global leader in the sports and footwear industry to calculate damages for the defendant's alleged infringement of the plaintiff's "cool compression" trademark. We reviewed and critiqued the opposing expert's damages claim and determined what profits, if any, from the sales of accused apparel were attributable to the plaintiff's trademark, as well as the unjust enrichment from use of the plaintiff's trademark. HKA consultants analyzed profit apportionment considerations based on surveys/studies, the defendant's proprietary contributions to the accused products, and the extent of use of the plaintiff's trademark on their products. HKA consultants identified a market comparable and determined the defendant's unjust enrichment based on avoiding acquiring the asserted trademark. One of our experts testified at deposition and trial in Philadelphia Federal Court. The plaintiff claimed damages were \$137 million plus punitive damages, and the jury awarded only \$507,000 in total damages and \$142,000 in economic damages.

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